

MONTANA SUPREME COURT

State of Montana v. Kevin Wesley Sandberg

2026 MT 45 (Mont. 2026) · No. DA 23-0346 · Decided March 10, 2026

SUMMARY

The Montana Supreme Court reviews Kevin Wesley Sandberg’s convictions for sexual intercourse without consent, aggravated kidnapping, and robbery. The appeal addresses whether repeated references to the complaining witness as a “victim” deprived Sandberg of a fair trial and whether the trial court improperly admitted evidence concerning his request that his girlfriend wipe his phone. The opinion applies principles concerning the presumption of innocence, prosecutorial and judicial neutrality, and the admissibility of evidence under Montana Rules of Evidence 402 and 404(b).

CASE DETAILS

COURT	Montana Supreme Court
WRITING FOR THE COURT	Ingrid Gustafson; Katherine M. Bidegaray; Laurie McKinnon; James Jeremiah Shea
JURISDICTION	Supreme Court of Montana
DECIDED	March 10, 2026
DOCKET	DA 23-0346
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal from jury convictions of sexual intercourse without consent, aggravated kidnapping, and robbery.
STANDARD OF REVIEW	Abuse of discretion for discretionary rulings, evidentiary rulings, and jury instructions. Harmless error analysis for preserved errors implicating the presumption of innocence.
PRECEDENTIAL VALUE	precedential
PARTIES	Kevin Wesley Sandberg v. State of Montana

TOPICS

- prosecutorial misconduct
- character evidence
- jury instructions

PRACTICE AREAS

- criminal law
- evidence
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the defendant was deprived of a fair trial by repeated and pervasive use of the word 'victim' in reference to the complaining witness.
2. Whether the District Court abused its discretion in admitting Sandberg's statement to his girlfriend requesting she 'wipe' his phone over Sandberg's Rule 402 and Rule 404(b) objections.

HOLDINGS

1. The District Court abused its discretion in overruling objections to the pervasive use of the word 'victim' to describe the complaining witness in a case where the commission of a crime was in dispute.
2. The District Court erred in admitting the evidence of the phone-wiping request, as it was irrelevant to consciousness of guilt for the charged offenses and constituted improper character evidence under Rule 404(b).

KEY QUOTATIONS

“The term ‘victim’ is conclusive in nature and connotes a predetermination that the person referred to ha[s] in fact been wronged.” (25)

“The word victim, in the connection in which it appears, is an unguarded expression, calculated, though doubtless unintentionally, to create prejudice against the accused. It seems to assume that the deceased was wrongfully killed, when the very issue was as to the character of the killing.” (14-16)

“A trial founded on the presumption of innocence simply cannot coexist with a trial conducted under the premise that a victim in fact exists where the trial itself is to determine the existence of a crime.” (26)

FACTUAL BACKGROUND

Kevin Sandberg and Tammany Andrade were acquainted through drug use. In April 2021, Sandberg was assaulted, and Andrade and her boyfriend fled with some of his belongings. In September 2021, Sandberg confronted Andrade at a homeless encampment tent about the stolen items. Andrade called 911 hours later, alleging Sandberg had sexually assaulted, kidnapped, and robbed her. Sandberg testified the oral sex was consensual, part of an arrangement where Andrade would repay him for the stolen property.

PROCEDURAL HISTORY

Sandberg was convicted by a jury in the District Court of the Fourth Judicial District, Missoula County. He appealed his convictions, arguing the District Court erred in allowing pervasive use of the term 'victim' and in admitting certain character evidence.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reversed and remanded for a new trial.

CASES CITED

- State v. Lawrence, 2016 MT 346, ¶ 15, 386 Mont. 86, 385 P.3d 968
- Estelle v. Williams, 425 U.S. 501 (1976)
- State v. Nomura, 903 P.2d 718 (Haw. Ct. App. 1995)
- Jackson v. Delaware, 600 A.2d 21 (Del. 1991)
- Utah v. Devey, 138 P.3d 90 (Utah Ct. App. 2006)
- Vermont v. Wigg, 889 A.2d 233 (Vt. 2005)
- Oregon v. Sperou, 442 P.3d 581 (Or. 2019)
- Connecticut v. Cortes, 885 A.2d 153 (Conn. 2005)
- Utah v. Carrera, 517 P.3d 440 (Utah 2022)
- Briscoe v. LaHue, 460 U.S. 325 (1983)
- Oregon v. Kehoe, 560 P.3d 774 (Or. 2024)
- California v. Williams, 17 Cal. 142 (Cal. 1860)
- New York v. Davis, 423 N.Y.S.2d 229 (N.Y. App. Div. 1979)
- Talkington v. Texas, 682 S.W.2d 674 (Tex. App. 1984)
- State v. Hayden, 2008 MT 274, ¶ 28, 345 Mont. 252, 190 P.3d 1091
- Sullivan v. Louisiana, 508 U.S. 275 (1993)
- State v. Van Kirk, 2001 MT 184, ¶ 47, 306 Mont. 215, 32 P.3d 215
- State v. Moore, 254 Mont. 241, 836 P.2d 604 (1992)
- United States v. Myers, 550 F.2d 1036 (5th Cir. 1977)
- State v. Lake, 2022 MT 28, ¶ 45, 407 Mont. 350, 503 P.3d 247
- State v. Buckles, 2018 MT 150, ¶ 13, 391 Mont. 511, 420 P.3d 511

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