

DA 18-0108

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 227N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

WILLIAM M. RUSSELL,

Defendant and Appellant.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DC 17-520(JA)
Honorable Robert B. Allison, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

William M. Russell, Self-Represented, Columbia Falls, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, C. Mark Fowler, Assistant
Attorney General, Helena, Montana

Ed Corrigan, Flathead County Attorney, Renn C. Fairchild, Deputy County
Attorney, Kalispell, Montana

Submitted on Briefs: August 22, 2018

Decided: September 11, 2018

Filed:



Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 William M. Russell (Russell) appeals his criminal trespass and criminal mischief convictions following jury trial in the Justice Court of Flathead County, and the subsequent appeal he took to the District Court. We affirm.

¶3 “We review cases that originate in justice court[s of record] and are appealed to district court as if the appeal originally had been filed in this Court. Accordingly, we undertake an independent examination of the record apart from the district court's decision.” *State v. Lamarr*, 2014 MT 222, ¶ 9, 376 Mont. 232, 332 P.3d 258 (internal citations omitted). We review lower court findings of fact for whether they are clearly erroneous and conclusions of law for correctness. *State v. Davis*, 2016 MT 206, ¶¶ 5-6, 384 Mont. 388, 378 P.3d 1192.

¶4 We have reviewed the lower court proceedings and find no reversible error. Russell was charged with misdemeanor criminal trespass on and criminal mischief to property purchased in good faith and possessed by the Belk's. Russell's list of appeal issues revolve around his claim that he had a legal entitlement to enter the Belk's property. Russell contends he had an ownership interest in the property and that it was inappropriately sold by his ex-wife in violation of a restraining order previously issued in his Arizona divorce

proceedings. Even if the property was sold in violation of another court's order, Russell had no right to be on the property. Russell clearly knew the property was sold at a sheriff's sale. Russell's remedy for an alleged wrongful sale of the property, if any, was against the seller (his ex-wife) for damages, not re-possession of the property by him from the good faith purchasers. Russell had no possessory interest or privilege in the property and had no authorization from the Belks to enter. Nothing in Russell's briefs show any authority obligating the Justice Court to clear title to the property. Further, even assuming Russell to have putative title of the property, putative title held by one with no privilege to enter the property does not permit the invasion of the possessory and custodial rights of good faith purchasers of the property. Russell has presented no cogent argument that the Justice or District Courts were legally obligated in any way to clarify his purported title claim in the criminal proceeding. Equally irrelevant are Russell's other assertions about his property rights. Russell has failed to show any basis to assert prosecutorial misconduct in charging the offenses it did or how he was prejudiced by any evidentiary rulings. It is not appropriate for an appellant to merely list his beliefs as to purported errors and then leave it for this Court to try to figure out how those purported errors prejudiced the appellant. Review of the record shows no abuse of discretion by the prosecution or by the trial court in evidentiary rulings or conduct of the trial.

¶5 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶6 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH

/S/ JAMES JEREMIAH SHEA

/S/ DIRK M. SANDEFUR

/S/ JIM RICE