

SUPREME COURT OF MONTANA

State of Montana v. Michael L. Berger

State v. Berger, 388 Mont. 498, 2017 MT 229 (2017) · No. DA 16-0683 · Decided September 19, 2017

SUMMARY

The Montana Supreme Court affirmed the denial of Michael Berger’s motion to dismiss charges arising from a DUI investigation. The Court held that an officer’s failure to advise Berger of his right to obtain an independent blood test did not violate due process because the officer requested only a preliminary alcohol screening test, Berger refused it, and the State obtained no blood or breath testing evidence. The Court also held that dismissal was not warranted for the related reckless driving and criminal mischief charges.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Michael E. Wheat; Michael E. Wheat; Mike McGrath; James Jeremiah Shea; Dirk M. Sandefur; Laurie McKinnon; Beth Baker
JURISDICTION	Montana
DECIDED	September 19, 2017
DOCKET	DA 16-0683
DISPOSITION	affirmed
PROCEDURAL POSTURE	Berger appealed the Montana Twentieth Judicial District Court's affirmance of the Hot Springs City Court's denial of his motion to dismiss.
STANDARD OF REVIEW	The denial of a motion to dismiss is reviewed de novo as a question of law. On an intermediate appeal from municipal court, the district court's decision is reviewed as if the case had originally been appealed to the Montana Supreme Court.
PRECEDENTIAL VALUE	published Montana Supreme Court opinion
PARTIES	Michael L. Berger v. State of Montana

TOPICS

criminal procedure

due process

suppression of evidence

appellate procedure

standard of review

PRACTICE AREAS

criminal procedure

DUI and implied consent

constitutional criminal procedure

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether an officer's failure to advise a suspect of the right to obtain an independent blood test, when the officer requested only a preliminary alcohol screening test under § 61-8-409, MCA, violated due process.
2. Whether that failure required dismissal of the DUI charge or the non-DUI charges.
3. Whether suppression was an available remedy when the State obtained no blood or breath test evidence.

HOLDINGS

1. When an officer requests only a preliminary alcohol screening test under § 61-8-409, MCA, and does not request a blood or breath test under § 61-8-402, MCA, the officer's failure to advise the accused of the right to obtain an independent blood test does not impede that right or violate due process.
2. The officer's failure to advise Berger of the right to an independent blood test did not entitle him to dismissal of the reckless-driving and criminal-mischief charges.
3. Suppression was unnecessary because there was no blood or breath test result or other testing evidence to suppress.

KEY QUOTATIONS

"We conclude that Smith's failure to notify Berger of his § 61-8-405, MCA, right to obtain an independent blood test does not constitute impeding Berger's right to obtain such a test nor does it violate Berger's due process rights." (388 Mont. at 504)

"Since there was no test result in this case, there was nothing to suppress." (388 Mont. at 504)

FACTUAL BACKGROUND

Police responded to reports that Berger was behaving violently and driving erratically and dangerously. The officer observed that Berger appeared intoxicated and that he failed multiple field sobriety tests. The officer advised Berger of the preliminary alcohol screening test and the consequences of refusal, but Berger refused the PAST; the officer did not request a blood or breath test under § 61-8-402, MCA, and no blood alcohol sample or test result existed.

PROCEDURAL HISTORY

Berger was arrested after refusing a preliminary alcohol screening test and was charged with reckless driving, criminal mischief, DUI, and negligent endangerment. The Hot Springs City Court denied his motion to dismiss based on the officer's failure to advise him of the right to obtain an independent blood test. Berger later entered a conditional plea agreement to reckless driving, criminal mischief, and DUI-first offense; negligent endangerment

was dismissed. The District Court affirmed the denial of dismissal and ordered suppression of any blood or breath testing evidence, although no such test result existed. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- City of Helena v. Grove, 2017 MT 111, 387 Mont. 378, 394 P.3d 189
- State v. Harrison, 2017 MT 60, 387 Mont. 52, 390 P.3d 945
- State v. Schauf, 2009 MT 281, 352 Mont. 186, 216 P.3d 740
- State v. Strand, 286 Mont. 122, 951 P.2d 552 (1997)
- State v. Swanson, 222 Mont. 357, 722 P.2d 1155 (1986)
- State v. Stueck, 280 Mont. 38, 929 P.2d 829 (1996)
- State v. Reavley, 2007 MT 168, 338 Mont. 151, 164 P.3d 890
- State v. Weaver, 1998 MT 167, 290 Mont. 58, 964 P.2d 713

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