

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0632

STATE OF MONTANA,

Plaintiff and Appellee,

v.

LORENZO HARRIS,

Defendant and Appellant.

APPELLANT'S OPENING BRIEF

On Appeal from the Montana Thirteenth Judicial District Court
Yellowstone County Cause No. DC 21-0533, Hon. Michael Moses
Presiding

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QUESTION PRESENTED

In a criminal bench trial, where a defendant is charged with homicide, does due process require the trial court to give consideration to lesser included offenses supported in evidence before finding the defendant guilty of the charged offense?

STATEMENT OF THE CASE

This matter is on appeal from Montana's Thirteenth Judicial District, Yellowstone County. Defendant Lorenzo Harris appeals the district court's May 10, 2022, Findings of Fact, Conclusions of Law, and Order, attached hereto as app. 1.

Mr. Harris respectfully moves that this Court reduce the offense of which he was convicted to the lesser included offense of mitigated deliberate homicide, and his case remanded to the district court for resentencing. In the alternative, Mr. Harris requests that the case be remanded to the district court for proceedings on the question of lesser applicable included offenses.

STATEMENT OF FACTS

Following a bench trial, Appellant Lorenzo Harris was convicted of one count of deliberate homicide with weapon enhancement in relation

to the December 27, 2021, shooting death of James Williams. The shooting occurred at the home of Mr. Harris's mother. Tr. Transcr. day 5, 136-137 (Apr. 1, 2022).

On the night of the homicide, Harris and his brother, Carvell Scott, had invited a small group to the home following a night of drinking at Billings' Shooters Bar. *Id.* Men within the social circle were commonly known to carry firearms. Tr. Transcr. day 4, 72-73 (Mar. 31, 2022); Tr. Transcr. day 2, 55:4-8, 125:10-12 (Mar. 29, 2022); Tr. Transcr. day 5, 141:20-24 (Apr. 1, 2022). The get-together expanded beyond what Harris and Scott intended, and the brothers attempted to remove people from the home. *Id.* at 137:1-5, 141, 153:4-7. Multiple fights broke out in the entryway to the house as Scott and Harris attempted to eject people from the home. Tr. Transcr. day 1, 94-98 (Mar. 28, 2022); Tr. Transcr. day 4, 23-25 (Mar. 31, 2022); Tr. Transcr. day 5, 153-154 (Apr. 1, 2022). Harris and Mr. Williams were among the individuals who fought. *Id.* Mr. Williams overpowered Harris and had him on the ground. *Id.* Guest Dawan Jones intervened, attempting to pull Williams off of Harris. *Id.* Jones testified that he felt someone pushing him from behind while he attempted to lift Williams. *Id.* Ultimately, all three men tumbled out the

door and fell through the iron handrail on the front porch. *Id.* In the midst of the melee, Mr. Harris fatally shot Mr. Williams. Sentcg. Hrg. Transcr. 82:9-17 (Aug. 4, 2022).

In its May 10, 2022, Findings of Fact, Conclusions of Law, and Order, the trial court wrote:

Significantly, Mr. Scott testified that a lot of fights were happening at the residence that night and that he and Mr. Harris were pushing people out of the residence. This is consistent with Mr. Jones statement describing that after he had picked Mr. Williams up off of Mr. Harris that Mr. Jones and Mr. Williams were pushed outside and ultimately fell off the porch. Additionally, Mr. Scott describes that he was in the entryway when Mr. Jones and Mr. Williams fell. Mr. Scott also described that Mr. Jones and Mr. Williams were the only two that fell off the porch.

FOFCOL 26 ¶ 44 (May 10, 2022).

At trial, there was no factual dispute that multiple fights took place at the family home; that Mr. Williams had bested Harris in a fist fight; that multiple people were crowded and yelling in the small entryway of the home; and that significant jostling occurred between Harris, Williams, Jones, and at least one additional person at the time Williams was shot. Trial counsel did not propose lesser offenses in pretrial proceedings, and the trial court provided no analysis of lesser included offenses.

STANDARD OF REVIEW

This Court reviews the sufficiency of evidence to support a conviction by viewing the evidence in a light most favorable to the prosecution and then determining whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Haser*, 2001 MT 6, P18, 304 Mont. 63, 20 P.3d 100 (citing *State v. Berger*, 1998 MT 170, P25, 290 Mont. 78, 964 P.2d 725).

This Court “may discretionarily review claimed errors that implicate a criminal defendant’s fundamental constitutional rights, even if no contemporaneous objection is made and notwithstanding the inapplicability of the Mont. Code Ann. § 46-20-701(2) criteria, where failing to review the claimed error at issue may result in a manifest miscarriage of justice, may leave unsettled the question of the fundamental fairness of the trial or proceedings, or may compromise the integrity of the judicial process.” *State v. Clausell*, 2001 MT 62, 305 Mont. 1, 22 P.3d 1111, 2001 Mont. LEXIS 75 (Mont. 2001).

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SUMMARY OF THE ARGUMENT

Mr. Harris has a due process right to have all lesser included offenses considered by the Court before he may be found guilty of deliberate homicide. Evidence submitted at trial was not sufficient to prove deliberate homicide with no circumstances of mitigation. At best, the trial evidence showed that Mr. Harris is guilty of mitigated deliberate homicide. Mr. Harris requests that this court apply a lesser included offense pursuant to Mont. Code Ann. § 46-20-703(3). In the alternative, Mr. Harris requests that his deliberate homicide conviction be vacated, and remanded to the district court for further evidentiary proceedings.

ARGUMENT

- I. *In a bench trial, where lesser included offenses are supported in evidence, the defendant has a due process right to have those lesser included offenses considered before he may be convicted of a greater offense.*

Mr. Harris respectfully requests that this Court exercise its power of discretionary review to address the question of whether the trial court was required to address the lesser included offense of mitigated deliberate homicide. As discussed below, this is a question of the fundamental fairness of the proceedings for Mr. Harris.

No person shall be deprived of his liberty without due process of law. Mont. Const. Art. II, § 6; 14th A. United States Const. A Montana defendant may be convicted only of the "greatest included offense about which there is no reasonable doubt." Mont. Code Ann. § 46-16-606.

A person commits the offense of deliberate homicide if he purposely or knowingly causes the death of another human being. Mont. Code Ann. § 45-5-102. A person commits the offense of mitigated deliberate homicide when he purposely or knowingly causes the death of another human being while under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. Montana Code Ann. § 45-5-103 (1). In a deliberate homicide case, knowledge or purpose may be inferred from the fact that the accused committed a homicide, and no circumstances of mitigation, excuse, or justification appear. Mont. Code Ann. § 45-5-112.

A Montana trial court, sitting as finder of fact, is permitted to *sua sponte* find a criminal defendant guilty of a lesser included offense. *State v. Black*, 270 Mont. 329, 331, 891 P.2d 1162, 1163 (1995). This Court has not yet considered whether due process requires such a trial court to

consider factually supported lesser offenses before it may adjudicate a defendant guilty of the charged offense.

The trial court erred when it failed to analyze whether circumstances of mitigation were present before finding Mr. Harris guilty of deliberate homicide. It is not disputed that Mr. Harris was entangled in a large melee when, sadly, he fired the shot that took Mr. Williams' life. The gathering in his mother's home had grown out of control, and several strangers were present. It was unclear how many of the people in attendance were armed. Harris was taken to the ground by a much larger, unknown individual in his mother's home until he and two others were ultimately ejected from the residence after being shoved out by an unidentified individual. The men were pushed hard enough to collapse an iron handrail, and all three fell from the porch into the yard. These undisputed facts are circumstances which could clearly cause a reasonable person to experience extreme mental and emotional stress, consistent with a finding of mitigated deliberate homicide.

The failure of the trial court to consider the lesser offense violated Mr. Harris's right to due process. Under Montana law, Mr. Harris could only be found guilty of the greatest offense of which all factual elements

could be proven beyond a reasonable doubt. The “deliberate” element of deliberate homicide may be inferred, but *only* where no circumstances of mitigation, excuse, or justification are present. The issue is especially problematic in this case because circumstances which prove the “mitigated” element of mitigated deliberate homicide must be found *in addition* to the elements already necessary to prove deliberate homicide. By not fully following through with a mitigation analysis, the trial court failed to properly address Mr. Harris’s level of culpability. For these reasons, Mr. Harris did not receive due process at trial.

II. *The evidence presented at trial was not sufficient to prove the necessary mental state for a conviction of deliberate homicide.*

As described above, in this case, mitigated deliberate homicide is the greatest included offense about which there is no reasonable doubt. There was clearly no advance plan by Mr. Harris to take Mr. Williams’ life. The events happened rapidly, while Mr. Harris was under extreme duress. Mr. Williams was a stranger to Mr. Harris and the occupants of the home. He was a much larger man, and he had overpowered Mr. Harris in the entryway of his mother’s home. This occurred in the context of a larger melee in which multiple people were involved, all potentially carrying concealed firearms. A reasonable person could only conclude

that Mr. Harris was under extreme emotional and mental stress when this unfortunate incident took place.

There is no reasonable doubt that Mr. Harris was under extreme emotional and mental stress when he shot Mr. Williams. For that reason, Mr. Harris respectfully moved this Court to apply the lesser offense of mitigated deliberate homicide and remand to the district court for resentencing, in accordance with Mont. Code Ann § 46-20-703(3).

CONCLUSION

For the reasons detailed above, Mr. Harris respectfully requests that this court apply a lesser included offense pursuant to Mont. Code Ann. § 46-20-703(3). In the alternative, Mr. Harris requests that his deliberate homicide conviction be vacated, and remanded to the district court for further evidentiary proceedings.

SUBMITTED this 12th day of August, 2024.

PLATH KEMMICK LAW, LLC

/s/ Melinda A. Driscoll

Melinda A. Driscoll

Attorney for Lorenzo Harris

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 Century Schoolbook 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 1725, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

DATED this 12th day of August, 2024.

/s/ Melinda A. Driscoll
Melinda A. Driscoll