

DA 17-0650

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 239N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

BARTLEY JOHN CRABTREE,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDC-16-379
Honorable Elizabeth A. Best, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Gregory Hood, Assistant Appellate
Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Tammy K Plubell, Helena,
Montana

Joshua A. Racki, Cascade County Attorney, Eric Kitzmiller, Special Deputy
County Attorney, Bozeman, Montana

Submitted on Briefs: August 7, 2019

Decided: October 8, 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 On June 13, 2017, a jury in the Eighth Judicial District Court, Cascade County, found Bart J. Crabtree (Crabtree) guilty of Theft by Embezzlement pursuant to a Common Scheme, a felony, in violation of § 45-6-301(7)(a) and (9), MCA. The District Court sentenced Crabtree to the Department of Corrections for a term of five years with three years suspended. Crabtree alleges the jury was not properly instructed that its decision had to be unanimous; that the District Court erred in limiting Crabtree's cross-examination of a witness; and that he was denied a speedy trial. We affirm.

¶3 On or about February 27, 2016, Marlee Sunchild (Sunchild) and Janet Brown (Brown) went to the Great Falls Police Department (GFPD) on a suspicion that Crabtree was embezzling funds from the Electric City Heat Girls Softball Team (ECH) account. Sunchild was the vice president and Brown was the secretary-treasurer of ECH. Sunchild and Brown alleged Crabtree stole \$2,560.38 from the organization's account by writing checks to himself as its president. Sunchild and Brown went to Prairie Mountain Bank and discovered that Crabtree had written \$5,300.00 worth of ECH checks to himself.

Crabtree wrote a total of twelve ECH checks to himself between April 17, 2015, and November 13, 2015.

¶4 On July 20, 2016, the State charged Crabtree with a single count of theft by common scheme. The case took approximately 328 days to reach trial. The State requested a continuance due to Crabtree seeking additional discovery approximately three weeks prior to trial. Additionally, two continuances for the State were granted to address a conflict in the Cascade County Attorney's Office, as one of its attorneys became a material witness to the case. The jury trial was held June 12 and 13, 2017. The State presented several witnesses including investigating officer Detective Burrows, and Sunchild. The focus of the State's inquiry was largely the twelve checks written by Crabtree to himself, his various explanations for needing to be reimbursed, and whether Crabtree's practice of reimbursing himself was authorized by the ECH Board of Directors (Board). The checks were admitted as one exhibit (State's Exhibit 1), without objection from Crabtree. The aggregate amount of the checks was \$5,300.00.

¶5 Sunchild testified that the Board never discussed or approved Crabtree's use of ECH checks to reimburse himself. During Sunchild's cross-examination, Crabtree, representing himself, asked Sunchild about a letter he sent her dated February 12, 2016. In the letter, Sunchild was dismissed as ECH's vice president and provided with the reasons for her dismissal. The letter was issued around the same time Sunchild and Brown were making inquiries to Crabtree about ECH's finances. The letter accused Sunchild of using her position as ECH vice president solely to the benefit of her daughter's softball team.

The letter also alleged Sunchild made several purchases on the organization's account for her daughter's team, including a \$500 "lunch charge" and \$925 for "State championship coats." Crabtree sought to demonstrate that Sunchild made her allegations against Crabtree in order to divert attention away from alleged unauthorized expenditures made by Sunchild. Crabtree never sought to have the dismissal letter admitted.

¶6 Crabtree did ask when Sunchild received the dismissal letter. Sunchild answered February 12, 2016. Crabtree then asked "Okay. And in that letter what were the reasons? What was the cause of your dismissal?" Sunchild replied "I don't recall." At this point, the District Court stopped Crabtree from pursuing his line of questioning any further, explaining "we are not trying Ms. Sunchild." Crabtree then stated: "Correct. But I guess what I was getting at is the reasons that I dismissed her is why she came after me for all these false allegations" Although Crabtree attempted repeatedly to question Sunchild regarding her dismissal and the dismissal letter, the court would not allow Crabtree's inquiries. Crabtree did not testify.

