

SUPREME COURT OF THE STATE OF MONTANA

State of Montana v. Dustin Scott Dineen

2020 MT 193 · No. DA 18-0388 · Decided August 4, 2020

SUMMARY

The Montana Supreme Court affirmed Dustin Scott Dineen’s felony strangulation conviction. The Court held that prior inconsistent statements by the victim were sufficiently corroborated by circumstantial evidence, rejected his ineffective-assistance claim for lack of demonstrated prejudice, and declined to review his unpreserved jury-instruction challenge for plain error.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Beth Baker; Chief Justice Mike McGrath; Justice Jim Rice; Justice James Jeremiah Shea; Justice Ingrid Gustafson; Justice Dirk M. Sandefur; Justice Laurie McKinnon
JURISDICTION	Montana
DECIDED	August 4, 2020
DOCKET	DA 18-0388
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dineen appealed his Yellowstone County conviction for felony strangulation of a partner or family member, challenging the sufficiency of the evidence, the effectiveness of trial counsel, and an unpreserved jury-instruction issue.
STANDARD OF REVIEW	The court reviewed sufficiency of the evidence de novo, ineffective-assistance claims de novo as mixed questions of law and fact, and exercised discretionary plain-error review sparingly for unpreserved claims implicating fundamental constitutional rights and the fairness of the proceedings.
PRECEDENTIAL VALUE	published
PARTIES	Dustin Scott Dineen v. State of Montana

TOPICS

- criminal procedure
- evidence
- ineffective assistance
- jury instructions
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

evidence

constitutional law

QUESTIONS PRESENTED

1. Whether sufficient evidence, including corroboration of Curtiss's prior inconsistent statements, supported Dineen's conviction for felony strangulation.
2. Whether defense counsel rendered ineffective assistance by asking Curtiss whether physical violence in the relationship was regular or an exception, thereby opening the door to evidence of prior violence.
3. Whether the court should exercise plain-error review over an unpreserved challenge to the jury instruction concerning the mental state required for strangulation.

HOLDINGS

1. The evidence was sufficient for a rational juror to find beyond a reasonable doubt that Dineen purposely or knowingly impeded Curtiss's normal breathing by blocking airflow to her nose and mouth. Curtiss's prior inconsistent statements could be used as substantive evidence because they were corroborated by circumstantial and other evidence.
2. Dineen failed to establish a reasonable probability that, absent counsel's question opening the door to evidence of prior domestic violence, the result of the proceeding would have been different. The ineffective-assistance claim therefore failed.
3. The court declined to exercise plain-error review over Dineen's unpreserved challenge to the jury instruction concerning the mental state for strangulation.

KEY QUOTATIONS

"Prior inconsistent statements may be admitted as substantive evidence and may be considered in determining whether the evidence is sufficient to sustain the conviction." (§ 12)

"Corroborating evidence "need not be direct evidence of each element of the offense."" (§ 15)

"To prevail on an ineffective assistance of counsel claim, a defendant must demonstrate, first, "that counsel's performance was deficient."" (§ 24)

FACTUAL BACKGROUND

Dustin Dineen and Jena Curtiss argued at their home on August 14, 2017, after Curtiss learned that her mother intended to report a child-custody matter to state authorities. Curtiss testified at trial that Dineen put his hand over her mouth and, briefly, over her nose and mouth, while prior statements to family members, a child-protection employee, and a police officer described Dineen holding her down and impeding her breathing. The State also presented evidence of Curtiss's frantic condition, injuries, raspy voice, contemporaneous statements, Dineen's repeated calls and text messages, and his admission that he covered Curtiss's mouth.

PROCEDURAL HISTORY

A Yellowstone County jury convicted Dineen of felony strangulation after rejecting his request for conviction of the lesser offense of Partner or Family Member Assault. The District Court denied his motion to dismiss for insufficient evidence. The Montana Supreme Court affirmed the conviction.

DISPOSITION

affirmed

CASES CITED

- State v. Laird, 2019 MT 198, 397 Mont. 29, 447 P.3d 416
- Garding v. State, 2020 MT 163, 400 Mont. 296
- State v. Lackman, 2017 MT 127, 387 Mont. 459, 395 P.3d 477
- State v. Godfrey, 2004 MT 197, 322 Mont. 254, 95 P.3d 166
- State v. McAlister, 2016 MT 14, 382 Mont. 129, 365 P.3d 1062
- State v. Rosling, 2008 MT 62, 342 Mont. 1, 180 P.3d 1102
- State v. Trujillo, 2008 MT 101, 342 Mont. 319, 180 P.3d 1153
- Murray v. Whitcraft, 2012 MT 298, 367 Mont. 364, 291 P.3d 587
- City of Helena v. Strobel, 2017 MT 55, 387 Mont. 17, 390 P.3d 921
- State v. Torres, 2013 MT 101, 369 Mont. 516, 299 P.3d 804
- Jones v. All Star Painting, Inc., 2018 MT 70, 391 Mont. 120, 415 P.3d 986
- Whitlow v. State, 2008 MT 140, 343 Mont. 90, 183 P.3d 861
- Cheetham v. State, 2019 MT 290, 398 Mont. 131, 454 P.3d 673
- City of Libby v. Hubbard, 2018 MT 2, 390 Mont. 108, 408 P.3d 532
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Lehrkamp, 2017 MT 203, 388 Mont. 295, 400 P.3d 697
- State v. Turnsplenty, 2003 MT 159, 316 Mont. 275, 70 P.3d 1234
- State v. Peart, 2012 MT 274, 367 Mont. 153, 290 P.3d 706
- State v. Lake, 2019 MT 172, 396 Mont. 390, 445 P.3d 1211
- State v. Van Kirk, 2001 MT 184, 306 Mont. 215, 32 P.3d 735