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STATE OF MONTANA
Case Number: DA 22-0635

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0635

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SAUL JAMES DOOLING,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Twenty-first Judicial District Court,
Ravalli County, The Honorable Howard F. Recht, Presiding

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STATEMENT OF THE ISSUES

Whether the plain language of Mont. Code Ann. § 45-6-301 established venue in a county where Appellant exerted unauthorized control of a stolen vehicle.

STATEMENT OF THE CASE

On July 8, 2021, the State charged Saul James Dooling (Dooling) via Information with seven counts, including Count I, a felony charge of theft, in violation of Mont. Code Ann. § 45-6-301. (Doc. 3.)

On February 4, 2022, Dooling filed an objection to venue with respect to Count I. (Doc. 22.) Dooling alleged that Ravalli County was an inappropriate venue for that charge since the stolen vehicle he used to flee from police and then crashed in Ravalli County was initially taken in Missoula County. (*Id.*)

On April 18, 2022, the district court held a hearing regarding the objection to venue. (Doc. 35.1.)

On April 25, 2022, the district court denied Dooling's objection. (Doc. 38.) The district court applied the plain language of Mont. Code Ann. § 45-6-301, and determined that, since Dooling had "exerted unauthorized control" over the stolen vehicle in Ravalli County, that was the appropriate venue. (*Id.* at 6.)

STATEMENT OF THE FACTS

On May 18, 2021, at approximately 10:37 p.m., Trooper McFarland was traveling southbound on US Highway 93 in Ravalli County, in a posted 65 mph nighttime speed zone.[1] He observed a red sedan traveling northbound at a high rate of speed. Trooper McFarland activated his radar, which displayed a speed of 85 mph. He turned his patrol vehicle around to catch up with the vehicle, but briefly lost visual contact with it as it went around a bend in the road. When Trooper McFarland was able to regain visual contact with the vehicle, he observed that it had advanced a considerable distance, consistent with having increased its speed.

Trooper McFarland again activated his radar and observed the red sedan to be traveling at 111 mph. He activated his emergency lights and accelerated to catch up with the vehicle. Trooper McFarland's radar showed the red sedan's speed had climbed to 119 mph.

Trooper McFarland observed the red sedan having a near miss with an uninvolved civilian who tried to pull over to the shoulder as the sedan passed. Trooper McFarland was aware that other state troopers were on the shoulder with another civilian vehicle just a couple of miles ahead of the pursuit.

[1] Unless otherwise indicated, all descriptions of the offense are taken from the State's motion and affidavit in support of leave to file an Information. (Doc. 1.)

Trooper McFarland activated his siren. As he and the sedan approached Sweeney Creek Loop at a speed of 119 mph, Trooper McFarland observed the sedan's brake lights illuminate, and the vehicle slowed to 90 mph as it attempted a very sharp turn onto Sweeney Creek Loop.

The red sedan was unable to negotiate the turn and passed through Sweeney Creek Loop, over the shoulder of US Highway 93, and into a field on the east side of the highway, where it became high-centered next to the railroad tracks. Trooper McFarland came to a stop on Sweeney Creek Loop and observed the driver/suspect exiting the vehicle. The suspect was wearing a fluorescent yellow coat with reflective tape.

Trooper McFarland exited his patrol vehicle and began to pursue the suspect on foot. He yelled out, "Stop, Police Stop," but the suspect did not comply and continued to run east, where he hopped over a fence into a field on private property. The suspect ran to the east side of the field, which is bordered by Koch Lane, and attempted to hide behind a tree.

Trooper McFarland shouted at the suspect to show his hands, but he stood up and began to remove his fluorescent coat. Trooper McFarland yelled, "Police, don't move," but the suspect removed his coat, threw it on the ground, and continued to flee.

Trooper McFarland observed the suspect had shoulder-length, shaggy black hair, and he appeared to be in his early to mid-twenties. As the foot chase continued, Trooper McFarland eventually fired his Taser and saw the suspect become rigid and fall to the ground. However, the suspect then stood up and ran in the direction of a nearby residence.

Trooper McFarland lost sight of the suspect as he ran around the back side of the residence. Other law enforcement officers had arrived and assisted in the search. One of the officers, Deputy Briese, was familiar with the suspect and identified him as Dooling.

After searching the area for approximately an hour, Ravalli County dispatch advised the officers that a homeowner on Koch Lane was reporting someone in the crawl space of their residence. Officers responded and located Dooling in the crawl space of the home.

