

DA 18-0116

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 41N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

THOMAS DEUTSCH, SR.,

Defendant and Appellant.

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APPEAL FROM: District Court of the Second Judicial District,  
In and For the County of Butte-Silver Bow, Cause No. DC-16-128  
Honorable Brad Newman, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Lisa S. Korchinski, Assistant Appellate  
Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Damon Martin, Assistant  
Attorney General, Helena, Montana

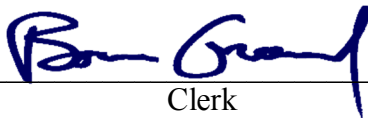
Eileen Joyce, Silver Bow County Attorney, Kelli Fivey, Deputy County  
Attorney, Butte, Montana

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Submitted on Briefs: November 18, 2020

Decided: February 16, 2021

Filed:

  
Clerk

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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 On July 25, 2016, Thomas Deutsch, Sr. was charged with Assault With a Weapon, a felony, pursuant to § 45-5-213, MCA. The jury trial was eventually set for July 11, 2017.

¶3 On June 3, 2016, Eliza Gray (Gray) and her husband travelled to Deutsch's home in Butte to remove garbage and debris such as mattresses from the yard.<sup>1</sup> Gray and her husband spent time at the home cleaning up the yard and cleaning off the roof of the garage. On June 6, 2016, Gray returned to the home and met her daughter Katherine Deutsch (Katherine). They discovered that more garbage had been thrown on the roof of the garage after the initial cleaning. Gray entered the home and confronted Deutsch about the new mess. Outside the home, Gray told Deutsch and Tommy to move out of the home that they were living in rent free. Deutsch became agitated.

¶4 Gray testified that Deutsch swung at her repeatedly with a small knife. She attempted to block the knife with her purse as she backed away from him. She said she was screaming for Deutsch to stop, and that Katherine ran up while Deutsch was "swaying"

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<sup>1</sup> Gray's brother owns the residence where Deutsch was living with Gray and Deutsch's son Thomas Deutsch Jr. (Tommy) at the time of the incident.

the knife in front of Gray. Soon after Deutsch went up to Gray's car where her six-year-old daughter was sitting and began to speak to Gray's daughter. Gray testified that she told Deutsch to get away from her daughter and that Gray was going to have Deutsch evicted. Gray saw Deutsch raise his hand up and bring it down on her left hand. Gray "felt like something hard hit [her] hand." Though she did not see the knife at the time, her hand was cut and bleeding. Gray testified that she wrapped her hand and left the residence.

¶5 Approximately five minutes later, Gray discovered that she was unable move the little finger and ring finger on her left hand. Gray testified that when she received medical treatment, her tendon was completely severed and that she had to have surgery to repair it. Gray also testified that she sustained cuts on her left breast during the incident.

¶6 Katherine testified about the events on June 6, 2016. She testified that she witnessed the altercation between Gray and Deutsch. Katherine said that Gray was upset because Gray had spent three days cleaning outside of Deutsch's residence, and when she returned on June 6, 2016, there was a "bigger mess." Katherine went around to the back of the house to begin cleaning again when she heard Gray scream. She ran to the front of the house and saw Deutsch acting "very erratic and agitated." Deutsch then went into the house, came back out and got in and out of his car, and then began making "slashing" motions at Gray with a small knife in his hand. Katherine testified that she saw the knife again as Deutsch drew it away from Gray. She saw that Gray's hand was cut and bleeding. Katherine also testified that Gray was screaming and afraid during the dispute.

¶7 Tommy testified that Gray threatened to physically harm Deutsch during the altercation. He also testified that Gray hit Deutsch with her purse and that she was yelling

at Deutsch. Tommy did not speak to the police about the existence of the knife until one day before trial, over a year after the incident, when he told police that Deutsch did not have a knife. Tommy testified that he told the police when initially interviewed that Gray “got stabbed on the fence.”

¶8 The State presented photographic evidence of the laceration to Gray’s left hand, lacerations on her left breast, and the shirt and bra that Gray was wearing that day which both had been cut through on the left side. The State also presented photographic evidence of blood on the street, past the sidewalk and away from the fence.

¶9 Following a unanimous jury verdict, Deutsch was sentenced to 15 years in Montana State Prison with credit for 311 days served.

¶10 Deutsch argues on appeal that the State failed to provide sufficient evidence to support his conviction. He argues that Gray did not see the knife, she did not have a reasonable apprehension of serious bodily injury, and the injury to her hand could have occurred due to the broken chain link fence.

¶11 “We review questions on the sufficiency of the evidence in a criminal case to determine whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Polak*, 2018 MT 174, ¶ 34, 392 Mont. 90, 422 P.3d 112 (citation omitted). In order to be convicted of assault with a weapon, a person must purposely or knowingly cause: (a) bodily injury to another with a weapon; or (b) reasonable apprehension of serious bodily injury in another by use of a weapon or what appears to be a weapon. Section 45-5-213(1), MCA (2015). The weight of the evidence and the

credibility of the witnesses are exclusively within the province of the trier of fact. *State v. Bower*, 254 Mont. 1, 8, 833 P.2d 1106, 1111 (1992) (citation omitted).

¶12 Both Gray and Katherine testified that they saw Deutsch holding a small knife prior to Gray's injury. Katherine testified that she saw Deutsch holding the knife as he drew it away from Gray's hand. Gray suffered a laceration to her left hand, which she testified severed a tendon. She also suffered lacerations to her left breast, and her clothing was cut. While Tommy testified that Gray could have injured her hand on the chain link fence, there was no other evidence presented to support that assertion.

¶13 The State clearly presented sufficient evidence to support Deutsch's conviction for assault with a weapon.

¶14 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶15 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ DIRK M. SANDEFUR

/S/ JIM RICE