

DA 17-0524

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 103N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

REID ERICKSON,

Defendant and Appellant.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DC 17-43
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Karl Knuchel, Aaron Brann, Karl Knuchel P.C., Livingston, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Ryan Aikin, Assistant
Attorney General, Helena, Montana

Bruce Becker, Park County Attorney, Livingston, Montana

Submitted on Briefs: February 21, 2018

Decided: May 1, 2018

Filed:



Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion, shall not be cited, and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Reid Lincoln Erickson appeals the Order of the Park County Justice Court allowing testimony about the certification of an Intoxilyzer from a Park County Sheriff's Deputy who had not personally performed the certifications, and the Sixth Judicial District Court's Order affirming the Justice Court's Order. We affirm.

¶3 On November 7, 2016, Trooper James Sulages stopped Erickson in Livingston for following too closely and for speeding in a school zone. After initiating the traffic stop, Sulages detected the odor of alcohol in the vehicle. When Sulages asked Erickson for his license, registration, and proof of insurance, Erickson repeatedly tried to give Sulages vehicle registration as proof of insurance. Sulages performed field sobriety tests on Erickson. Based on the field sobriety test results, Erickson's driving behavior, and the odor of alcohol, Sulages arrested Erickson on suspicion of driving under the influence of alcohol ("DUI"). Following the arrest, Sulages administered an Intoxilyzer breath test at the detention center. Erickson registered a blood alcohol content of .089. Sulages cited Erickson for (1) DUI—first offense; (2) speeding in a school zone; (3) failure to carry proof of insurance—first offense; and (4) following too closely.

¶4 On November 15, 2016, Erickson requested a trial by jury, and, on November 17, Erickson pled not guilty to all four of his violations. On May 2, 2017, the Justice Court conducted a bench trial.¹ The Justice Court admitted the printed results of the Intoxilyzer breath test with no objection from Erickson. The State called Deputy Jason Hopkin to testify regarding the Intoxilyzer certifications performed on October 25 and December 1, 2016, to certify the Intoxilyzer instrument used to test Erickson's breath. Though qualified to certify Intoxilyzer instruments, Hopkin did not personally certify the Intoxilyzer instrument used on Erickson. Erickson objected to Hopkin's testimony on grounds of lack of foundation and hearsay. The Justice Court overruled Erickson's objection. Erickson was found guilty of speeding, following too closely, and DUI. The charge of no insurance was dismissed after Erickson presented evidence he had insurance at the time of the offense. The Justice Court sentenced Erickson to ten days in jail, with nine days suspended, and fined him \$945.00. Erickson appealed to the District Court and argued that the Justice Court abused its discretion in allowing Hopkin to testify regarding the field certifications. The District Court affirmed, finding the field certifications fall within the business records exception, and that any qualified agent of that department can testify regarding the evidence. Erickson appeals.

¶5 The Park County Justice Court is a court of record. In an appeal to the district court from a justice court of record, the district court functions as an intermediate appellate court and must confine its review to the record. *Stanley v. Lemire*, 2006 MT

¹ The record indicates that Erickson's attorneys were contacted and advised of the last day the Justice Court could call a jury. Erickson's attorneys did not file any motions or brief the matter.

304, ¶¶ 24–25, 334 Mont. 489, 148 P.3d 643 (citing §§ 3-5-303, MCA, 3-10-115, MCA). The district court reviews the justice court’s findings of fact to determine whether they were clearly erroneous, reviews discretionary rulings for an abuse of discretion, and reviews legal conclusions to determine whether they are correct. *Stanley*, ¶ 25; § 3-10-115(1), MCA. On appeal from the district court’s review of the justice court decision, this Court examines the record independently to determine whether the justice court’s findings of fact were clearly erroneous, whether its discretionary rulings were an abuse of discretion, and whether its legal conclusions were correct. *State v. Eystad*, 2017 MT 29, ¶ 10, 386 Mont. 291, 389 P.3d 1014 (citing *Stanley*, ¶ 26).

¶6 M. R. Evid. 104(a) provides:

Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court. In making its determination it is not bound by the rules of evidence except those with respect to privileges.

When a court considers whether adequate foundation for admission of breath test results in a DUI prosecution exists, M. R. Evid. 104(a) “authorizes the court to do so without regard to whether the [Intoxilyzer] certification forms are hearsay.” *State v. Jenkins*, 2011 MT 287, ¶¶ 8–10, 362 Mont. 481, 265 P.3d 643 (holding that a district court did not err in admitting breath test instrument certifications because the certifications were not substantive evidence of the DUI offense) (citing *State v. Delaney*, 1999 MT 317, ¶¶ 16, 18, 297 Mont. 263, 991 P.2d 461). Thus, the State need not demonstrate that field certifications fall within an exception to the hearsay rule. *Jenkins*, ¶ 9. Instead, the State must demonstrate the accuracy of the instrument was certified in accordance with

regulations as part of the foundation for admission of breath test evidence. *State v. Incashola*, 1998 MT 184, ¶ 8, 289 Mont. 399, 961 P.2d 745; Admin R. M. 23.4.213(1) (2017). Certification complying with regulations “constitutes an adequate foundation for admissibility of the breath tests results” *Incashola*, ¶ 16; Admin R. M. 23.4.213(1)(i) (a valid field certification “shall create the inference that the breath [test] instrument was in proper working order at the time of the subject test. . . .”).

¶7 Erickson argues the Justice Court improperly admitted the Intoxilyzer field certifications because they were without foundation and were inadmissible hearsay. Erickson argues the Justice Court abused its discretion when, over the objections of Erickson’s counsel, it allowed Hopkin to testify to the Intoxilyzer certifications even though he was not the certifying officer. We disagree.

¶8 The Intoxilyzer field certifications admitted at trial were not substantive evidence of Erickson’s guilt. The sole purpose of the certifications was to serve as foundation for the admission of the Intoxilyzer test results. *See Jenkins*, ¶¶ 8–9. Accordingly, the Justice Court was not required to consider their admissibility under the Rules of Evidence. Once the State showed certification in compliance with applicable regulations, *see Incashola*, ¶ 16, the Justice Court was entitled to rely on the certifications as foundation for the admission of Erickson’s breath test results. The actual breath test results were properly admitted without objection. The Justice Court did not abuse its discretion when it allowed testimony regarding the certification of the Intoxilyzer from a qualified operator who did not personally perform the certification. *See Eystad*, ¶ 10.

¶9 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. We affirm.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ DIRK M. SANDEFUR
/S/ JIM RICE
/S/ BETH BAKER
/S/ INGRID GUSTAFSON