

SUPREME COURT OF THE STATE OF MONTANA

State of Montana v. Andrew John Smith

Smith, 2025 MT 281 (Supreme Court of the State of Montana 2025) · No. DA 22-0484 · Decided December 9, 2025

SUMMARY

The Montana Supreme Court considers whether Andrew John Smith could seek a lesser-included instruction for mitigated deliberate homicide while asserting justifiable use of force and whether the court should review unpreserved objections concerning juror questions under plain-error principles. The court holds that the district court erred in categorically precluding the lesser-included offense based on Smith's defense theories, explaining that alternative and inconsistent theories may be presented when supported by evidence. The opinion also addresses the handling of juror questions and ultimately affirms Smith's conviction and sentence.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Cory J. Swanson; Justice James Jeremiah Shea; Justice Beth Baker; Justice Laurie McKinnon; Justice Katherine M. Bidegaray; Justice Ingrid Gustafson; Justice Jim Rice
JURISDICTION	Montana Supreme Court
DECIDED	December 9, 2025
DOCKET	DA 22-0484
DISPOSITION	affirmed
PROCEDURAL POSTURE	Smith appealed his criminal conviction and sentence from the Montana District Court, challenging a pretrial ruling concerning alternative defense theories and lesser-included-offense instructions and seeking plain-error review of the district court's handling of midtrial juror questions.
STANDARD OF REVIEW	A ruling on a motion in limine is reviewed for abuse of discretion; legal interpretations underlying the ruling are reviewed de novo. An unpreserved issue may be reviewed for plain error only when failure to review may result in a manifest miscarriage of justice, leave the fundamental fairness of the proceeding unsettled, or compromise the integrity of the judicial process. Error is disregarded unless it affects substantial rights.

PRECEDENTIAL VALUE

published precedential opinion

PARTIES

Andrew John Smith v. State of Montana

TOPICS

criminal procedure

appellate procedure

preservation of error

standard of review

evidence

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

evidence

QUESTIONS PRESENTED

1. Whether the District Court erred by categorically precluding Smith from seeking mitigated deliberate homicide as a lesser-included offense while also asserting justifiable use of force.
2. Whether the Montana Supreme Court should exercise plain-error review concerning the District Court's response to two midtrial evidentiary questions from individual jurors without consulting the parties before responding.

HOLDINGS

1. A justifiable-use-of-force defense does not categorically preclude a mitigated deliberate homicide instruction. Because mitigated deliberate homicide has the same purposeful-or-knowing homicide elements as deliberate homicide and adds the element of extreme mental or emotional stress supported by a reasonable explanation or excuse, the two theories are not legally or logically inconsistent. The instruction must be given if trial evidence supports it.
2. The District Court's error was not prejudicial and did not require reversal because Smith identified no admissible evidence, or evidence he had not voluntarily withdrawn, that would have supported a mitigated deliberate homicide instruction. Smith also failed to make an offer of proof, resulting in waiver of the evidentiary issue.
3. The court declined to exercise plain-error review because Smith did not show that failure to review the unpreserved issue would result in a manifest miscarriage of justice, undermine the fundamental fairness of the proceeding, or compromise the integrity of the judicial process.

KEY QUOTATIONS

“A lesser-included offense instruction is not supported by the evidence when the evidence, if believed, would require an acquittal on both the greater and lesser offense—that is, the defense’s entire theory is that the defendant did not commit the crime.” (¶ 25)

“Therefore, the State is incorrect. A JUOF defense does not preclude mitigated deliberate homicide as a lesser included offense, so long as there is evidence presented at trial to support it.” (¶ 36)

“The District Court erred in its pretrial ruling that Smith could not alternatively argue justifiable use of force and mitigated deliberate homicide as a lesser-included offense.” (¶ 63)

FACTUAL BACKGROUND

Smith encountered his 79-year-old neighbor, Larry Patterson, outside an apartment in Winnett. Patterson was found bleeding from multiple stab wounds, with a firearm nearby; Smith had a knife and told witnesses that Patterson had shot him first. Patterson died, and Smith testified that Patterson pulled a pistol and shot him before Smith stabbed him until the gun left Patterson's hands. Physical evidence contradicted portions of Smith's account, including the location of blood and the level of the neck wound.

