

DA 17-0471

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 70N

CITY OF GREAT FALLS,

Plaintiff and Appellee,

v.

JOSEPH K. TAGGART,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. ADC 17-1
Honorable Gregory Pinski, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Koan Mercer, Assistant Appellate
Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Robert Stutz, Assistant
Attorney General, Helena, Montana

Neil Anthon, Great Falls City Attorney, Cassidy R. Blomgren, Deputy City
Attorney, Great Falls, Montana

Submitted on Briefs: December 12, 2018

Decided: March 26, 2019

Filed:


Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 In a bench trial, the Great Falls Municipal Court convicted Joseph Taggart (Taggart) of first-offense Partner or Family Member Assault (PFMA). Taggart did not appear for trial. The City of Great Falls (City) prosecuted its case without calling the victim, who was uncooperative, to testify at trial. Taggart appealed his conviction to the Eighth Judicial District Court, Cascade County. The District Court affirmed Taggart's conviction, concluding that certain statements Taggart made after his arrest, which the City used to establish Taggart's relationship to the victim, were not the result of custodial interrogation. Taggart also challenged the sufficiency of the evidence establishing his relationship to the victim. The District Court concluded the evidence was sufficient to establish the crime of PFMA. Taggart appeals.

¶3 In the early morning hours of June 2, 2016, William Arnot (Arnot) was working at Five Loaves Bakery in Great Falls when he heard a woman screaming outside and the sounds of a physical altercation. Arnot ran outside the bakery and saw a man pinning a woman to the ground on her back. As Arnot would describe, the man was "sledgehammering" the woman's face with his fists. Arnot yelled at the assailant who quickly fled. The woman stood up and rushed to Arnot, crying out for him to call the

police. Arnot saw that the woman was bleeding from her mouth, spitting up blood, and appeared to have a broken nose. He brought her inside, called the police, requested an ambulance, and helped the woman with her injuries while they waited for emergency responders.

¶4 Great Falls Police Department Officer Cobb responded and identified the woman as Ms. Conley. Officer Cobb observed Ms. Conley's injuries, but she was generally uncooperative. She would not allow the ambulance to take her to the hospital, and she would not allow Officer Cobb to take her to the police station to photograph her injuries. She did, however, identify Taggart as her assailant, and she mentioned she was upset because Taggart accused her of cheating on him. Officer Cobb determined he had probable cause to arrest Taggart for PFMA but was unable to locate Taggart at that time. He issued a citation for Taggart's arrest that he left for future shifts to serve on Taggart.

¶5 Later that day, Sergeant Anthony Munkres contacted Ms. Conley and learned where he could locate Taggart. Sergeant Munkres proceeded to that location, made contact with Taggart, confirmed his identity through Taggart himself and dispatch, and proceeded to arrest him. Sergeant Munkres did not read Taggart his *Miranda* warnings. While Sergeant Munkres arrested Taggart, Taggart asked what his charges were. Sergeant Munkres responded that the charges were for misdemeanor PFMA, and Taggart stated the charges "should be higher than that." While the two walked to Sergeant Munkres's patrol vehicle, Taggart spoke to Sergeant Munkres about his life. He told Sergeant Munkres that the location they were at was his mother's house and that his mother was watching him and Ms.

Conley's children there. Taggart described them as "our children," which led Sergeant Munkres to believe Taggart and Ms. Conley shared children.

¶6 The Great Falls Municipal Court held a bench trial in absentia regarding Taggart's PFMA charge. Arnot, Officer Cobb, and Sergeant Munkres all testified, but Ms. Conley did not. Taggart's counsel raised a confrontation clause objection when, through Officer Cobb's testimony, the City sought to introduce Ms. Conley's identification of Taggart and statements about her and Taggart's relationship. Taggart's defense counsel also asserted Sergeant Munkres violated Taggart's constitutional rights when he had a conversation with Taggart about sharing children with Ms. Conley after Sergeant Munkres arrested Taggart. The Municipal Court overruled each objection and convicted Taggart of PFMA.

¶7 Taggart appealed to the District Court where his only argument was that the Municipal Court erred by admitting his statements to Sergeant Munkres about his relationship with Ms. Conley. Taggart also argued that there was insufficient evidence to establish a partner or familial relationship between him and Ms. Conley. The District Court affirmed Taggart's conviction.

¶8 Taggart appeals to this Court, arguing: (1) the Municipal Court erred by admitting the statements Taggart made to Sergeant Munkres because Sergeant Munkres never read Taggart his *Miranda* rights and Taggart made the statements pursuant to a custodial interrogation; (2) the Municipal Court erred by admitting Ms. Conley's statements through Officer Cobb's testimony in violation of Taggart's constitutional right to confront witnesses against him; (3) the Municipal Court erred by admitting evidence of Taggart's

post-arrest silence in violation of Taggart's constitutional right against self-incrimination; and (4) taken together, the violations warrant reversal as cumulative error.

