DA 20-0243

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 129

STATE OF MONTANA,

Plaintiff and Appellee,

v.

BRANDON LEE CRAFT,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDC-116-416
Honorable Elizabeth A. Best, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Alexander H. Pyle, Assistant Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Katie F. Schulz, Assistant Attorney General, Helena, Montana

Josh Racki, Cascade County Attorney, Kory Larsen, Deputy County Attorney, Great Falls, Montana

Submitted on Briefs: May 3, 2023

Decided: July 5, 2023

Filed:

Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Defendant Brandon Lee Craft appeals the District Court's denial of his request to provide a jury instruction on the lesser-included offense of mitigated deliberate homicide and the February 28, 2020 Sentencing Order and Judgment for felony deceptive practices in violation of § 45-6-317(1)(a), MCA (2015)[1] by the Eighth Judicial District Court, Cascade County. We address the following issues:

1. *Whether the District Court abused its discretion when it did not provide a jury instruction on the lesser-included offense of mitigated deliberate homicide.*

2. *Whether sufficient evidence supports the jury's guilty verdict as to felony deceptive practices in violation of § 45-6-317(1)(a), MCA.*

¶2 We affirm in part, reverse in part, and remand with further proceedings consistent with this Opinion.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 In February 2016 Craft shot his roommate, Adam Petzack, in the back of the head and buried Petzack on his property near Great Falls, Montana. Over the next few days, Craft and his wife, Katelyn, sold Petzack's car for $600 on Craigslist, and within the ensuing months stole hundreds of dollars of Petzack's veteran's benefits. In August 2016, police arrested Craft and Katelyn for Petzack's murder. Craft was charged with deliberate homicide in violation of § 45-5-102(1)(a), MCA, tampering with physical evidence in violation of § 45-7-207(1)(a), MCA, deceptive practices in violation of

[1] Throughout this Opinion, we refer to § 45-6-317(1)(a), MCA (2015), because Craft was convicted under the 2015 statute.

§ 45-6-317(1)(d)(i), MCA, and deceptive practices in violation of § 45-6-317(1)(a), MCA. He went to trial on all four felony charges.[2]

¶4 Relevant to this appeal, the State argued at trial that Craft killed Petzack and directed Katelyn to sell Petzack's truck. In support of its argument, the State introduced letters Craft wrote to Katelyn and his grandmother in which Craft confessed to committing the crimes as well as testimony from Craft's fellow inmate who stated that Craft told him that he and Katelyn had planned to kill Petzack and blame it on Petzack sexually assaulting their child. The State also played a taped interview from Craft's arrest in which Craft told police that he shot Petzack because he "snapped" after he found him masturbating on his couch and saw his four-year-old daughter partially naked in her bedroom.

¶5 At trial, Craft completely denied the State's allegations, contending that Katelyn killed Petzack while Craft was out of town, and he was not involved with selling Petzack's truck. Nevertheless, because the State played the taped interview in which Craft admitted to shooting Petzack because he "snapped," Craft requested that the District Court provide the jury with an instruction on the lesser-included offense of mitigated deliberate homicide because the interview constituted evidence that Craft was under extreme mental or emotional stress when he killed Petzack. The State objected, arguing that Craft's theory of defense was that he did not commit the murder; therefore, a lesser-included instruction was not proper. The District Court concluded that if Craft testified that he did not commit the crimes then the court would not give the lesser-included instruction. Conversely, the

[2] Katelyn pled guilty to two counts of deceptive practices and testified for the State at trial.

District Court held that if Craft testified that he did commit the crimes, there was "some evidence in the record at this point of mitigation . . . that's for the jury to decide."

¶6 After the District Court's conclusion, Craft did not testify that he killed Petzack. Instead, he testified that Katelyn shot Petzack while he was out of town for work because she thought that Petzack had sexually assaulted their daughter. When pressed on the truth of his previous confessions, he insisted that he had lied to protect his family but now wanted the "truth to come out." Based on Craft's testimony, the District Court refused to give the jury the lesser-included offense instruction.

