

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0342

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JEREMY CHRISTOPHER HOLMQUIST,

Defendant and Appellant.

BRIEF OF APPELLEE

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

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STATEMENT OF THE ISSUE

Whether reversible error occurred when the district court overruled Appellant's hearsay objection when, even assuming the district court abused its discretion, the error was harmless since any hearsay admitted was not related to an element of the offense and Appellant admitted that he was noncompliant with his SVOR registration requirements in Flathead County.

STATEMENT OF THE CASE

On March 25, 2021, the State of Montana filed an Information charging Appellant Jeremy Holmquist (Holmquist) with failure to register as a sexual offender in violation of Mont. Code Ann. §§ 46-23-504 and -505. The State alleged that between the dates of May 13, 2019, and March 24, 2021, Holmquist failed to register or keep his registration as a sexual offender current. (D.C. Doc. 3.) Attorney Liam Gallagher represented Holmquist throughout the criminal proceedings. (D.C. Doc. 7.)

The district court conducted a jury trial on September 15-16, 2021. (9/15/21-9/16/21 Transcript of Jury Trial [Tr.].) Holmquist objected to a question the prosecutor asked one of the witnesses on redirect examination on hearsay grounds. (Tr. at 269.) The district court overruled the objection. (Tr. at 270.) The jury found Holmquist guilty. (D.C. Doc. 34.)

The district court designated Holmquist a persistent felony offender and sentenced him to prison for five years. (D.C. Doc. 55.)

STATEMENT OF THE FACTS

I. The offense

Jerie Betschart (Betschart) is employed by the Kalispell Police Department (KPD) as a patrol administrative assistant. Her responsibilities include completing work for the Sexual and Violent Offender Registry (SVOR). Betschart maintains all the SVOR related files and makes certain that all the information for local offenders, including addresses and phone numbers, on the SVOR is current. (Tr. at 183.)

In February 2017, Holmquist registered on the SVOR with the City of Kalispell. (Tr. 185-86; State's Ex. 1, admitted without objection.) Holmquist has a statutory rape conviction from South Dakota. (Tr. at 190.) Betschart met with Holmquist personally and reviewed his obligations under the SVOR. The obligations were listed on a form. Holmquist wrote his initials by each obligation and signed the bottom of the form. (Tr. at 187; State's Ex. 1.)

Betschart explained that if a person required to register is homeless, he still is obligated to register:

When they register as a transient, they—basically, their responsibilities are the same in that if any of their information

changes, within three days they're required to come in and report that to me.

That includes whether or not they're staying in a car in Walmart, if they decide to move to ShopKo, then they have to let me know.

(Tr. at 187.) If the person required to register changes residence, he has a duty to report the change. If he leaves the county of residence for more than ten days, he is required to let his home county know of his departure and must notify the county where he will be staying for ten days or more. (Tr. at 187-88.) Betschart reviewed all these requirements with Holmquist and inquired whether he had any questions. Holmquist did not ask any questions. (Tr. at 197.)

The last time Holmquist updated an address with Betschart was on December 17, 2017. Holmquist reported to Betschart that he was moving to Cynthia Drive, which was outside the Kalispell city limits but still within Flathead County. (Tr. at 189, 249.)

On December 27, 2019, Officer Oster of the KPD, was dispatched to an apartment complex at 308 Two Mile Drive in Flathead County to remove Holmquist from the property. (Tr. at 205-07, 227.) Officer Oster had contact with Holmquist at apartment 304B. (Tr. at 207-08.) Holmquist reported that he was homeless but had briefly been staying with his girlfriend at the apartment. (Tr. at 209.) Officer Oster explained to Holmquist that he had been "trespassed" and

could no longer stay at the property. (Tr. at 227.) Holmquist never mentioned living in Missoula. (Tr. at 209-10.)

Officer Oster also informed Holmquist that her records showed him to be noncompliant with the SVOR registry requirements. (Tr. at 209) Holmquist told Officer Oster that he knew he was noncompliant with the SVOR. (Tr. at 242-43.) Holmquist also reported that he had a job in Kalispell at the 4Bs Restaurant on East Idaho. (*Id.*) Officer Oster advised Holmquist that he needed to get his registration updated. (Tr. at 210.) Officer Oster did not cite Holmquist for trespassing and did not arrest him for being noncompliant with the SVOR. Instead, she instructed him to update his registration by the following Monday. (Tr. at 245.) Officer Oster reported Holmquist's noncompliance to Betschart, who requested Detective Buls of the Flathead County Sheriff's Office investigate Holmquist's status. (Tr. at 203.)

Detective Buls performs compliance checks on individuals within Flathead County who are required to register with the SVOR. (Tr. at 246, 248.) Detective Buls was familiar with Holmquist because at one time he was registered with the Flathead County Sheriff's Office. (Tr. at 249.) Detective Buls recalled that Holmquist had listed his address with Flathead County as somewhere on Cynthia Drive. (*Id.*) Holmquist never listed the Two Mile Drive address with the sheriff's office. On May 13, 2019, Holmquist reported to the sheriff's office that he was

moving to Missoula. From May 13, 2019, through March of 2021, Holmquist did not register with the Flathead County Sheriff's Office. (Tr. at 251.)

In March 2021, Detective Buls learned that Holmquist was back in Kalispell. He had been living with his girlfriend and was employed in Kalispell. Holmquist was not properly registered with the Flathead County Sheriff's Office. (Tr. at 251-52.)

Holmquist did not testify or call any witnesses.

II. Defense counsel's hearsay objection

During defense counsel's cross-examination of Detective Buls, the following exchange occurred:

Q. During those two dates, the dates that Mr. Clegg just mentioned, May 13th of 2019 and March 24th of 2021, he had one address registered; correct?

A. Down in Missoula, yes.

Q. Yes. And do you know the address?

A. Yes. I do know it. Well, I don't know it personally, no.

Q. You haven't been there?

A. No.

Q. You knocked on the door there?

A. I did not, no.

Q. Okay. What's that address?

A. I don't know the exact answer to that.

(Tr. at 269.)

During redirect examination, the following exchange occurred:

Q. 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?

(Tr. at 269-70.) Defense counsel objected on hearsay grounds, and the district court overruled the objection. Detective Buls answered, "Yes." (Tr. at 270.) Holmquist's counsel declined to ask further questions on recross-examination. (*Id.*)

During the State's closing and rebuttal argument, the prosecutor did not mention Detective Buls' answer that relied on information he had received from Missoula County. (*See* Tr. at 299-303, 343-48.) The prosecutor rebutted the notion that Holmquist had been living in Missoula and the inference that Holmquist was registered in Missoula County as follows:

[Tara Oster] wrote down that [Holmquist] said I'm working at 4Bs. He said I've been staying here with my girlfriend. He said[,] Now I'm homeless.

And that's important because Now I'm homeless indicates that he doesn't have a residence. Not Oh, I'm actually here, I have a residence in Missoula. No, he said[,] Now I'm homeless.

(Tr. at 345.)

SUMMARY OF THE ARGUMENT

Any error in allowing Detective Buls to provide a one-word answer that was based on information relayed to him from officers in Missoula County was harmless. The admission of Detective Buls' answer did not prove an element of the offense the State had to prove because the State charged Holmquist for failing to register or keep his registration required by the SVOR updated in Flathead County. At trial, the State proved beyond a reasonable doubt that within the time alleged in the Information, Holmquist was living and working in Flathead County but was not properly registered in Flathead County. Holmquist also admitted that he knew he was not complying with the SVOR requirements. There is no reasonable probability that the jury convicted him for failing to register in Flathead County based on an inference that when he allegedly lived in Missoula County, he was not properly registered there.

Here, it was Holmquist, not the State, who inserted Missoula County into the trial. Without calling any witnesses, Holmquist inferred for the jury that he really was a resident of Missoula County so he was not required to register in Flathead County. The State did not rely on the one-word answer based on hearsay to prove the elements of the offense with which it charged Holmquist. The only relevance to the question the State asked was to rebut Holmquist's inference that he did not live

in Flathead County. The State presented other admissible evidence that Holmquist resided and worked in Flathead County, including Holmquist's own admissions.

