

SUPREME COURT OF MONTANA

State v. Vogl

2009 MT 270 (2009) · No. DA 09-0039 · Decided August 14, 2009

SUMMARY

The Montana Supreme Court affirmed the denial of Christopher J. Vogl’s motion to dismiss a DUI charge for lack of probable cause. The court held that the arresting deputy’s observations independently supported probable cause and that suppression, rather than dismissal, was the proper remedy for any unlawful arrest or improperly obtained evidence.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Mike McGrath; W. William Leaphart; Brian Morris; Jim Rice; James C. Nelson
JURISDICTION	Montana
DECIDED	August 14, 2009
DOCKET	DA 09-0039
DISPOSITION	affirmed
PROCEDURAL POSTURE	Vogl appealed the Thirteenth Judicial District Court's denial of his motion to dismiss a DUI charge for lack of probable cause to arrest.
STANDARD OF REVIEW	The opinion does not expressly state a separate standard of review; it reviewed whether the District Court correctly denied the motion to dismiss for lack of probable cause.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Christopher J. Vogl v. State of Montana

TOPICS

- probable cause
- suppression of evidence
- criminal procedure
- appellate procedure
- evidence

PRACTICE AREAS

- criminal procedure
- DUI
- appellate procedure
- evidence

QUESTIONS PRESENTED

1. Whether the District Court should have dismissed the DUI charge for lack of probable cause to arrest after suppressing the HGN and preliminary breath test evidence.
2. Whether the deputy's observations, apart from the suppressed test evidence, established probable cause to arrest Vogl for DUI.

HOLDINGS

1. An allegedly illegal arrest does not require dismissal of all charges; the proper remedy is suppression of evidence seized or obtained as a result of the arrest.
2. The deputy had probable cause to arrest Vogl for DUI based solely on the deputy's observations of Vogl's apparent alcohol impairment.

KEY QUOTATIONS

“We have recognized that the appropriate course of action in the event of an illegal arrest is not to dismiss all charges, but to suppress all evidence seized or otherwise gained as a result of the arrest.” (¶ 6)

“A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.” (¶ 7)

FACTUAL BACKGROUND

A deputy stopped Vogl for expired vehicle plates and observed several signs of alcohol impairment, including the smell of alcohol, red and glossy eyes, difficulty understanding the stop, and unusual difficulty removing his license from his wallet. Vogl said he had come from a bar, and field sobriety and preliminary breath tests indicated alcohol impairment, although those test results were later suppressed because the deputy did not administer the tests in accordance with his training. Vogl did not object to admission of a .142 breath-alcohol result or a videotape of his voluntary post-arrest interview.

PROCEDURAL HISTORY

Vogl's motion to dismiss in justice court was granted, and the State appealed to the District Court. The District Court suppressed evidence from the HGN test and preliminary breath test but denied Vogl's motion to dismiss. Vogl was subsequently convicted by a jury of DUI per se and appealed to the Montana Supreme Court.

DISPOSITION

affirmed

CASES CITED

- State v. McKee, 1998 MT 110, ¶ 27, 288 Mont. 454, 958 P.2d 700

OPINION

State v. Vogl 2009 MT 270

PER CURIAM.

2009 MT 270N

STATE OF MONTANA, Plaintiff and Appellee, v. CHRISTOPHER J. VOGL, Defendant and Appellant. No. DA 09-0039 Supreme Court of Montana. Submitted on Briefs: July 15, 2009. Decided: August 14, 2009. For Appellant: Bradley J. Finn, Attorney at Law, Billings, Montana For Appellee: Steve Bullock, Montana Attorney General; Jonathan M. Krauss, Assistant Attorney General, Helena, Montana. Dennis Paxinos, Yellowstone County Attorney; Robert Spoja, Deputy County Attorney, Billings, Montana. Chief Justice Mike McGrath 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 Christopher J. Vogl (Vogl) appeals from the denial of his motion to dismiss by the Thirteenth Judicial District Court, Yellowstone County. We affirm. ¶ 3 The issue on appeal is whether the District Court correctly denied Vogl's motion to dismiss for lack of probable cause to arrest for driving under the influence of alcohol (DUI). ¶ 4 Yellowstone County Deputy Sheriff John Smith (Deputy Smith) stopped Vogl for expired plates around 10:00 PM on February 2, 2007, in Lockwood. Deputy Smith smelled alcohol on Vogl's breath, observed that Vogl's eyes were red and glossy, observed that Vogl had trouble understanding why he had been stopped, and observed that Vogl had "out of the ordinary" difficulty removing his driver's license from his wallet. Vogl acknowledged he had just come from the Second Shift Bar. Deputy Smith administered field sobriety tests, including the horizontal gaze nystagmus (HGN) test and preliminary breath test (PBT), which indicated to Deputy Smith that Vogl was alcohol impaired. Deputy Smith arrested Vogl for DUI. ¶ 5 Vogl moved to dismiss the DUI charge in justice court, which was granted on June 25, 2007. The State appealed to District Court where Vogl filed motions to suppress and dismiss. On January 28, 2008, the District Court granted Vogl's motion to suppress evidence from the HGN test and PBT due to Deputy Smith's failures to administer the tests in accordance with his DUI training. The District Court denied Vogl's motion to dismiss. Vogl was convicted by a jury of operating a motor vehicle with an alcohol concentration of .08 or more (DUI per se) on November 17, 2008. ¶ 6 Vogl argues on appeal that since both the HGN and PBT were suppressed, the District Court should have dismissed the case for lack of probable cause to arrest him for DUI. "We have recognized that the appropriate course of action in the event of an illegal arrest is not to dismiss all charges, but to suppress all evidence seized or otherwise gained as a result of the arrest." State v. McKee, 1998 MT 110, ¶ 27, 288 Mont. 454, 958 P.2d 700. Vogl successfully suppressed evidence from the HGN test and PBT, however, Vogl did not object to the admission at trial of a breath alcohol test result of .142, nor to a videotape of Vogl's voluntary post-arrest interview with law enforcement. Vogl

failed to avail himself of the proper remedy for his alleged illegal arrest, which was suppression of any resulting evidence. ¶ 7 Regardless, we conclude that Deputy Smith had probable cause to arrest Vogl. "A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest." Section 46-63-11(1), MCA. Deputy Smith's observations alone supported such probable cause for DUI. Thus, the District Court correctly denied Vogl's motion to dismiss. ¶ 8 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 opinions. It is manifest on the face of the briefs and the record that the appeal is without merit because the issue is clearly controlled by settled Montana law. ¶ 9 Affirmed. JUSTICES W. WILLIAM LEAPHART, BRIAN MORRIS, JIM RICE and JAMES C. NELSON, concur.