

SUPREME COURT OF THE STATE OF MONTANA

State v. Jason Christ

Christ, 2015 MT 333N (Supreme Court of the State of Montana 2015) · No. DA 13-0410 · Decided December 1, 2015

SUMMARY

The Montana Supreme Court affirmed Jason Christ’s conviction for intimidation under § 45-5-203(2), MCA, based on threats to bomb a Verizon store. The court declined to review unpreserved facial-overbreadth and jury-instruction claims under plain-error review and held that sufficient evidence supported the conviction.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Justice James Jeremiah Shea; Justice Patricia Cotter; Justice Laurie McKinnon; Justice Michael E. Wheat
JURISDICTION	Montana
DECIDED	December 1, 2015
DOCKET	DA 13-0410
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a jury conviction for intimidation under § 45-5-203(2), MCA.
STANDARD OF REVIEW	Issues raised for the first time on appeal are generally not considered. Plain-error review is discretionary and requires a showing that failure to review the alleged error would result in a manifest miscarriage of justice, leave unsettled the fundamental fairness of the proceeding, or compromise the integrity of the judicial process. The sufficiency-of-the-evidence claim was reviewed under the applicable settled standards.
PRECEDENTIAL VALUE	Nonprecedential; memorandum opinion designated noncitable under Montana Supreme Court Internal Operating Rules § I, ¶ 3(c).
PARTIES	Jason Christ v. State of Montana

TOPICS

criminal procedure

free speech

first amendment

preservation of error

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether Christ's facial overbreadth challenge to § 45-5-203(2), MCA, and his challenge to the jury instruction could be considered for the first time on appeal.
2. Whether the Supreme Court should exercise plain-error review over the unpreserved constitutional and instructional claims.
3. Whether sufficient evidence supported Christ's conviction for knowingly communicating a threat of a pending explosion endangering life or property.

HOLDINGS

1. The court would not consider the facial-overbreadth and jury-instruction claims because Christ did not raise them in the District Court.
2. The court declined to exercise plain-error review because failure to review the alleged errors would not result in a manifest miscarriage of justice, leave unsettled the fundamental fairness of the proceeding, or compromise the integrity of the judicial process.
3. The evidence was sufficient to sustain Christ's conviction for knowingly communicating a threat to bomb the Verizon store under § 45-5-203(2), MCA.

KEY QUOTATIONS

“Any reasonable person would understand the explicit threat in Christ’s statement that unless he got someone to talk to he could come down and bomb the Verizon store.” (¶ 8)

“The State has a fundamental interest in prohibiting terroristic threats, and there is no First Amendment right to threaten to bomb someone.” (¶ 8)

“this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.” (¶ 1)

FACTUAL BACKGROUND

Christ made repeated hostile telephone calls to Verizon employees after becoming dissatisfied with Verizon's service. During one call, he threatened to come to the store and bomb it, although he later claimed he was not serious. Verizon employees feared for their safety, contacted law enforcement, and the bomb squad searched the store without finding a bomb. Evidence also showed that Christ later played a recording of the threat to his employees and coached them regarding their testimony.

PROCEDURAL HISTORY

A Missoula County jury convicted Jason Christ of intimidation based on a threat to bomb a Verizon store. Christ appealed, arguing that the intimidation statute was facially overbroad, that the jury instruction was improper, and that the evidence was insufficient. The Supreme Court declined to review the unpreserved constitutional and instructional claims under plain-error review and affirmed the conviction.

DISPOSITION

affirmed

CASES CITED

- State v. Taylor, 2010 MT 94, ¶ 12, 356 Mont. 167, 231 P.3d 79
- State v. Taylor, 2010 MT 94, ¶¶ 12-13, 17, 356 Mont. 167, 231 P.3d 79
- State v. Finley, 276 Mont. 126, 134-35, 915 P.2d 208, 214, 216 (1996)
- State v. McCarthy, 2004 MT 312, ¶ 47, 324 Mont. 1, 101 P.3d 288
- State v. Lance, 222 Mont. 92, 101-02, 721 P.2d 1258, 1264-65 (1986)
- State v. Ross, 269 Mont. 347, 358-59, 889 P.2d 161, 168 (1995)

OPINION

State v. Jason Christ

205 MT 333N

PER CURIAM.

December 1 2015 DA 13-0410 Case Number: DA 13-0410

IN THE SUPREME COURT OF THE STATE OF MONTANA

2015 MT 333N

STATE OF MONTANA,

Plaintiff and Appellee, v.

