

SUPREME COURT OF MONTANA

State of Montana v. Michael Gene McCollom, 2005 MT 61, 326 Mont.
251

109 P.3d 215 (2005) · No. No. 04-072 · Decided March 15, 2005

SUMMARY

The Supreme Court of Montana affirmed the denial of Michael Gene McCollom's motion to suppress statements made after his arrest for felony sexual assault. The court held that McCollom did not invoke his right to counsel, knowingly and voluntarily waived his Miranda rights, and made the statements voluntarily under the totality of the circumstances.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	John Warner; Karla M. Gray; Patricia O. Cotter; James C. Nelson; Jim Rice
JURISDICTION	Montana
DECIDED	March 15, 2005
DOCKET	No. 04-072
DISPOSITION	affirmed
PROCEDURAL POSTURE	McCollom pleaded guilty to two counts of felony sexual assault while reserving his right to appeal the denial of his motion to suppress statements made to law enforcement. He appealed the District Court's order denying suppression.
STANDARD OF REVIEW	The court reviewed factual findings for clear error and reviewed legal conclusions de novo or plenary for correctness.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Michael Gene McCollom v. State of Montana

TOPICS

- suppression of evidence
- miranda rights
- right to counsel
- criminal procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether McCollom's statements should have been suppressed because his actions and the officer's knowledge of his planned trip to consult an attorney invoked his Fifth and Sixth Amendment right to counsel under the United States Constitution and Article II, Section 24 of the Montana Constitution.
2. Whether McCollom's statements were involuntary because of the timing of the Miranda warning, his having been awake for approximately 30 hours, the interrogation techniques used, and alleged promises of leniency or treatment.

HOLDINGS

1. McCollom did not invoke his right to counsel because he made no request to speak with an attorney before or during interrogation; his travel to Montana to consult counsel was not a clear and unambiguous invocation requiring police to delay questioning.
2. McCollom's recorded statements were made after a knowing and voluntary waiver of his rights and were not rendered involuntary by the circumstances of the interrogation.
3. The District Court's findings were supported by substantial evidence and were not clearly erroneous.

KEY QUOTATIONS

"After his arrest, McCollom could have, at any time, invoked his right to consult with a lawyer." (217)

"The totality of the circumstances test requires the district court to consider 'the defendant's age and level of education; the interrogation technique and whether the defendant was advised of his Miranda rights; the defendant's prior experience with the criminal justice system and police interrogation; and the defendant's background and experience.'" (218)

FACTUAL BACKGROUND

McCollom was arrested in Montana pursuant to a valid arrest warrant after returning from Arizona, where he had been living since the alleged sexual assaults. Approximately four hours after his arrest, Captain Pat George described investigative information, played part of a victim interview, advised McCollom of his Miranda rights, and obtained a signed waiver before conducting a recorded interview. McCollom claimed that fatigue, interrogation techniques, and promises of leniency or treatment rendered his statements involuntary, but the District Court credited the officer's testimony and found McCollom's waiver knowing and voluntary.

PROCEDURAL HISTORY

The Third Judicial District Court for Powell County denied McCollom's motion to suppress oral, written, and transcribed admissions and confessions. McCollom then entered guilty pleas to both counts, reserved the suppression issue for appeal, was sentenced to Montana State Prison, and appealed. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Gouras, 2004 MT 329, ¶ 12, 324 Mont. 130, 102 P.3d 27
- State v. Spang, 2002 MT 120, ¶ 25, 310 Mont. 52, 48 P.3d 727
- State v. Mayes, 251 Mont. 358, 376-77, 825 P.2d 1196, 1208 (1992)
- State v. Grey, 274 Mont. 206, 212, 907 P.2d 951, 955 (1995)
- State v. Hill, 2000 MT 308, ¶ 39, 302 Mont. 415, 14 P.3d 1237
- State v. Phelps, 215 Mont. 217, 224, 696 P.2d 447, 451 (1985)
- State v. Larson, 2004 MT 345, ¶ 53, 324 Mont. 310, 103 P.3d 524

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