

SYNOPSIS OF THE CASE

2015 MT 218, DA 14-0089: STATE OF MONTANA, Plaintiff and Appellant,
v. **ROBERT E. SPADY**, Defendant and Appellee.¹

The Montana Supreme Court has upheld the constitutionality of the 24/7 Sobriety Program. The program allows a court to require an individual, who is accused of a second or subsequent DUI offense, to submit to twice-daily breath tests as a condition of release from jail before trial. The individual is responsible for the \$2 per test fee. Failure to comply with the testing requirement may result in a criminal contempt charge.

The Lincoln County Justice of the Peace ordered Robert Spady to participate in the 24/7 Sobriety Program as one of eight conditions of his release on bond. Spady had a prior DUI conviction in 2006. Spady missed three tests and the State charged him with criminal contempt. Spady challenged the constitutionality of the 24/7 Sobriety Program.

The District Court granted Spady's motion to dismiss. The District Court held that the fees unfairly punished the defendant prior to being convicted of the charged crime, that the statute governing the program fees improperly delegated legislative authority to the Attorney General, and that portions of the statute were unconstitutionally vague. The State appealed the District Court's decision to the Montana Supreme Court. Oral argument was held in Bozeman on April 27, 2015.

The Supreme Court held that requiring individuals accused, but not convicted of, repeat drunk driving offenses to submit to daily breath tests and pay the associated fees does not violate their due process rights and is not pretrial punishment in violation of the Constitution. However, the Supreme Court concluded that while the testing can be an appropriate condition of bond, it may only be ordered after the court conducts an individualized assessment to determine whether the condition is appropriate for the individual defendant. The Court likened the testing fees to bail and cautioned that courts must conduct the same inquiry into appropriateness and financial ability when ordering the breath testing as it would when imposing bail. The Court concluded that the Justice Court erred when it imposed the condition without assessing whether the testing was necessary and appropriate for Spady.

While the Supreme Court affirmed the District Court's order remanding the case to the Justice Court, the Court rejected the District Court's conclusion that the 24/7

¹ This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.

Sobriety Program lacked objective criteria to guide the Attorney General when setting program fees. The Court held that § 44-4-1204(2), MCA, provides a clear policy that fees are limited to those associated with administering the program, notably the “cost of installation, monitoring, and deactivation of any testing devices.” The Court reversed the District Court’s conclusion that the statute granted the Attorney General complete discretion when setting fees.

The Court also addressed the search and seizure implications of the breath tests. The Court weighed the State’s interest in protecting the public from intoxicated drivers against the privacy interests of an individual arrested for a second or subsequent drunk driving offense, and concluded that the testing does not infringe a significant privacy interest. The Court concluded that the breath test is a search, but is reasonable because of a pretrial defendant’s diminished expectation of privacy. The Court held that the tests are not unreasonable if a determination is made by the court that the program is appropriate for that defendant given the nature of the charges against him.

The case is now remanded to the Justice Court with instructions to dismiss the contempt charges.