Dooling was shirtless and had multiple cuts and scrapes, consistent with having run through thick brush and barbed wire fences. Officers found Taser probes in Dooling's right buttock and ankle. Dooling was assessed for his injuries, and his identity was confirmed.

On June 22, 2021, Trooper McFarland learned that the red sedan had been stolen from Jerry's Transmission Service in Missoula and had a value of approximately $1,800. Trooper McFarland attempted to speak with Dooling at the

Ravalli County Detention Center. Dooling would not discuss the incident, but as Trooper McFarland was leaving, Dooling stated, "I had permission to use it."

On July 8, 2021, the district court filed an order granting the State leave to file an Information charging Dooling with seven counts, with Count I being felony theft in violation of Mont. Code Ann. § 45-6-301. (Doc. 2.) Bail was set at $20,000, and a public defender was appointed to represent Dooling. (Doc. 7.1.) On July 22, 2021, bail was lowered to $5,000, with the condition that Dooling submit to GPS monitoring. (Doc. 13 at 3.)

On August 13, 2021, Dooling posted the $5,000 bond. (Doc. 16.) He then failed to appear at a February 2, 2022 pretrial hearing, and the district court issued a warrant and set bail at $10,000. (Doc. 21.)

On February 4, 2022, Dooling filed an objection to venue. (Doc. 22.) Citing *State v. Eagle Speaker*, 2000 MT 152, 300 Mont. 115, 4 P.3d 1, Dooling alleged that, since the theft of the red sedan initially occurred in Missoula, Ravalli County was an inappropriate venue for the charge. (*Id.*) Dooling asked the district court to dismiss Count I. (*Id.* at 4.)

On February 26, 2022, the State filed its response. (Doc. 26.) The State pointed out that "[t]here are no factual allegations that it was [Dooling] who stole the vehicle from Missoula County—only that it was in fact stolen there." (*Id.* at 6.)

The State cited to the Commission Comments to Mont. Code Ann. § 46-3-112, which state:

> This provision allows the trial to take place in the most convenient county where an element of the offense occurred . . . . The only elements of the crime which are of interest are those acts constituting or requisite to the consummation of the offense; the trial of the case may be held in any county in which such acts occur.

(*Id*. at 6.)

On April 18, 2022, the parties argued their respective positions before the district court. (Doc. 35.1.) Addressing Dooling's attorney, the district court accurately observed that:

> Under [Mont. Code Ann. § 45-6-301] subparagraph one, standard charge of theft, if a person knowingly—purposely or knowingly obtains or exerts unauthorized control over property, and has the purpose of depriving the owner of the property, that person may be guilty of the offense of theft. It doesn't say you have to be the first person to obtain or exert unauthorized control. It just requires the State to prove that the person purposely or knowingly exerted unauthorized control.

(4/18/22 Tr. at 7-8.)

The district court then asked, "So if your client knows he is exerting unauthorized control over property that belongs to someone else, and the State can prove that he was doing so to deprive the owner of the property, how is that not an offense in Ravalli County?" (*Id.* at 8.) Dooling's attorney responded that "taking still takes place at the time he received that car." (*Id.*)

The district court asked, "[W]hat's the difference between obtaining and exerting [unauthorized control]?" Dooling's attorney responded, "I don't think there is a difference . . . ." (*Id.* at 9.)

On April 25, 2022, the district court filed its order denying Dooling's objection to venue. (Doc. 38.) Relying on *State v. Deshazer*, 2016 MT 8, 382 Mont. 97, 365 P.3d 475, and the plain language of the theft statute, the district court found that Dooling had "exerted unauthorized control" over the stolen vehicle in Ravalli County, "regardless of where it came from." (Doc. 38 at 6.) The district court pointed out that the use of the disjunctive "or" in the theft statute meant the State was required to prove Dooling either "obtained" or "exerted unauthorized control" over the vehicle. (*Id.*) The district court reasoned that by this language, the State was not required to prove both. (*Id.*) Because Dooling exerted unauthorized control over the vehicle in Ravalli County, the district court concluded that Ravalli County was an appropriate venue for the charge. (*Id.*)

Addressing Dooling's stance that theft can only be charged in the county where a defendant initially obtains stolen property, the district court concluded:

> . . . this interpretation of the law could lead to an absurd result if, as in this case, the State cannot prove where the Defendant first came into possession of the allegedly stolen property. In such a circumstance, and applying Defendant's argument to its illogical extreme, Defendant could argue that any county in which a defendant is charged with theft is an improper county for purposes of venue because in every county in which the State may attempt to prosecute the offense a defendant

> could argue that the State is unable to prove that is the county where the defendant first obtained possession.