¶7 The State presented evidence that within days of killing Petzack, Craft sold Petzack's truck to Mike Hardison. Katelyn testified that after Craft directed her to sell Petzack's truck, she advertised the truck on Craigslist for $800. Hardison testified that when he responded to the advertisement, he and Katelyn coordinated the delivery and negotiated the price, and he paid "somewhere between 6 [sic] and $800." That night, Craft and Katelyn drove to Deer Lodge and delivered the truck to Hardison. Craft's defense maintained that Katelyn originated and executed the idea to sell the truck on Craigslist, and Craft testified that his only involvement was delivering the truck to Deer Lodge.

¶8 The jury found Craft guilty on all four charges. The District Court sentenced him to 100 years in prison for the deliberate homicide charge, ten years for the tampering charge, and two concurrent ten-year sentences for the deceptive practices charges. Craft appealed the sentence, arguing that the District Court erred when it denied his request for a jury instruction on the lesser-included offense of mitigated deliberate homicide and that

there was insufficient evidence for the jury to convict Craft of the felony deceptive practices charge in violation of § 45-6-317(1)(a), MCA.

STANDARDS OF REVIEW

¶9 We review a district court's refusal to give a jury instruction on a lesser-included offense for an abuse of discretion. *State v. Freiburg*, 2018 MT 145, ¶ 10, 391 Mont. 502, 419 P.3d 1234. A district court abuses its discretion if it acts "arbitrarily without conscientious judgment or exceeds the bounds of reason." *State v. Jensen*, 2019 MT 60, ¶ 8, 395 Mont. 119, 437 P.3d 117. "Reversible error will occur only if the jury instructions prejudicially affect the defendant's substantial rights." *Freiburg*, ¶ 10 (internal citations omitted). A defendant is "prejudiced by the failure to give a requested lesser-included offense instruction when the evidence could warrant a jury finding the defendant guilty of a misdemeanor offense instead of a felony." *Freiburg*, ¶ 10 (internal citations omitted).

¶10 We review whether sufficient evidence supports a conviction de novo. *State v. Christensen*, 2020 MT 237, ¶ 11, 401 Mont. 247, 472 P.3d 622. "When reviewing a challenge to the sufficiency of the evidence, this Court determines 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." *Christensen*, ¶ 11.

DISCUSSION

1. Whether the District Court abused its discretion when it did not provide a jury instruction on the lesser-included offense of mitigated deliberate homicide.

¶11 Craft claims that the District Court erred when it refused his request to provide a jury instruction on the lesser-included offense of mitigated deliberate homicide. A person is guilty of mitigated deliberate homicide when the person "purposely or knowingly causes the death of another human being . . . under the influence of extreme mental or emotional stress for which there is no reasonable explanation or excuse." Section 45-5-103(1), MCA. Either party may present evidence of mitigating circumstances, but neither party has the burden of proof as to the mitigating circumstances. Section 45-5-103(3), MCA. Craft argues that he is entitled to jury instructions that cover every theory of the case and asserts that the taped confession of his statement that he "snapped" was sufficient evidence for a jury to find that he was under extreme emotional stress when he shot and killed Petzack. Section 45-5-103(1), MCA. Moreover, he argues, that the District Court even recognized that the testimony was "a mitigation reason for the commission of the homicide" and was required to instruct the jury as to those mitigating circumstances. The State responds that Craft did not present alternate theories of his case; rather, Craft's only theory was that he did not commit the murder. It concludes that because his theory, if believed by the jury, would result in an acquittal, a lesser-included instruction is not warranted.

¶12 Criminal defendants are entitled to jury instructions that cover every issue or theory supported by the evidence. *Freiburg*, ¶ 13. "A defendant may be convicted only of the greatest included offense about which there is no reasonable doubt." *Freiburg*, ¶ 13

(internal quotations and citations omitted). A defendant is entitled to a lesser-included offense instruction when "there is a proper request by one of the parties and the jury, based on the evidence, could be warranted in finding the defendant guilty of a lesser-included offense." Section 46-16-607(2), MCA.

