

SUPREME COURT OF MONTANA

State v. Smith, 2004 MT 191, 322 Mont. 206

95 P.3d 137 (2004) · No. No. 02-459 · Decided July 26, 2004

SUMMARY

The Montana Supreme Court held that the prosecutor acted within its discretion by charging Scott Smith with assault with a weapon rather than privacy in communications. However, the charge retained in Smith’s plea agreement alleged apprehension by a third party rather than by the intended victim and therefore failed to state the necessary elements of assault with a weapon under Montana law. The court reversed the denial of Smith’s motion to dismiss.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Jim Rice; Chief Justice Karla M. Gray; Justice John Warner; Justice Patricia O. Cotter; Justice W. William Leaphart; Justice Jim Regnier; Justice James C. Nelson
JURISDICTION	Montana
DECIDED	July 26, 2004
DOCKET	No. 02-459
DISPOSITION	reversed
PROCEDURAL POSTURE	Smith appealed from the denial of his motion to dismiss Count I of a second amended Information after pleading guilty pursuant to an agreement that reserved his right to appeal the appropriateness of the charge.
STANDARD OF REVIEW	The denial of a motion to dismiss criminal charges is reviewed de novo as a matter of law, with the question being whether the district court correctly interpreted the law.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Scott S. Smith v. State of Montana

TOPICS

- criminal procedure
- statutory interpretation
- appellate procedure
- standard of review
- preservation of error

PRACTICE AREAS

Criminal law

Criminal procedure

Statutory interpretation

Appellate procedure

QUESTIONS PRESENTED

1. Whether the prosecutor was required to charge Smith with privacy in communications through intimidation over the telephone rather than assault with a weapon.
2. Whether the affidavit and Count I of the second amended Information alleged the necessary elements of assault with a weapon under § 45-5-213, MCA.
3. Whether the victim of assault with a weapon must actually see the weapon or reasonably believe that a weapon was being used.

HOLDINGS

1. The prosecutor was not required to charge Smith under the privacy-in-communications statute because that statute and the assault-with-a-weapon statute punish distinct criminal conduct, and the county attorney had discretion to select the charge when the facts supported more than one possible offense.
2. A victim need not actually see the weapon for the offense of assault with a weapon to be established.
3. Count I failed to state the necessary elements of assault with a weapon because it alleged that Tami, a third party, experienced apprehension that Hernandez would be injured; the statute requires reasonable apprehension in the intended victim of the serious bodily injury.

KEY QUOTATIONS

“The crime of assault with a weapon may be established: (1) if a person uses a weapon, or what reasonably appears to be a weapon, to cause reasonable apprehension of serious bodily injury in the victim, or (2) if a person causes reasonable apprehension that the victim will sustain serious bodily injury from a weapon, if it reasonably appears to the victim that a weapon is involved, whether actually seen or not.” (95 P.3d at 143)

“We conclude that subpart (1)(b) does not expand the crime of assault with a weapon to an entire new group of third parties who were fearful about the defendant inflicting serious bodily injury upon an intended victim.” (95 P.3d at 144)

FACTUAL BACKGROUND

Smith made telephone threats to his estranged wife, Tami, stating that he would kill her boyfriend, Mac Hernandez, with a gun and making a metallic clicking sound that he identified as a gun cocking. Smith then called Hernandez and threatened to kill him at the hospital, causing Hernandez to put on a bulletproof vest and contact police. Police later arrested Smith and recovered firearms from his home. Count I alleged that Tami apprehended harm to Hernandez, while Count II alleged that Hernandez himself apprehended harm to him; Smith pleaded guilty to Count I after Count II was dismissed.

PROCEDURAL HISTORY

The State charged Smith with two counts of assault with a weapon. The District Court denied Smith's motion to dismiss, Smith later pleaded guilty to Count I under a plea agreement that dismissed Count II and provided for a deferred sentence and probation, and he appealed the charging issue to the Montana Supreme Court.

DISPOSITION

reversed

CASES CITED

- State ex rel. Booth v. Montana Twenty-First Judicial District, 1998 MT 344, 292 Mont. 371, 972 P.2d 325
- State v. Bowles, 284 Mont. 490, 947 P.2d 52 (1997)
- State v. Feight, 2001 MT 205, 306 Mont. 312, 33 P.3d 623
- State ex rel. Fletcher v. District Court, 260 Mont. 410, 859 P.2d 992 (1993)
- State v. Booke, 178 Mont. 225, 583 P.2d 405 (1978)
- State v. Misner, 234 Mont. 215, 763 P.2d 23 (1988)
- State v. Hagberg, 277 Mont. 33, 920 P.2d 86 (1996)
- State v. Roullier, 1999 MT 37, 293 Mont. 304, 977 P.2d 970
- State v. Matt, 249 Mont. 136, 814 P.2d 52 (1991)
- State v. Crabb, 232 Mont. 170, 756 P.2d 1120 (1988)
- State v. Brown, 239 Mont. 453, 781 P.2d 281 (1989)
- In re Marriage of Skillen, 1998 MT 43, 287 Mont. 399, 956 P.2d 1
- State ex rel. Durland v. Board of County Commissioners, 104 Mont. 21, 64 P.2d 1060 (1937)
- Clark v. Olson, 96 Mont. 417, 31 P.2d 283 (1934)
- Montana Beer Retailers' Protective Ass'n v. State Board of Equalization, 95 Mont. 30, 25 P.2d 128 (1933)