State v. Rogers, 2013 MT 221

John Wolff
University of Montana School of Law, John.Wolff@umontana.edu

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Even if ample admissible evidence proves a defendant committed a crime, the defendant’s right to a fair trial is violated if: (1) the State introduces inadmissible evidence at trial that does not prove an element of the crime; (2) no admissible evidence proves the facts that the tainted evidence proves; and (3) it is reasonably possible that the evidence contributed to the defendant’s conviction.

On the morning of April 16, 2011, S.M. reported that her “on again, off again” boyfriend, Donald P. Rogers, sexually and physically assaulted her. Rogers was subsequently arrested and charged with eight counts, including sexual intercourse without consent and partner or family member assault. Rogers claimed the sex was consensual. Prior to trial, Rogers gave notice that he would assert a justifiable use of force defense by establishing that S.M. had a violent character. District Court Judge Edward P. McLean informed Rogers: “If you talk about violence, any act of violence that you committed against another person is relevant and admissible.” After Rogers testified about S.M.’s prior acts of violence against him, the State cross-examined Rogers on his prior criminal history. Specifically, Rogers was questioned about two prior partner assaults, misdemeanor assaults, a dismissed felony assault charge, and two rape convictions that were overturned on appeal. The jury convicted Rogers of all eight counts.

On appeal, Rogers argued the District Court violated his right to a fair trial by allowing the State to question him about his prior criminal history once he testified about S.M.’s prior acts of violence against him. The State argued that any error was harmless. The Montana Supreme Court held Judge McLean erred when he allowed evidence of Rogers’ prior criminal history to be presented to the jury. The Court remanded the case for a new trial on all charges.

Generally, it is error to admit evidence of a defendant’s other crimes, wrongs, or acts. However, a verdict is reversed only when the record shows that the error was prejudicial. When a
court erroneously allows tainted evidence to prove an element of a crime, and no other evidence could have done so, a defendant's right to a fair trial is violated and is therefore automatically reversed. Alternatively, if there is no other admissible evidence proving the same facts and the tainted evidence did not prove an element of the crime, the State must show that there is no reasonable possibility that the tainted evidence might have contributed to the defendant’s conviction. The State’s burden is almost impossible to carry when the tainted evidence is “highly inflammatory.”

The Court reversed Rogers’ case because: (1) Rogers’ criminal history was inadmissible and did not prove any elements of the crimes charged; (2) there was no admissible evidence proving Rogers’ entire history of crime and violence; and (3) given the “highly inflammatory” nature of the offenses, it was reasonably possible that Rogers’ criminal history influenced the verdict. The Court further noted that the record was replete with proof that Rogers committed the crimes charged. Nonetheless, the Court held admitting Rogers’ criminal history was not harmless error because to hold otherwise would “invite the State to offer inadmissible yet damaging evidence in a strong case . . . since the worst that can happen is that the error is noted but deemed harmless.”

Montana practitioners should be aware that a conviction may be overturned, even if ample evidence proves the defendant committed the crime, when: (1) the State introduces inadmissible evidence at trial that does not prove an element of the crime; (2) no admissible evidence proves the facts that the tainted evidence proves; and (3) it is reasonably possible that the evidence contributed to the defendant’s conviction. Once the defendant satisfies the first two elements, the burden falls upon the State to show that it was not reasonably possible that the evidence contributed to the defendant’s conviction.
Honorable Edward P. McLean, District Court Judge of Missoula County, Case NO. DC 11-180

For Appellant: Wade Zolynski, Chief Appellate Defender; Eileen A. Larkin, Assistant Appellate Defender; Helena, Montana

For Appellee: Timothy C. Fox, Montana Attorney General; Tammy K. Plubell, Assistant Attorney General; Helena, Montana
Fred R. Van Valkenburg, Missoula County Attorney; Jason Marks, Deputy County Attorney; Missoula, Montana

John Wolff