

2010 Montana Supreme Court Update

Your fastest choice in pre-dinner breakout sessions.



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Office of the Appellate Defender
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Sentencing

- Illegal sentencing remedy is remand. *Heafner*, 2010 MT 87
- Time-served credit on new charge despite being on parole. *Hornstein*, 2010 MT 75
- Unsuspended portion of a DoC sentence can be longer than 5 years if imposed after a revocation. *Roberts*, 2010 MT 110



Sentencing

- SRD's "clearly inadequate or excessive" standard upheld. *Driver*, 2010 MT 43
- Pine Hills commitment criterion interpreted to allow Pine upon the 4th misdemeanor within 12 months. *K.M.G.*, 2010 MT 81
- Reversing *Gaither*, 2009 MT 391, the total for all counts in a PFO case may exceed 100 years. *Gunderson*, 2010 MT 166



Sentencing (restitution)

- Test for restitution is causation, not knowledge. *Brownback*, 2010 MT 96
- Court may—but is not required to—impose interest on restitution. *Bucher*, 2010 MT 147
- No unspecified appellate counsel costs. *Stout*, 2010 MT 137
- Reminder that upon a *de novo* retrial, the district court cannot impose costs for the justice court trial. *Bustle*, 2010 MT 68



Pleas and Plea Agreements

- Change in suppression law does not establish “good cause” to withdraw a plea. *Andrews*, 2010 MT 154
 - This was not an involuntariness claim.
- State’s conduct before SRD can be (but wasn’t) a breach. *Shepard*, 2010 MT 20



Double Jeopardy

- No bar to revoking both parole and probation for the same conduct.
Haagenson, 2010 MT 95
- Overruling *Johnston* and the spirit of *Martinez*, P&P can do a 72-hour or 10-day hold-and-release and then later seek revocation for the same allegations.
Maynard, 2010 MT 115
 - The only prohibition is against P&P holding an intervention hearing and then revoking.



Double Jeopardy

- Tribal eluding conviction bars subsequent State prosecution for criminal endangerment. *James*, 2010 MT 175
– “same transaction”
- Assault on minor not included offense of PFMA. *Weatherell*, 2010 MT 37
- Sex assault (even felony) is included offense of SIWC. *Williams*, 2010 MT 58



Procedural Process Rights

- Without new information, State may not increase the charges on retrial following a hung jury. *Knowles*, 2010 MT 186
 - does not apply to initial plea negotiations
- Severance in multiple victim case unlikely to succeed on speculative bolstering argument. *Taylor*, 2010 MT 94
- Dismissal remedy for lack of timely initial appearance. *Strong*, 2010 MT 163



Procedural Process Rights

- Dismissal for non-intentional destruction of evidence requires State negligence + vital to defense + exculpatory nature apparent pre-destruction. *Meredith*, 2010 MT 27
- Δ has right to personal presence at hearing to decide trial continuance due to new evidence. *Charlie*, 2010 MT 195
 - but here it was harmless



Procedural Process Rights

- Court suggests far tighter trial scheduling practices. *Couture*, 2010 MT 201
 - Majority wants trial date set at arraignment
 - Continuances only upon actual showing of “good cause”
 - disapproved of requiring speedy waivers
 - disapproved of local practice of not taking appropriate dispositions after omni
 - Remember continuances that don’t move the trial date are irrelevant for speedy purposes.



Procedural Process Rights

- Witnesses' pregnancy/caregiver hardship were "good cause" excusing delay under misdemeanor speedy trial statute. *Roan*, 2010 MT 29
- Due process provides limited protection re: preaccusation delay, but Δ must show substantial case prejudice & some State culpability. *Passmore*, 2010 MT 34
- If Δ absconded, speedy analysis must still weigh State's diligence in seeking Δ . *Lacey*, 2010 MT 6



Procedural Process Rights

- Request for new counsel based on IAC can be denied on existing record alone if it directly refutes IAC. *Happel*, 2010 MT 200
- No decision for now regarding whether ADO has an inherent conflict of interest raising IAC claims involving OPD attorneys. *Sellers*, DA 09-0556, -0605
- Non-cite: State did not oppose immediate direct appeal of refusal to transfer to Youth Court. *M.J.V.*, 2010 MT 9N

Suppression Decisions

- *Goetz* applies to cell phone conversations. *Allen*, 2010 MT 214
 - public heard snippets, but substance private
 - CI can testify w/o warrant
 - slightly expands and settles *Goetz*
- Under federal *Miranda* analysis, reference to lawyer didn't show Δ wanted to speak *only* through attorney. *Scheffer*, 2010 MT 73
- Bar + near collision + slow + crossing fog line = PS of DUI. *Cooper*, 2010 MT 11
 - Stop based solely on muddy/snowy plates?



Transaction Rule & *Just*

- Grooming of youths other than named victim not inextricably linked. *Lacey*, 2010 MT 6
- “help explain” or “provide some context” insufficient. *Sage*, 2010 MT 156
- “inextricably linked” broad in continuing conduct sex case. *Guill*, 2010 MT 69
- Δ must have known of acts to admit through transaction rule. *Henson*, 2010 MT 136
- Can be “inextricably linked” even if not immediately prior. *Stout*, 2010 MT 137
- Δ’s wife’s abuse of victim not admissible under *Just*. *Knowles*, 2010 MT 186



Jury Selection

- Court held *Batson* does not prohibit striking a juror based on his expressed beliefs even if they are a reflection of his ethnic identity. *James*, 2010 MT 175
- Meaning of “ensuing year” in jury pool statute reviewed for abuse of discretion. *Norquay*, 2010 MT 85
- Reiterated that “coaxed recantations” matter little while spontaneous statements of bias weigh heavily. *Allen*, 2010 MT 214



Jury Instructions

- Δ entitled to accomplice instruction b/c evidence was sufficient for jury to concluded witness who drove Δ to assault victim's house was accomplice. *Allen*, 2010 MT 214
- No *sua sponte* LIO instruct require. *Parrish*, 2010 MT 212
- “not a passenger” actual physical control instruction error. *Christiansen*, 2010 MT 197
- Assault LIO of assault w/ weapon. *Feltz*, 2010 MT 48



Jury Instructions

- Obstructing requires result definition of knowingly. *Johnston*, 2010 MT 152
 - same, crim. endangerment: Albright, DA 10-126
- DUI refusal inference instruction available for SFST refusal. *Stanczak*, 2010 MT 106
- Circumstantial evidence instruction directing jury to determine “most reasonable” upheld. *Sirles*, 2010 MT 88



Evidentiary Issues

- No per se rule excludes or allows Δ 's use of SO expert testimony that Δ isn't a SO. *Passmore*, 2010 MT 34.
- No common law collateral-fact doctrine in MT. Just 403 and the other codified Rules of Evidence. *Passmore*, 2010 MT 34



Evidentiary Issues

- No Confrontation violation regarding adopted statements. *T.J.B.*, 2010 MT 116
- Δ expert excluded due to disclosure two weeks before trial. *Henson*, 2010 MT 136
- Evidence of lesbian relationship prejudicial and should not have been admitted in obstructing case. *Miller*, 2010 MT 62



Evidentiary Issues

- No *Brady* violation regarding private, third-party video. *Seiffert*, 2010 MT 169
 - Δ could obtain through “reasonable diligence”
- No *Brady* violation for non-disclosure of victim booking photo. *James*, 2010 MT 175
 - cumulative + Δ could obtain w/ “due diligence”
- No *Brady* violation regarding CFS document that Δ knew of but did not specifically request. *Parrish*, 2010 MT 212
 - Again, Δ ’s “reasonable diligence”