DA 19-0256

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 27N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ERIC GREGORY BURNS,

Defendant and Appellant.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DC 19-10
Honorable Brenda Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Karl Knuchel, Eric T. Oden, Law Office of Karl Knuchel, PC,
Livingston, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Rob Cameron, Deputy
Attorney General, Helena, Montana

Kendra K. Lassiter, Park County Attorney, Livingston, Montana

Submitted on Briefs: December 11, 2019

Decided: February 4, 2020

Filed:

Clerk

Chief Justice Mike McGrath 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 Eric Gregory Burns ("Burns") appeals from an order of the Sixth Judicial District Court, Park County. The District Court affirmed a Park County Justice Court verdict that found Burns guilty of Failure to Obtain Landowner Permission for Hunting, § 87-6-415, MCA. In appealing the District Court's order affirming the Justice Court, Burns contends that the Justice Court erred in denying his motion to dismiss the action on the grounds that he was not in violation of § 87-6-415, MCA, since he did not "take or attempt to take" a game animal while traversing across the private property at issue to access public land. Burns also argues the Justice Court abused its discretion by: 1) admitting the State's Exhibit 12, which allegedly misstated the applicable law and its elements; 2) denying Burns's motion for mistrial after giving an allegedly invalid jury instruction; and 3) allowing the State to propose jury instructions less than 24 hours before the trial without making a finding of good cause. We affirm.

¶3 On October 27, 2017, Burns was issued a citation by Montana Fish, Wildlife, and Parks Game Warden Drew Scott alleging a violation of § 87-6-415, MCA, Failure to Obtain Landowner Permission for Hunting, a misdemeanor. Burns began his hunt via the

Rock Creek Trailhead in Paradise Valley, Montana, on horseback along with fellow hunter Cody Cherry ("Cherry"). At some point during their hunt, they decided to access a section of public land (S02, T07 S, R06 E) ("Section 2") that, with the exception of the southwest corner, is surrounded by private property owned by Point of Rocks Ranch. Burns and Cherry were coming from another section of public land (S34, T06, R06 E) ("Section 34") and attempting to access Section 2 via the northwest corner. Unlike a typical land survey corner that has four sections meeting to form four corners, Section 34 and Section 2 are separated by approximately 80 feet of Point of Rocks Ranch land. As a result of the separation between the two sections of public land, Burns and Cherry traversed across Point of Rocks Ranch land to access Section 2. While Burns and Cherry stated that they had been crossing the area for the last 20 to 25 years, Point of Rocks Ranch does not provide goodwill access to Section 2.[1] Upon crossing onto Point of Rocks Ranch land, a trail camera owned by Point of Rocks Ranch captured Cherry and Burns, who were each wearing hunter's orange and carrying rifles. The picture was sent to Point of Rocks Ranch manager Matt Lumley who contacted law enforcement.

¶4 While Burns admitted he was hunting to Warden Scott, he pleaded not guilty in Park County Justice Court on December 12, 2017. After several continuances, trial was set for January 9, 2019, with jury instructions due on January 4, 2019. Prior to trial, Burns objected to the State's proposed jury instructions, with the exception of preliminary Instructions 1 through 6, on the basis that they were filed four days after the deadline on January 8, 2019, and one day before trial. Burns also specifically objected to

[1] Burns did not raise the issue of the existence of a prescriptive easement.

the State's Offered Instruction No. 13, which the Justice Court excluded, while overruling Burns's objections to the State's remaining instructions. On January 9, 2019, the Justice Court held a jury trial resulting in a "guilty" verdict. Prior to the jury's deliberation, the Justice Court had inadvertently read Instruction No. 13. On February 15, 2019, Burns appealed to the Montana Sixth Judicial District Court. On April 4, 2019, the District Court affirmed the Justice Court on all issues. Burns now appeals.[2]

¶5 Burns argues that the Justice Court abused its discretion by: 1) denying Burns's motion to dismiss the case on the basis that the State presented insufficient evidence; 2) allowing the admission into evidence of a photocopy of a page from the 2017 Montana Hunting Regulations; 3) reading a jury instruction (Instruction No. 13) at the close of evidence that it had excluded before trial; and 4) allowing the State to submit jury instructions after the Court's deadline without a finding of good cause for the delay, contrary to Rule 19(c) of the Montana Uniform Rules for the Justice and City Courts.

¶6 A lower court's interpretation of a statute is a question of law that is reviewed for correctness. *Mont. Dep't of Revenue v. Priceline.com, Inc.*, 2015 MT 241, ¶ 6, 380 Mont. 352, 354 P.3d 631. We review a lower court's denial of a motion to dismiss based on insufficiency of evidence de novo. *State v. McAlister*, 2016 MT 14, ¶ 6, 382 Mont. 129, 365 P.3d 1062. Regarding a lower court's decisions on admission of evidence, we review rulings for an abuse of discretion. *State v. Walker*, 2018 MT 312, ¶ 11, 394 Mont.

[2] Burns and Cherry were tried together in the Justice Court. They appealed separately to both the District Court and this Court *See State v. Cherry*, 2020 MT 25, ___ Mont. ___, ___ P.3d ___.

1, 433 P.3d 202. A lower court's decisions on jury instructions are reviewed for an abuse of discretion. *State v. Doyle*, 2007 MT 125, ¶ 66, 337 Mont. 308, 160 P.3d 516.

¶7 Burns's first three issues rely on an argument that the State was required to prove three elements, not two, in its charge against him for Failure to Obtain Landowner Permission for Hunting. While the State argues only elements one and two are necessary, Burns adds a third element to § 87-6-415, MCA, and argues the following elements are necessary: 1) that a person be on private property without permission; 2) that person is hunting on that private property; and 3) that person takes or attempted to take a game animal.

