

COURT OF APPEALS OF OREGON

State v. Suing

350 Or. App. 795 (2026) · No. A184459 · Decided June 24, 2026

SUMMARY

The Oregon Court of Appeals held that the arresting officer had probable cause to arrest Bryon Cody Suing for driving under the influence of intoxicants. Considering the hospital security guard’s report, corroborating circumstances, and the officer’s observations, the court reversed the trial court’s suppression ruling and remanded for further proceedings.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Aoyagi, Presiding Judge; Egan, Judge; Pagán, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	June 24, 2026
DOCKET	A184459
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The state appealed a pretrial order suppressing evidence obtained following defendant's arrest for driving under the influence of intoxicants.
STANDARD OF REVIEW	The court reviewed the trial court's express and implied historical findings for constitutional sufficiency and reviewed the probable-cause determination for legal error.
PRECEDENTIAL VALUE	Published Oregon Court of Appeals opinion
PARTIES	State of Oregon v. Bryon Cody Suing

TOPICS

- probable cause
- suppression of evidence
- search and seizure
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal procedure
- evidence
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the totality of the circumstances provided the arresting officer with objectively reasonable probable cause to believe that defendant had driven while physically or mentally impaired.
2. Whether the trial court's finding that no driving had been observed or reported was supported by the record and could be relied on in the probable-cause analysis.

HOLDINGS

1. The officer had probable cause to arrest defendant because, under the totality of the circumstances, it was objectively reasonable to believe that defendant had driven while impaired.
2. The trial court's finding that no driving was observed or reported was not binding to the extent it was unsupported by the record and contradicted the court's supported findings that the security guard reported seeing defendant drive away.

KEY QUOTATIONS

“Probable cause exists if the officer has “a substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it.”” (at 797)

“An officer must subjectively believe that a crime has been committed and thus that a person or thing is subject to seizure, and this belief must be objectively reasonable in the circumstances.” (at 797)

“The totality of the circumstances made it objectively reasonable for McKenna to believe that it was more likely than not that defendant had committed DUII when he drove home from the hospital.” (at 800-801)

“Because McKenna had probable cause to arrest defendant for DUII, the trial court erred in granting suppression of the evidence derived from the arrest.” (at 801)

FACTUAL BACKGROUND

A hospital security guard reported that defendant appeared obviously drunk, smelled of alcohol, was unsteady, had been advised by medical professionals not to drive, and drove a white Dodge pickup from the hospital. Officer McKenna located a matching truck at defendant's residence, still emanating heat, and defendant admitted that he had returned from the hospital about 30 minutes earlier. McKenna observed glassy and slightly bloodshot eyes, smelled alcohol on defendant's breath, and concluded that defendant's signs of impairment exceeded what would be explained by a single whiskey shot consumed at home. Defendant declined field sobriety tests, and McKenna arrested him for DUII.

PROCEDURAL HISTORY

The Crook County Circuit Court concluded that the arresting officer lacked objectively reasonable probable cause to arrest defendant for DUII and suppressed evidence derived from the arrest. The state appealed. The Oregon Court of Appeals reversed and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings after reversal of the suppression order.

CASES CITED

- State v. Owens, 302 Or. 196, 204, 729 P.2d 524 (1986)
- State v. Vasquez-Villagomez, 346 Or. 12, 23, 203 P.3d 193 (2009)
- State v. Sinkey, 303 Or. App. 673, 678, 465 P.3d 284 (2020)
- State v. DeJong, 368 Or. 640, 643, 497 P.3d 710 (2021)
- State v. Sullivan, 322 Or. App. 563, 564, 520 P.3d 911 (2022), rev. denied, 370 Or. 827 (2023)
- State v. Pollock, 189 Or. App. 38, 42, 73 P.3d 297 (2003), aff'd on other grounds, 337 Or. 618, 102 P.3d 684 (2004)
- State v. Foster, 350 Or. 161, 173, 252 P.3d 292 (2011)