

SUPREME COURT OF MONTANA

City of Helena v. Kortum, 2003 MT 290

78 P.3d 882 (Mont. 2003) · No. No. 02-227 · Decided October 21, 2003

SUMMARY

The Supreme Court of Montana affirmed George Peter Kortum's DUI conviction. The court held that the trial court properly denied a directed verdict because evidence beyond the field sobriety tests, including driving behavior, officer observations, alcohol consumption, and refusal to submit to breath testing, supported the conviction. The court also held that the trial court did not abuse its discretion by limiting defense counsel's use of a state pamphlet concerning blood alcohol content.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Jim Rice; Chief Justice Karla M. Gray; Justice James C. Nelson; Justice W. William Leaphart
JURISDICTION	Montana
DECIDED	October 21, 2003
DOCKET	No. 02-227
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kortum appealed his DUI conviction from the First Judicial District Court for Lewis and Clark County to the Supreme Court of Montana, challenging the denial of a directed verdict and the restriction on defense counsel's use of a BAC pamphlet during closing argument.
STANDARD OF REVIEW	A denial of a motion for a directed verdict in a criminal case is reviewed to determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt; the decision is reviewed for abuse of discretion. Evidentiary rulings are also reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	George Peter Kortum v. City of Helena

TOPICS

criminal procedure

evidence

standard of review

preservation of error

appellate procedure

PRACTICE AREAS

criminal law

DUI

evidence

appellate procedure

municipal law

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by denying Kortum's motion for a directed verdict because the field sobriety tests were allegedly administered improperly and outside established police procedure.
2. Whether the District Court abused its discretion by prohibiting defense counsel from further using the BAC and You pamphlet during closing argument after limiting its admission to the fact that it was a Montana Department of Transportation publication.

HOLDINGS

1. The District Court did not abuse its discretion in denying the directed-verdict motion because, even assuming the field sobriety tests were flawed, the evidence viewed in the light most favorable to the City allowed a rational jury to find Kortum guilty of DUI beyond a reasonable doubt.
2. Kortum's argument that improperly administered field sobriety tests were incompetent and inadmissible was not preserved because he did not make that argument or object to the admission of the testimony in the District Court.
3. The District Court did not abuse its discretion by prohibiting further use of the BAC and You pamphlet after defense counsel attempted to use its statistics as substantive evidence that Kortum was not intoxicated or impaired.

KEY QUOTATIONS

“The State is not required to produce evidence of a quantifiable blood alcohol content to demonstrate a defendant is driving under the influence of alcohol.” (¶ 22)

“We conclude that, when the evidence is taken in the light most favorable to the City, a rational jury could have found Kortum guilty of DUI beyond a reasonable doubt.” (¶ 26)

“The District Court's prohibition of the further use of the pamphlet cannot be characterized as a reversal of its previous ruling admitting the pamphlet, but rather an underscoring of its pretrial ruling.” (¶ 35)

FACTUAL BACKGROUND

Kortum drove from a bar in Helena after consuming approximately three drinks. Officer David Glowacki observed Kortum make a wide turn into the opposing traffic lane, cross the centerline several times, and drive through a red light; the traffic-light incident was recorded on video. During the stop, the officer observed signs of impairment, administered field sobriety tests, and later offered additional tests at the police station, while Kortum refused breath testing both times. The District Court admitted the State's BAC and You pamphlet only as

a state publication and not for the truth or accuracy of its contents, but defense counsel relied on its chart during argument despite the court's limitation.

PROCEDURAL HISTORY

The City of Helena charged Kortum with DUI and running a red light. A Helena City Court jury found him guilty of both offenses, and after his appeal to the First Judicial District Court, a six-member jury again found him guilty. The District Court denied Kortum's motion for a directed verdict and limited his use of the BAC and You pamphlet in argument. The Montana Supreme Court affirmed his DUI conviction.

DISPOSITION

affirmed

CASES CITED

- State v. Landis, 2002 MT 45, 308 Mont. 354, 43 P.3d 298
- State v. Dahlin, 1998 MT 113, 289 Mont. 182, 961 P.2d 1247
- State v. Weeks, 270 Mont. 63, 891 P.2d 477 (1995)
- State v. Price, 2002 MT 150, 310 Mont. 320, 50 P.3d 530
- City of Missoula v. Forest, 236 Mont. 129, 769 P.2d 699 (1989)
- State v. Van Kirk, 2001 MT 184, 306 Mont. 215, 32 P.3d 735
- City of Missoula v. Robertson, 2000 MT 52, 298 Mont. 419, 998 P.2d 144
- State v. Martinosky, 1999 MT 122, 294 Mont. 426, 982 P.2d 440
- State v. Peterson, 236 Mont. 247, 769 P.2d 1221 (1989)
- State v. Palmer, 247 Mont. 210, 805 P.2d 580 (1991)
- State v. Oman, 218 Mont. 260, 707 P.2d 1117 (1985)
- State v. Brady, 2000 MT 282, 302 Mont. 174, 13 P.3d 941
- State v. Carter, 285 Mont. 449, 948 P.2d 1173 (1997)
- State v. Stringer, 271 Mont. 367, 897 P.2d 1063 (1995)
- State v. Bingman, 2002 MT 350, 313 Mont. 376, 61 P.3d 153
- In re Marriage of Njos, 270 Mont. 54, 889 P.2d 1192 (1995)
- State v. Thompson, 237 Mont. 384, 773 P.2d 722 (1989)
- State v. Little, 260 Mont. 460, 861 P.2d 154 (1993)