

DA 19-0423

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 154N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CHARLES CLIFFORD HAMLIN,

Defendant and Appellant.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. ADC 2018-61
Honorable Mike Menahan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

David M. Maldonado, Maldonado Law, PLLC, Missoula, Montana

For Appellee:

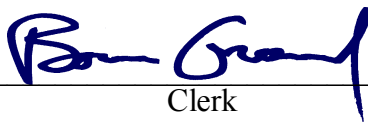
Austin Knudsen, Montana Attorney General, Jonathan M. Krauss,
Assistant Attorney General, Helena, Montana

Leo Gallagher, Lewis and Clark County Attorney, Fallon Stanton, Deputy
County Attorney, Helena, Montana

Submitted on Briefs: May 26, 2021

Decided: June 22, 2021

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 Charles Clifford Hamlin appeals his conviction, entered in the First Judicial District Court, Lewis and Clark County, of two counts of violation of an order of protection, third or subsequent offense, and one count of stalking. We affirm.

¶3 On December 1, 2017, S.R., Hamlin's ex-girlfriend and mother of their child, obtained a temporary order of protection (TOP) from the District Court, requiring Hamlin to remain at least 1500 feet away from her and her son's person, home, workplace, vehicle, and school/daycare. A hearing was scheduled for December 21, 2017. However, Hamlin, although notified by the Lewis and Clark County Sheriff's Office that S.R. had obtained a TOP, was not served as of December 19, 2017. The District Court rescheduled the hearing to January 3, 2018. Pursuant to § 40-15-202(1), MCA, the TOP granted on December 1, 2017, remained in effect pending a hearing. On December 26, 2017, the Lewis and Clark County Sheriff's Office served Hamlin with the TOP, Order Setting Hearing and Petition, and Minute Entry from December 19, 2017. On January 3, 2018, S.R. was unable to enter the courtroom. Consequently, the District Court continued the hearing to January 16, 2018 and ordered the TOP remain in full force and effect pursuant to § 40-15-202(1), MCA. Following further continuances,

on February 13, 2018, the District Court ordered that the order of protection remain in effect.

¶4 Concurrent with these events, Hamlin was alleged to have violated the order of protection on multiple separate occasions. He was charged with ten offenses. Counts I and II charged violations of the order of protection (third or subsequent offense) and were both predicated on Hamlin's alleged presence within 1500 feet of their son's school. Count I alleged Hamlin was observed driving through the school parking lot on January 8, 2018. Count II alleged Hamlin was within 1500 feet of their son's school on January 23, 2018, through GPS tracking instituted by court order in a separate matter. Count III, stalking, was alleged to have occurred between December 22, 2017, and January 23, 2018. Counts IV through X were submitted to the jury as alternative charges to Count III, each alleging a violation of the TOP through contact with S.R. on various, distinct dates of the same timeframe.

¶5 In a January 2019 jury trial, the defense made a motion to dismiss, arguing the prosecution failed to establish the TOP was in effect during the time the violations were alleged to have occurred. This motion was denied by the District Court. The prosecution then moved to reopen their case-in-chief, which was granted pursuant to § 26-10-611(a), MCA, and submitted additional minute entries detailing the procedural history of the TOP. The defense neither objected to the admission of this evidence, nor moved to dismiss following its admission. After jury instruction as to the elements of the offense, Hamlin was convicted of Counts I, II, and III. Following sentencing, he timely appealed.

¶6 We restate the dispositive issue as whether there was sufficient evidence to establish Hamlin was subject to a valid order of protection.

¶7 This Court reviews the denial of a motion to dismiss for insufficient evidence (formerly a motion for directed verdict) de novo. *State v. Kirn*, 2012 MT 69, ¶ 8, 364 Mont. 356, 374 P.3d 746.

¶8 On appeal, Hamlin argues insufficient evidence was presented that a valid order of protection was in place from December 22, 2017 to January 23, 2018. Hamlin contends a lack of notice from December 22, 2017 to December 26, 2017 and the accumulated documents from December 26, 2017 to January 23, 2018 do not establish the existence of a valid order of protection. With respect to the latter argument, § 40-15-202(1), MCA, states: “The hearing date may be continued at the request of either party for good cause or by the court. If the hearing date is continued, *the temporary order of protection must remain in effect until the court conducts a hearing.*” (Emphasis added.) The plain language of the statute is clear, and the record substantiates the following: the TOP was granted on December 1, 2017, Hamlin was served on December 26, 2017, and the hearing resolving the matter was held on February 13, 2018. Accordingly, the TOP was in effect for the duration of the timeframe raised on appeal by Hamlin.

¶9 Regarding Hamlin’s first argument, § 45-5-626(1), MCA, states:

It may be inferred that the defendant had knowledge of an order at the time of an offense if the defendant had been served with the order before the time of the offense. Service of the order is not required upon a showing that the defendant had knowledge of the order and its content.

During the jury trial, the officer who served the TOP to Hamlin testified that Hamlin was aware of the TOP beginning December 19, 2017. In the defense's closing argument, this fact was recognized and remained undisputed. Accordingly, Hamlin had knowledge of the TOP for the duration of the timeframe during which he violated the order. Therefore, we conclude the District Court was correct in determining sufficient evidence existed that Hamlin was subject to a valid temporary order of protection.

¶10 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.

¶11 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR