

SUPREME COURT OF MONTANA

State v. Godfrey, 2004 MT 197

95 P.3d 166, 322 Mont. 254 (2004) · No. No. 01-890 · Decided July 28, 2004

SUMMARY

The Montana Supreme Court affirmed Tracey Raymond Godfrey's conviction for felony sexual assault. The court held that although the prosecutor's questions and closing argument concerning Godfrey's explanation were inadvisable, they did not plainly comment on his post-warning silence in a manner warranting plain-error review. The court therefore declined to invoke the common-law plain-error doctrine.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Patricia O. Cotter; Patricia O. Cotter; James C. Nelson; W. William Leaphart; Jim Regnier; Jim Rice; Karla M. Gray; Ed McLean
JURISDICTION	Montana
DECIDED	July 28, 2004
DOCKET	No. 01-890
DISPOSITION	affirmed
PROCEDURAL POSTURE	Godfrey appealed his jury conviction and sentence for felony sexual assault, arguing that the prosecutor violated his due-process right to remain silent and that the unobjected-to error warranted plain-error review.
STANDARD OF REVIEW	The Montana Supreme Court may exercise discretionary common-law plain-error review of unpreserved errors implicating fundamental constitutional rights when failure to review could result in a manifest miscarriage of justice, leave the fundamental fairness of the proceedings unsettled, or compromise the integrity of the judicial process. The court applies that doctrine sparingly and case by case.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Tracey Raymond Godfrey v. State of Montana

TOPICS

miranda rights

due process

prosecutorial misconduct

appellate procedure

preservation of error

PRACTICE AREAS

criminal procedure

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the prosecutor's cross-examination and closing argument improperly commented on Godfrey's post-arrest silence or failure to provide an explanation before trial, violating due process under *Doyle v. Ohio*.
2. Whether the Montana Supreme Court should invoke common-law plain-error review despite trial counsel's failure to object.
3. Whether the challenged prosecutorial comments required reversal of Godfrey's conviction.

HOLDINGS

1. Doyle-type due-process protections are not limited to situations in which a police officer reads Miranda warnings at the time of arrest. A defendant may be induced to remain silent when a court advises him of the right to remain silent, including through a written acknowledgment or judicial recitation of rights.
2. The prosecutor's questioning and closing argument were inadvisable but primarily addressed the credibility and timing of Godfrey's trial account, rather than clearly commenting on his silence or implying that his silence demonstrated guilt.
3. The court declined to invoke common-law plain-error review because the challenged comments did not clearly comment on or infringe Godfrey's fundamental right to remain silent.

KEY QUOTATIONS

"Once a Miranda warning of any sort is given, it is error for a prosecutor to comment on a defendant's post-Miranda silence or his failure to offer a post-Miranda explanation of the alleged crime." (95 P.3d at 173)

"We conclude that the particular facts of this case do not compel the application of the plain error doctrine because there simply was no clear comment on or infringement of Godfrey's fundamental right to remain silent." (95 P.3d at 174-175)

FACTUAL BACKGROUND

Godfrey regularly cared for nine-year-old K.M. and her siblings, including overnight stays at his converted school bus. K.M. later reported that Godfrey had sexually touched her on two occasions, and several witnesses testified about her disclosures. When police executed a search warrant at Godfrey's bus, he was handcuffed and told that K.M. had been sexually assaulted, but he was not questioned, arrested, or given Miranda warnings. At trial, Godfrey testified and offered an explanation for the incidents; the prosecutor questioned why he had not offered that explanation earlier and referred to the time he had to develop it.

PROCEDURAL HISTORY

A Ravalli County jury acquitted Godfrey of one count of sexual assault and one count of attempted sexual intercourse without consent but convicted him of a second count of sexual assault. The District Court sentenced him to an aggregate forty-one-year term, and the Sentence Review Division later amended the sentence to sixty years with thirty years suspended. Godfrey timely appealed to the Montana Supreme Court.

DISPOSITION

affirmed

CASES CITED

- State v. Finley, 276 Mont. 126, 915 P.2d 208 (1996)
- Doyle v. Ohio, 426 U.S. 610 (1976)
- State v. Van Kirk, 2001 MT 184, 306 Mont. 215, 32 P.3d 735
- State v. Furlong, 213 Mont. 251, 690 P.2d 986 (1984)
- State v. Sullivan, 280 Mont. 25, 927 P.2d 1033 (1996)
- Miranda v. Arizona, 384 U.S. 436 (1966)
- Johnson v. United States, 318 U.S. 189 (1943)
- Portuondo v. Agard, 529 U.S. 61 (2000)
- Jenkins v. Anderson, 447 U.S. 231 (1980)
- Anderson v. Charles, 447 U.S. 404 (1980)