

No. 90-414

IN THE SUPREME COURT OF THE STATE OF MONTANA

1991

THE STATE OF MONTANA,

Plaintiff and Respondent,

-vs-

BRIAN TRENT WELDELE,

Defendant and Appellant.

APPEAL FROM: District Court of the First Judicial District,
In and for the County of Lewis & Clark,
The Honorable Jeffrey Sherlock, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Charles A. Graveley, Helena, Montana.

For Respondent:

Hon. Marc Racicot, Attorney General, State of
Montana, Helena, Montana; Michael J. Rieley,
Assistant City Attorney, City of East Helena, Luxan
& Murfitt, Helena, Montana.

FILED

MAY 7 - 1991

Submitted: March 28, 1991

Decided: May 7, 1991

Filed:

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

Ed Smith

clerk

Chief Justice J. A. Turnage delivered the Opinion of the Court.

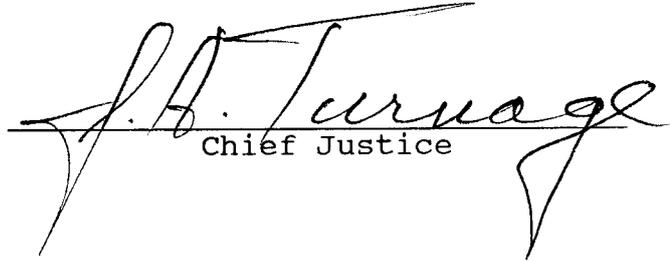
Brian Trent Weldele appeals an order and a judgment of the First Judicial District, Lewis and Clark County, which denied his motion to dismiss and found him guilty of driving while under the influence of alcohol (third offense), a misdemeanor. The District Court sentenced Weldele to the following: one year imprisonment with thirty days suspended, a \$1,000.00 fine, a \$10.00 mandatory surcharge fee, court costs, suspended his driver's license, and ordered him to attend the ACT program through Boyd Andrew Care Center. We affirm.

The sole issue presented on appeal is a factual dispute: following his arrest for driving under the influence of alcohol, did Weldele request a blood test during the booking process, and did the arresting police officer deny him this right? A videotape of the Weldele's booking process, although poor in quality, is consistent with the arresting police officer's testimony that although Weldele once inquired about a blood test, he never at any time requested that a blood test be performed. We therefore agree with the District Court and hold that, based upon the videotape and the testimony of the arresting police officer, Weldele did not request a blood test during the booking process and accordingly, was not denied his right to a blood test.

Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Operating Rules, this decision shall not be cited as precedent and

shall be published by its filing as a public document with the Clerk of this Court and by a report of its result to West Publishing Company.

Let remittitur issue forthwith.


Chief Justice

We concur:





Justices

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No. 90-414

THE STATE OF MONTANA,)
)
 Plaintiff and Respondent,)
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 v.)
)
 BRIAN TRENT WELDELE,)
)
 Defendant and Appellant.)

FILED
 ORDER MAY 14 1991
Ed Smith
 CLERK OF SUPREME COURT
 STATE OF MONTANA

On May 7, 1991, the Opinion of this Court was issued in the above-entitled appeal. It appearing that there is an error in said Opinion,

IT IS ORDERED that the following language found at page 2 of the Opinion of this Court dated May 7, 1991, " . . . one year imprisonment with thirty days suspended, . . ." be amended to read, ". . . one year imprisonment with all but thirty days suspended, . . ."

The Clerk is directed to mail a true copy of this order to counsel of record for the respective parties.

DATED this 14th day of May, 1991.

J. A. Curran
 Chief Justice
Karla M. Gray
Tracy Inoué
R. C. McDevitt
 Justices