¶13 Based on § 46-16-607(2), MCA, this Court enumerated a two-factor test to determine whether a lesser-included offense instruction is warranted: "(1) as a matter of law, the offense for which the instruction is requested is a lesser-included offense of the offense charged; and (2) the proposed lesser-included offense instruction is supported by the evidence." *Freiburg*, ¶ 13 (citing *State v. Daniels*, 2017 MT 163, ¶ 12, 388 Mont. 89, 397 P.3d 460). The second factor is satisfied when there is "some basis from which a jury could rationally conclude that the defendant is guilty of the lesser, but not the greater offense." *Freiburg*, ¶ 13 (citing *State v. Castle*, 285 Mont. 363, 369, 948 P.2d 688, 691 (1997)). But not just any quantity of evidence is necessarily sufficient to warrant a lesser-included offense instruction. *See State v. Martin*, 2001 MT 83, ¶ 32, 305 Mont. 123, 23 P.3d 216 (reasoning that any quantum of evidence of mitigation, no matter how small, is [not] sufficient to require an instruction on mitigated attempted deliberate homicide). Rather, the evidence must provide "some basis from which a jury could *rationally* conclude that the defendant is guilty of the lesser, but not the greater offense." *Freiburg*, ¶ 13 (emphasis added) (internal quotations and citation omitted).

¶14 There is no dispute that the first factor is satisfied in this case. Mitigated deliberate homicide is a lesser-included offense of deliberate homicide. Section 45-5-103(2), MCA. The issue, then, is whether under the second factor there was sufficient evidence for the

jury to rationally conclude that Craft murdered Petzack "under the influence of extreme mental or emotional stress for which there is no reasonable explanation or excuse." Section 45-5-103(1), MCA; *see Freiburg*, ¶ 13.

¶15 There is sufficient evidence for the jury to convict a defendant of the lesser offense when there are alternate theories of the case, including a theory about the lesser-included offense, and other witness testimony—especially the defendant's testimony—supports that theory. *Freiburg*, ¶ 18 (defendant entitled to a lesser-included instruction when he presented alternative theories supported by the evidence and did not adopt an "all or nothing" approach to his defense); *Daniels*, ¶¶ 15-16 (evidence supported the lesser-included instruction when both theories were argued in opening and closing arguments and defendant's testimony could establish both theories). By contrast, a lesser-included offense instruction is not supported by the evidence when the evidence, if believed, would require an acquittal on both the greater and lesser offense—that is, the defense's entire theory is that the defendant did not commit the crime. *State v. Heit*, 242 Mont. 488, 492, 791 P.2d 1379, 1382 (1990); *State v. Baugh*, 174 Mont. 456, 459, 571 P.2d 779, 781 (1977); *State v. Grant*, 221 Mont. 122, 131-33, 717 P.2d 562, 568-70 (1986).

¶16 The District Court properly denied Craft's request for the lesser-included offense instruction of mitigated deliberate homicide based on Craft's theory of the case and the evidence. Although Craft correctly points out that he is entitled to present alternate, and sometimes conflicting, theories of his case, we have repeatedly held that when the defendant's only theory is acquittal he is not entitled to a lesser-included offense instruction. *Heit*, 252 Mont. at 492, 791 P.2d at 1382; *Baugh*, 174 Mont. at 459, 571 P.2d

at 781; *Grant*, 221 Mont. at 131-33, 717 P.2d at 568-70. Craft did not present multiple theories. Craft adopted an "all or nothing" approach at trial. His sole theory of the case—and all his evidence, arguments, and his own testimony to that effect—was that Katelyn killed Petzack while he was out of town.

