

SUPREME COURT OF MISSOURI

State of Missouri v. Timothy A. Shepherd

No. SC99081 (Mo. Apr. 26, 2022) · No. SC99081 · Decided April 26, 2022

SUMMARY

The Supreme Court of Missouri held that the State failed to prove Timothy Shepherd was a habitual offender based solely on his certified Colorado driving record. The record did not establish that at least five prior Colorado convictions involved conduct qualifying as intoxication-related traffic offenses under Missouri law in effect when the current offense occurred. The court vacated the judgment and remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Paul C. Wilson, Chief Justice; Russell, Judge; Powell, Judge; Fischer, Judge; Thomson, Special Judge; Breckenridge, Judge; Draper, Judge; Ransom, Judge, not participating
JURISDICTION	Missouri
DECIDED	April 26, 2022
DOCKET	SC99081
DISPOSITION	vacated
PROCEDURAL POSTURE	Shepherd appealed his conviction and enhanced sentence for driving while intoxicated as a habitual offender, challenging the sufficiency of the evidence supporting his habitual-offender status.
STANDARD OF REVIEW	The sufficiency of the evidence is reviewed to determine whether the state presented sufficient evidence from which a rational fact-finder could have found the required facts beyond a reasonable doubt, viewing the evidence and reasonable inferences in the light most favorable to the verdict. Statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Timothy A. Shepherd v. State of Missouri

TOPICS

- sentencing
- criminal procedure
- statutory interpretation
- standard of review
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

sentencing

QUESTIONS PRESENTED

1. Which version of Missouri's intoxication-related traffic offense definition governs whether prior convictions qualify for habitual-offender sentencing enhancement?
2. Whether the state proved beyond a reasonable doubt that at least five of Shepherd's prior Colorado convictions arose from conduct qualifying as intoxication-related traffic offenses under Missouri law.
3. Whether the conduct underlying a prior out-of-state conviction must also constitute a crime under Missouri law at the time of the current offense.

HOLDINGS

1. A prior conviction qualifies as an intoxication-related traffic offense only if the conduct underlying it satisfied the applicable Missouri definition in effect at the time of the present offense for which the state seeks sentencing enhancement.
2. For purposes of the applicable intoxication-related traffic offense definition, driving means physically driving or operating a vehicle and does not include merely being in actual physical control of a vehicle.
3. When an out-of-state statute criminalizes both conduct that qualifies as an intoxication-related traffic offense under Missouri law and conduct that does not, the state must prove beyond a reasonable doubt that the defendant's prior conviction arose from qualifying conduct.
4. The certified Colorado driving record, standing alone, was insufficient to prove that at least five of Shepherd's seven prior convictions qualified as intoxication-related traffic offenses.
5. The conduct underlying a prior out-of-state conviction need not also constitute a crime under Missouri law at the time of the current offense in order to qualify as an intoxication-related traffic offense, so long as it satisfies the applicable statutory definition of an intoxication-related traffic offense.

KEY QUOTATIONS

"Accordingly, this Court holds that a prior conviction qualifies as an IRTTO only if the conduct involved constituted "driving while intoxicated" (or another portion of the IRTTO definition in section 577.001(15)) as defined at the time of the current offense for which the state seeks enhancement, not the time of the conduct underlying the prior conviction." (at 3-4)

"In circumstances such as these (i.e., when the defendant was convicted in another state under a statute prohibiting both conduct that does meet the applicable definition of an IRTTO in Missouri and conduct that does not), this Court holds that it is the state's burden to prove beyond a reasonable doubt, State v. Craig, 287 S.W.3d 676, 681 (Mo. banc 2009), not merely that this out-of-state conviction occurred but also that the conviction arose from conduct that meets the definition of an IRTTO under Missouri law at the time of the present offense." (at 7-8)

"When the evidence is utterly silent about the existence or non-existence of some fact, and the finder of fact draws from such silence a conclusion about that fact, this is mere supposition or speculation. It is not an

inference, and certainly not a reasonable inference.” (at 10-12)

FACTUAL BACKGROUND

On March 21, 2017, Timothy Shepherd was involved in a single-vehicle accident in Missouri after consuming approximately six beers, and testing showed a blood alcohol concentration of 0.280 percent. He was charged with driving while intoxicated as a habitual offender. To establish habitual-offender status, the state introduced only a certified Colorado driving record listing seven prior convictions for driving under the influence or driving while ability impaired by alcohol or drugs. The Colorado statutes encompassed both actually driving and merely being in actual physical control of a vehicle, while Missouri's applicable definition of driving did not include mere actual physical control.

PROCEDURAL HISTORY

After a bench trial in the Warren County Circuit Court, Shepherd was convicted of driving while intoxicated and sentenced to 10 years' imprisonment as a habitual offender. The circuit court relied solely on a certified Colorado driving record showing seven prior alcohol- or drug-related driving convictions. The Supreme Court of Missouri held the record insufficient to prove five qualifying intoxication-related traffic offenses and vacated the judgment for resentencing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case is remanded for resentencing. The circuit court may determine whether a lower enhancement is supported based on the evidence presented at the original trial, but additional evidence of intoxication-related traffic offenses beyond that introduced at the initial trial is not permissible.

CASES CITED

- Cox v. Director of Revenue, 98 S.W.3d 548, 550-51 (Mo. banc 2003)
- State v. Craig, 287 S.W.3d 676, 681 (Mo. banc 2009)
- People v. Swain, 959 P.2d 426, 430-31 (Colo. 1998)
- Brewer v. Motor Vehicle Division, Department of Revenue, 720 P.2d 564, 567 (Colo. 1986)
- State v. Coday, 496 S.W.3d 572, 576 (Mo. App. 2016)
- State v. Gibson, 122 S.W.3d 121, 130 (Mo. App. 2003)
- Draper v. Louisville & N.R. Co., 156 S.W.2d 626, 630 (Mo. 1941)
- State v. Schroeder, 330 S.W.3d 468, 475 (Mo. banc 2011)
- State v. Raines, 62 S.W.2d 727, 729 (Mo. banc 1933)
- State v. Collins, 849 S.W.2d 228 (Mo. App. 1993)
- State v. McCord, 621 S.W.3d 496, 498 (Mo. banc 2021)

- State v. Vandever, 175 S.W.3d 107, 108 (Mo. banc 2005)
- State v. Niederstadt, 66 S.W.3d 12, 14 (Mo. banc 2002)
- State v. Stewart, 560 S.W.3d 531, 533 (Mo. banc 2018)
- State v. Wright, 382 S.W.3d 902, 903 (Mo. banc 2012)
- State v. Ryan, 813 S.W.2d 898, 903 (Mo. App. S.D. 1991)
- State v. Rowe, 63 S.W.3d 647, 650 (Mo. banc 2002)
- Doyle v. Tidball, 625 S.W.3d 459, 466 (Mo. banc 2021)
- McIntyre v. David, 431 S.W.2d 216, 220 (Mo. 1968)
- Greenbriar Hills Country Club v. Director of Revenue, 47 S.W.3d 346, 352 (Mo. banc 2001)

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