

SUPREME COURT OF THE STATE OF MONTANA

State v. Jason Rand

2014 MT 19N (Supreme Court of the State of Montana 2014) · No. DA 12-0756 · Decided January 21, 2014

SUMMARY

The Montana Supreme Court affirmed Jason Rand’s conviction for Driving Under the Influence Per Se. The court held that Montana’s DUI statute imposes strict or absolute liability, making Rand’s intent not to drive irrelevant to whether he was in actual physical control of the vehicle. The court also upheld the trial court’s refusal to give Rand’s proposed jury instruction concerning intent and the totality of the circumstances.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Michael E. Wheat; Patricia Cotter; Jim Rice; Beth Baker; Laurie McKinnon
JURISDICTION	Montana
DECIDED	January 21, 2014
DOCKET	DA 12-0756
DISPOSITION	affirmed
PROCEDURAL POSTURE	Rand appealed his jury conviction for one count of Driving under the Influence Per Se, challenging the exclusion of evidence concerning his intent to drive and the refusal of his proposed jury instruction concerning actual physical control.
STANDARD OF REVIEW	A grant or denial of a motion in limine is reviewed for abuse of discretion, and jury instructions are also reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Nonprecedential; noncitable memorandum opinion under Section I, Paragraph 3(d), Montana Supreme Court Internal Operating Rules.
PARTIES	Jason Rand v. State of Montana

TOPICS

- criminal procedure
- evidence
- standard of review
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

evidence

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by granting the State's motion in limine and excluding evidence of Rand's intent not to drive.
2. Whether the District Court abused its discretion by refusing Rand's proposed jury instruction requiring the jury to consider the totality of the circumstances, including intent, in determining whether he was in actual physical control of the vehicle.

HOLDINGS

1. Intent to drive is irrelevant because Montana DUI is a strict-liability, or absolute-liability, offense that does not require a culpable mental state.
2. A person remains in actual physical control of a vehicle while asleep behind its steering wheel; neither movement nor intended movement is required.

KEY QUOTATIONS

"An absolute liability offense is one in which the actor's intent is irrelevant since it is the act itself which constitutes the offense." (§ 6)

"A driver remains in actual physical control of a vehicle while asleep behind its steering wheel; movement or intended movement is not required." (§ 7)

FACTUAL BACKGROUND

Deputies found Jason Rand asleep in the driver's seat of his vehicle with the motor running. After waking him, they observed that he strongly smelled of alcohol, conducted field sobriety tests, and detained him for DUI. Rand consistently maintained that he intended only to sleep in the running vehicle and did not intend to drive.

PROCEDURAL HISTORY

The Lewis and Clark County District Court granted the State's motion in limine barring Rand from arguing that he did not intend to drive and rejected his proposed totality-of-the-circumstances jury instruction. A jury convicted Rand of DUI Per Se. The Montana Supreme Court affirmed in a noncitable memorandum opinion.

DISPOSITION

affirmed

CASES CITED

- Arizona v. Zaragoza, 209 P.3d 629 (Ariz. 2009)
- State v. Hicks, 2013 MT 50, 369 Mont. 165, 296 P.3d 1149

- Christofferson v. City of Great Falls, 2003 MT 189, 316 Mont. 469, 74 P.3d 1021
- State v. Huebner, 252 Mont. 184, 827 P.2d 1260 (1992)
- State v. McDole, 226 Mont. 169, 734 P.2d 683 (1987)
- State v. Hudson, 2005 MT 142, 327 Mont. 286, 114 P.3d 210
- State v. Ellenburg, 283 Mont. 136, 938 P.2d 1376 (1997)
- State v. Taylor, 203 Mont. 284, 661 P.2d 33 (1983)

OPINION

PER CURIAM.

January 21 2014 DA 12-0756 IN THE SUPREME COURT OF THE STATE OF MONTANA 2014 MT 19N STATE OF MONTANA, Plaintiff and Appellee, v. JASON RAND, Defendant and Appellant. APPEAL FROM: District Court of the First Judicial District, In and For the County of Lewis and Clark, Cause No. DDC 12-235 Honorable James P. Reynolds, Presiding Judge COUNSEL OF RECORD: For Appellant: Wendy Holton, Attorney at Law; Helena, Montana For Appellee: Timothy C. Fox, Montana Attorney General, Pamela P. Collins, Assistant Attorney General; Helena, Montana Leo Gallagher, Lewis and Clark County Attorney, Jeff Sealey, Deputy County Attorney; Helena, Montana Submitted on Briefs: December 18, 2013 Decided: January 21, 2014 Filed: _____ Clerk Justice Michael E Wheat delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.

Its case title, 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 Jason Rand (Rand) appeals his conviction at trial on one count of Driving under the Influence Per Se (DUI Per Se).

We affirm. ¶3 Lewis and Clark County Deputies (Deputies) discovered Rand sleeping in the driver’s seat of his vehicle with the motor running and checked to see whether he needed assistance. Upon waking Rand, Deputies found that he smelled strongly of alcohol, conducted field sobriety tests, and eventually detained him for DUI. At all times during his arrest and trial, Rand maintained that he did not intend to drive, but rather, to sleep in his running vehicle. ¶4 Before trial on one count of DUI Per Se, the State moved in limine to prohibit Rand from arguing that he did not intend to drive the vehicle.

Rand opposed that motion, citing to Arizona v. Zaragoza, 209 P.3d 629 (Ariz. 2009) for the proposition that his intent to drive was relevant to whether he was in “actual physical control” of his vehicle. Rand further proposed a jury instruction that “actual physical control” of a motor vehicle must be evaluated by considering a totality of the circumstances and whether the person’s current or imminent control of the vehicle presented a real danger to himself or others.

The District Court rejected Rand's instruction and granted the State's motion in limine on the grounds that Montana's DUI statute is an absolute liability offense, and therefore, intent is irrelevant to the commission of the crime.

The jury later returned a verdict of guilty to the DUI Per Se 2 charge. On appeal to this Court, Rand argues that the District Court should have instructed the jury to consider the totality of the circumstances, including his intent, to determine whether he was in "actual physical control" of his vehicle. ¶5 A trial court's grant or denial of a motion in limine is an evidentiary ruling reviewed for abuse of discretion.

State v. Hicks, 2013 MT 50, ¶ 14, 369 Mont. 165, 296 P.3d 1149. We review jury instructions for abuse of discretion. Christofferson v. City Great Falls, 2003 MT 189, ¶ 9, 316 Mont. 469, 74 P.3d 1021. ¶6 A person may be guilty of an offense without having a mental state of knowingly, negligently or purposely when the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

Section 45-2-104, MCA. "An absolute liability offense is one in which the actor's intent is irrelevant since it is the act itself which constitutes the offense." State v. Huebner, 252 Mont. 184, 188, 827 P.2d 1260, 1263 (1992) (citing State v. McDole, 226 Mont. 169, 174, 734 P.2d 683, 686 (1987)).

The offense of driving under the influence is a strict liability offense and does not require an intent element. State v. Hudson, 2005 MT 142, ¶ 15, 327 Mont. 286, 114 P.3d 210 (citing State v. Ellenburg, 283 Mont. 136, 137, 938 P.2d 1376, 1377). ¶7 In light of this well-settled Montana law, the District Court properly found that evidence of Rand's intent was irrelevant to the trial, and properly refused Rand's instruction that his mental state should be considered in determining "actual physical control." A driver remains in actual physical control of a vehicle while asleep behind its steering wheel; movement or intended movement is not required.

Hudson, ¶ 16 (citing State v. Taylor, 203 Mont. 284, 287, 661 P.2d 33, 34 (1983)). That is exactly the case here. Rand exerted actual 3 physical control over his car when he slept behind the wheel. Therefore, the District Court properly exercised its discretion in refusing evidence of Rand's intent and refusing his jury instruction on "actual physical control." ¶8 The District Court's decision correctly applied well-settled Montana law.

We have determined to decide this case pursuant to Section I, Paragraph 3(d), of our Internal Operating Rules, which provides for noncitable memorandum opinions. Affirmed. /S/ MICHAEL E WHEAT We Concur: /S/ PATRICIA COTTER /S/ JIM RICE /S/ BETH BAKER /S/ LAURIE McKINNON 4

