

Smith got the Mine; Schneiders got the Shaft

By James C. Nelson

Montana Supreme Court Justice (Ret.)

Even after sentencing, the Rodney Robert Smith case doesn't pass the smell test.

There isn't room to repeat the details of the case here. Holly K. Michels for the Independent Record¹ and KXLH's Mike Dennison² have done a thorough job of reporting the facts surrounding the case and Smith's sentencing hearing on December 9, before District Court Judge Kathy Seeley.

From those reports and preceding coverage, I offer three observations.

First, as Judge Seeley stated at Smith's sentencing hearing, she was between a rock and a hard place. Typically, the sentencing judge is stuck with whatever plea agreement (or sweetheart deal, in this case) is reached between the defendant and the State. That was the case here. It is not the Court's job to prosecute a criminal case or represent the defendant. So, Judge Seeley should bear no criticism for Smith's prosecution and ridiculously inadequate sentence.

Second, it appears from the above-mentioned reports that the facts of the case were disputed. In that regard, two points deserve mention. First, the Lewis and Clark County attorney's office is probably one of most experienced and competent in the State. When County Attorney Leo Gallagher charged Smith with felony assault and various misdemeanors, he, as the prosecutor, had to have probable cause to do so, by statute, section 46-11-201 MCA, and under Montana Rule of Professional Conduct 3.8a.

Accordingly, based on his review of the County Attorney's file, AG general counsel, Derek Oestreicher's, conclusion that he could not prove some of the original charges that County Attorney Leo Gallagher's office believed were supported by that same evidence leaves one questioning what actually motivated the AG's decision. That there might have been disputed facts is no reason; in most

¹Independent Record, Friday December 10, 2021, pp 1 and A6

²<https://www.kxlh.com/news/montana-politics/judge-accepts-gun-case-plea-deal-arranged-by-ag-knuudsens-office>

criminal cases there are disputed facts. And, as Judge Seeley pointed out, Smith could have been convicted on the testimony of one of the two victims alone without any other evidence.

Moreover, Oestreicher's statement that the concealed-carry charges were based on laws repealed three months *after* Smith committed the alleged criminal acts with which he was charged makes little sense either; conduct violating a criminal statute is not exonerated by the later repeal of the statute.

Perhaps these explanations are the result of Oestreicher's apparent lack of any actual prosecutorial experience.³

Second, all that aside, and assuming that the facts surrounding Smith conduct were disputed, it is troubling that the Attorney General's office cut a sweetheart deal with Smith and, thereby, prevented a jury trial that would have allowed the citizens of Lewis and Clark County to listen to the evidence, judge the credibility of witnesses, and determine the truth one way or the other. As John Adams said in 1774, "Representative government and trial by jury are the heart and lungs of liberty."⁴

The victims, John and Jessie Schneider deserved to have their day in Court, and to have their fellow citizens determine the guilt or innocence of the individual who allegedly assaulted and traumatized them and raised havoc in their business—when they *were* following the law. Moreover, we should all be concerned that the Attorney General is setting a precedent for micro-managing elected county prosecutor's cases and interfering with their performing the duties they—not the Attorney General--were elected to perform.

We don't know why Smith got special treatment, and we don't know who will be the next criminal who garners the Attorney General's favor or why.

Third, as for the victims, according to Mike Dennison's report, Mr. Schneider stated that when he voiced concern to general counsel Oestreicher that he, as an innocent victim, was being treated unfairly, Oestreicher laughed at him on the phone. Indeed, the Schneiders were never consulted; rather they were

³https://helenair.com/news/state-and-regional/govt-and-politics/knudsen-names-senior-staff-to-ag-administration/article_3580f84b-7960-5ed7-a6b6-53f1851cf4c5.html

⁴ <https://www.avvo.com/legal-guides/ugc/7-quotes-that-illustrate-the-importance-of-trial-by-jury-to-remember-next-time-you-have-jury-duty>

completely blindsided by The AG's handling of Smith's case. If true, that was an egregious violation of the law.

Specifically, section 46-24-103 of the Montana code provides:

Duty of attorney general. The attorney general shall ensure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system. The attorney general shall prepare a written notice of the rights and services available to victims of crime under this chapter. The notice must be distributed to local law enforcement agencies in the state. In addition, the attorney general shall ensure that victims and witnesses are provided important services and assistance as required under this chapter.

Additionally, section 46-24-104, MCA requires:

Consultation with victim of certain offenses. As soon as possible prior to disposition of the case, the prosecuting attorney in a criminal case shall consult with the victim of a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim or, in the case of a minor child victim or homicide victim, with the family of the victim in order to obtain the views of the victim or the victim's family regarding the disposition of the case, including:

- (1) dismissal of the case;
- (2) release of the accused pending judicial proceedings;
- (3) plea negotiations; and
- (4) pretrial diversion of the case from the judicial process.

At least from the two news reports referred to above, it appears that, in the AG's rush to let Smith off the hook, the statutory processes enacted by the legislature to protect the rights of the victims like the Schneiders, were steam-rolled over. Schneiders were victimized twice: once by Smith and then by the public officials that were statutorily required to protect their interests.

The long and short of it is that the founding fathers included jury trials in the constitution because jury trials prevent tyranny. The definition of tyranny is oppressive power exerted by the government. Tyranny also exists when absolute power is vested in a single ruler. Jury trials are the opposite of tyranny because the citizens on the jury are given the absolute power to make the final decision.⁵

⁵ <https://www.judges.org/wp-content/uploads/2020/03/Why-Jury-Trials-are-Important-to-a-Democratic-Society.pdf>

Here, Montana's whole system for charging, prosecuting and trying criminal cases was hijacked by the Attorney General's office. The victims were twice victimized and the alleged criminal skated for all intents and purposes.

In short, the AG's office gave the law-breaker, Smith, the mine and the law-abiding citizens, the Schneiders, the shaft.