

SUPREME COURT OF THE STATE OF MONTANA

State of Montana v. Ryan Jeffrey Counts

State v. R. Counts, 2017 MT 13N · No. DA 15-0390 · Decided January 24, 2017

SUMMARY

The Montana Supreme Court affirmed the denial of Ryan Jeffrey Counts’s motion to suppress breath-test evidence and his DUI conviction. The Court held that Counts waived his appellate challenge concerning the Intoxilyzer’s field certification because he had not raised that specific argument before the District Court.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	James Jeremiah Shea; Mike McGrath; Laurie McKinnon; Beth Baker; Jim Rice
JURISDICTION	Montana
DECIDED	January 24, 2017
DOCKET	DA 15-0390
DISPOSITION	affirmed
PROCEDURAL POSTURE	Counts appealed from the District Court's denial of his motion to suppress breath-test evidence and from his subsequent jury conviction for driving under the influence.
STANDARD OF REVIEW	Evidentiary-admissibility rulings are reviewed for abuse of discretion; when the ruling rests on a question of law, the legal conclusion is reviewed for correctness.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Ryan Jeffrey Counts v. State of Montana

TOPICS

- suppression of evidence
- evidence
- preservation of error
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal procedure
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether Counts preserved his appellate argument that the Intoxilyzer was not properly field certified under the Senior Operator's Manual and the Administrative Rules of Montana.
2. Whether the District Court abused its discretion by denying suppression of the breath-test results based on the foundation evidence presented below.

HOLDINGS

1. Counts waived the field-certification challenge because he did not raise it in his written suppression motion or at the suppression hearing; merely referring generally to foundation did not preserve every possible foundation argument.
2. The District Court did not abuse its discretion in denying Counts's motion to suppress on the grounds presented below.

KEY QUOTATIONS

“this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.” (§ 1)

“Merely uttering the word “foundation” before the trial court does not give a party carte blanche to raise every conceivable foundation argument on appeal under the auspices of it being “within the scope of the legal theory articulated to the trial court.”” (§ 6)

“Allowing a party to raise new arguments or change its legal theory on appeal “is fundamentally unfair” to the district court, which would be faulted for failing to rule on an issue it never had the opportunity to consider.” (§ 7)

FACTUAL BACKGROUND

Counts was arrested on suspicion of driving under the influence and submitted a breath sample on an Intoxilyzer 8000 at the Fergus County Sheriff's Office. The test showed a blood alcohol content of .201 percent. At the suppression hearing, Sheriff Eades produced the gas standard used with the test and testified from personal knowledge that it was the standard used when administering Counts's breath test.

PROCEDURAL HISTORY

Counts was convicted after a bench trial in Fergus County Justice Court and appealed to the District Court for a trial de novo. The District Court denied his motion to suppress the Intoxilyzer 8000 breath-test results, a jury convicted him of DUI per se, and the court sentenced him to jail, a fine, and a surcharge. Counts timely appealed to the Montana Supreme Court, arguing that the State failed to establish the Intoxilyzer's field certification.

DISPOSITION

affirmed

CASES CITED

- State v. Jenkins, 2011 MT 287, ¶ 4, 362 Mont. 481, 265 P.3d 643
- State v. Frickey, 2006 MT 122, ¶ 9, 332 Mont. 255, 136 P.3d 558
- State v. Claassen, 2012 MT 313, ¶ 19, 367 Mont. 478, 291 P.3d 1176
- State v. Montgomery, 2010 MT 193, ¶ 12, 357 Mont. 348, 239 P.3d 929
- State v. Martinez, 2003 MT 65, ¶ 17, 314 Mont. 434, 67 P.3d 207

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