

SUPREME COURT OF THE STATE OF MONTANA

State of Montana v. Ricky Dean Zander

State v. Zander, 2006 MT 77N (2006) · No. No. 05-333 · Decided April 18, 2006

SUMMARY

The Montana Supreme Court affirmed Ricky Dean Zander’s judgment and sentence following his guilty plea to felony driving under the influence. The Court upheld the District Court’s conclusions concerning particularized suspicion, probable cause, suppression issues, advisories, and the effect of a no-driving pretrial-release condition. The memorandum decision was designated noncitable under the Montana Supreme Court’s Internal Operating Rules.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Karla M. Gray; Justice John Warner; Justice W. William Leaphart; Justice Brian Morris; Justice Jim Rice
JURISDICTION	Montana
DECIDED	April 18, 2006
DOCKET	No. 05-333
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from the judgment and sentence entered after his guilty plea to felony DUI, challenging the denial of pretrial motions to dismiss and suppress evidence and several related rulings.
STANDARD OF REVIEW	The Supreme Court determined that the appeal was without merit because the record contained sufficient evidence to support the District Court's findings of fact and the legal issues were controlled by settled Montana law.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Ricky Dean Zander v. State of Montana

TOPICS

- criminal procedure
- suppression of evidence
- probable cause
- miranda rights
- double jeopardy

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the arresting officer had particularized suspicion to investigate Zander based on the 911 report and confirmation from the driver of the struck vehicle.
2. Whether the officer had probable cause to arrest Zander for DUI.
3. Whether the evidence relating to the arrest and detention should be suppressed based on the Krause or Miranda advisories.
4. Whether accident-report confidentiality protections applied to the information supporting particularized suspicion.
5. Whether the no-driving pretrial-release condition invalidated the implied-consent advisory or otherwise waived or estopped the State from prosecuting Zander.
6. Whether prosecution after imposition of the no-driving condition violated double-jeopardy protections or applicable ethical and statutory provisions.

HOLDINGS

1. The District Court correctly determined that the arresting officer had particularized suspicion to approach and investigate Zander based on the 911 report of a drunk driver causing an accident and the officer's confirmation of that report at the scene.
2. The District Court correctly determined that probable cause supported Zander's DUI arrest.
3. The District Court correctly determined that Zander received adequate Krause and Miranda advisories, and the Supreme Court did not disturb the denial of suppression relief.
4. The no-driving condition did not invalidate the implied-consent advisories, waive or estop the State from prosecuting Zander, or constitute punishment for double-jeopardy purposes.

KEY QUOTATIONS

“the following memorandum decision shall not be cited as precedent.” (¶ 1)

“Affirmed.” (¶ 6)

FACTUAL BACKGROUND

A 911 caller reported that a drunk driver had caused an accident in a parking lot. The arresting officer confirmed the report at the scene with the driver of the struck vehicle, observed Zander, administered standardized field sobriety maneuvers, obtained Zander's admission that he had been drinking, and received a positive portable breath-test result. Zander had three prior DUI convictions, and a no-driving condition had been imposed as a condition of pretrial release.

PROCEDURAL HISTORY

The Fourth Judicial District Court of Missoula County denied Zander's motions to dismiss the charges and suppress evidence, concluding that the arresting officer had particularized suspicion and probable cause, that the Krause and Miranda advisories were adequate, and that a no-driving pretrial-release condition did not invalidate the implied-consent advisories, waive or estop prosecution, or constitute punishment for double-jeopardy purposes. Zander then pleaded guilty and appealed. The Montana Supreme Court decided the appeal by memorandum decision and affirmed.

DISPOSITION

affirmed

OPINION

PER CURIAM.

No. 05-333 IN THE SUPREME COURT OF THE STATE OF MONTANA 2006 MT 77N STATE OF MONTANA, Plaintiff and Respondent, v. RICKY DEAN ZANDER, Defendant and Appellant. APPEAL FROM: District Court of the Fourth Judicial District, In and For the County of Missoula, Cause No. DC 03-298 Honorable Douglas G. Harkin, Presiding Judge COUNSEL OF RECORD: For Appellant: Clinton H. Kammerer; Kammerer Law Offices, Missoula, Montana For Respondent: Hon. Mike McGrath, Attorney General; C. Mark Fowler, Assistant Attorney General, Helena, Montana Fred Van Valkenburg, Missoula County Attorney; Karen Townsend, Deputy County Attorney, Missoula, Montana Submitted on Briefs: March 14, 2006 Decided: April 18, 2006 Filed: _____ Clerk Chief Justice Karla M. Gray delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(d)(v), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following memorandum decision shall not be cited as precedent.

It shall be filed as a public document with the Clerk of the Supreme Court and its case title, Supreme Court cause number and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports. ¶2 Ricky Dean Zander appeals from the judgment and sentence entered by the Fourth Judicial District Court, Missoula County, upon his guilty plea to the felony offense of operating a motor vehicle while under the influence of alcohol or drugs (DUI).

Before Zander pled guilty, the District Court denied Zander's pretrial motions to dismiss the charges and to suppress evidence. The court concluded the arresting officer had particularized suspicion to approach Zander based on information from a 911 dispatcher that a citizen reported a drunk driver had caused an accident in a parking lot and his confirmation of that report on the scene with the driver of the struck vehicle.

The court also determined the officer had probable cause to arrest Zander based on the reports of drunk driving by the 911 caller and the driver of the struck vehicle, the officer's observations of Zander, Zander's performance on standardized field sobriety maneuvers, Zander's admission to drinking and the result of his portable breath test.

Moreover, the court determined Zander received adequate Krause and Miranda advisories. ¶3 In addition, the District Court determined that a "no driving" restriction imposed by the Justice Court and retained by the District Court as a condition of pretrial release did not render the implied consent advisories given to Zander invalid, did not constitute grounds for concluding the State had waived prosecution or was estopped from prosecuting Zander, and was not "punitive" for purposes of double jeopardy analysis.

In determining the "no driving" condition was not punitive, the court reasoned, in part, that the condition was authorized by § 46-9-108(1), MCA, because it was imposed to protect the public in light of Zander's three prior DUI convictions. ¶4 On appeal, Zander asserts certain witnesses lacked credibility because, among other things, their testimony regarding particularized suspicion went beyond their statements in prior affidavits and the officer's report.

Related to the assertion that the officer lacked particularized suspicion of criminal activity, Zander argues he is entitled to the confidentiality protections for accident reports set forth in § 61-7-114, MCA. He also contends the evidence did not establish the Krause advisory was properly administered.

In addition, he posits that any information—which he does not specify—gathered between his arrest and the reading of his Miranda rights at the detention center should be suppressed. Moreover, he contends the "no driving" pretrial release condition rendered the implied consent advisory invalid or, alternatively, constituted waiver or estoppel of the State's further prosecution of him.

He also argues his prosecution after the imposition of the "no driving" condition—which he characterizes as unusual and punitive—is a violation of constitutional double jeopardy protections, the Canons of Judicial Ethics and certain statutory provisions. ¶5 We have determined to decide this case pursuant to Section I, Paragraph 3(d), of our 1996 Internal Operating Rules, as amended in 2003, which provides for memorandum 3 opinions.

It is manifest on the face of the briefs and the record that Zander's appeal is without merit because there clearly is sufficient evidence to support the District Court's findings of fact and the legal issues are clearly controlled by settled Montana law that the District Court correctly interpreted. ¶6 Affirmed. /S/ KARLA M. GRAY We concur: /S/ JOHN WARNER /S/ W. WILLIAM LEAPHART /S/ BRIAN MORRIS /S/ JIM RICE 4

