

SUPREME COURT OF THE STATE OF MONTANA

State v. Musil

2005 MT 212N (2005) · No. No. 04-751 · Decided August 30, 2005

SUMMARY

The Montana Supreme Court affirmed Fred Musil’s convictions for five counts of cruelty to animals and one count of failure to license his dogs. The court held that the District Court did not abuse its discretion by admitting evidence concerning dogs beyond those specifically named in the charges or by instructing the jury on the charged statutory definition of cruelty to animals. The memorandum decision was designated noncitable under the Montana Supreme Court’s internal operating rules.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Karla M. Gray; Karla M. Gray; W. William Leaphart; Patricia O. Cotter; Brian Morris; Jim Rice
JURISDICTION	Montana
DECIDED	August 30, 2005
DOCKET	No. 04-751
DISPOSITION	affirmed
PROCEDURAL POSTURE	Musil appealed to the Montana Supreme Court from the District Court’s judgment entered after a trial de novo affirming convictions for five counts of cruelty to animals and one count of failure to license his dogs.
STANDARD OF REVIEW	The admission of evidence is reviewed for abuse of discretion. Jury instructions are reviewed for abuse of discretion and will not be reversed unless they prejudicially affect the defendant’s substantial rights.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Fred Musil v. State of Montana

TOPICS

- evidence
- jury instructions
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by admitting evidence concerning dogs other than the five dogs specifically named in the cruelty-to-animals charges.
2. Whether the District Court abused its discretion in instructing the jury on the statutory definition of cruelty to animals.

HOLDINGS

1. The District Court did not abuse its discretion by admitting evidence regarding the care and confinement of dogs other than the five dogs specifically identified in the charges.
2. The District Court did not abuse its discretion by giving the State's instruction defining cruelty to animals under § 45-8-211(1)(b), MCA, rather than Musil's proposed instruction incorporating all statutory definitions.

FACTUAL BACKGROUND

Musil was charged with five misdemeanor counts of cruelty to animals based on the alleged mistreatment or neglect of five dogs and one misdemeanor count of failing to license 50 dogs. At the District Court trial, the State introduced testimony, photographs, and a videotape concerning the conditions under which Musil confined and cared for more than 50 dogs. Musil objected to evidence concerning dogs other than the five specifically named dogs and challenged the jury instruction defining cruelty to animals.

PROCEDURAL HISTORY

A Lewis and Clark County Justice Court jury found Musil guilty on all six misdemeanor counts. Musil appealed to the First Judicial District Court and received a trial de novo, resulting in guilty verdicts, sentencing, and entry of judgment. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Snell, 2004 MT 334, ¶ 17, 324 Mont. 173, 103 P.3d 503
- State v. Grindheim, 2004 MT 311, ¶ 17, 323 Mont. 519, 101 P.3d 267

OPINION

PER CURIAM.

No. 04-751 IN THE SUPREME COURT OF THE STATE OF MONTANA 2005 MT 212N
STATE OF MONTANA, Plaintiff and Respondent, v. FRED MUSIL, Defendant and Appellant.
APPEAL FROM: The District Court of the First Judicial District, In and For the County of Lewis
and Clark, Cause No. BDC-1999-7, Honorable Jeffrey M. Sherlock, Presiding Judge COUNSEL
OF RECORD: For Appellant: Martin Eveland, Assistant Public Defender, Helena, Montana For
Respondent: Honorable Mike McGrath, Attorney General; Jim Wheelis, Assistant Attorney
General, Helena, Montana Leo Gallagher, County Attorney; Deborah Butler, Special Deputy
County Attorney, Helena, Montana Submitted on Briefs: August 10, 2005 Decided: August 30,
2005 Filed: _____ Clerk Chief Justice Karla M.
Gray delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(d)(v), Montana
Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following memorandum
decision shall not be cited as precedent.

Its case title, Supreme Court cause number and disposition shall be included in this Court's
quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports. ¶2 Fred
Musil (Musil) appeals from the judgment entered by the First Judicial District Court, Lewis and
Clark County, on his convictions on five counts of cruelty to animals and one count of failure to
license his dogs.

We affirm. ¶3 The issues Musil raises are whether the District Court abused its discretion in
admitting evidence regarding dogs other than the five specifically named dogs in the cruelty to
animal charges, and whether the District Court abused its discretion in instructing the jury
regarding the definition of the offense of cruelty to animals. ¶4 The State of Montana (State)
charged Musil by amended complaint with five counts of misdemeanor cruelty to animals based
on allegations he knowingly or negligently subjected five dogs to mistreatment or neglect by
confining the dogs in a cruel manner in violation of § 45-8-211(1)(b), MCA.

The amended complaint also charged Musil with one misdemeanor count of failure to license 50
dogs in violation of a county ordinance. A jury trial was held in the Lewis and Clark County
Justice Court resulting in guilty verdicts on all six counts. Musil appealed to the District Court and
received a trial de novo. 2 ¶5 At trial in the District Court, the State presented testimony and
evidence--including photographs and a videotape--documenting the conditions under which Musil
confined and cared for over 50 dogs.

Musil objected to the State presenting evidence regarding the care and confinement of dogs other
than the five dogs specifically mentioned in the amended complaint. The District Court overruled
the objection. During the settling of jury instructions, the State offered an instruction defining the
offense of cruelty to animals as provided in § 45-8-211(1)(b), MCA, which relates to carrying or
confining any animal in a cruel manner.

This is the subsection of the statute which the State specifically charged Musil with violating. Musil objected to the instruction and offered an alternative instruction which included all the various definitions of cruelty to animals contained in § 45-8-211(1), MCA.

The District Court refused Musil's instruction and gave the State's instruction. The jury eventually returned a verdict finding Musil guilty on all six counts. The District Court sentenced Musil and entered judgment. Musil appeals. ¶6 We have determined to decide this case pursuant to Section 1, Paragraph 3(d) of our 1996 Internal Operating Rules, as amended in 2003, which provides for memorandum opinions.

The determination of whether evidence is relevant and admissible is within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion. *State v. Snell*, 2004 MT 334, ¶ 17, 324 Mont. 173, ¶ 17, 103 P.3d 503, ¶ 17. Additionally, a trial court has broad discretion in formulating jury instructions and we will not reverse the trial court unless the instructions prejudicially affect the defendant's substantial rights.

State v. Grindheim, 2004 MT 311, ¶ 17, 323 Mont. 519, ¶ 17, 101 P.3d 3 267, ¶ 17. It is manifest on the face of the briefs and the record that this appeal is without merit because there was no abuse of judicial discretion. ¶7 Affirmed. /S/ KARLA M. GRAY We Concur: /S/ W. WILLIAM LEAPHART /S/ PATRICIA O. COTTER /S/ BRIAN MORRIS /S/ JIM RICE 4