

SUPREME COURT OF THE STATE OF MONTANA

State of Montana v. Dawn Marie Jensen

State v. Dawn M. Jensen, 2013 MT 353N (2013) · No. DA 12-0409 · Decided November 19, 2013

SUMMARY

The Montana Supreme Court affirmed Dawn Marie Jensen’s conviction for criminal distribution of dangerous drugs. The court held that an improper prosecutorial comment concerning Jensen’s acceptance of consequences did not prejudice her because the objection was sustained and the jury was properly instructed. The court declined to apply plain-error review to other unobjected-to prosecutorial comments regarding reasonable doubt, common sense, and witness credibility.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Michael E. Wheat; Michael E. Wheat; Mike McGrath; Jim Rice; Beth Baker; Laurie McKinnon
JURISDICTION	Montana
DECIDED	November 19, 2013
DOCKET	DA 12-0409
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jensen appealed her jury conviction for one count of criminal distribution of dangerous drugs, challenging several closing arguments by the prosecutor and the denial of a new trial.
STANDARD OF REVIEW	A district court's decision regarding a new trial in the interests of justice is reviewed for abuse of discretion. Unpreserved claims are reviewed for plain error only sparingly, when they implicate fundamental constitutional rights and result in a manifest miscarriage of justice.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Dawn Marie Jensen v. State of Montana

TOPICS

[criminal procedure](#)[prosecutorial misconduct](#)[reasonable doubt](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the prosecutor's statement that Jensen refused to accept her consequences was improper and prejudicial.
2. Whether the prosecutor's unobjected-to comments concerning reasonable doubt, common sense, and the informant's credibility warranted plain-error review or reversal.
3. Whether the district court abused its discretion by refusing to grant a new trial based on the prosecutor's closing arguments.

HOLDINGS

1. The prosecutor's statement that Jensen refused to accept her consequences was improper, but it did not prejudice Jensen's right to a fair trial because the comment was largely irrelevant, the evidence and trial focused on whether she committed the crime, and the district court's admonishment and jury instructions had a curative effect.
2. The court declined to exercise plain-error review because the comments concerning reasonable doubt, common sense, and the informant's credibility did not implicate Jensen's fundamental constitutional rights or cast unfairness into the trial.
3. The district court did not abuse its discretion in refusing to grant a new trial, and Jensen's conviction was affirmed.

KEY QUOTATIONS

"The prosecutor's comments that Jensen did not "accept her consequences" were improper." (¶ 5)

"Since none of these statements jeopardized Jensen's fundamental rights or cast unfairness into the trial, we decline to exercise plain error review of these issues." (¶ 10)

FACTUAL BACKGROUND

The prosecution argued during closing that the reasonable-doubt burden was not unreasonable, that jurors should use common sense, and that the State's informant had no incentive to lie because she faced criminal prosecution for doing so. The prosecutor also stated that Jensen refused to accept her consequences, prompting an objection that the district court sustained and an admonishment that the argument was improper. Jensen had denied committing the offense, and the jury was instructed to decide guilt based only on the evidence presented at trial.

PROCEDURAL HISTORY

Following a trial in the District Court of the Seventeenth Judicial District, Valley County, Jensen was convicted of criminal distribution of dangerous drugs. On appeal, she argued that prosecutorial comments during closing argument deprived her of a fair trial. The Montana Supreme Court affirmed the conviction and declined to exercise plain-error review of the unpreserved claims.

DISPOSITION

affirmed

CASES CITED

- Cooper v. Hanson, 2010 MT 113, ¶ 28, 356 Mont. 309, 234 P.3d 59
- State v. Goodwin, 249 Mont. 1, 17, 813 P.2d 953, 963 (1991)
- State v. Ahto, 1998 MT 200, ¶ 32, 290 Mont. 338, 965 P.2d 240
- State v. Arigwe, 2007 MT 204, ¶ 164, 338 Mont. 442, 167 P.3d 815
- State v. Stewart, 2000 MT 379, ¶ 42, 303 Mont. 507, 16 P.3d 391
- State v. Gladue, 1999 MT 1, ¶¶ 27, 31, 293 Mont. 1, 972 P.2d 827
- State v. Criswell, 2013 MT 177, ¶ 50, 370 Mont. 511, 305 P.3d 760
- State v. Finley, 276 Mont. 126, 137, 915 P.2d 208, 215 (1996)
- State v. West, 2008 MT 338, ¶¶ 20, 23, 346 Mont. 244, 194 P.3d 683
- State v. Lindberg, 2008 MT 389, ¶¶ 30-34, 347 Mont. 76, 196 P.3d 1252
- State v. Raugust, 2000 MT 146, ¶¶ 42-43, 300 Mont. 54, 3 P.3d 115
- State v. Daniels, 2003 MT 247, ¶ 26, 317 Mont. 331, 77 P.3d 224
- State v. MacDonald, 2013 MT 97, ¶ 14, 369 Mont. 483, 299 P.3d 799
- State v. Parks, 2013 MT 280, ¶ 34, 372 Mont. 88, 310 P.3d 1088