ARGUMENT

I. The standard of review

This Court reviews a district court's evidentiary rulings for abuse of discretion because a district court has broad discretion in determining the relevance and admissibility of evidence. *State v. Hardin*, 2023 MT 132, ¶ 15, 413 Mont. 26, 532 P.3d 466. A district 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.* To the extent that an evidentiary ruling is based on an interpretation of an evidentiary rule or statute, this Court's review is de novo. *State v. Lake*, 2022 MT 28, ¶ 23, 407 Mont. 350, 503 P.3d 274.

II. Even assuming the district court erred in overruling Holmquist's hearsay objection, the error was harmless.

Holmquist argues that the district court committed reversible error by overruling his hearsay objection during Detective Buls' testimony. But, even if the district court abused its discretion in overruling Holmquist's objection, the error was harmless.

This Court considered a very similar issue in *State v. Payne*, 2011 MT 35, 359 Mont. 270, 248 P.3d 842. Payne moved from Connecticut where he had been registered on that state's sexual offender registry. Payne moved to Missoula without notifying the Connecticut registry and did not register in Missoula. Law enforcement officers in Missoula learned that Payne was living in Missoula and required to register on Montana's SVOR. *Id.* ¶¶ 6-7. The State later charged Payne with failing to register. *Id.* ¶ 8.

At trial, the prosecutor asked the investigative detective if she had learned during her investigation whether Payne was complying with Connecticut registration law. Payne objected. The district court overruled the objection. The jury found Payne guilty. *Id.* ¶¶ 12-13. On appeal, this Court held that the district court erred in admitting the hearsay statement into evidence because, even though the detective did not repeat the Connecticut declarant's words on the witness stand, the detective's answer was based on testimonial hearsay. *Id.* ¶¶ 29-31. Even so, this Court concluded that the district court's error in admitting testimonial hearsay was harmless. *Id.* ¶ 40.

In *Payne*, applying the harmless error analysis from *State v. Van Kirk*, 2001 MT 184, 206 Mont. 215, 32 P.3d 735, this Court concluded that the admission of the detective's hearsay testimony was trial error amenable to harmless error analysis. *Id.* ¶¶ 35-36. Following the guidance of *Van Kirk*, this

Court first concluded that the inadmissible evidence did not go to an element of the offense. *Id.* ¶ 38. The Court explained that the detective’s testimony did not go to an element of the charged offense because failing to comply with another state’s statute was not an element of the crime the State accused Payne of committing. *Id.*

The Court then explained that the State did not present any untainted admissible evidence to show Payne was not in compliance with Connecticut’s registration laws. Thus, for the admissible evidence to be harmless, the State had to demonstrate that there was no “reasonable probability” the jury relied on Payne’s lack of compliance with Connecticut to convict him of the charged offense in Montana. *Id.* After reviewing the evidence, this Court concluded that the jury had sufficient admissible evidence to support its guilty verdict against Payne. *Id.* ¶ 40.

Here, as in *Payne*, any error in admitting hearsay was harmless. The State charged Holmquist with failing to register as a sexual offender or keep his registration as a sexual offender current in *Flathead County* on or between the dates of May 13, 2019, and March 24, 2021. Thus, the objectionable evidence did not go to an element of the charged offense. Even assuming Holmquist briefly moved to Missoula County, the State presented evidence at trial that on December 29, 2019, Holmquist was living and working within Flathead County, but was not registered with either the local police department or the local sheriff’s office. And Holmquist admitted to Officer Oster that he knew he was not compliant with his

sexual offender registration requirements. Holmquist did not present evidence that contradicted Officer Oster's testimony.

Also, the State presented evidence that Holmquist clearly knew he had to comply with the SVOR requirements because he had initialed and signed a form detailing the requirements. (*See* State's Ex. 1 admitted without objection at trial.) What Holmquist did or did not do in Missoula County did not excuse what he did not do in Flathead County.

Importantly, it was Holmquist, not the State, who inserted Missoula County into the trial to create the impression that perhaps Holmquist was living in Missoula County and was properly registered there. The State only delved into what Detective Buls knew about Holmquist's registration in Missoula County on cross-examination. Unlike in *State v. Butler*, 2021 MT 124, 404 Mont. 213, 487 P.3d 18, a case Holmquist relies upon, the State did not affirmatively use hearsay evidence to prove an element of the offense.

In *Butler*, the investigating trooper testified about what a passenger in Butler's vehicle told him concerning his injuries to prove an element of negligent vehicular assault. Although the State claimed it was not offering the evidence for the truth of the matter asserted, this Court observed that was how the State used the hearsay statement at trial. Thus, it was error for the district court to admit the statement for a non-hearsay purpose—allowing the trooper to explain the next

steps in his investigation—and then allow the State to use the evidence for the hearsay purpose of proving an element of the offense of negligent vehicular homicide. *Id.*, ¶¶ 17-18.

Since in Holmquist’s case the State did not use hearsay to prove an element of the offense, the next question is whether the State presented other admissible evidence that proved the same fact as the hearsay testimony. *Payne*, ¶¶ 37-38. Although State did not present other admissible evidence to show that Holmquist did not comply with the registration requirements while he lived in Missoula, the State did present other admissible evidence that Holmquist was not living in Missoula for the duration of the time alleged in the Information.

Officer Oster had an encounter with Holmquist on December 27, 2019, when she explained that he could no longer be at his girlfriend’s apartment complex. Holmquist told Officer Oster that he was working locally at the 4Bs and had been living at his girlfriend’s apartment. Holmquist also stated that if he could not stay with his girlfriend, he would be homeless. Holmquist never registered his girlfriend’s address as the SVOR requires. Holmquist also admitted that he knew he was noncompliant with the SVOR requirements. Rather than arresting Holmquist, Officer Oster instructed him to come into compliance with the SVOR requirements by the upcoming Monday. This admissible evidence established that

Holmquist was living and working in Flathead County during the time alleged in the Information rather than in Missoula County as he wanted the jury to infer.

To the extent that Detective Buls' answer to which Holmquist objected implied that Holmquist was not registered in Missoula County, the State must demonstrate there is not a reasonable probability that the jury relied on Holmquist's lack of compliance with the SVOR in Missoula County to convict him for failing to comply with the SVOR requirements in Flathead County. Notably, Holmquist overlooks this prong of the harmless error analysis, concluding that because the State did not present other admissible evidence that Holmquist was not compliant with the SVOR when he lived in Missoula, the admission of Detective Buls' answer is reversible error.

Like in *Payne*, there is not a reasonable probability that the jury convicted Holmquist in Flathead County because of his lack of compliance in Missoula County. In *Payne*, this Court explained that the hearsay evidence admitted at Payne's trial raised a risk that jurors could have concluded Payne had a propensity for failing to comply with sexual offender registration laws. *Id.* ¶ 39. Payne, however, made no propensity objection in the district court, so this Court declined to consider a propensity theory of prejudice. *Id.* Similarly, Holmquist raised no propensity objection in the district court, nor has he made such an unpreserved argument in his opening brief.

Also, Holmquist admitted to Officer Oster that he had been living with his girlfriend in Flathead County and working at the local 4Bs restaurant, and that he knew he was not complying with the SVOR requirements. Finally, even though the district court overruled Holmquist's hearsay objection, the prosecutor did not rely on Detective Buls' answer during closing arguments. Instead, the prosecutor focused on events that transpired in Flathead County and Holmquist's own admissions about where he lived and worked and that he knew he was not compliant.

Based on the facts in Holmquist's case, any error that occurred in admitting an answer based on hearsay was clearly harmless.

CONCLUSION

For the reasons argued above, the State respectfully requests that this Court affirm Holmquist's conviction for failure to register as a sexual offender.

Respectfully submitted this 15th day of May, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2,983 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

/s/ Tammy K Plubell
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CERTIFICATE OF SERVICE

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