

SUPREME COURT OF THE STATE OF MONTANA

State v. Michael Howard Moullet

2014 MT 261N (Supreme Court of the State of Montana 2014) · No. DA 13-0555 · Decided September 23, 2014

SUMMARY

The Montana Supreme Court affirmed Michael Howard Moullet’s burglary conviction based on his alleged intent to commit custodial interference. The Court held that the charging documents sufficiently established probable cause and that the statutory defense for custodial interference did not apply because Moullet was charged with burglary, not custodial interference. The opinion is a noncitable memorandum decision.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Patricia Cotter; James Jeremiah Shea; Laurie McKinnon; Beth Baker; Jim Rice
JURISDICTION	Montana
DECIDED	September 23, 2014
DOCKET	DA 13-0555
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a conviction for burglary based on intent to commit custodial interference.
STANDARD OF REVIEW	A district court's determination that a motion to file an information is supported by probable cause is reviewed for abuse of discretion; legal conclusions based on statutory interpretation are reviewed de novo.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Michael Howard Moullet v. State of Montana

TOPICS

- criminal procedure
- probable cause
- statutory interpretation
- standard of review
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate law

QUESTIONS PRESENTED

1. Whether the amended charging documents sufficiently established probable cause for burglary based on an intent to commit custodial interference.
2. Whether the State was required to allege facts negating the statutory defense or escape clause in Section 45-5-304(3), MCA, including whether Moullet was a first offender, intended not to return the children, or intended to retain them for a particular period.
3. Whether the defense in Section 45-5-304(3), MCA, applies to a defendant charged with burglary rather than custodial interference.

HOLDINGS

1. The amended information and amended affidavit established more than a mere probability that Moullet committed burglary with the intent to commit custodial interference, and therefore supported probable cause.
2. The State was not required to allege facts identifying possible defenses specified in Section 45-5-304(3), MCA, because Moullet was charged with burglary, not custodial interference.
3. The State did not need to prove that custodial interference was actually committed; proof of the intent to commit that offense upon unlawful entry was sufficient for burglary.

KEY QUOTATIONS

“The essential elements of burglary have always been the wrongful presence of the burglar with an intent to commit another offense.” (¶ 9)

“It is not necessary to demonstrate that the related offense was in fact committed where the intent to commit it is shown,” (¶ 9)

“Since the charging documents establish more than a mere probability that Moullet committed the burglary of which he was convicted, the District Court did not abuse its discretion in denying Moullet’s Motion to Dismiss Count II.” (¶ 10)

FACTUAL BACKGROUND

The State alleged that Moullet forcibly entered his grandchildren's residence in Billings at approximately 5:00 a.m. using a pry bar. After entering, he opened the children's bedroom doors and turned on the lights, and he reportedly said that God had sent him to get the boys. Moullet left without taking the children and was later apprehended. The amended information charged burglary based on an alleged purpose to commit custodial interference.

PROCEDURAL HISTORY

The State charged Moullet with burglary and later filed an amended information alleging alternative burglary counts based on intent to commit unlawful restraint or custodial interference. The District Court denied Moullet's motion to dismiss Count II, the jury acquitted him on Count I and convicted him on Count II, and the court sentenced him to ten years of incarceration. Moullet appealed the denial of his motion to dismiss.

DISPOSITION

affirmed

CASES CITED

- State v. Harlson, 2006 MT 312, ¶ 21, 335 Mont. 25, 150 P.3d 349
- State v. Kern, 2003 MT 77, ¶ 19, 315 Mont. 22, 67 P.3d 272
- State v. Price, 2002 MT 229, ¶ 42, 311 Mont. 439, 57 P.3d 42
- State v. Lance, 201 Mont. 30, 33, 651 P.2d 1003, 1004 (1982)
- State v. Wells, 202 Mont. 337, 352-53, 658 P.2d 381, 389 (1983)

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