(*Id.* at 7.)

The district court also determined that "*Eagle Speaker* was focused on which court had the authority to hear the case—not where the case may be heard. It is clear that the District Court has jurisdiction over this case, and thus *Eagle Speaker* is not applicable in a venue analysis." (*Id.*)

On April 29, 2022, Dooling entered into a plea agreement (Doc. 39), whereby he would enter guilty pleas to four counts in an amended Information. (Doc. 40.) These included a plea to felony theft, misdemeanor fleeing a peace officer, reckless driving, and driving while suspended or revoked.[2] (Doc. 39.) Dooling reserved his right to appeal the district court's denial of his objection to venue. (*Id.*) The parties agreed to recommend a deferred sentence on the felony theft. (*Id.* at 2.) The agreement was nonbinding on the district court pursuant to Mont. Code Ann. § 46-12-211(1)(c). (*Id.* at 3.)

On July 12, 2022, the State filed a notice of intent to deviate from the plea agreement, based on Dooling being charged with another felony theft in Missoula County, this time of a pickup truck and a motorcycle. (Doc. 49.)

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[2] The plea to felony theft was entered pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). (5/4/22 Plea Tr. at 7.) On the misdemeanor counts of fleeing a peace officer, reckless driving, and driving while suspended, Dooling provided a factual basis to all three counts. (*Id.* at 9-12.)

On August 3, 2022, the district court declined to follow the terms of the plea agreement and, on the count of felony theft, committed Dooling to the Department of Corrections for 3 years, with 181 days of jail credit. (Doc. 56.) This appeal follows.

SUMMARY OF THE ARGUMENT

The district court properly interpreted the plain language of Mont. Code Ann. § 45-6-301 to determine that Dooling exerted unauthorized control over a stolen vehicle in Ravalli County. The district court correctly determined that the holding of *Eagle Speaker* applied to jurisdiction, not venue. The district court accurately pointed out that Dooling's interpretation of the theft statute, which omitted the "exerts unauthorized control" language, would lead to absurd results in cases where the State could not prove where a defendant initially obtained stolen property. Further, because Dooling drove the stolen vehicle in or through Ravalli County, that was the appropriate venue pursuant to Mont. Code Ann. § 46-3-114(2).

/ / /

ARGUMENT

I. Standard of review

This Court reviews a lower court's legal conclusion regarding the appropriate venue de novo. *City of Helena v. Frankforter*, 2018 MT 193, ¶ 5, 392 Mont. 277, 423 P.3d 581 (citing *State v. Patterson*, 2012 MT 282, ¶ 22, 367 Mont. 186, 291 P.3d 556).

II. The district court correctly determined that venue was appropriate in Ravalli County.

A. Applicable statutes

> A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:
> (a) has the purpose of depriving the owner of the property;
> (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
> (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

Mont. Code Ann. § 45-6-301(1).

"In all criminal prosecutions, the charge must be filed in the county where the offense was committed unless otherwise provided by law." Mont. Code Ann. § 46-3-110(1). "[I]f an act requisite to the commission of an offense occurs or continues in more than one county, the charge may be filed in any county in which the act occurred or continued." Mont. Code Ann. § 46-3-112(2).

"[I]f an offense is committed in or against a public or private conveyance and it is doubtful in which county the offense occurred, the charge may be filed in any county in or through which the conveyance has traveled." Mont. Code Ann. § 46-3-114(2).

B. The State was not required to prove where Dooling initially obtained the stolen vehicle.

The district court correctly interpreted the plain language of the theft statute to require that the State prove Dooling either "obtained" or "exerted control" over the stolen vehicle, but not both. (Doc. 38 at 6.) As this Court has observed in the context of statutory interpretation,

> [t]he word "or" connotes a disjunctive particle, and it is used to express an alternative between two or more things. When a requirement contains a disjunctive, only one of the separately stated factors must exist. Therefore, we conclude from the plain language of § 61-8-326, MCA, that either signs or markings may designate a portion of road as a no-passing zone.

Contreras v. Fitzgerald, 2002 MT 208, ¶ 15, 311 Mont. 257, 54 P.3d 983 (internal citations omitted).

Montana Code Annotated § 45-6-301 clearly requires the State to prove that Dooling either obtained or exerted unauthorized control over the vehicle, but not both. The district court correctly concluded that Dooling exerted unauthorized control over the motor vehicle in Ravalli County, "regardless of where it came

from." (Doc. 38 at 6.) Therefore, Ravalli County was the proper venue pursuant to the plain language of Mont. Code Ann. § 46-3-110.

Dooling asserts that "holding on to the red sedan after it was initially stolen does not establish venue." (Appellant's Br. at 16.) This argument is unavailing, in part because Dooling was never accused of "holding on to the red sedan." Rather, the allegations, to which Dooling has since admitted, were that he fled the police at potentially lethal speeds exceeding 100 mph and endangered the lives of both law enforcement and civilians prior to crashing. These acts, which occurred entirely within Ravalli County, clearly constitute "exerting unauthorized control" over the stolen vehicle under Mont. Code Ann. § 45-6-301.

C. Neither *Eagle Speaker* nor *Mullin* apply to the facts of this case.

The holding in *Eagle Speaker*, *supra*, is not applicable here. In *Eagle Speaker*, this Court determined that the State lacked jurisdiction to prosecute a Native American who had stolen horses wholly within reservation boundaries. This Court's holding was, "We conclude that the offense of theft occurs *for jurisdictional purposes* where the elements of that offense take place." *Eagle Speaker*, ¶ 24 (emphasis added). The issue was one of jurisdiction between two sovereign nations, not venue, which is governed by distinct statutory provisions. As the district court recognized, "*Eagle Speaker* was focused on which court had the authority to hear the case—not where the case may be heard. It is

clear that the District Court has jurisdiction over this case, and thus *Eagle Speaker* is not applicable in a venue analysis." (Doc. 38 at 7.)

Likewise, *State v. Mullin*, 268 Mont. 214, 886 P.2d 376 (1994), concerned application of the statute of limitations, not the location where an element of the crime occurred, and also applied different subsections of the theft statute than presented here.

In *Mullin*, this Court affirmed the dismissal of felony theft by concealment of stolen property charged under Mont. Code Ann. § 45-6-301(1)(b) and 3(b) (1993) because the charging documents were filed six years after the alleged date the property at issue was stolen and, thus, was past the five-year statute of limitations. *Mullin*, 268 Mont. at 216, 886 P.2d at 377.

In *Mullin*, this Court applied Mont. Code Ann. § 45-1-205(7) (1993), which provided that, for the purposes of the statute of limitations, "[a]n offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated." *Mullin*, 268 Mont. at 216, 886 P.2d at 377. Additionally, *Mullin* applied a specific theory of theft by concealment. *Id.* The charge at issue here is theft, and the relevant element at issue is whether Dooling "exerted unauthorized control," not "when" nor the manner in which he initially obtained the stolen property.

III. The district court correctly determined that Dooling's interpretation of venue would lead to absurd results.

"In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-2-101. Further, statutory construction should not lead to absurd results if a reasonable interpretation can avoid it. *City of Missoula v. Fox*, 2019 MT 250, ¶ 18, 397 Mont. 388, 450 P.3d 898 (citations omitted).

By asking this Court to omit the unambiguous language of Mont. Code Ann. § 45-6-301, which requires that the defendant either "obtains or exerts unauthorized control," Dooling invites absurd results in the application of the statute. As the district court pointed out,

> [Dooling's] interpretation of the law could lead to an absurd result if, as in this case, the State cannot prove where [Dooling] first came into possession of the allegedly stolen property. In such a circumstance, and applying [Dooling's] argument to its illogical extreme, [Dooling] could argue that any county in which a defendant is charged with theft is an improper county for purposes of venue because in every county in which the State may attempt to prosecute the offense a defendant could argue that the State is unable to prove that is the county where the defendant first obtained possession.

(Doc. 38 at 7.)

Dooling argues that "[t]he district court's hypothetical completely ignores the use of circumstantial evidence to prove theft." (Appellant's Br. at 19.) He

suggests that his "later possession of the red sedan would be circumstantial evidence that he committed the theft [in Missoula]." (*Id.* at 20.)

In other words, Dooling contends that the district court was required to ignore overwhelming direct evidence that he "exerted unauthorized control" over the stolen vehicle in Ravalli County, and determine venue based on tenuous circumstantial evidence that he "obtained" the vehicle in Missoula County.

