

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court No. DA 22-0342

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JEREMY HOLMQUIST,

Defendant and Appellant.

APPELLANT'S OPENING BRIEF

On appeal from the Montana Eleventh Judicial District Court,
Flathead County, The Honorable Heidi Ulbricht, Presiding.

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STATEMENT OF THE ISSUE

- I. Did the district court err in allowing hearsay evidence through Flathead County Detective Buls that Holmquist was noncompliant in Missoula to prove the offense of failure to register as a sexual offender?

STATEMENT OF THE CASE

This is an appeal from the Eleventh Judicial District Court, Flathead County. On September 16, 2021, following a two-day trial, a jury of twelve found Holmquist guilty of Failure to Register as a Sexual or Violent Offender, in violation of Mont. Code Ann. § 46-23-504 and 505.

Holmquist appeals, arguing that the district court erred when it allowed the State to elicit hearsay testimony through Flathead County Detective Buls about Holmquist's noncompliance in Missoula. Specifically, Holmquist objected to Detective Buls's testimony about his follow-up investigation into Holmquist's registry compliance in Missoula because Detective Buls's testimony relayed out-of-court statements from law enforcement in Missoula.

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STATEMENT OF THE FACTS

On March 24, 2021, the State charged Holmquist by Information with (1) Failure to Register, a felony, in violation of Mont. Code Ann. §§ 46-23-504 and 505. (Doc. 3). The State alleged that on or between May 13, 2019, and March 24, 2021, Holmquist purposely or knowingly failed to register or keep registration current as a sexual offender, as required under the Sexual or Violent Offender Registration Act (“SVOR”). (Doc. 1). More specifically, the State alleged that Holmquist was convicted of Statutory Rape (3rd degree) in Rapid City, South Dakota, in 1996 and was required to register as a sexual offender when he moved to Montana.

In the *State’s Motion and Affidavit for Leave to File an Information*, the State alleged that in May 2019, Holmquist changed his address from Flathead County to Missoula. (Doc. 1). On January 21, 2020, Detective Steve Debert, with the Missoula Police Department conducted a compliance check at Holmquist’s reported Missoula address but the landlord apparently advised that he did not live there. *Id.*

Holmquist was arrested, arraigned before Judge Ulbricht, and pled “not guilty.” (Doc. 9). One week later, the State petitioned to revoke Holmquist’s release because he allegedly failed to check in with the

Flathead County Sheriff's Office and was considered "noncompliant" with Montana's Registration Act. (Doc. 11). He was subsequently arrested and held on \$50,000 bond. (Doc. 12). On July 7, the State filed notice that it will seek to designate Holmquist as a persistent felony offender ("PFO") and sentence him accordingly, pursuant to Mont. Code Ann. §46-18-502. (Doc. 13).

The State moved *in limine* to prevent defense counsel from referencing the penalty for the charged offense, the designation of the offense as a felony, evidence regarding defendant's good character, criminal history or other conduct to attack the credibility of State witnesses, and the amount of time elapsed between the incident and filing charges. (Doc. 17). The defense did not respond, and the Court granted the State's Motion. (Doc. 22).

Holmquist's Jury Trial began on September 15, 2021. (Doc. 25.10; See 9/15/2021 Trial Trans.)

After thorough jury selection, a jury was empaneled, and trial began. The State made an opening statement and the defense reserved. The State first called Kalispell Police Department Patrol Administrative Assistant, Jerie Betschart, to testify. (*Id.* at 182:10-183:14). One of

Betschart's responsibilities is working for the SVOR. (*Id.* at 182:15-19). In that role, Betschart physically met with Holmquist and went through the standard sex and violent offender registration form with him. (*Id.* at 185:15-187:7, *See* State's Trial Exhibit 1).

