

SUPREME COURT OF MONTANA

State of Montana v. Bryan Dean LeMay

2011 MT 323 (Mont. 2011) · No. DA 10-0535, DA 10-0536, DA 10-0538 · Decided December 22, 2011

SUMMARY

The Supreme Court of Montana affirmed Bryan Dean LeMay's convictions and sentences arising from three criminal cases involving DUI, motorcycle licensing, and offenses against a peace officer. The court rejected claims of outrageous government conduct, ineffective assistance of counsel, involuntary nolo contendere pleas, lack of particularized suspicion for an investigative stop, and lack of state criminal jurisdiction.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice James C. Nelson; James C. Nelson; Mike McGrath; Patricia Cotter; Beth Baker; Brian Morris; Michael E. Wheat; Jim Rice
JURISDICTION	Montana
DECIDED	December 22, 2011
DOCKET	DA 10-0535, DA 10-0536, DA 10-0538
DISPOSITION	affirmed
PROCEDURAL POSTURE	LeMay appealed a consolidated judgment and sentence entered after he pleaded nolo contendere to offenses in three criminal cases, reserving the right to appeal. He challenged the denial of motions to dismiss, claims of ineffective assistance, denial of his motion to withdraw the pleas, denial of suppression, and the State's criminal jurisdiction.
STANDARD OF REVIEW	The court reviewed denial of a motion to dismiss de novo; ineffective-assistance claims and voluntariness of pleas de novo as mixed questions of law and fact; denial of suppression under the clearly erroneous/correct application of law standard; and subject-matter jurisdiction de novo.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Montana
PARTIES	Bryan Dean LeMay v. State of Montana

TOPICS

criminal procedure

suppression of evidence

probable cause

ineffective assistance

tribal jurisdiction

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

appellate law

Indian Country jurisdiction

QUESTIONS PRESENTED

1. Whether the District Court erred by denying LeMay's motion to dismiss for outrageous government conduct based on alleged harassment and racial profiling.
2. Whether LeMay received ineffective assistance of counsel.
3. Whether the District Court erred by denying LeMay's motion to withdraw his nolo contendere pleas.
4. Whether the District Court erred by denying LeMay's motion to suppress for lack of particularized suspicion to conduct an investigative stop.
5. Whether the District Court erred by denying LeMay's motion to dismiss for lack of state criminal jurisdiction because the charged offenses allegedly occurred in Indian Country.

HOLDINGS

1. The alleged harassment and racial profiling did not constitute outrageous government conduct warranting dismissal because LeMay did not show that government agents manufactured his crimes, generated new crimes for purposes of prosecution, or violated constitutional rights related to the charged offenses.
2. LeMay failed to establish ineffective assistance because the record showed that counsel pursued the outrageous-conduct claim and LeMay did not demonstrate deficient performance or a reasonable probability of a different result.
3. The District Court properly denied withdrawal of LeMay's nolo contendere pleas because he understood their consequences, entered them voluntarily, and failed to establish good cause for withdrawal.
4. The officer had particularized suspicion to stop LeMay because he observed LeMay cross double-yellow lines and make a turn producing a 180-degree change in direction, and the circumstances objectively suggested a traffic violation.
5. Montana courts had criminal jurisdiction because the offenses were committed in Fairview or Sidney, Montana, locations the record established were not in Indian Country.

KEY QUOTATIONS

“While we may some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction, the instant case is distinctly not of that breed.” (¶ 28)

“A defendant’s subsequent, valid explanation for conduct that objectively appeared suspicious may affect his or her ultimate liability for a charged offense, but it cannot affect the validity of a stop properly based on particularized suspicion.” (¶ 63)

FACTUAL BACKGROUND

LeMay was involved in several traffic and criminal incidents in Richland County, Montana, including two motorcycle DUI incidents, operating a motorcycle without the required endorsement, and a confrontation with a police officer during the attempted arrest of LeMay near his son's motorcycle. In the DUI incidents, officers observed conduct supporting traffic stops and chemical testing showed blood-alcohol concentrations of 0.14 and 0.185. During the confrontation, LeMay refused commands, approached the officer, resisted arrest, and appeared to reach for a weapon that was ultimately identified as a pocket-sized multi-tool. LeMay claimed that local officers had harassed and racially profiled him and asserted that his Native American status deprived Montana courts of criminal jurisdiction.

