

SUPREME COURT OF MONTANA

State v. Strauss, 2003 MT 195

74 P.3d 1052 (2003) · No. No. 02-426 · Decided August 4, 2003

SUMMARY

The Supreme Court of Montana reviewed Alicia Marlene Strauss's convictions and sentence arising from the shooting death of Douglas Brian Brown. The court held that the admission of audio commentary and a crime-scene reenactment video was erroneous but harmless, and that the State's late disclosure of a witness's statement did not require reversal. The opinion also addressed voluntary-intoxication jury instructions and a weapon-enhancement sentence.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice W. William Leaphart; Chief Justice Karla M. Gray; Justice Jim Regnier; Justice James C. Nelson; Justice Patricia Cotter
JURISDICTION	Montana
DECIDED	August 4, 2003
DOCKET	No. 02-426
DISPOSITION	reversed
PROCEDURAL POSTURE	Strauss appealed her jury conviction for negligent homicide and the resulting sentence, including a ten-year weapon enhancement.
STANDARD OF REVIEW	Evidentiary rulings and rulings on motions for continuance were reviewed for abuse of discretion. Jury instructions were reviewed to determine whether they fully and fairly instructed the jury on the applicable law and whether any error prejudicially affected substantial rights. Trial error was reviewed for harmlessness beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	Alicia Marlene Strauss v. State of Montana

TOPICS

- criminal procedure
- evidence
- sentencing
- harmless error
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court improperly admitted the audio narration accompanying a crime-scene video.
2. Whether the District Court improperly admitted a second crime-scene video depicting a reenactment without an adequate foundation.
3. Whether the District Court erred by allowing Nancy Wickham to testify about Strauss's undisclosed statement and by denying a mistrial or continuance.
4. Whether the District Court erred in instructing the jury that voluntary intoxication was not a defense and could not be considered in determining the requisite mental state.
5. Whether the District Court lawfully imposed a ten-year weapon enhancement without charging the enhancement in the Information and obtaining a separate jury finding.

HOLDINGS

1. The District Court should have played the first video without sound because the recorded commentary did not qualify as admissible prior-statement non-hearsay under Rule 801(d)(1), but the error was harmless beyond a reasonable doubt.
2. The second video was a reenactment and required foundation establishing authentication, identification, accurate portrayal of the event, and substantially similar filming conditions; the State failed to provide that foundation, but the error was harmless beyond a reasonable doubt.
3. The District Court did not abuse its discretion by allowing Wickham to testify or by denying Strauss's requested mistrial and two-week continuance.
4. The instruction stating that voluntary intoxication is not a defense and may not be considered in determining the existence of an offense's mental state did not constitute reversible error.
5. The District Court erred by imposing the ten-year weapon enhancement without complying with the statutory requirements that the enhancement be charged and separately found by the jury.

KEY QUOTATIONS

“This procedure gives the opposing party the opportunity to address and object to each statement individually if offered for the truth of the matter stated.” (74 P.3d at 1057)

“Because the tape was a re-enactment of Strauss's crime, we conclude that it required a proper foundation, including authentication and identification.” (74 P.3d at 1059)

“In light of the State's concession, we conclude that the District Court erred by sentencing Strauss to an additional ten years under the weapon enhancement statute, § 46-18-221, MCA, without first complying with the procedural requirements of § 46-1-401(1), MCA.” (74 P.3d at 1063)

FACTUAL BACKGROUND

During an argument at the victim Douglas Brian Brown's residence, Strauss shot Brown with a rifle. Brown died from a gunshot wound, and Strauss told the 911 dispatcher that the shooting was accidental. At trial, the State presented evidence concerning the crime scene, Strauss's statements, and the circumstances of the shooting; Strauss was convicted of negligent homicide rather than deliberate homicide.

PROCEDURAL HISTORY

Strauss was charged by Information with deliberate homicide in the Twentieth Judicial District Court, Sanders County, and pleaded not guilty. After a jury trial, she was convicted of the lesser-included offense of negligent homicide. The District Court imposed twenty years of imprisonment, with ten years suspended, plus a consecutive ten-year weapon enhancement. The Montana Supreme Court affirmed the conviction and underlying sentence but struck the weapon enhancement.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The weapon-enhancement portion of the sentence is stricken; the judgment and underlying sentence are affirmed.

CASES CITED

- State v. Osborne, 1999 MT 149, ¶ 23, 295 Mont. 54, 982 P.2d 1045
- State v. Van Kirk, 2001 MT 184, ¶¶ 40-44, 306 Mont. 215, 32 P.3d 735
- Peschke v. Carroll College, 280 Mont. 331, 342-43, 929 P.2d 874, 881 (1997)
- Pickren v. State, 269 Ga. 453, 455-56, 500 S.E.2d 566, 569-70 (1998)
- State v. Leroux, 133 N.H. 781, 784-85, 584 A.2d 778, 781 (1990)
- Jackson v. State, 551 So. 2d 132, 139 (Miss. 1989)
- Morgan v. State, 518 So. 2d 186, 189-90 (Ala. Crim. App. 1987)
- State v. Harris, 247 Mont. 405, 417, 808 P.2d 453, 460 (1991)
- State v. Bales, 1999 MT 334, ¶ 24, 297 Mont. 402, 994 P.2d 17
- Brady v. Maryland, 373 U.S. 83, 87 (1963)
- United States v. Hsieh Hui Mei Chen, 754 F.2d 817, 824 (9th Cir. 1985)
- State v. Muir, 263 Mont. 211, 214, 867 P.2d 1094, 1096 (1994)
- State v. Bingman, 2002 MT 350, ¶ 19, 313 Mont. 376, 61 P.3d 153
- State v. Martinez, 1998 MT 265, ¶ 22, 291 Mont. 306, 968 P.2d 705
- State v. Borchert, 281 Mont. 320, 327, 934 P.2d 170, 175 (1997)
- Montana v. Egelhoff, 518 U.S. 37, 56 (1996)
- State v. Egelhoff, 272 Mont. 114, 125-26, 900 P.2d 260, 266-67 (1995)
- Byers v. Mahoney, 279 Mont. 28, 32, 929 P.2d 202, 205 (1996)

- Small v. Good, 284 Mont. 159, 163, 943 P.2d 1258, 1260 (1997)
- State v. Carter, 285 Mont. 449, 461, 948 P.2d 1173, 1180 (1997)
- Hooks v. State, 534 So. 2d 329, 351 (Ala. Crim. App. 1987)
- Wilson v. Piper Aircraft Corp., 282 Or. 61, 74-76, 577 P.2d 1322, 1330 (1978)

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