JASON CHRIST,

Defendant and Appellant. APPEAL FROM: District Court of the Fourth Judicial District, In and

For the County of Missoula, Cause No. DC-11-10 Honorable Karen Townsend, Presiding Judge

COUNSEL OF RECORD: For Appellant: Koan Mercer, Assistant Appellate Defender, Helena,

Montana For Appellee: Timothy C. Fox, Montana Attorney General, Tammy A. Hinderman,

Assistant Attorney General, Helena, Montana Kirsten H. Pabst, Missoula County Attorney,

Jennifer Clark, Andrew S. Paul, Deputy County Attorneys, Missoula, Montana Submitted on

Briefs: November 4, 2015 Decided: December 1, 2015 Filed:

_____ Clerk Chief Justice Mike McGrath 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 Jason Christ appeals from his April 18, 2013 conviction by a jury of the offense of intimidation pursuant to § 45-5-203(2), MCA. We affirm. ¶3 In 2010 Christ became dissatisfied with the service he received from Verizon Wireless, and he initiated several intense phone confrontations with Verizon employees. Christ threatened to “do something” to the store manager; he threatened to “kick the shit out of your staff members”; he called one employee a “snide little piece of shit”; threatened to wreck the inside of the store; and repeatedly yelled profanity. On August 18, 2010, Christ called a Verizon store in Missoula demanding to talk to someone who could get something done, or he would “come down and bomb the fucking store.” When asked by the Verizon employee, Christ said he was not “serious.” The employees did not know where Christ was located when he made the bomb threat, but other statements he made indicated that he may have been watching the store. The Verizon employees feared for their safety and called 911 multiple times requesting an officer at the store. They also informed the Verizon home office in Salt Lake City that someone had threatened to harm the store. 2 ¶4 In later calls that same day Christ continued to threaten a Verizon employee that he would “come after” her and that she would “pay for it.” A Missoula police officer went to the Verizon store and found the female employee upset, shaking, nervous and angry. The officer assisted the employees in examining the office for anything suspicious and then called the bomb squad, but they found no bomb. Verizon provided a security guard for the store. ¶5 Christ called a Missoula Police detective to give a statement and denied that he had delivered a bomb threat. He claimed that one of his many enemies must have impersonated him and made the calls to get him into trouble. Subsequent testimony showed that Christ played a recording of the bomb threat to his employees and coached them on testimony to give in court. ¶6 The jury convicted Christ of a violation of § 45-5-203(2), MCA, which makes it unlawful to knowingly communicate a threat of a pending explosion that would endanger life or property. Christ first argues that the statute is facially overbroad and that the District Court gave improper instruction to the jury. Christ did not raise these issues below and we have consistently held that we will not consider issues raised for the first time on appeal. *State v. Taylor*, 2010 MT 94, ¶ 12, 356 Mont. 167, 231 P.3d 79. ¶7 Christ asks this Court to exercise plain error review over the issues that were not raised before the District Court. We decline. We are not convinced that failure to review the claimed errors would result in a manifest miscarriage of justice, leave unsettled the fundamental fairness of the proceeding, or compromise the integrity of the judicial 3 process. *Taylor*, ¶¶ 12-13, 17; *State v. Finley*, 276 Mont. 126, 134-35, 915 P.2d 208, 214, 216 (1996). ¶8 Christ argues that there was insufficient evidence to convict him of the offense, based upon his parsing of the words “threat” and “pending” as used in the statute. Any reasonable person would understand the explicit threat in Christ’s statement that unless he got someone to talk to he could come down and bomb the Verizon store. He cannot avoid this obvious conclusion with his subsequent disclaimer that he was not serious any more than a person who yells “fire” in a crowded theater can escape the consequences by adding “just kidding.” Threatening words have consequences, especially when considered in the context of the several other threats that Christ

made against Verizon employees before and after the bomb threat. *State v. McCarthy*, 2004 MT 312, ¶ 47, 324 Mont. 1, 101 P.3d 288. The State has a fundamental interest in prohibiting terroristic threats, and there is no First Amendment right to threaten to bomb someone. *State v. Lance*, 222 Mont. 92, 101-02, 721 P.2d 1258, 1264-65 (1986). The prosecution presented sufficient evidence to sustain a conviction under the statute for knowingly communicating a threat to bomb the Verizon store. *State v. Ross*, 269 Mont. 347, 358-59, 889 P.2d 161, 168 (1995). ¶9 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court this case presents questions controlled by settled law or by the clear application of applicable standards of review. ¶10 Affirmed. 4

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ PATRICIA COTTER

/S/ LAURIE McKINNON

/S/ MICHAEL E WHEAT

5