PROCEDURAL HISTORY

A jury convicted Smith of deliberate homicide with a dangerous-weapon sentencing enhancement. The District Court sentenced him to a total of 110 years in Montana State Prison and precluded him from using mental-disease-or-disorder evidence to support a mitigated deliberate homicide instruction while asserting justifiable use of force. During trial, the court declined to answer two jurors' evidentiary questions after informing the parties, and Smith did not object. The Montana Supreme Court held that the pretrial ruling was legally erroneous but nonprejudicial and declined plain-error review of the juror-question issue, affirming.

DISPOSITION

affirmed

CASES CITED

- State v. Hudon, 2019 MT 31, ¶¶ 16, 29, 394 Mont. 226, 434 P.3d 273
- State v. Thomas, 2020 MT 281, ¶ 13, 402 Mont. 62, 476 P.3d 26
- State v. Akers, 2017 MT 311, ¶¶ 12-13, 389 Mont. 531, 408 P.3d 142
- State v. German, 2001 MT 156, ¶¶ 7, 20, 23, 306 Mont. 92, 30 P.3d 360
- State v. Castle, 285 Mont. 363, 366-69, 948 P.2d 688, 690-91 (1997)
- State v. Martin, 2001 MT 83, ¶¶ 23, 33-34, 305 Mont. 123, 23 P.3d 216
- State v. Freiburg, 2018 MT 145, ¶¶ 18-19, 391 Mont. 502, 419 P.3d 1234
- State v. Martinez, 1998 MT 265, ¶¶ 10, 15-20, 291 Mont. 265, 968 P.2d 705
- State v. Schmalz, 1998 MT 210, ¶ 23, 290 Mont. 420, 964 P.2d 763
- State v. Craft, 2023 MT 129, ¶¶ 13, 15-16, 413 Mont. 1, 532 P.3d 461
- State v. Dulaney, 2025 MT 67, ¶¶ 24-25, 32, 421 Mont. 251, 566 P.3d 534
- State v. Shegrud, 2014 MT 63, ¶¶ 13-18, 374 Mont. 192, 320 P.3d 455
- State v. Daniels, 2017 MT 163, ¶¶ 12, 16, 388 Mont. 89, 397 P.3d 460
- State v. Howell, 1998 MT 20, ¶¶ 20, 33-34, 287 Mont. 268, 954 P.2d 1102
- State v. Sellner, 286 Mont. 397, 401-03, 951 P.2d 996, 998-99 (1997)
- State v. Grindheim, 2004 MT 311, ¶ 41, 323 Mont. 519, 101 P.3d 267
- State v. Jay, 2013 MT 79, ¶ 44, 369 Mont. 332, 298 P.3d 396
- State v. Brown, 2022 MT 176, ¶ 15, 410 Mont. 38, 517 P.3d 177
- Park v. Montana Sixth Judicial District Court, 1998 MT 164, ¶ 26, 289 Mont. 367, 961 P.2d 1267

- State v. Hess, 252 Mont. 205, 213, 828 P.2d 382, 388 (1992)
- Hans v. State, 283 Mont. 379, 395-99, 942 P.2d 674, 683-86 (1997)
- State v. MacGregor, 2013 MT 297A, ¶ 50, 372 Mont. 142, 311 P.3d 428
- State v. Goulet, 283 Mont. 38, 42, 938 P.2d 1330, 1332-33 (1997)
- State v. Henson, 2010 MT 136, ¶¶ 28-31, 356 Mont. 458, 235 P.3d 1274
- State v. King, 2013 MT 139, ¶ 37, 370 Mont. 277, 304 P.3d 1
- In re O.A.W., 2007 MT 13, ¶ 51, 335 Mont. 304, 153 P.3d 6
- State v. Raugust, 2000 MT 146, ¶ 27, 300 Mont. 54, 3 P.3d 115
- State v. Byrne, 2021 MT 238, ¶ 20, 405 Mont. 352, 495 P.3d 440
- State v. Favel, 2015 MT 336, ¶ 17, 381 Mont. 472, 362 P.3d 1126
- City of Missoula v. Charlie, 2025 MT 85, ¶¶ 17-18, 421 Mont. 403, 567 P.3d 922
- State v. Tapson, 2001 MT 292, ¶ 35, 307 Mont. 428, 41 P.3d 305
- State v. Northcutt, 2015 MT 267, ¶¶ 12, 18-19, 381 Mont. 81, 358 P.3d 179
- State v. Kennedy, 2004 MT 53, ¶¶ 32-34, 320 Mont. 161, 85 P.3d 1279
- State v. Erickson, 2021 MT 320, ¶ 27, 406 Mont. 524, 500 P.3d 1243