Betschart testified that Holmquist initialed each obligation and signed the bottom of the standard sex and violent offender registration form. (*Id.* at 186:22-187:7). She explained to the jury an offender's responsibilities when homeless, after moving, when leaving the county, or when changing their contact information. (*Id.* at 187:10-188:4)

On cross-examination, Betschart admitted that some registration requirements were "somewhat hard to understand" as she struggled to explain the rules for when an offender leaves the county for less than ten days. (*Id.* at 191:22-195:15). She further testified that if Holmquist left Flathead County and moved to Missoula that he would need to inform the Sheriff's Office, not the City of Kalispell. (*Id.* at 196:5-20).

On re-direct, the State elicited testimony from Betschart regarding Holmquist's underlying sex offense that required his registration, specifically that his victim was fourteen years old and that he used coercion. (*Id.* at 198:5-3). The defense objected to "facts not in evidence"

but, unfortunately, those facts were contained within State's already admitted Exhibit 1. (*Id.* at 198:4-22). The Court overruled the objection. (*Id.*)

Next, the State called City of Kalispell Officer Tara Oster to testify. (*Id.* at 204:24-25; 205:25-206:1). On December 27, 2019, Oster had contact with Holmquist at an apartment on 308 Two Mile Drive, in Flathead County. (*Id.* at 206:19-208:1). Oster testified that she advised Holmquist he needed to register as he was showing as noncompliant in their SVOR system. (*Id.* at 208:13-22). Holmquist told Oster that he was homeless and had been briefly staying with his girlfriend. (*Id.* at 209:8-11). She further testified that Holmquist told her he was working at 4Bs Restaurant in Kalispell. (*Id.* at 209:13-16). Oster then emailed the SVOR clerk, Jerie Betschart about Holmquist's noncompliance. (*Id.* at 210:17-19).

Oster's testimony continued and on cross-examination, she claimed that during her conversation with Holmquist he admitted he was noncompliant. (*Id.* at 242:22-243:2). However, she failed to mention in her police report that Holmquist confessed to his noncompliance and the

State failed to preserve any video evidence of this interaction. (*Id.* at 243:9-19; 212:1-11).

Next, the State called Flathead County Detective Josh Buls to testify. (*Id.* at 246:15). He is the detective commander for the Flathead County Sheriff's Office and has worked with the SVOR since 2019. (*Id.* at 247:4-6). Buls knew Holmquist and that he was registered with the Flathead County Sheriff's Office at one time. (*Id.* at 249:4-7). He testified that Holmquist never registered 308 Two Mile Drive with his office. (*Id.* at 19-20). On May 13, 2019, Holmquist told Buls that he was moving to Missoula and did not register with Flathead County between May 13, 2019, and March of 2021. (*Id.* at 250:24-251:6).

In March of 2021, Buls learned from Officer Oster that Holmquist had apparently moved back to Kalispell, was living with his girlfriend, and working locally. (*Id.* at 252:8-12). The State then attempted to elicit hearsay testimony from Kimberly Hodges (Holmquist's girlfriend) that she provided at his bail hearing in a separate case. (*Id.* at 252:17-253:4). Defense counsel objected on hearsay and confrontation grounds. (*Id.* at 253:16-254:16). The Court excluded the testimony of Ms. Hodge's prior

testimony and instructed the jury not to consider any prior testimony or reference to her. (*Id.* at 260:19-20, 268:4-7).

Buls confirmed that between May 2019 and March 2021, in Flathead County Holmquist did not register an address, did not update a change in residence, and did not indicate he was transient or homeless. (*Id.* at 268:111-21). On cross-examination, Buls admitted that Holmquist did have an address registered in Missoula County but that he did not know it and had never been there. (*Id.* at 269:3-15). On re-direct, the State elicited the following testimony:

Mr. Clegg: Detective, as your position with the SVOR, have you been in touch with Missoula authorities and investigated that address?

A: Yes, I did.

Q: Was he still noncompliant between those dates?

Mr. Gallagher: Objection; hearsay.

