

DA 23-0143

IN THE SUPREME COURT OF THE STATE OF MONTANA

2025 MT 18

STATE OF MONTANA,

Plaintiff and Appellee,

v.

BENJAMIN EUGENE COLE JR.,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DC-22-426
Honorable Robert L. Deschamps, III, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Tammy Hinderman, Appellate Defender Division Administrator,
Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Brad Fjeldheim,
Assistant Attorney General, Helena, Montana

Matthew Jennings, Missoula County Attorney, Ryan Mickelson,
Deputy County Attorney, Missoula, Montana

Submitted on Briefs: December 11, 2024

Decided: January 28, 2025

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Benjamin Eugene Cole Jr. (Cole) appeals from his conviction in the Missoula County Justice Court for misdemeanor partner or family member assault (PFMA) asserting his right to a jury trial was violated. We affirm.

¶2 We restate the issue on appeal as follows:

Did the Justice Court err by conducting a bench trial without a written waiver of defendant's right to a jury trial?

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Cole was charged on February 2, 2022, in the Missoula County Justice Court with misdemeanor PFMA, second offense, in violation of § 45-5-206, MCA. At his initial appearance on February 2, 2022, the Justice Court Judge advised Cole of his rights, including his right to a trial by jury and Cole verbally affirmed to the court he understood his rights. During the initial omnibus hearing, Cole's counsel requested additional time to discuss with Cole as to whether he wanted a jury or judge trial. Upon later reconvening the omnibus hearing, Cole's counsel in Cole's presence advised the court that Cole requested to have a judge trial. The State then confirmed it likewise agreed to a judge trial. As such, the Justice Court set the matter for bench trial. The day before trial at the trial confirmation hearing, Cole personally appeared with his counsel who again confirmed Cole wanted a bench trial. Bench trial was held the following day on June 23, 2022, in which Cole was present and represented by counsel. At the outset of trial, in Cole's personal presence, the court asked the parties if there was anything that needed to be addressed prior to the start of trial. Both parties advised there was not, and the matter

proceeded to trial before the judge, sitting without a jury. At no point during trial did Cole object to proceeding via bench trial or otherwise request a jury trial in any way. Following the trial, the judge convicted Cole of misdemeanor PFMA, second offense, and imposed a 12-month deferred imposition of sentence. Cole appealed to the District Court asserting the Justice Court had violated his right to a jury trial. The District Court affirmed, concluding that a totality of the circumstances showed Cole voluntarily, knowingly, and intelligently waived his right to a jury trial. Cole appeals.

STANDARD OF REVIEW

¶4 The parties agree that on appeal from a justice court of record, a district court functions as an intermediate appellate court and is confined to review of the record and questions of law. Sections 3-5-303 and 3-10-115, MCA; *State v. Luke*, 2014 MT 22, ¶ 9, 373 Mont. 398, 321 P.3d 70; *Stanley v. Lemire*, 2006 MT 304, ¶ 25, 334 Mont. 489, 148 P.3d 643. On appeal to this Court, we review the case as if the appeal had been originally filed in this Court, independent from the District Court's decision. *State v. Maile*, 2017 MT 154, ¶ 7, 388 Mont. 33, 396 P.3d 1270; *Stanley*, ¶ 26. We review a justice court's conclusions of law for correctness. *State v. Darrah*, 2009 MT 96, ¶ 8, 350 Mont. 70, 205 P.3d 792.

DISCUSSION

¶5 *Did the Justice Court err by conducting a bench trial without a written waiver of defendant's right to a jury trial?*

¶6 Cole admits he did not object to a bench trial or at any time request a jury trial and as such did not preserve the issue for appeal. He instead asserts that a defendant's statutory

and constitutional challenge to the validity of waivers of the right to a jury trial satisfy the requirements of plain error review. Generally, this Court does not address issues not preserved for appeal. Plain error review is an exception to this general rule. The purpose of plain error review is to correct error not objected to at trial but that affects the fairness and integrity of the proceedings. *State v. Akers*, 2017 MT 311, ¶ 10, 389 Mont. 531, 408 P.3d 142. To reverse a decision for plain error, a defendant must: (1) demonstrate the error implicated a fundamental right, and (2) firmly establish that a failure to review the error would result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of a trial or proceedings, or compromise the integrity of the judicial process. *Akers*, ¶ 10. “[W]e employ the plain error doctrine sparingly, on a case-by-case-basis, considering the ‘totality of circumstances of each case.’” *State v. George*, 2020 MT 56, ¶ 5, 399 Mont. 173, 459 P.3d 854 (quoting *Akers*, ¶ 13).

¶7 The State asserts Cole has failed to meet his burden to support plain error review as the totality of the circumstances show Cole validly waived his right to a jury trial. We agree.

¶8 Article II, Section 26, of the Montana Constitution provides, in pertinent part:

The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such a manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law.

Cole acknowledges that while Article II, Section 26, of the Montana Constitution authorizes the legislature to set procedural requirements for waiver, it cannot and does not undermine the substantive requirement under the Sixth Amendment of the United States

Constitution and Article II, Section 24, of the Montana Constitution that any such waiver be knowing, intelligent, and voluntary. We agree, but this does not mean that written waiver of the right to a jury trial is required in misdemeanor cases.

¶9 Montana law has separate provisions for the waiver of jury trial for felony and misdemeanor offenses. Pursuant to § 46-16-110(3), MCA, a defendant’s waiver of the right to a jury trial in felony cases must be in writing—“Upon written consent of the parties, a trial by jury may be waived.” Whereas in misdemeanor cases, pursuant to § 46-17-201(2), MCA, written waiver is not required—“Upon consent of the parties, a trial by jury may be waived.” When interpreting a statute, we begin with its plain language. *In re U.A.C.*, 2022 MT 230, ¶ 13, 410 Mont. 493, 520 P.3d 295. “The plain meaning of a statute controls when the legislative intent can be determined from the plain meaning of the words used in the statute.” *In re U.A.C.*, ¶ 13. Further, where the legislature includes particular language in one section of the criminal code—as it did in § 46-16-110, MCA, requiring *written* waiver in felony cases—but excludes it in another—as it did in § 46-17-201, MCA, when it did not mention any requirement for written waiver in misdemeanor cases—we will generally presume the legislature acted intentionally and purposely to do so. *Cross v. VanDyke*, 2014 MT 193, ¶ 19, 375 Mont. 535, 332 P.3d 215; § 1-2-102, MCA. *See also Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 300 (1983); *accord United States v. Naftalin*, 441 U.S. 768, 773, 99 S. Ct. 2077, 2082 (1979) (“The short answer is that Congress did not write the statute that way.”). From the plain language of each statute, it is clear that written waiver of one’s right to a jury trial is required in felony cases and is not required in misdemeanor cases. Despite this, under both

statutory provisions it is implicit that waiver of the right to a jury trial—either in writing for felony offenses or otherwise for misdemeanor offenses—must still meet the constitutional requirement that the waiver be knowing, voluntary, and intelligent. *State v. Reim*, 2014 MT 108, ¶ 31, 374 Mont. 487, 323 P.3d 880; *State v. Bird*, 2002 MT 2, ¶¶ 35-36, 308 Mont. 75, 48 P.3d 266. Thus, the touchstone determination in a misdemeanor case is whether the totality of the circumstances demonstrate a knowing, voluntary, and intelligent waiver by the defendant of his right to a jury trial.

¶10 The State asserts Cole cannot meet his burden to prove plain error review is warranted because both parties consented to waive jury trial and Cole’s waiver was knowing, voluntary, and intelligent. We agree. At Cole’s initial appearance the Justice Court explained to Cole his right to a trial either by jury or by judge. Cole confirmed he understood his rights. He pled not guilty and was appointed counsel to represent him. Cole appeared in-person at all pretrial proceedings and at trial with his legal counsel. The Justice Court continued the omnibus hearing specifically to give Cole opportunity to discuss with his counsel whether he wanted to proceed with a jury trial or a judge trial. Upon reconvening the omnibus hearing at a later date, Cole’s counsel advised the Justice Court that Cole wanted to proceed with a judge trial. The State agreed. Cole was present, heard his counsel make this representation, and did not object or otherwise indicate in any manner he wanted a jury trial rather than a judge trial. Cole appeared the day before trial with counsel and again confirmed to the court he intended to proceed to a judge trial the next day. The next day, Cole appeared with counsel and proceeded to a judge trial and testified in his own defense. It was clear at trial there was no jury and his guilt would be exclusively

determined by the Justice Court Judge. At no time during trial did Cole object to proceeding with a judge trial or otherwise assert he wanted a jury trial. These undisputed facts support that Cole discussed with his legal counsel whether it was best to proceed to a judge or jury trial, chose to proceed with a judge trial, fully participated in the judge trial, and only after being convicted did he attempt to get a second bite at the apple by belatedly asserting on appeal that a written waiver signed by him was required to waive his right to a jury trial. We are further unpersuaded by Cole's argument that at the reconvening of the omnibus hearing he was distracted in discussion with counsel regarding child custody issues so that his request to proceed with a judge trial was unreliable in some fashion. While he may have had some additional discussion with his counsel about child issues which counsel related to the court, there is no evidence suggesting Cole did not understand his right to a jury trial; that he did not have sufficient opportunity to discuss his option to elect either a jury trial or a judge trial; or that he did not knowingly, voluntarily, and intelligently confirm his election of a judge trial and then proceed with his full participation in his judge trial. The totality of the circumstances demonstrate Cole knowingly, voluntarily, and intelligently waived his constitutional right to a jury trial and the record is completely void of anything which would indicate a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of a trial or proceedings, or compromise the integrity of the judicial process. Reversal pursuant the plain error doctrine is therefore unwarranted under the facts of this case. *Akers*, ¶ 10.

CONCLUSION

¶11 The Justice Court did not err by conducting a misdemeanor bench trial without a written waiver of defendant's right to a jury trial.

¶12 Affirmed.

/S/ INGRID GUSTAFSON

We Concur:

/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ JIM RICE