PROCEDURAL HISTORY

The District Court for the Seventh Judicial District, Richland County, denied LeMay's motions to dismiss for outrageous government conduct and lack of state criminal jurisdiction, his motion to suppress for lack of particularized suspicion, and his motion to withdraw his nolo contendere pleas. LeMay entered nolo contendere pleas to the charges in all three cases, was sentenced in a combined judgment, and appealed. The Montana Supreme Court consolidated the appeals and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Roundstone, 2011 MT 227, ¶ 11, 362 Mont. 74, 261 P.3d 1009
- State v. Knowles, 2010 MT 186, ¶ 23, 357 Mont. 272, 239 P.3d 129
- United States v. Russell, 411 U.S. 423 (1973)
- State v. Ditton, 2006 MT 235, ¶ 34, 333 Mont. 483, 144 P.3d 783
- State v. Williams-Rusch, 279 Mont. 437, 445, 928 P.2d 169, 174 (1996)
- City of Billings v. Bruce, 1998 MT 186, 290 Mont. 148, 965 P.2d 866
- State v. Ramirez, 710 F.2d 535, 539 (9th Cir. 1983)
- United States v. Ryan, 548 F.2d 782, 789 (9th Cir. 1976)
- Whitlow v. State, 2008 MT 140, ¶¶ 9-12, 20-21, 343 Mont. 90, 183 P.3d 861
- State v. Racz, 2007 MT 244, ¶¶ 13, 22, 339 Mont. 218, 168 P.3d 685
- Strickland v. Washington, 466 U.S. 668, 694, 697 (1984)
- Adams v. State, 2007 MT 35, ¶ 22, 336 Mont. 63, 153 P.3d 601
- State v. Howard, 2011 MT 246, ¶¶ 21-22, 362 Mont. 196
- In re Petition of Hans, 1998 MT 7, ¶ 41, 288 Mont. 168, 958 P.2d 1175
- State v. Kougl, 2004 MT 243, ¶ 14, 323 Mont. 6, 97 P.3d 1095
- State v. Robinson, 2009 MT 170, ¶ 10, 350 Mont. 493, 208 P.3d 851
- State v. Swensen, 2009 MT 42, ¶ 9, 349 Mont. 268, 203 P.3d 786

- State v. McFarlane, 2008 MT 18, ¶¶ 11, 17, 341 Mont. 166, 176 P.3d 1057
- State v. Warclub, 2005 MT 149, ¶¶ 17, 32, 327 Mont. 352, 114 P.3d 254
- Hans v. State, 283 Mont. 379, 410-11, 942 P.2d 674, 693 (1997)
- State v. Muhammad, 2005 MT 234, ¶¶ 14, 24, 328 Mont. 397, 121 P.3d 521
- State v. Flynn, 2011 MT 48, ¶¶ 6-7, 11-12, 359 Mont. 376, 251 P.3d 143
- State v. Larson, 2010 MT 236, ¶¶ 15, 19, 358 Mont. 156, 243 P.3d 1130
- Weer v. State, 2010 MT 232, ¶¶ 7, 19-20, 358 Mont. 130, 244 P.3d 311
- Brown v. State, 2009 MT 64, ¶ 20, 349 Mont. 408, 203 P.3d 842
- City of Missoula v. Moore, 2011 MT 61, ¶ 16, 360 Mont. 22, 251 P.3d 679
- State v. Rutherford, 2009 MT 154, ¶¶ 11-12, 350 Mont. 403, 208 P.3d 389
- In re Estate of Big Spring, 2011 MT 109, ¶ 20, 360 Mont. 370, 255 P.3d 121
- Cooper v. Glaser, 2010 MT 55, ¶ 6, 355 Mont. 342, 228 P.3d 443
- Meagher v. Butte-Silver Bow City-County, 2007 MT 129, ¶ 13, 337 Mont. 339, 160 P.3d 552
- Zempel v. Liberty, 2006 MT 220, ¶ 11, 333 Mont. 417, 143 P.3d 123
- LaPier v. McCormick, 986 F.2d 303, 304 (9th Cir. 1993)
- In re Diserly, 140 Mont. 219, 220, 370 P.2d 763, 763 (1962)