

SUPREME COURT OF MONTANA

City of Billings v. Oltrogge

2014 MT 104N (2014) · No. DA 13-0517 · Decided April 15, 2014

SUMMARY

The Montana Supreme Court affirmed Joey Jean Oltrogge’s conviction for disorderly conduct arising from profane and insulting remarks directed at a 13-year-old neighbor. The court held that the remarks constituted unprotected fighting words and applied its analysis from the related City of Billings v. Nelson appeal to reject the remaining issues. The memorandum opinion was issued as a noncitable decision under the Montana Supreme Court’s Internal Operating Rules.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Mike McGrath; Beth Baker; Patricia Cotter; Michael E. Wheat; Jim Rice
JURISDICTION	Montana
DECIDED	April 15, 2014
DOCKET	DA 13-0517
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Yellowstone County District Court order affirming Oltrogge's disorderly-conduct conviction in the City of Billings Municipal Court.
STANDARD OF REVIEW	The court reviewed legal issues under settled Montana law and reviewed issues involving judicial discretion for abuse of discretion.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; expressly designated noncitable under Montana Supreme Court Internal Operating Rules.
PARTIES	Joey Jean Oltrogge v. City of Billings

TOPICS

- criminal procedure
- first amendment
- free speech
- appellate procedure
- statutory interpretation

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether Oltrogge's gesture and statement constituted unprotected fighting words under Montana's disorderly-conduct statute.
2. Whether the District Court correctly affirmed the municipal court's resolution of the related constitutional, evidentiary, sentencing, and judicial-bias issues.

HOLDINGS

1. Oltrogge's act of flipping off the child and saying "Fuck you" was inherently inflammatory and constituted fighting words with the potential to incite an immediate violent response; therefore, the speech was not constitutionally protected and supported the disorderly-conduct conviction.
2. The District Court correctly affirmed the municipal court's rulings concerning the responding officer's alleged misstatement, replay of recordings, authentication of a McDonald's receipt, consideration of the victim's age at sentencing, and the unpreserved judicial-bias claim.

KEY QUOTATIONS

"Similarly, Oltrogge's words were inherently inflammatory and fall within the "fighting words" doctrine. Her speech was not constitutionally protected." (§ 5)

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

FACTUAL BACKGROUND

Oltrogge and her mother saw the victim, a thirteen-year-old neighbor, walking home from school while they were driving to the mother's house. Oltrogge raised her middle finger and said, "Fuck you," while her mother used a racial slur. The child's mother called police, and Oltrogge and her mother were tried together and convicted of disorderly conduct.

PROCEDURAL HISTORY

Oltrogge was convicted of disorderly conduct in municipal court after making an insulting and profane remark toward a thirteen-year-old child. The District Court affirmed, and Oltrogge appealed to the Montana Supreme Court. The Supreme Court decided the appeal by memorandum opinion and affirmed.

DISPOSITION

affirmed

CASES CITED

- City of Billings v. Nelson, 2014 MT 98
- City of Whitefish v. O'Shaughnessy, 216 Mont. 433, 704 P.2d 1021 (1985)
- State v. Robinson, 2003 MT 364, 319 Mont. 82, 82 P.3d 27

