

SUPREME COURT OF MONTANA

State v. Paoni

331 Mont. 86 (2006) · No. No. 04-748 · Decided February 7, 2006

SUMMARY

The Montana Supreme Court affirmed Joseph Paoni’s convictions for assault with a weapon, partner-family member assault, criminal mischief, and two counts of criminal endangerment. The court held that, even assuming Paoni preserved his Crawford confrontation-clause objection, other admissible evidence independently supported the assault conviction and rendered any error harmless. The court also held that Paoni waived his challenge to the prosecution’s opening statement by failing to object timely, and in any event the statement was later supported by admitted evidence.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Brian Morris; Chief Justice Karla M. Gray; Justice W. William Leaphart; Justice John Warner; Justice Jim Rice; Justice James C. Nelson; Justice Patricia O. Cotter
JURISDICTION	Montana
DECIDED	February 7, 2006
DOCKET	No. 04-748
DISPOSITION	affirmed
PROCEDURAL POSTURE	Joseph Paoni appealed his convictions for assault with a weapon, partner-family member assault, criminal mischief, and two counts of criminal endangerment. He challenged the admission of hearsay under the Sixth Amendment's Confrontation Clause and the denial of his motion for a mistrial.
STANDARD OF REVIEW	Evidentiary rulings and denial of a motion for a mistrial are reviewed for abuse of discretion. Preservation of error is governed by whether the defendant made a timely and sufficiently specific objection.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joseph Paoni v. State of Montana

TOPICS

criminal procedure

sixth amendment

hearsay

harmless error

preservation of error

PRACTICE AREAS

criminal law

criminal procedure

evidence

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QUESTIONS PRESENTED

1. Whether sufficient admissible evidence independently supported Paoni's assault-with-a-weapon conviction, making any error in admitting David's hearsay statements harmless even assuming the Confrontation Clause issue was preserved.
2. Whether the District Court abused its discretion by denying Paoni's motion for a mistrial based on the State's opening-statement reference to Paoni's statements that he wanted the baby dead.

HOLDINGS

1. Any error in admitting David's hearsay statements was harmless because the State presented unobjected-to evidence independently proving that Paoni struck David in the face with a rifle, including Tiffany's statements on the redacted 911 tape, the officer's observations of David's injury, and a photograph of the injury.
2. The District Court did not abuse its discretion in denying the motion for a mistrial because Paoni failed to make a timely objection, thereby waiving the issue, and the State later introduced evidence establishing the substance of the statements referenced in opening argument.

KEY QUOTATIONS

“the State must demonstrate that the fact-finder was presented with admissible evidence that proved the same facts as the tainted evidence, and qualitatively, by comparison, the tainted evidence would not have contributed to the conviction.” (¶ 26)

“Joseph’s failure to make a timely objection to the State’s alleged impermissible comment waives the objection and precludes appellate review.” (¶ 36)

FACTUAL BACKGROUND

After drinking, Joseph Paoni assaulted his pregnant girlfriend, Tracyn Elrich, and struck his brother David in the eye with the butt of a rifle when David intervened. David and his daughter Tiffany reported the incident during a 911 call, and officers observed an injury to David's eye and photographed it. David and Tiffany moved to Illinois before trial and did not appear as witnesses, but statements attributed to them were introduced through the 911 recording and police testimony.

PROCEDURAL HISTORY

The Twenty-First Judicial District Court, Ravalli County, denied Paoni's pretrial motion to dismiss, admitted or permitted use of the challenged evidence, denied his motion for a mistrial, and entered convictions on all counts.

The court sentenced him to twenty years in the Montana State Prison with five years suspended. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Damon, 2005 MT 218, ¶ 12, 328 Mont. 276, 119 P.3d 1194
- State v. Steele, 2004 MT 275, ¶ 15, 323 Mont. 204, 99 P.3d 210
- State v. Olsen, 2004 MT 158, ¶ 10, 322 Mont. 1, 92 P.3d 1204
- State v. Vukasin, 2003 MT 230, ¶ 29, 317 Mont. 204, 75 P.3d 1284
- Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)
- State v. Van Kirk, 2001 MT 184, ¶¶ 43, 47, 306 Mont. 215, 32 P.3d 735
- State v. Mizenko, 2006 MT 11, ¶ 26, 330 Mont. 299, 127 P.3d 458
- State v. Davis, 2000 MT 199, ¶ 39, 300 Mont. 458, 5 P.3d 547
- State v. Gardner, 2003 MT 338, ¶¶ 49, 58-59, 318 Mont. 436, 80 P.3d 1262
- State v. Whitlow, 285 Mont. 430, 442, 949 P.2d 239, 247 (1997)
- State v. Scheffelman, 250 Mont. 334, 339, 820 P.2d 1293, 1296 (1991)