

DA 15-0743

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 116N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

WILLIAM J. NORDHOLM,

Defendant and Appellant.

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APPEAL FROM: District Court of the Third Judicial District,  
In and For the County of Anaconda-Deer Lodge, Cause No. DC 14-51  
Honorable Ray Dayton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Danny Tenenbaum, Assistant Appellate  
Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Ryan Aikin, Assistant  
Attorney General, Helena, Montana

Ben Krakowka, Deer Lodge County Attorney, Anaconda, Montana

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Submitted on Briefs: March 28, 2018

Decided: May 8, 2018

Filed:



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Clerk

Justice Dirk Sandefur delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), 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 William Nordholm (Nordholm) appeals from the judgment of conviction of the Montana Third Judicial District Court on the misdemeanor offenses of resisting arrest and obstructing a peace officer in violation of §§ 45-7-301 and -302, MCA. We affirm.

¶3 On March 22, 2014, four officers of the Anaconda-Deer Lodge County Police Department responded to a report that Wayne Jarvi (Jarvi) was drinking alcohol in violation of his bail conditions. Officer Ryan Eamon (Eamon) and his partner arrived at Trailer #8 in Hunters Trailer Court, knocked on the door, and asked for Jarvi. When an unidentified person in the trailer responded from behind the door that Jarvi was not present, Officer Eamon and his partner walked away as fellow Officers Kristopher Vauthier (Vauthier) and Jack Doemel (Doemel) were arriving in another patrol car. After seeing that the initial responding officers did not require assistance, Officers Vauthier and Doemel turned around and were driving past Trailer #8 to leave the area when an unknown male walked out of the trailer and approached their patrol car apparently filming the officers on a cell phone. The officers stopped and without getting out of the car asked, "what's going on?" Without verbal response, the man attempted to extend his arm into the patrol car to record the

officers with his cell phone. The officers later testified that the man smelled of alcohol, causing them to suspect that he might be Jarvi. The officers then exited the car and asked the man to identify himself. When the man did not respond, the officers warned him that they would arrest him if he did not identify himself. The man again did not identify himself and instead asked if the officers were detaining him. When Officer Doemel then moved to physically arrest him, the man resisted the officer's attempt to handcuff him. In an attempt to jerk out of the officer's grasp, the man dropped his phone, pulled his left hand away, and repeatedly stated that he was defending himself. Officer Doemel testified that the man's behavior caused him to fear for his safety. The officers eventually physically arrested the man, handcuffed him, and transported him to the Anaconda-Deer Lodge Detention Center. At the detention center, the man cooperatively identified himself to the booking officer as William Nordholm.

¶4 After the State charged him in Justice Court, a jury convicted Nordholm on September 18, 2014, of obstructing a peace officer and resisting arrest. Nordholm timely appealed to District Court for trial de novo. After waiving his right to jury trial, Nordholm proceeded to a district court bench trial on April 23, 2015. At the close of evidence, the District Court adjudicated Nordholm guilty of resisting arrest but ordered the parties to submit proposed findings of fact and conclusions of law on the offense of obstructing a peace officer. Upon ultimately adjudicating Nordholm guilty on both offenses, and despite the fact that Nordholm had not challenged the constitutional sufficiency or legality of the State's evidence by motion to dismiss or suppress evidence, the District Court issued

findings of fact and conclusions of law to the effect that: (1) Nordholm's refusal to identify himself hindered the officers' performance of their official duty (i.e., the investigation of another man's alleged violation of bail conditions); (2) the officers did not violate Nordholm's constitutional right against self-incrimination because disclosure of his identity would not have been incriminating under the circumstances; and (3) the officers' engagement of Nordholm did not implicate, much less violate, his constitutional right to be free from unreasonable search and seizure because (A) the officers did not initially stop Nordholm—he voluntarily initiated the contact with them, and (B) the officers lawfully extended the initial engagement based on an articulated, particularized suspicion of criminal activity (i.e., that Nordholm was the individual who was drinking in violation of bail conditions) which in turn led to his arrest on the charged offenses.

¶5 As a preliminary matter, in the manifest absence of a timely challenge by Nordholm in District Court to the constitutional sufficiency or legality of the State's evidence, the District Court's findings of fact and conclusions of law regarding Nordholm's constitutional rights to be free from self-incrimination and unreasonable search and seizure pertained to matters not at issue and thus are not subject to review on appeal. Accordingly, to the extent properly preserved and raised upon appeal, the narrow permissible scope of Nordholm's appeal is limited to the sufficiency of the State's evidence under the applicable rules of evidence and standard of proof.

¶6 We review the district court's factual findings to determine whether they are clearly erroneous. Findings of fact are clearly erroneous only if not supported by substantial

evidence, the court misapprehended the effect of the evidence, or we are convinced from our review of the record that the lower court was mistaken. *State v. Warclub*, 2005 MT 149, ¶ 23, 327 Mont. 352, 114 P.3d 254. We review lower court conclusions of law de novo for correctness and discretionary decisions for an abuse of discretion. *Heath v. State*, 2009 MT 7, ¶ 13, 348 Mont. 361, 202 P.3d 118.

¶7 Our review of the record indicates substantial evidence sufficient to support a verdict beyond a reasonable doubt that: (1) the subject police officers were acting in the course of their official investigative duty when Nordholm unilaterally initiated contact with them; (2) Nordholm purposely or knowingly obstructed or hindered the officers in the performance of their official duty in violation of § 45-7-302(1), MCA (knowing obstruction, impairment, or hindering of the “enforcement of the criminal law” or “performance of a governmental function”), by knowingly refusing to identify himself upon the officers’ request; and (3) Nordholm physically resisted the officers’ attempt to arrest him in violation of § 45-7-301(1)(a), MCA (knowing attempt to prevent a police officer from effecting an arrest by use of physical force against the officer). Within the scope of permissible appeal and review on the record presented, Nordholm has failed to demonstrate that his District Court convictions are based on any timely-raised materially erroneous finding of fact, incorrect conclusion of law, abuse of discretion, or evidentiary defect under the applicable rules of evidence or standard of proof. Further, Nordholm has neither timely raised any overriding constitutional issue nor shown a sufficient basis for plain error review thereof.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶9 Affirmed.

/S/ DIRK M. SANDEFUR

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ BETH BAKER

/S/ JIM RICE