

IN THE SUPREME COURT, STATE OF WYOMING

2018 WY 24

OCTOBER TERM, A.D. 2017

March 5, 2018

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DEVIN JAY HARDMAN,

Appellant  
(Defendant),

v.

THE STATE OF WYOMING,

Appellee  
(Plaintiff).

S-17-0242

*Appeal from the District Court of Lincoln County  
The Honorable Joseph B. Bluemel, Judge*

***Representing Appellant:***

R. Michael Vang, R. Michael Vang, P.C., Laramie, Wyoming; Timothy K. Newcomb, Laramie, Wyoming. Argument by Mr. Vang.

***Representing Appellee:***

Peter K. Michael, Wyoming Attorney General; Christyne M. Martens, Deputy Attorney General; Caitlin Frances Harper, Senior Assistant Attorney General; Samuel L. Williams, Assistant Attorney General. Argument by Mr. Williams.

***Before BURKE, C.J., and DAVIS, FOX, KAUTZ, and BOOMGAARDEN, JJ.***

**NOTICE:** This opinion is subject to formal revision before publication in Pacific Reporter Third. Readers are requested to notify the Clerk of the Supreme Court, Supreme Court Building, Cheyenne, Wyoming 82002, of any typographical or other formal errors so that correction may be made before final publication in the permanent volume.

## FOX, Justice.

¶1 Devin Jay Hardman entered a conditional no contest plea to the charge of driving under the influence, causing serious bodily injury pursuant to Wyo. Stat. Ann. §§ 31-5-233(b)(i) and 31-5-233(h)(i). The district court entered its Order Granting Entry of Conditional Plea Pursuant to W.R.Cr.P. 11(a)(2), identifying the purpose of the conditional plea as:

[T]o allow the Defendant to appeal the District Court’s denial of the Defendant’s motions to suppress the *blood alcohol concentration* (BAC) level of *eight one-hundredths of one percent* (0.08%) and to allow any further hearings pursuant to *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 592-595[, 113 S.Ct. 2786, 2796-98, 125 L.Ed.2d 469] (1993) . . . .

(Emphasis in original.)

¶2 Mr. Hardman raises a number of issues on appeal; however, the threshold issue is whether he presents a proper conditional plea. We conclude that he does not, and since reversal of the district court’s order is required because “the issues are clearly controlled by settled Wyoming law,” we enter an abbreviated opinion pursuant to W.R.A.P. 9.06.

¶3 W.R.Cr.P. 11(a)(2) requires: 1) the parties to make a reservation of the right to appeal a specific issue in writing, 2) the State’s consent, and 3) the trial court’s approval. *Matthews v. State*, 2014 WY 54, ¶ 15, 322 P.3d 1279, 1281 (Wyo. 2014) (citing *Walters v. State*, 2008 WY 159, ¶¶ 14-15, 197 P.3d 1273, 1277 (Wyo. 2008)).<sup>1</sup> These three requirements were met, and the specific issues are identified in the district court’s order, which was approved as to form by both parties. We next consider the “fourth requirement, that ‘conditional pleas will be allowed only when the decision of the [appellate court] . . . will dispose of the case either by allowing the plea to stand or by such action as compelling dismissal of the [charges] or suppressing essential evidence.’” *Matthews*, ¶ 15, 322 P.3d at 1281 (quoting *Walters*, ¶ 15, 197 P.3d at 1277-78); *see also Brown v. State*, 2017 WY 45, ¶¶ 10-11, 393 P.3d 1265, 1270 (Wyo. 2017).

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<sup>1</sup> W.R.Cr.P. 11(a)(2) states:

Conditional Pleas. — With the approval of the court and the consent of the attorney for the state, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to seek review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

[¶4] For purposes of this analysis, we disregard the additional issues raised in the Brief of Appellant and focus only on those issues preserved in the Order Granting Entry of Conditional Plea Pursuant to W.R.Cr.P. 11(a)(2). The motion to suppress Mr. Hardman's blood alcohol content is an issue that would likely be dispositive because a ruling in Mr. Hardman's favor would compel dismissal of the charges by suppressing essential evidence. A remand for further *Daubert* hearings, however, could lead to a variety of outcomes, most of which would entail further proceedings without necessarily disposing of the case. We have said that the entire plea is invalid if it contains a non-dispositive issue. *See Walters*, 2008 WY 159, ¶ 26, 197 P.3d at 1280. We reverse and remand to the district court for proceedings consistent with this opinion.