¶9 When district courts function as intermediate appellate courts for appeals from lower courts of record, we review the appeal de novo as though it were originally filed in this Court. Section 3-5-303, MCA; *State v. Akers*, 2017 MT 311, ¶ 9, 389 Mont. 531, 408 P.3d 142. When an appellate court reviews the grant or denial of a motion to suppress, the appellate court determines whether the trial court's findings of fact are clearly erroneous and whether the court correctly interpreted the law and applied it to those facts. *State v. Nixon*, 2013 MT 81, ¶ 15, 369 Mont. 359, 298 P.3d 408. Generally, an appellate court does not address issues raised for the first time on appeal. *Akers*, ¶ 10. 1 Plain error review is an exception to this general rule where we may consider issues raised for the first time on appeal. *Akers*, ¶ 10. "[C]ourts invoke plain error review to correct error not objected to at trial but that affects the fairness, integrity, and public reputation of judicial proceedings." *State v. Finley*, 276 Mont. 126, 134, 915 P.2d 208, 213 (1996), *overruled on other grounds by State v. Gallagher*, 2001 MT 39, ¶ 21, 304 Mont. 215, 19 P.3d 817. To reverse a decision for plain error, the appellant must: (1) demonstrate that the claimed error implicates a fundamental right; and (2) firmly convince this Court that a failure to review the claimed error would result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the trial or proceedings, or compromise the integrity of the judicial process. *Akers*, ¶ 10.

¶10 In the District Court, Taggart challenged the Municipal Court's admission of his statement to Sergeant Munkres describing the children as "our children" that led the

Municipal Court to conclude the City satisfied the element of PFMA requiring a partner or familial relationship between the defendant and victim. The basis for Taggart's challenge was that he was in custody and the statement was a result of Sergeant Munkres's interrogation. Next, Taggart argued to the District Court that his statement, by itself, was insufficient to establish the requisite relationship.

¶11 The District Court reviewed the record and concluded that following Taggart's arrest, Taggart was not given his *Miranda* warnings. However, the District Court determined that Taggart himself initiated and sustained his conversation with Sergeant Munkres; that the conversation was about Taggart's life and not about the offense; that the conversation was not an attempt by Sergeant Munkres to obtain information about the assault or to obtain an admission; that Sergeant Munkres told Taggart he was not the investigating officer; and that Taggart discussed his family spontaneously. The record supports the Municipal Court's findings that Taggart did not make his statement that the children were "our children" as a result of a custodial interrogation. A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the lower court has misapprehended the effect of the evidence, or if review of the record leaves the appellate court with a definite and firm conviction that a mistake has been made. *State v. Wagner*, 2013 MT 159, ¶ 9, 370 Mont. 381, 303 P.3d 285. We conclude, as the District Court did, that the Municipal Court did not make any clearly erroneous factual findings or misapprehend the evidence. We are not convinced that the Municipal Court made any mistake in concluding that Taggart's statements were freely and voluntarily made and were not the result of a custodial interrogation by Sergeant Munkres.

¶12 We similarly conclude Taggart’s statement that the children were “our children” is sufficient to satisfy the requirements of § 45-5-206(2)(b), MCA, which defines “partners” as, in relevant part, “persons who have a child in common.” Accordingly, the City presented sufficient evidence to the Municipal Court through Taggart’s own statements for the court to conclude that Taggart and Ms. Conley were partners.

¶13 Taggart failed to raise his remaining challenges on appeal in the District Court. It is well-established that “a reviewing court can consider only those issues that are properly preserved for its review.” *In re T.E.*, 2002 MT 195, ¶ 20, 311 Mont. 148, 54 P.3d 38. “In order to preserve a claim or objection for appeal, an appellant must raise that specific claim or objection in the [lower court].” *In re T.E.*, ¶ 20. The only issues Taggart raised on appeal to the District Court concerned the admission of his statements to Sergeant Munkres, which he argued were involuntary and the result of custodial interrogation. We employ the plain error doctrine sparingly, on a case-by-case basis considering the totality of the circumstances of each case. *Akers*, ¶ 13. Here, we are not convinced that plain error review is warranted. While Taggart asserts his constitutional right to confront witnesses against him has been implicated and that the City improperly commented on Taggart’s choice to remain silent, we are not convinced that a review of the record supports the exercise of plain error review. After consideration of the bench trial in its entirety, Taggart has not established that failure to review his remaining claims would amount to a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the proceeding, or compromise the integrity of the judicial process.

¶14 We affirm the District Court's order affirming Taggart's conviction in the Municipal Court.

¶15 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶16 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ JIM RICE
/S/ INGRID GUSTAFSON