

SUPREME COURT OF THE STATE OF MONTANA

State v. Violette

378 Mont. 320 (2015) · No. DA 14-0200 · Decided February 24, 2015

SUMMARY

The Montana Supreme Court dismissed without prejudice an interim appeal from an order denying David Violette’s motion to require the State to elect between aggravated assault and elder abuse charges. The court held that Violette’s double-jeopardy claim and reliance on Montana’s multiple-charges statute were premature because jeopardy had not attached before trial. The court remanded the matter to the District Court for trial without deciding whether elder abuse is a specific instance of aggravated assault.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Laurie McKinnon; Michael E. Wheat; James Jeremiah Shea; Patricia Cotter; Jim Rice
JURISDICTION	Montana
DECIDED	February 24, 2015
DOCKET	DA 14-0200
DISPOSITION	dismissed
PROCEDURAL POSTURE	Interim appeal from an order denying the defendant's pretrial motion to require the State to elect between aggravated assault and elder abuse charges while the underlying criminal proceeding remained pending.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	David Lee Violette v. State of Montana

TOPICS

- double jeopardy
- criminal procedure
- appellate procedure
- statutory interpretation
- interlocutory appeal

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate procedure
- constitutional law

QUESTIONS PRESENTED

1. Whether Violette could obtain interlocutory appellate review of his claim that prosecuting him for both aggravated assault and elder abuse would violate double-jeopardy protections or Montana's multiple-charges statute before he had been tried or convicted.
2. Whether the Montana Supreme Court should decide at that stage whether elder abuse is a specific instance of aggravated assault under § 46-11-410(2)(d), MCA.

HOLDINGS

1. Violette's claims were premature because jeopardy had not attached; he had not previously been tried for or convicted of the charged offenses.
2. Section 46-11-410(1), MCA, permits prosecution for multiple offenses arising from the same transaction, while the restrictions in § 46-11-410(2), MCA, concern multiple convictions; therefore, Violette's reliance on subsection (2) was premature.

KEY QUOTATIONS

“Before a question of double jeopardy arises, there must be an initial determination as to whether jeopardy has attached in the first instance.” (§ 6)

“IT IS HEREBY ORDERED this appeal is DISMISSED WITHOUT PREJUDICE, and the matter is remanded to the District Court for trial.” (§ 11)

FACTUAL BACKGROUND

The State alleged that David Violette confronted Mary Mehrer, a 75-year-old woman, at an obstruction on an access road near his property. After allegedly taking Mehrer's camera and throwing it to the ground, Violette allegedly struck her in the face, causing her to fall and suffer head trauma and vision loss. The State charged him with aggravated assault, criminal mischief, and elder abuse.

PROCEDURAL HISTORY

The State charged Violette with aggravated assault, criminal mischief, and elder abuse. Violette moved to require the State to elect between aggravated assault and elder abuse, arguing that prosecution for both would violate double-jeopardy protections and Montana's multiple-charges statute. The Tenth Judicial District Court denied the motion, and the Montana Supreme Court dismissed the interim appeal without prejudice and remanded the matter for trial.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The appeal was dismissed without prejudice, and the matter was remanded to the District Court for trial.

CASES CITED

- Keating v. First Judicial District, 278 Mont. 218, 224, 924 P.2d 1297, 1300 (1996)
- State v. Wirtala, 231 Mont. 264, 269, 752 P.2d 177, 181 (1988)
- United States v. DiFrancesco, 449 U.S. 117, 129, 101 S. Ct. 426, 433 (1980)
- State v. Lane, 1998 MT 76, ¶ 8, 288 Mont. 286, 957 P.2d 9
- State v. Matt, 2005 MT 9, ¶ 10, 325 Mont. 340, 106 P.3d 530
- Crist v. Bretz, 437 U.S. 28, 38, 98 S. Ct. 2156, 2162 (1978)