

SUPREME COURT OF THE STATE OF MONTANA

State v. Neal Edward Fehringer

State v. Neal E. Fehringer, 2013 MT 10 (2013) · No. DA 12-0238 · Decided January 22, 2013

SUMMARY

The Montana Supreme Court affirmed Neal Fehringer’s conviction for partner or family member assault. The Court held that the Justice Court jury-selection process substantially complied with statutory requirements and that the charging documents adequately informed Fehringer of the charge and established probable cause. The Court also held that disorderly conduct was not a lesser-included offense of partner or family member assault.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Mike McGrath; Beth Baker; Michael E. Wheat; Patricia O. Cotter; Brian Morris
JURISDICTION	Montana
DECIDED	January 22, 2013
DOCKET	DA 12-0238
DISPOSITION	affirmed
PROCEDURAL POSTURE	Fehringer appealed to the Montana Supreme Court from the District Court’s order affirming his Justice Court conviction and sentence for partner or family member assault.
STANDARD OF REVIEW	The court reviewed the jury-composition issue for correctness as a conclusion of law, denial of dismissal for lack of probable cause for abuse of discretion, and the lesser-included-offense issue de novo.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Neal Edward Fehringer v. State of Montana

TOPICS

jury selection lesser included offense instructions jury instructions criminal procedure
appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Justice Court properly called and selected the jury.
2. Whether the complaint and notice to appear were defective because they cited an incorrect statutory subsection and allegedly stated only possible rather than probable cause.
3. Whether disorderly conduct or disturbing the peace was a lesser-included offense of partner or family member assault requiring jury instructions.

HOLDINGS

1. The Justice Court substantially complied with the statutory jury-selection requirements, and Fehringer failed to prove that the jury-selection process was unlawful or that he was denied a fair and impartial jury.
2. The complaint and notice to appear adequately charged partner or family member assault and established probable cause despite an erroneous statutory subsection citation and the use of the word “pausably” in the probable-cause narrative.
3. Disorderly conduct is not a lesser-included offense of partner or family member assault, so Fehringer was not entitled to jury instructions on disorderly conduct.

KEY QUOTATIONS

“The purpose of charging documents is to reasonably appraise the accused of the charges against him so that he has the opportunity to prepare and present a defense.” (¶ 25)

“The “facts” referred to in subsection (a) are the statutory elements of the two offenses, not the individual facts of the case.” (¶ 32)

FACTUAL BACKGROUND

Fehringer argued with his wife, threw a box at her, and pushed her into a refrigerator, causing bruising and breaking her watch. He admitted the conduct to a deputy after receiving Miranda warnings. After initially being set for a bench trial, Fehringer demanded a jury trial on the day of trial following the presiding justice of the peace's recusal, and a jury was assembled for trial the next day. The jury convicted him of partner or family member assault.

PROCEDURAL HISTORY

The Yellowstone County Justice Court convicted Fehringer after a jury trial and sentenced him to one year in jail, all but five days suspended, and a \$500 fine. The District Court affirmed the conviction by order dated March 12, 2012. The Montana Supreme Court affirmed the District Court.

DISPOSITION

affirmed

CASES CITED

- State v. Bearchild, 2004 MT 355, ¶ 7, 324 Mont. 435, 103 P.3d 1006
- Tribby v. Northwestern Bank, 217 Mont. 196, 205, 704 P.2d 409, 415 (1985)
- State v. Elliott, 2002 MT 26, ¶ 27, 308 Mont. 227, 43 P.3d 279
- State v. Wilson, 2007 MT 327, ¶ 25, 340 Mont. 191, 172 P.3d 1264
- State v. Hocter, 2011 MT 251, ¶ 16, 362 Mont. 215, 262 P.3d 1089
- State v. Bahr, 2009 MT 378, ¶¶ 9, 11, 353 Mont. 294, 224 P.3d 610
- State v. Molenda, 2010 MT 215, ¶¶ 3, 9, 358 Mont. 1, 243 P.3d 387
- State v. Martinosky, 1999 MT 122, ¶ 18, 294 Mont. 427, 982 P.2d 440
- State v. Weatherell, 2010 MT 37, ¶ 13, 355 Mont. 230, 225 P.3d 1256