

SUPREME COURT OF MONTANA

State v. Lewis, 340 Mont. 10

171 P.3d 731 (2007) · No. DA 07-0114 · Decided November 8, 2007

SUMMARY

The Supreme Court of Montana reviews an interlocutory appeal from orders suppressing evidence obtained during a fire investigation at the defendant's residence. The court holds that exigent circumstances and the plain-view doctrine justified the deputy's second entry and seizure of evidence from a table and bed, but affirms suppression of evidence obtained during later entries undertaken to search for additional evidence. The matter is affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	James C. Nelson; Karla M. Gray; W. William Leaphart; Brian Morris; Jim Rice
JURISDICTION	Montana
DECIDED	November 8, 2007
DOCKET	DA 07-0114
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal by the State from orders suppressing physical and photographic evidence in a felony-arson prosecution and denying reconsideration.
STANDARD OF REVIEW	The Supreme Court reviewed the district court's factual findings for clear error and its interpretation and application of law de novo. Findings are clearly erroneous if unsupported by substantial credible evidence, if the court misapprehended the effect of the evidence, or if review leaves the appellate court with a definite and firm conviction that a mistake was made.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	State of Montana v. Robert L. Lewis

TOPICS

- fourth amendment
- search and seizure
- warrant requirement
- exclusionary rule
- suppression of evidence

PRACTICE AREAS

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether McCord's second entry to photograph and seize evidence observed in plain view during the initial, exigency-based entry was lawful without a warrant.
2. Whether McCord's third and subsequent entries to search for and gather additional evidence from the kitchen area were lawful without a warrant.
3. Whether the plain view doctrine should be characterized as an exception to the warrant requirement for searches or only for seizures.

HOLDINGS

1. The second entry was lawful because exigent circumstances reasonably supported reentry to prevent fire-suppression efforts from destroying evidence, and the entry was a continuation of the initial lawful entry rather than a detached search.
2. The third and subsequent entries were unlawful because they were separate entries undertaken to search for additional evidence after the fire had been suppressed and the cause and location of the fire had been determined; they required a warrant, consent, or a separate exigency, none of which existed.
3. The plain view doctrine is an exception to the warrant requirement applicable to seizures, not searches. It does not authorize an officer to intrude or proceed to the location of evidence without an independent lawful basis for presence and access.

KEY QUOTATIONS

"Thus, the plain view doctrine should not be misconstrued as a "stand-in" for a search warrant." (¶ 24)

"Given these circumstances, we hold that it was reasonable for McCord to believe that efforts to suppress the fire might destroy the relevant evidence that he had observed in plain view and, thus, that exigent circumstances justified his second entry and the seizure of the evidence." (¶ 32)

"A separate entry to search for and gather evidence pursuant to a criminal investigation requires a separate justification, such as a warrant, consent, or an exigency." (¶ 40)

"Affirmed in part, reversed in part, and remanded for further proceedings consistent with this Opinion." (¶ 47)

FACTUAL BACKGROUND

A fire occurred in an apartment rented by Robert Lewis. Deputy Larry McCord lawfully entered with firefighters to suppress the fire and observed apparent cigarette-and-matchbook fuses in plain view on a table and bed. He left briefly to retrieve a camera, reentered within approximately two minutes to photograph and seize those items, and later reentered after firefighters removed ceiling tiles to search for and seize additional evidence from

the kitchen area. The district court suppressed evidence from the later entries, prompting the State's interlocutory appeal.

PROCEDURAL HISTORY

The District Court for the Tenth Judicial District, Fergus County, suppressed evidence obtained during the deputy's second, third, and fourth entries into a fire-damaged residence and denied the State's motion for reconsideration. The State appealed. The Montana Supreme Court reversed suppression of the table-and-bed evidence and related photographs, affirmed suppression of the kitchen-area evidence, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including treatment of the table-and-bed evidence and related photographs as not subject to suppression while leaving suppression of the kitchen-area evidence intact.

CASES CITED

- State v. Bassett, 1999 MT 109, 294 Mont. 327, 982 P.2d 410
- Michigan v. Tyler, 436 U.S. 499, 98 S. Ct. 1942, 56 L. Ed. 2d 486 (1978)
- State v. Loh, 275 Mont. 460, 914 P.2d 592 (1996)
- State v. Olson, 2002 MT 211, 311 Mont. 270, 55 P.3d 935
- Horton v. California, 496 U.S. 128, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990)
- State v. DeWitt, 2004 MT 317, 324 Mont. 39, 101 P.3d 277
- State v. Lanegan, 2004 MT 134, 321 Mont. 349, 91 P.3d 578
- State v. Gomez, 2007 MT 111, 337 Mont. 219, 158 P.3d 442
- Cassidy v. Yellowstone County Sheriff, 2006 MT 217, 333 Mont. 371, 143 P.3d 148
- State v. Shaw, 2005 MT 141, 327 Mont. 281, 114 P.3d 198
- State v. Elison, 2000 MT 288, 302 Mont. 228, 14 P.3d 456
- Payton v. New York, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980)
- Coolidge v. New Hampshire, 403 U.S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971)
- State v. McCarthy, 258 Mont. 51, 852 P.2d 111 (1993)
- State v. Weaselboy, 1999 MT 274, 296 Mont. 503, 989 P.2d 836
- State v. Loh, 275 Mont. 460, 914 P.2d 592 (1996)
- State v. Delao, 2006 MT 179, 333 Mont. 68, 140 P.3d 1065
- State v. St. Germain, 2007 MT 28, 336 Mont. 17, 153 P.3d 591
- In re Estate of Bayers, 1999 MT 154, 295 Mont. 89, 983 P.2d 339
- State v. Bullock, 272 Mont. 361, 901 P.2d 61 (1995)

- State v. Hubbel, 286 Mont. 200, 951 P.2d 971 (1997)
- State v. Sawyer, 174 Mont. 512, 571 P.2d 1131 (1977)
- State v. Long, 216 Mont. 65, 700 P.2d 153 (1985)
- Camara v. Municipal Court, 387 U.S. 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967)
- Wolf v. Colorado, 338 U.S. 25, 69 S. Ct. 1359, 93 L. Ed. 1782 (1949)
- State v. Copelton, 2006 MT 182, 333 Mont. 91, 140 P.3d 1074
- State v. Pierce, 2005 MT 182, 328 Mont. 33, 116 P.3d 817
- State v. Snell, 2004 MT 269, 323 Mont. 157, 99 P.3d 191
- State v. Logan, 2002 MT 206, 311 Mont. 239, 53 P.3d 1285
- State v. Doyle, 1998 MT 195, 290 Mont. 287, 963 P.2d 1255
- State v. Romero, 224 Mont. 431, 730 P.2d 1157 (1986)
- Texas v. Brown, 460 U.S. 730, 103 S. Ct. 1535, 75 L. Ed. 2d 502 (1983)

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