The Court: Overruled. You may answer.

The Witness: Yes.

(*Id.* at 269:23-270:8). Defense counsel chose to forego any further cross examination, and, on that note, the State rested its case. (*Id.* at 20:22-23).

Defense counsel renewed his objection that the State was permitted, over defense objection, to elicit hearsay testimony from a witness about Holmquist's apparent noncompliance in Missoula. (*Id.* at 281:21-25). He argued that the State elicited blatant hearsay about Holmquist's noncompliance status in Missoula which resulted in a patently unfair trial and violated Holmquist's right to due process. (*Id.* at 283:4-13). Defense counsel consequently demanded a mistrial. (*Id.*) The State denied eliciting any statement about what the Missoula Police Department said, and the Court denied the motion for a mistrial. (*Id.* at 285:2-22).

After closing arguments and deliberation, the jury found Holmquist guilty of Failure to Register as a Sexual or Violent Offender. (*Id.* at 299:12-34:3; 252:14-15). The Court sentenced Holmquist to the Montana State Prison for a period of five years. (Doc. 55).

STANDARD OF REVIEW

This Court reviews evidentiary rulings for an abuse of discretion. *State v. Peterson*, 2024 MT 5, ¶ 13, 415 Mont. 34, 541 P.3d 776. A trial court abuses its discretion if it acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason, resulting in

substantial injustice. *Id.* An erroneous evidentiary ruling constitutes reversible error when a substantial right of the party is affected. *State v. Buckles*, 2018 MT 150, ¶ 9, 391 Mont. 511, 420 P.3d 511, (citing M.R. Evid. 103).

SUMMARY OF THE ARGUMENT

The district court erred in overruling Holmquist's hearsay objection to Detective Buls's testimony about his follow-up investigation into Holmquist's SVOR compliance in Missoula, as his testimony relayed out-of-court statements by Missoula law enforcement. The State used this testimony for the truth of the matter asserted – that Holmquist was noncompliant with the SVOR. The State cannot demonstrate that there is no reasonable possibility that the hearsay testimony contributed to Holmquist's conviction for failure to register. Therefore, the district court's admission of this hearsay testimony prejudiced Holmquist's right to a fair trial and this matter should be reversed and remanded for a new trial.

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ARGUMENT

I. THE DISTRICT COURT’S ERRED IN ALLOWING THE STATE TO ELICIT HEARSAY EVIDENCE THROUGH DETECTIVE BULS REGARDING HOLMQUIST’S NONCOMPLIANCE IN MISSOULA.

“Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” M.R. Evid. 801(c). Hearsay is not admissible unless it falls under an exception to the general prohibition on such evidence. M.R. Evid. 802. A witness must testify only to his or her personal knowledge, and not merely repeat the out-of-court statements of others as truth. *State v. Butler*, 2021 MT 124, ¶ 19, 404 Mont. 213, 487 P.3d 18.

In *State v. Butler*, Butler made a hearsay objection to Trooper Cook’s testimony about his follow-up investigation into the victim’s injuries, as Trooper Cook’s testimony relayed out-of-court statements the victim made to Trooper Cook. 2021 MT 124, ¶ 14, 404 Mont. 213, 487 P.3d 18. The district court allowed the evidence not for the truth of the matter asserted or as substantive evidence but to show the next steps in the officer’s investigation. *Id.* Butler argued that the State used this testimony for the truth of the matter asserted – as substantive evidence

of injury to the victim and that an officer's next steps in an investigation should not be allowed to serve as a conduit for the admission of otherwise inadmissible hearsay. *Id.* The State argued that Trooper Cook's testimony did not contain hearsay on its face, as it contained no statement by an out-of-court declarant but rather the investigative steps he took and what he later learned. *Id.*, ¶ 15.

There, the Court agreed with Butler that the evidence was used for the truth of the matter asserted, that the State relied on Trooper Cook's testimony as evidence of the victim's injury, and that it was error for the district court to admit the testimony. *Id.*, ¶ 17.

Testimony relaying out-of-court statements ostensibly to explain the next steps of law enforcement's investigation, but which go directly toward proving an element of the charged offense and the defendant's guilt, run a substantial risk of misuse and thus may run afoul of M. R. Evid 402 and 403. In many instances, this evidence has little or no probative value other than as substantive evidence in violation of the hearsay rule. *See State v. Laird*, 2019 MT 198, ¶ 75, 397 Mont. 29, 447 P.3d 416; *State v. Runs Above*, 2003 MT 181, ¶ 21, 316 Mont. 421, 73 P.3d 161; *In re D.W.L.*, 189 Mont. 267, 270-71, 615 P.2d 887, 889 (1980). This danger is especially highlighted in this case, where it is not mere conjecture the jury may have misused the evidence, but the State explicitly and incorrectly relied on the evidence as substantive evidence to prove the essential elements of the charged offense.

Id. ¶ 18.

Here, Flathead County Detective Buls's testified that on May 13, 2019, Holmquist informed him that he was moving to Missoula. (Trial Trans. At 250:24-21:1). He testified that Holmquist had one address registered between May 13, 2019, and March 24, 2021, and it was in Missoula. (*Id.* at 269:3-7). However, Detective Buls did not personally know the address, had never been there, and had never knocked on the door there. (*Id.* at 269:8-14). And, notably, testified (over objection) that with his position in the SVOR, *he was in touch with* Missoula authorities, investigated that address, and Holmquist was still noncompliant between May 13, 2019, and March 24, 2021. (*Id.* at 269:23-270:1(emphasis added)).

Here, akin to *Butler*, Holmquist made a hearsay objection to Detective Buls's testimony about his investigation into his registry compliance in Missoula, as Detective Buls's testimony relayed out-of-court statements from Missoula authorities. Holmquist's hearsay objection properly raised the issue of whether Detective Buls testified from his personal knowledge or was merely repeating out-of-court statements made to him for their truth of the matter asserted. Detective Buls had no basis for knowledge of Holmquist's compliance other than

out-of-court statements made to him during his apparent investigation. (See Trial Trans. at 269:8-14, Det. Buls's lack of knowledge of Holmquist's registered Missoula residence).

Unlike *Butler*, the district court here did not provide an explanation as to why it overruled Holmquist's hearsay objection, but simply stated to Detective Buls, "Overruled. You may answer." Detective Buls's testimony that he was in touch with the Missoula authorities and Holmquist was still noncompliant, was offered solely to prove the truth of the matter asserted— as substantive evidence that Holmquist was not in compliance with the SVOR in Missoula. This testimony constituted inadmissible hearsay and Detective Buls's commentary about his investigation should not be allowed to serve as a conduit for its admission.

The district court erred in admitting this hearsay testimony as it went directly toward proving an element of the charged offense and Holmquist's guilt. This evidence was used as substantive evidence in violation of the hearsay rule. Just like in *Butler*, it is not mere conjecture that the jury may have misused this evidence, the State failed to call the

appropriate Missoula witnesses to testify as to Holmquist's registered Missoula address and used this impermissible hearsay evidence instead.

II. THE HEARSAY EVIDENCE REGARDING HOLMQUIST'S NONCOMPLIANCE IN MISSOULA CONSTITUTES REVERSIBLE TRIAL ERROR.

This Court has adopted a two-step analysis to determine whether an alleged error prejudiced a criminal defendant's right to a fair trial and is therefore reversible. *State v. Runs Above*, 2003 MT 181, ¶ 24, 316 Mont. 421, 427, 73 P.3d 161, 165 (citing *State v. Van Kirk*, 2001 MT 184, 306 Mont. 215, 32 P.3d 735). The first step is to categorize the error as either structural error or trial error. *Id.* If the error is determined to be trial error, the second step requires the Court to ascertain whether such error was harmless under the circumstances. *Runs Above*, ¶ 25. To prove that that a trial error was harmless

the State must demonstrate that there is no reasonable possibility that the inadmissible evidence might have contributed to the conviction. To do this, the State must demonstrate that the fact-finder was presented with admissible evidence that proved the same facts as the tainted evidence, and qualitatively, by comparison, the tainted evidence would not have contributed to the conviction.

Id.

A district court's abuse of discretion regarding an evidentiary ruling does not necessarily constitute reversible error, as "a reversal cannot be predicated upon an error in admission of evidence, where the evidence in question was not of such character to have affected the result." *State v. Runs Above*, 2003 MT 181, ¶ 23, 316 Mont. 421, 427, 73 P.3d 161, 165 (quoting *In re A. N.*, 2000 MT 35, ¶ 55, 298 Mont. 237, 995 P.2d 427).

Here, the district court's error in allowing the State to elicit impermissible hearsay evidence through Detective Buls is trial error rather than structural error. Under the circumstances, this error was not harmless as the State cannot demonstrate that there is no reasonable probability that this inadmissible evidence might have contributed to Holmquist's conviction. The State relied on Detective Buls's impermissible hearsay testimony as evidence that Holmquist was noncompliant in Missoula rather than calling the appropriate witnesses to testify about Holmquist's compliance and registered address in Missoula.

In the *State's Affidavit for Leave to File an Information*, the State alleged the following:

3. On May 13, 2019, HOLMQUIST changed his address with the Flathead County Sheriff's Office to an address in Missoula,

Montana. On January 21, 2020, Det. Steve Debert, Missoula Police Department, conducted a compliance check at HOLMQUIST'S reported Missoula address, however, the property landlord advised he did not live there.

(Doc. 1). The *State's Motion for Leave* references the landlord at Holmquist's registered Missoula address and Missoula Detective Steve Debert. *Id.* In the *Information*, the State lists Missoula Detective Steve Debert as a possible State witness. (Doc. 3). Yet, the State failed to call Detective Steve Debert or the landlord in Missoula to testify at trial when its burden of prove is *beyond a reasonable doubt* not just probable cause. (See, generally, Trial Trans.). Instead, it elicited impermissible hearsay testimony from Detective Buls about Holmquist's apparent noncompliance in Missoula and immediately rested its case.

The State cannot demonstrate that the jury was presented with admissible evidence that proved the same facts as the tainted evidence because the State failed to call the appropriate Missoula witnesses to testify at trial. This testimony was of such a character to have affected the result and had such an impact that the State rested their case on this inadmissible hearsay testimony. Therefore, the admission of this testimony constitutes reversible trial error.

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CONCLUSION

The district court abused its discretion and incorrectly overruled Holmquist's hearsay objection during Detective Buls's testimony about Holmquist's noncompliance in Missoula. Because there is a reasonable probability that this evidence contributed to Holmquist's conviction, the admission of this evidence was not harmless. For these reasons, Holmquist requests the Court reverse and remand this matter for a new trial.

RESPECTFULLY submitted this 15th day of April 2024.

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By: 
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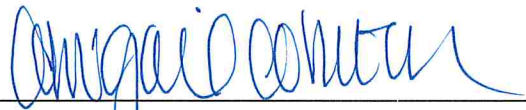
CERTIFICATE OF COMPLIANCE

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that this Appellant's Opening Brief is printed with proportionately spaced Century Schoolbook typeface of 14 points, is double-spaced except for lengthy quotations or footnotes, and does not exceed 10,000 words, excluding the Table of Contents, the Table of Authorities, Certificate of Service, and Certificate of Compliance, as calculated by my Microsoft Word software.

DATED this 15th day of April 2024.

RYAN & MILLER, PLLC

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CERTIFICATE OF SERVICE

I, Abigail Marie Coburn, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 04-15-2024:

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