¶7 In addition to an instruction that the jury's verdict must be unanimous, the District Court instructed the jury on the elements of felony theft as follows:

1. That the Defendant with the purpose to deprive Electric City Heat Softball Organization, the owner of the property, obtained or exerted unauthorized control over property entrusted to Defendant.
AND
2. That the Defendant acted purposely or knowingly.
AND
3. That the value of the property was in excess of \$1,500.00.

The jury found Crabtree guilty of theft in an amount greater than \$1,500.00.

¶8 Crabtree contends the jury should have been instructed that to find him guilty they must reach a unanimous verdict as to each check. Crabtree argues that because there were twelve checks, the jury needed to be instructed its decision had to be unanimous as to each check. Crabtree, however, failed to make this argument at trial and he urges on appeal that this Court exercise plain error review. This Court generally does not address issues raised for the first time on appeal. *State v. Hatfield*, 2018 MT 229, ¶ 15, 392 Mont. 509, 426 P.3d 569. We may invoke the plain error doctrine to review an issue not previously objected to in situations implicating a defendant’s fundamental constitutional rights, and where failing to review the alleged error may result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the proceedings, or compromise the integrity of the judicial process. *Hatfield*, ¶ 15.

¶9 Crabtree’s alleged error does implicate a fundamental right. Article II, Section 26, of the Montana Constitution provides in part: “In all criminal actions, the verdict shall be unanimous.” “Since the right to a unanimous verdict is explicit in the Declaration of Rights in Montana’s Constitution, it is a fundamental right.” *State v. Weaver*, 1998 MT 167, ¶ 26, 290 Mont. 58, 964 P.2d 713.

¶10 Nonetheless, failure to review Crabtree’s alleged error that the jury was not properly instructed will not result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the proceedings, or compromise the integrity of the judicial process. *Hatfield*, ¶ 28. This Court reviews alleged error respecting jury instructions to determine whether, as a whole, the jury has been fully and fairly instructed. *State v. Lacey*,

2012 MT 52, ¶ 15, 364 Mont. 291, 272 P.3d 1288. Here, the jury was instructed on both the elements of theft and value, and that its decision must be unanimous. Regardless of whether they agreed on each particular check, the verdict rendered by each individual juror reflected his or her decision that the collective value of the checks stolen exceeded \$1,500.00. Accordingly, the instructions as a whole fully and fairly instructed the jury, and failure to address Crabtree's alleged error will not result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the trial, or compromise the integrity of the judicial process. This Court declines plain error review.

¶11 Next, we consider whether the District Court abused its discretion in limiting Crabtree's questioning of Sunchild regarding the dismissal letter. Crabtree asserts the jury never considered the evidence of Sunchild's expenditures, and that the District Court abused its discretion in limiting the scope of his cross-examination.

¶12 A trial court has broad discretion to limit the scope of cross-examination to those issues it determines are relevant to the trial. *State v. Nelson*, 2002 MT 122, ¶ 15, 310 Mont. 71, 48 P.3d 739; *State v. Beavers*, 1999 MT 260, ¶ 36, 296 Mont. 340, 987 P.2d 371 (citing *State v. Sullivan*, 266 Mont. 313, 323, 880 P.2d 829, 836 (1994)). Moreover, limiting the scope of cross-examination does not necessarily violate a defendant's right to confront an adverse witness. *Nelson*, ¶ 15; *Beavers*, ¶ 36 (citation omitted).

¶13 We conclude the District Court did not abuse its discretion in limiting Crabtree from questioning Sunchild specifically about the reasons for her dismissal. The District Court

allowed the jury to hear that Crabtree had sent Sunchild a letter dismissing her. The District Court also allowed Crabtree to ask Sunchild when she received the letter of dismissal. Finally, Crabtree was allowed to ask Sunchild “Okay. And in that letter what were the reasons? What was the cause of your dismissal?” Sunchild replied “I don’t recall.” At this point, the District Court stopped Crabtree from pursuing his line of questioning any further, stating, “You have established you sent her a letter. She has conceded you sent her a letter. There is a disagreement about whether you had the power. That goes to bias. Going any further does not go to the probative value of proof of the claims or defenses in this case.”

