

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Case Number: DA 20-0580

In the Matter of J.W., A Youth Under the Age of Eighteen Years

ON APPEAL FROM JUDGMENT ENTERED IN THE SIXTEENTH JUDICIAL
DISTRICT YOUTH COURT OF FALLON COUNTY IN THE STATE OF
MONTANA BEFORE HONORABLE NICKOLAS C. MURNION

REPLY BRIEF OF APPELLANT YOUTH J.W.

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REPLY TO THE BRIEF OF APPELLEE

Pursuant to M. R. App. P. 12(3), Appellant files his brief in Reply to the Brief of Appellee and argues as follows:

I. Children are Different than Adults in more Contexts than just Sentencing, (Issue Presented for Review No. 1).

“Adults and youths are different, and so are the court systems that recognize those differences.” *In re G.T.M.*, 2009 MT 443, ¶15, 354 Mont. 197, 222 P.3d 626. “The youth court system was specifically designed to appropriately address the youthful indiscretions resulting from immaturity.” *G.T.M.* at ¶15. As a result, Youths are not sentenced in the same manner or pursuant to the same rules and limits as are adults. *See Id*; *See Also, Steilman v. Michael*, 2017 MT 310, ¶14, 389 Mont. 512, 407 P.3d 313 *citing Montgomery v. Louisiana*, ___ U.S. ___, 136 S.Ct. 718, 732-733, 193 L.Ed.2d 599 (2016), *Miller v. Alabama*, 567 U.S. 460, 470-471, 132 S.Ct. 2455, 2463-64, 183 L.Ed.2d 407 (2012), *Graham v. Florida*, 560 U.S. 48, 68, 130 S.Ct. 2011, 2026, 176 L.Ed.2d 825 (2010) and *Roper v. Simmons*, 543 U.S. 551, 575, 125 S.Ct. 1183, 1198, 161 L.Ed.2d 1 (2005).

The differences between adults and children are relevant to more than just the manner, nature and extent to which they may be punished by the Courts. It is not just the penal system in which children are treated special. “Montana recognizes that youths are to be given special treatment by the courts.” *In re Appeal of Cascade*

Cnty. Dist. Court, 2009 MT 355, ¶14, 353 Mont. 194, 219 P.3d 1255. Youths enjoy greater protection, not less, under the Youth Court Act than do their adult counterparts in District Court. “[T]he Youth Court Act is a law enacted to enhance the protection of youths...” *D.M.K. v. Weber*, 403 Mont. 547, 483 P.3d 475 (Order entered in Supreme Court Case No. OP 21-0068 on 2/23/2021); *See Also, In re K.E.G.*, 2013 MT 82, ¶22, 369 Mont. 375, 298 P.3d 1151, *reversed on other grounds by In re B.W.*, 2014 MT 27, ¶29, 373 Mont. 409, 318 P.3d 682.

One purpose of the Montana Youth Court Act is “to provide judicial procedures in which the parties are ensured a fair, accurate hearing and recognition and enforcement of the constitutional and statutory rights.” Mont. Code Ann. § 41-5-102(4). The purpose of the Youth Court Act is not limited only to punishment and/or rehabilitation of the Youth, but all aspects necessary for a fair accurate hearing. The Youth Court should recognize not only the Youth’s Eighth Amendment rights, but all his constitutional and statutory rights. The Jury was instructed that age only matters with respect to credibility of witnesses. *See Court’s Jury Instruction No. 12, Reg. 61 at page 15.* In light of cases cited in the Youth’s opening brief, *Steilman*, *Montgomery*, *Miller*, *Graham*, and *Roper*, the Youth J.W. was not judged as a child of 14 but instead as an adult. The Youth J.W. received no special treatment and the procedures with regard to jury instruction were in no way enhanced to protect J.W. As a result, his substantial rights were affected and the Youth Court abused its

discretion when it refused to give the Youth J.W.’s Proposed Instructions Nos. 3, 4 and 5 regarding the differences between adults and children.

II. Defendant was Denied his Right to Present a Defense, (Issue Presented for Review No. 2).

Under the federal and state constitutions, a defendant is guaranteed the right to present evidence in his or her defense. *See* United States Const. Amend. XIV and Montana Const. Art. II § 17. Whether rooted in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants “a meaningful opportunity to present a complete defense.” *Cal. v. Trombetta*, 467 U.S. 479, 485 (1984); *See Also, State v. Fish*, 190 Mont. 461, 473, 621 P.2d 1072, 1079 (1980) (improper exclusion of evidence and testimony to refute essential element of crime charged deprived the accused of his right to a fair trial).

“The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State’s accusations.” *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973); *Davis v. Alaska*, 415 U.S. 308, 317 (1974), *Washington v. Texas*, 388 U.S. 14, 19 (1967). The right to present a defense includes, at a minimum . . . “the right to put before a jury evidence that might influence the determination of guilt.” *Pa. v. Ritchie*, 480 U.S. 39, 56 (1987). The right to present a defense also includes “the right to present the defendant’s version of the facts as

well as the prosecution's to the jury so it may decide where the truth lies.”
Washington, 388 U.S. 14 at 19.

The Youth Court went only half as far as due process requires. There was evidence with regard to the age of M.H., (*See* Transcript of Proceedings 3 day Jury Trial August 11, 12, 13, 2020, before Honorable Nickolas C. Murnion, District Court Judge, hereinafter “T.,” at pages T. 305:21-305:22), and the age of the Youth (T. 433:17-433:22; 301:11-301:15). In other words, the Youth Court allowed evidence that the complaining witness against the Youth J.W., M.H., was age 16 over at the time of the sexual encounter and the Youth was age 14 at the time of the sexual encounter. The Youth Court permitted evidence that M.H. indisputably consented to the Youth J.W. inserting one finger into her vagina, T. 346:14-346:24, and that M.H. also agreed to the subsequent act by the Youth J.W. of inserting two fingers into M.H.'s vagina. T. 346:25-348:4. These acts amounted to “sexual intercourse” as defined by Mont. Code Ann. § 45-2-101(68), and the Youth Court instructed the jury on this definition. *See* Jury Instructions Given, No. 16, Reg. 61 at page 19. M.H. had committed a crime as defined by Mont. Code Ann. § 45-5-503(1) because the Youth J.W. was incapable of consenting to the acts as provided by Mont. Code Ann. § 45-5-501(1)(b)(iv), and his consent would be no defense to a prosecution against M.H. for the reasons provided by Mont. Code Ann. §§ 45-2-211(2)(a) and (b). While the Youth J.W. was allowed to present the evidence that the acts and crimes occurred,

the Youth Court abused its discretion when it refused to instruct the jury on why this evidence was mattered or why it was important except with regard to whether the Youth committed an act which would be a crime if committed by an adult. The jury was instructed on the definition of sexual intercourse without consent, (Mont. Code Ann. § 45-5-503), and the definition of sexual intercourse, (Mont. Code Ann. § 45-2-101(68)), but without the Youth's Proposed Jury Instruction No. 7, Appendix. A (Appellant's Opening Brief) at App. 4, the jury could only consider those instructions at it related to the Youth's guilt or innocence with regard to the crime charged against him. The jury was unable to consider the evidence for the purpose of impeachment¹. The Jury was also specifically told that in assessing a witnesses credibility, the should consider "...any motive, bias or prejudice..." Jury Instructions Given, No. 3, Reg. 61 at page 6, ¶2. However without the Youth's Proposed Jury Instruction No. 7, the jury was unaware of the obvious motive, bias, or prejudice possessed by M.H. to testify other than truthfully.

Further compounding the error, Trial Counsel for the Youth was allowed to state in his Opening that, consistent with the Youth's defense:

Here we have a sixteen year old girl with a fourteen year old boy, that fourteen year old boy had been drinking and was described as wobbling, slurring his speech, acting crazy, stumbling, didn't really know what he was doing. He had just graduated eighth grade. Meanwhile she had just gra – or just finished her sophomore year of high school. Now the law

¹ “Impeachment evidence is ‘evidence tending to cast doubt’ on the credibility of a witness’ or witness testimony.” *State v. McGhee*, 2021 MT 193, ¶17, 405 Mont. 121, *quoting State v. Pelletier*, 2020 MT 187, ¶14, 401 Mont. 454, 473 P.3d 991.

states that at the age of sixteen you're able to consent to sex. At the age of fourteen you absolutely, no matter what you do, no matter if you are the one pursuing the sex, it's statutory rape from the sixteen year old. [The Youth J.W.] was incapable of consent. Now, this story comes to fruition on November thirteen, that's when [M.H.] reported, talked to her aunt at the high school who talked to Ms. [Q] or [Q] I couldn't pronounce her name, says you should talk to your parents. [M.H.] talked to four adults and at that time it's decided to report it to law enforcement. She reports it to law enforcement because it's going around the school that her and [the Youth J.W.] have had sex. She's now a junior, [the Youth J.W. is] a freshman. [M.H.] went from perpetrator to victim with three words, I said no. Those three words separate [the Youth J.W.] and [M.H.] sitting at the defendant's table.

T. 276:7-277:2.

Trial Counsel for the Youth similarly argued in closing:

Now, sexual intercourse means penetration of the vulva of one person by the penis of another or penetration of the vulva of one person by a body member of another person, that's sexual intercourse. At the beginning of this case in the opening statement I told you that his case changed with three words, I said no. When [M.H.] allowed herself to have [the Youth J.W.] put one finger into her that was sexual intercourse, she was sixteen, he was fourteen, that's statutory rape. [M.H.] heard this going around the school, that there were rumors that the two of them had had sex and she needed to get ahead of it because she was the perpetrator. So she talks to her friends, we don't know what those conversations were like. She talks to four adults and then it gets reported to law enforcement. Those three words, those three simple words, I said no, changed who's sitting in that seat.

T. 516:13-517:3

The evidence presented at trial is a primary guide as to whether a particular instruction should be given or rejected. "A district court must only instruct the jury on those theories and issues which are supported by evidence presented at trial."

State v. Hagen, 273 Mont. 432, 438, 903 P.2d 1381, 1387 (1995), *citing State v. Popescu*, 237 Mont. 493, 495, 774 P.2d 395, 396 (1989); *See Also State v. Daniels*, 2011 MT 278, ¶42, 362 Mont. 426, 265 P.3d 623). Although the Youth J.W. did not have a right to have the jury instructed on every nuance of the case, “the district court has a duty to instruct the jury on every issue or theory having support in the evidence.” *State v. Demers*, 234 Mont. 273, 280, 762 P.2d 860 (1988). When “determining whether to give an instruction, the inquiry of the court must only be whether any evidence exists in the record to warrant an instruction.” *Id. citing State v. Sotelo*, 209 Mont. 86, 89, 679 P.2d 779, 781 (1984). The Youth J.W.’s theory that M.H. was altering her testimony to avoid prosecution for the precise crime for which the Youth was alleged to have committed had support in the evidence adduced at trial and the instruction proposed by the Youth was not only warranted, but required to give effect to the Youth’s due process right to present a defense.

The Youth Court abused its discretion when it refused to give the instruction and the failure affected the Youth J.W.’s substantial rights.

III. Conclusion.

The Court should reverse and vacate the Final Disposition and judgment against the Appellant Youth and remand the case for proceedings consistent with the opinion of the Court, including, but not limited to, an Order dismissing the Petition or in the alternative, requiring a new trial for the Appellant Youth during which the

jury would receive an instruction as requested in Youth's Proposed Jury Instruction Nos. 3, 4, 5, and 7 (Reg. 39, pages 7-12, and 15-16).

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing brief with the Clerk of the Montana Supreme Court; and that I served a copy of the foregoing pleading by causing it to be electronically served pursuant to the Temporary Electronic Filing Rules, TEFr 6(b) and (c), at the time of filing, on the following:

Dated this 26th day of August, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word for Mac version 16.47 is 2074 words, excluding table of contents, table of citations, certificate of service, certificate of compliance and the appendices per M. R. App. P. 11(4)(d).

So certified this 26th day of August, 2021.

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I, Shandor Badaruddin, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 08-26-2021:

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