¶17 Even if Craft argued multiple theories, the evidence was insufficient to support the jury concluding that Craft committed mitigated deliberate homicide. Craft maintains that § 45-5-103(1), MCA, does not require that he proves mitigating circumstances beyond a reasonable doubt and that *any* piece of evidence that could support mitigating circumstances compelled the District Court to provide a lesser-included offense instruction. But this Court has not held that "any quantum of evidence of mitigation, no matter how small, is sufficient to require an instruction on mitigated [] deliberate homicide." *Martin*, ¶ 34. This Court has consistently held that limited pieces of evidence without more—especially when the defendant maintains his innocence—will not support a finding that the defendant acted under "extreme emotional or mental stress for which there is no reasonable explanation or excuse." Section 45-5-103(1), MCA; *see*, *e.g.*, *Heit*, 242 Mont. at 492, 791 P.2d at 1382 (evidence of the defendant's agitation and intoxication and the defendant's theory that he did not kill the deceased was insufficient to support a finding of extreme mental or emotional stress); *Grant*, 221 Mont. at 131-33, 717 P.2d at 568-70 (evidence of intoxication and defendant's testimony that he did not kill the victim was insufficient to show extreme mental or emotional stress); *cf. Taylor v. State*, 2014 MT 142, ¶ 22, 375 Mont. 234, 335 P.3d 1218 (holding that defendant's isolated statement that

he "might have brushed the [victim's] breast with his pinky," did not support the lesser-included offense instruction).

¶18 As in *Heit*, *Grant*, and *Taylor*, Craft's isolated statement combined with his singular—and contradictory—theory of complete innocence is insufficient to warrant a lesser-included offense instruction. Craft's sole evidence supporting the mitigated deliberate homicide offense was the taped statement in which Craft stated that he "snapped." But Craft expressly disavowed this statement at trial. More to the point, Craft's statement was never introduced as evidence of mitigation. The State introduced the statement as evidence that Craft kept changing his story. Although the District Court acknowledged that the statement could be evidence of mitigation, if Craft testified to that effect at trial, Craft's affirmative disavowal of the statement vitiated the viability of that defense. The District Court did not abuse its discretion when it considered this single statement with the rest of the evidence and determined that there was not enough support for the jury to rationally conclude that Craft committed mitigated deliberate homicide.

2. Whether sufficient evidence supports the jury's guilty verdict as to felony deceptive practices in violation of § 45-6-317(1)(a), MCA.

¶19 Craft argues that the State did not prove every element of § 45-6-317(1)(a), MCA, and therefore there was insufficient evidence in the record for the jury to find Craft guilty of selling Petzack's truck. The State must prove "beyond a reasonable doubt [] every fact necessary to constitute [the] crime." *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970). To convict a defendant of felony deceptive practices, the State must prove that a person purposely or knowingly "causes another, by deception or threat, to execute a

document disposing of property or a document by which a pecuniary obligation is incurred." Section 45-6-317(1)(a), MCA. For felony theft cases, including deceptive practices charges such as § 45-6-317(1)(a), MCA, the State must also prove that the value of the property taken exceeded $1,500. Section 45-6-317, MCA; *see State v. Ohms*, 2002 MT 80, ¶ 10, 309 Mont. 263, 46 P.3d 55 ("The value of the property taken is an essential element which must be proved beyond a reasonable doubt.").

¶20 The State concedes that its evidence was "insufficient to establish [that] the truck's value was more than $1,500," but nevertheless argues that there was sufficient evidence to convict Craft for a misdemeanor in violation of § 45-6-317(1)(b), MCA. But Craft was neither charged nor convicted with misdemeanor deceptive practices. The Information, the State's cursory arguments as to how Petzack's truck was sold, and the verdict form all show that the jury convicted Craft under § 45-6-317(1)(a), MCA. As the State concedes that it did not prove that the truck's worth was more than $1,500—an essential element of the offense charged—there was insufficient evidence to convict Craft of felony deceptive practices in violation of § 45-6-317(1)(a), MCA. As the evidence is insufficient, acquittal on this count is proper. *State v. Polak*, 2018 MT 174, ¶ 35, 392 Mont. 90, 422 P.3d 112 ("Once a reviewing court has found the evidence legally insufficient, the proper remedy is a judgment of acquittal.").

CONCLUSION

¶21 The District Court did not abuse its discretion when it denied Craft's request for the lesser-included offense instruction of mitigated deliberate homicide. There was insufficient evidence to support Craft's conviction of deceptive practices under

§ 45-6-317(1)(a), MCA. We affirm in part and reverse in part. We remand to the District Court for further proceedings consistent with this Opinion.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE