

SUPREME COURT OF MONTANA

State v. \$129,970.00, One Hundred Twenty Nine Thousand Nine
Hundred Seventy Dollars in United States Currency

337 Mont. 475 (Mont. 2007) · No. No. 05-585 · Decided June 19, 2007

SUMMARY

The Supreme Court of Montana affirmed a forfeiture order concerning \$129,970 in United States currency seized from a rental vehicle. The court held that the rental company could authorize removal of the defendant's property after terminating the rental agreement, that the subsequent search warrant was sufficiently particular and supported by probable cause, and that the evidence supported forfeiture.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	John Warner; Karla M. Gray, C.J.; James C. Nelson; W. William Leaphart; Patricia Cotter
JURISDICTION	Montana
DECIDED	June 19, 2007
DOCKET	No. 05-585
DISPOSITION	affirmed
PROCEDURAL POSTURE	Daniel Ward Payne appealed from the Rosebud County District Court's order granting the State's petition for forfeiture of \$129,970 in United States currency.
STANDARD OF REVIEW	The court reviewed the grant of the forfeiture petition for clearly erroneous factual findings and correct conclusions of law. It reviewed the magistrate's probable-cause determination for whether there was a substantial basis, giving great deference and drawing reasonable inferences in support of the determination. Whether a warrant was overbroad was reviewed de novo.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Daniel Ward Payne v. State of Montana

TOPICS

forfeiture

search and seizure

warrant requirement

probable cause

appellate procedure

PRACTICE AREAS

forfeiture

search and seizure

criminal procedure

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether removal of Payne's personal possessions from the rental car was a warrantless search violating his privacy rights.
2. Whether Payne's detention was a pretext to retain his property long enough to obtain a search warrant, rendering the search and seizure unlawful.
3. Whether the search warrant was overbroad, insufficiently specific as to the suspected offense, or unsupported by probable cause.
4. Whether the State presented sufficient evidence to justify forfeiture of the \$129,970.

HOLDINGS

1. The removal did not violate Payne's constitutional privacy or search-and-seizure rights because Avis had terminated the rental agreement, regained control of the vehicle, and validly consented to removal of Payne's property. Marijuana in plain view and drug paraphernalia in nonconcealed areas could also be seized without violating Payne's privacy rights.
2. Payne's detention and the officer's contact with Avis did not constitute an unlawful pretext for securing consent to remove the property or for obtaining the search warrant.
3. The warrant was not overbroad and sufficiently specified the property and suspected criminal activity by describing United States currency as proceeds of dangerous-drug sales or currency intended for exchange of controlled substances in violation of Title 45, chapter 9, MCA.
4. The search warrant was supported by probable cause because the totality of the circumstances established a substantial basis for concluding that evidence of drug activity would be found in the property removed from the rental car.
5. The State established the basis for forfeiture, and Payne failed to rebut the statutory presumption by a preponderance of the evidence.

KEY QUOTATIONS

"Where no reasonable expectation of privacy exists, there is neither a "search" nor a "seizure" within the contemplation of Article II, Section 10 of the Montana Constitution." (¶ 26)

"subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." (¶ 34)

FACTUAL BACKGROUND

A Montana Highway Patrol officer stopped Payne while he was driving a rental car 98 miles per hour in a 75-mile-per-hour zone and arrested him for DUI. After Avis terminated the rental agreement and requested recovery

of the vehicle, the officer removed Payne's property from the car and observed marijuana and drug paraphernalia in plain view. A warrant issued to search the removed property, and officers found \$129,970 in triple-vacuum-sealed packages inside a locked toolbox. The district court found Payne's explanation that he won the money in an illegal poker game not credible and granted forfeiture.

PROCEDURAL HISTORY

After a traffic stop and Payne's arrest for DUI, law enforcement obtained a warrant to search property removed from a rental vehicle and seized \$129,970 in currency. The State filed a forfeiture petition. Following a bench trial, the Sixteenth Judicial District Court, Rosebud County, granted the petition and addressed Payne's challenge to the search and seizure. Payne appealed, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Seizure of \$23,691.00 in U.S. Currency, 273 Mont. 474, 905 P.2d 148 (1995)
- Hauge v. Dist. Ct., 2001 MT 255, 307 Mont. 195, 36 P.3d 947
- State v. Minez, 2004 MT 115, 321 Mont. 148, 89 P.3d 966
- State v. Copelton, 2006 MT 182, 333 Mont. 91, 140 P.3d 1074
- State v. Snell, 2004 MT 269, 323 Mont. 157, 99 P.3d 191
- State v. Hill, 2004 MT 184, 322 Mont. 165, 94 P.3d 752
- State v. Boyer, 2002 MT 33, 308 Mont. 276, 42 P.3d 771
- State v. Griffin, 2004 MT 331, 324 Mont. 143, 102 P.3d 1206
- Whren v. United States, 517 U.S. 806, 813, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996)
- State v. Bar-Jonah, 2004 MT 344, 324 Mont. 278, 102 P.3d 1229
- State v. Farabee, 2000 MT 265, 302 Mont. 29, 22 P.3d 175
- Sunday v. Harboway, 2006 MT 95, 332 Mont. 104, 136 P.3d 965
- State v. Pierce, 2005 MT 182, 328 Mont. 33, 116 P.3d 817
- State v. Seader, 1999 MT 290, 297 Mont. 60, 990 P.2d 180
- State v. St. Marks, 2002 MT 285, 312 Mont. 468, 59 P.3d 1113
- Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)
- State v. Gray, 2001 MT 250, 307 Mont. 124, 38 P.3d 775