As the district court suggested, if Dooling's motion in Ravalli County had been successful, and Missoula County had subsequently charged him with the theft of the vehicle, his attorney there could have objected to venue in a much more effective manner.[3] Dooling committed numerous criminal offenses in the stolen vehicle while fleeing police in Ravalli County, the venue where the overwhelming majority of the witnesses were located, and there was no direct evidence that it was Dooling who initially obtained or exerted control of the vehicle in Missoula County. The district court correctly determined that Dooling's interpretation of the theft statute for purposes of venue would lead to absurd results.

/ / /

[3] Unless there was additional evidence that is not contained in the record, it seems extremely unlikely Missoula County would have charged the case, which was likely the impetus of the motion in the first place.

IV. Ravalli County was an appropriate venue under Mont. Code Ann. § 46-3-114(2).

"Except as provided in 46-3-110(2), if an offense is committed in or against a public or private conveyance and it is doubtful in which county the offense occurred, the charge may be filed in any county in or through which the conveyance has traveled." Mont. Code Ann. § 46-3-114(2).

This Court interpreted Mont. Code Ann. § 46-3-114(2) in *State v. Diesen*, 2000 MT 1, 297 Mont. 459, 992 P.2d 1287 (*overruled in part by Frankforter*, ¶ 14).[4] In *Diesen*, the defendant was charged with boating under the influence of alcohol after a collision with another boat on Fort Peck Lake, but the evidence was unclear whether the collision occurred in Garfield or Valley County. *Diesen*, ¶ 10.

The district court determined that, pursuant to Mont. Code Ann. § 46-3-114(2), venue was appropriate in Valley County because the evidence showed that Diesen had operated his boat "in or through" Valley County, regardless of where the collision occurred. *Deisen*, ¶ 12.

In affirming the district court, this Court observed that Mont. Code Ann. § 46-3-114(2) was drafted with the intent "that the term 'conveyance' would 'cover all modes of transportation,' obviating the need to list all types of

[4] "We accordingly overrule the above-listed cases and other cases to the extent they confuse venue with jurisdiction and state or hold venue is a jurisdictional fact that must be proven at trial beyond a reasonable doubt." *Frankforter*, ¶ 14.

conveyances expressly and thereby eliminating the 'possibility of an omission.'" *Diesen,* ¶ 17 (citing Commission Comments to Mont. Code Ann. § 46-3-114(2)). Because the stolen vehicle here was obviously a mode of transportation, Dooling's offenses were committed in or against a "conveyance."

The record is clear that the conveyance was originally stolen in Missoula. However, *where* Dooling initially obtained the conveyance is in fact "doubtful." Dooling's statement to Trooper McFarland, "I had permission to use it," while suspect, suggests at least the possibility of an intermediary who first "obtained" the stolen vehicle in Missoula County.

Based on the evidence, or lack thereof, demonstrating where Dooling initially obtained the stolen vehicle, it is plausible that he obtained it in any number of different counties. However, since Dooling drove the conveyance "in or through" Ravalli County, venue there was legally appropriate under Mont. Code Ann. § 46-3-114(2).

Venue under Mont. Code Ann. § 46-3-114(2) was not raised before the district court in this case. However, as this Court has stated, "[W]e have long adhered to the principle that we have discretion on appellate review to independently examine the record and affirm a lower court judgment that reached the correct result, even if for a wrong or incomplete reason." *State v. McGhee*, 2021 MT 193, ¶ 32, 405 Mont. 121, 492 P.3d 518 (citing *State v. Marcial*,

2013 MT 242, ¶ 10, 371 Mont. 348, 308 P.3d 69; *State v. Ellison*, 2012 MT 50, ¶ 8, 364 Mont. 275, 272 P.3d 646; *State v. Hendershot*, 2009 MT 292, ¶ 33, 352 Mont. 271, 2016 P.3d 754).

Dooling committed this offense in or against a private conveyance, and it is doubtful where he first obtained the conveyance. Because he drove the stolen conveyance "in or through" Ravalli County, venue there was proper pursuant to Mont. Code Ann. § 46-3-114(2).

CONCLUSION

The district court's order denying Dooling's motion to dismiss for improper venue should be affirmed.

Respectfully submitted this 2nd day of July, 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 4,029 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

/s/ Thad Tudor
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I, Thad Nathan Tudor, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 07-02-2024:

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