¶14 We agree with the District Court that Crabtree was allowed to present evidence he had dismissed Sunchild at the same time Sunchild went to the police. A jury could evaluate whether her dismissal was a motive for initiating the charges. The District Court was tasked with the unenviable challenge of allowing Crabtree latitude in cross-examination while still keeping the trial on track. We conclude, under the facts and circumstances here, that the District Court did not abuse its discretion in limiting Crabtree’s cross-examination.

¶15 A speedy trial violation presents a question of constitutional law that we review de novo to determine whether the district court correctly interpreted and applied the law. *State v. Velasquez*, 2016 MT 216, ¶ 6, 384 Mont. 447, 377 P.3d 1235 (citation omitted). We review the district court’s underlying factual findings for clear error. *Velasquez*, ¶ 6 (citation omitted). This Court examines speedy trial violations by balancing: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of the right to a

speedy trial; and (4) the prejudice to the defendant as a result of the delay. *State v. Ariegwe*, 2007 MT 204, ¶ 20, 338 Mont. 442, 167 P.3d 815.

¶16 Crabtree was arrested on September 14, 2016. Except for a few hours of detention, he was released on bond pending trial. On December 12, 2016, the State sought a continuance because Crabtree requested discovery from the State a few weeks prior to trial. Crabtree also delayed in picking the discovery up. On February 6, 2017, the State moved for another continuance because it identified a conflict of interest within the Cascade County Attorney's Office and advised the Montana Department of Justice would try the case. On April 24, 2017, the State moved for another thirty-day continuance, advising that the Gallatin County Attorney's Office had agreed to try the case. A few weeks prior to trial, the court held another status hearing. Crabtree did not appear, instead calling the District Court's law clerk shortly before the hearing to advise that it was not convenient for him to appear. A bench warrant was issued for his arrest.

¶17 Applying the test enunciated in *State v. Arigewe*, the District Court first concluded the length of the delay for the analysis was 328 days and therefore a speedy trial analysis was triggered. Assessing the reasons for the delay, and particularly Crabtree's untimely request for discovery and transcripts, the court noted that this amount of delay was significant. The court observed that while the State may not have been diligent in identifying a conflict, it was diligent in moving the case to trial. The District Court concluded the second factor, the reason for the delay, also weighed against Crabtree. In assessing the third factor, Crabtree's responses to the delay, the District Court noted that

Crabtree was not diligent with matters of discovery, and moreover, Crabtree failed to appear for a status hearing. The District Court concluded this factor also weighed against Crabtree. As for the final factor of prejudice, the court determined Crabtree had not been deprived of employment, had not been greatly affected financially, and had not been deprived of associations with his family or other liberty interests. The court further determined that the length of the delay did not impair Crabtree's ability to prepare an effective defense.

¶18 Upon our de novo review, we similarly conclude that, although a portion of the delay was attributable to the State, the State's delay was due to institutional forces beyond the prosecutor's control, weighing less heavily against the State. *Arigewe*, ¶ 68. The State sought two continuances for addressing a conflict of interest in prosecuting the case. While the State is responsible for addressing a conflict, this type of delay "is not one the State actively pursued." *Ariegwe*, ¶ 68.

¶19 This Court also concludes the District Court's determination that the response to the delay weighed against Crabtree is well supported. Indeed, Crabtree's absence at a status hearing in his case, just a few weeks prior to trial, and giving no legitimate excuse for his absence, is particularly informative of Crabtree's lack of motivation to proceed to trial expeditiously. Crabtree also did not provide adequate notice of his intended absence, instead opting shortly before the hearing to call the District Court's law clerk to inform that his appearance at the hearing would not be convenient. While Crabtree filed a motion to dismiss on speedy trial grounds asserting the State was "kicking the can down the road"

Crabtree was not especially motivated to proceed to trial and absented himself from a status hearing a few weeks before trial would begin.

¶20 Crabtree has also failed to demonstrate that he was prejudiced by the delay. Crabtree had not been deprived of employment, had not been greatly affected financially, and had not been deprived of associations with his family or other liberty interests. The court further determined that the length of the delay did not impair Crabtree's ability to prepare an effective defense.

¶21 Accordingly, the District Court's findings of fact were not clearly erroneous, and its conclusions of law were correct.

¶22 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.

¶23 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ JIM RICE