¶8 Burns asserts that since the State did not prove or introduce any evidence regarding the alleged third element, the Justice Court abused its discretion in denying his motion to dismiss based on insufficiency of evidence. Similarly, Burns argues that the Justice Court abused its discretion by allowing the admission of the State's Exhibit 12, which was a page from the 2017 Deer, Elk, and Antelope Montana Hunting Regulations that detailed it was against Montana law to hunt on private land without permission. He argues the page misstates the elements of § 87-6-415, MCA, by only using the word "hunting" and not language from Burns's third offered element of "attempting to take game animals." Burns further argues that the Justice Court abused its discretion at the end of trial by denying his motion for mistrial based on the Justice Court's inadvertent reading of the State's Instruction No. 13, which it had initially excluded. Burns's objection to the State's Instruction No. 13 is on the basis that the instruction omits his

third offered element of "taking or attempting to take game animals" as an independent element of the offense, distinct from "hunting."

¶9 Burns's first three issues fail since he relies on an incorrect understanding of the statute. Section 87-6-415, MCA, is titled "Failure to Obtain Landowner Permission for Hunting." The statute specifically states: "A resident or nonresident shall obtain permission of the landowner . . . before taking or attempting to take game animals . . . while *hunting* on private property." Section 87-6-415(1), MCA (emphasis added). The statutory definition of "hunt" provides that "taking or attempting to take game animals" is part and parcel of "hunting," specifically stating: "The term includes an attempt to take or harvest" a game animal, in addition to "pursu[ing], shoot[ing], wound[ing], tak[ing], harvest[ing], kill[ing], chas[ing], lur[ing], possess[ing], or captur[ing]" game animals. Section 87-6-101(14), MCA. In other words, one cannot be "hunting" without "taking or attempting to take game animals."

¶10 While Burns argues he was not "taking or attempting to take game animals" as he crossed the 80 feet of private property, he was engaged in the act of hunting. Burns was wearing hunter's orange and admitted to Warden Scott that he was hunting while crossing the offset corner of private property to get to Section 2. The purpose of hunting is to "take or attempt to take" a game animal; it is not a separate action from hunting. As the Warden testified: "Hunting begins at the time you leave your vehicle until you get back. You can't walk across someone else's land to get to more public land and just say you are not hunting when crossing private land." As clearly provided for in § 87-6-415,

MCA, Burns needed permission prior to hunting on Point of Rocks Ranch private property.

¶11 Accordingly, the Justice Court did not abuse its discretion on Burns's first three issues. We decline to adopt Burns's third element of § 87-6-415, MCA. The Justice Court did not abuse its discretion by denying Burns's motion to dismiss since the State's admitted evidence that Burns was hunting while on private land without permission was sufficient.

¶12 Further, by denying Burns's motion for mistrial due to its inadvertent reading of Instruction No. 13, the Justice Court did not abuse its discretion since it was an accurate reflection of the law, and therefore, harmless. In reviewing whether a trial court abused its discretion in its decisions regarding jury instructions, we determine: 1) whether the jury instructions "fully and fairly instruct the jury on applicable law"; and 2) if a mistake occurred, whether the mistake "prejudicially affect[ed] the defendant's substantial rights. . . ." *State v. Norman*, 2010 MT 253, ¶ 13, 358 Mont. 252, 244 P.3d 737. Burns was not prejudiced by the inadvertent reading of the instruction.

¶13 Similarly, Burns's argument regarding Exhibit 12, the 2017 Montana Hunting Regulations, fails. Burns asserts that the 2017 Montana Hunting Regulations contained inaccurate statements of § 87-6-415, MCA, since it did not include his third offered element. However, the regulation is an accurate reflection of § 87-6-415, MCA, as it details that a person may not hunt on private property without permission. We have long recognized that "[t]hose who apply to the State for permission to harvest or remove Montana's natural game are on notice that they are rightfully subject to . . . regulations [of

the Montana Department of Fish, Wildlife, and Parks]." *State v. Boyer*, 2002 MT 33, ¶ 22, 308 Mont. 276, 42 P.3d 771. The Justice Court did not abuse its discretion by admitting the State's Exhibit 12.

¶14 Regarding Burns's fourth issue, he contends the Justice Court abused its discretion by allowing the State to submit its jury instructions after the Court's deadline without having good cause. Rule 19 of the Montana Uniform Rules for the Justice and City Courts provides: "All proposed jury instructions . . . must be delivered to the court in duplicate and a copy served upon all opposing parties not less than twenty-four (24) hours before trial." Mont. Unif. R. for the Justice and City Courts Rule 19(c). As noted above, we will reverse a trial court's decision regarding jury instructions when the mistake prejudicially affected the defendant's substantial rights. *Norman*, ¶ 13.

¶15 There is no question that the State submitted its jury instructions past the deadline; however, the Justice Court had broad discretion in its decision regarding the State's jury instructions. *Doyle*, ¶ 66. Good cause to allow the State to submit its jury instructions was present. Burns failed to submit any pattern or standard jury instructions which could be used for trial, making the State's offered instructions necessary for the trial to proceed. The State's jury instructions fully and fairly instructed the jury on the applicable law. Instructions 1 through 10 were pattern instructions and necessary to conduct the trial, Instructions 14 through 16 were standard instructions, Instructions 11 through 12 were taken directly from the applicable hunting statutes, and Instruction 13 was taken directly from the 2017 Deer, Elk, and Antelope Montana Hunting Regulations. Burns did not

establish that his substantial rights were prejudicially affected by the Justice Court's decision.

¶16 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 questions, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶17 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ DIRK M. SANDEFUR
/S/ JIM RICE
/S/ BETH BAKER
/S/ INGRID GUSTAFSON