FILED

04/16/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 17-0228

DA 17-0228

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 90N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SARA LOUISE SNYDER,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DC 15-35-IN
Honorable Karen Townsend, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Colin M. Stephens, Smith & Stephens, P.C., Missoula, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Mardell Ployhar, Assistant Attorney General, Helena, Montana

Kirsten H. Pabst, Missoula County Attorney, Karla Painter, Deputy County Attorney, Missoula, Montana

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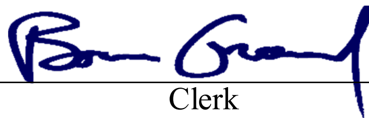
Submitted on Briefs: January 23, 2019

Decided: April 16, 2019

Filed:



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Clerk

Justice Dirk Sandefur 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 Defendant Sara Louise Snyder appeals from her judgment of conviction on two counts of elder exploitation in the Montana Fourth Judicial District Court, Missoula County. We affirm.

¶3 Prior to her death in 2002, Jaynet Brown (Jaynet) owned and operated the Busy Elves Bridal Shop (Busy Elves) in Missoula. Jaynet was married to Horace "Bud" Brown (Brown) who was the elected Missoula County Surveyor. Brown met Sara Snyder (Snyder) when she was working at Busy Elves from 1997 to 2000. After Jaynet passed, Brown endeavored to operate the bridal shop, eventually re-hiring Snyder to assist him.

¶4 Over time, Brown and Snyder developed a close relationship. Snyder viewed Brown as a "lonely" man whom she regarded as a father-figure. Brown, who had no children and no family in Montana, similarly considered and held Snyder out to the public as his adopted daughter. He had a similarly close relationship with Snyder's daughter and referred to her as his granddaughter.

¶5 In 2011, Brown began experiencing memory problems. In November, accompanied by Snyder, Brown saw a doctor who evaluated him for onset of dementia. A CT brain scan revealed microvascular changes but he was able to pass a diagnostic memory test. Brown

nonetheless experienced difficulty driving as of December 2011. Following a traffic accident in regard to which law enforcement cited him for a moving violation citation, Brown again saw a doctor with Snyder in May 2012 and, for the first time, failed a dementia screening test. A consulting neurologist subsequently diagnosed him with progressive dementia.

¶6 Snyder drove Brown to medical appointments in August 2012 and twice in 2013. In coordination with his physician, Snyder became actively involved in monitoring Brown's medication and blood sugar levels and generally assisting in his overall care. However, in a letter to Adult Protective Services (APS) dated December 10, 2013, Brown's physician reported that Brown's "needs were not being met in the current system . . . [and] somebody should be helping him."

¶7 Brown owned a home on property that also included two rental units. Prior to 2012, Brown had never missed a mortgage payment on his property. However, the bank stopped receiving payments on Brown's mortgage in late 2012 and, following several unanswered calls and demand letters, initiated non-judicial foreclosure which terminated with a trustee's sale of his property in November 2013.

¶8 Upon serving a subsequent notice to vacate at his home, a bank employee found Brown surprised and mystified as to what had happened. As Brown accompanied the bank employee through his home, they encountered a locked room Brown described as "her" room—"she keeps that locked[,] I don't go in there." The bank employee testified at trial that Brown told her it was his granddaughter's room. As she proceeded through the home, the bank employee did not see any of the demand letters or foreclosure notices sent to

Brown. One of Brown's tenants subsequently told the bank employee that Snyder had removed all of Brown's vehicles from the premises, leaving only "an old car" containing a bag of Brown's mail on the street.

¶9 Around the time of the 2013 foreclosure, APS initiated an elder exploitation investigation based on an APS report from one of Brown's tenants. At Brown's home, the investigator found him to be highly confused and bewildered by the foreclosure. In response to questioning, Brown stated that he had previously granted a power of attorney to Snyder but that he no longer wanted it to continue. As before, Brown stated that the locked room in his home belonged to Snyder. Upon gaining access after Brown was unable to open the door with his keys, the investigator saw artwork, Christmas gifts, and various documents belonging to Brown in the locked room including, *inter alia*, a motor vehicle title transfer document. Upon subsequent examination of Brown's bank records, the investigator discovered that Brown received over $4,400 a month in retirement and social security income but that his account had been depleted by a large number of withdrawals from ATMs in or near casinos. The bank records evidenced no deposits of the substantial monthly rental income Brown received from tenants.

¶10 Subsequent investigation revealed that Brown had recently told his sister from Florida to contact him only through Snyder and that his telephone number had been changed several times without explanation. Two of Brown's tenants subsequently testified that Snyder had directed them to pay their rent to her and that they had both paid their respective rent in cash on occasion to Snyder and on occasion to Brown. One of the tenants testified further that, upon experiencing difficulty paying her rent, she entered into an

informal agreement with Brown to help care for him in lieu of rent but, when later unable to do so, received a written 72-hour eviction notice signed by Snyder. Law enforcement analysis of Brown's bank records and nearby casino records indicated a significant increase in large ATM withdrawals starting in 2012. From late 2012 through November 2013 when his sister gained control of his finances as his court-appointed guardian and conservator, Brown's bank records reflected ATM withdrawals in excess of $46,000 primarily from casino ATMs.

¶11 Brown's bank records similarly indicated a number of other irregular financial activity including, *inter alia*, online and store purchases from merchants, such as Hollister and Aeropostale, not typically patronized by elderly men. Motor vehicle title records indicated that Brown recently owned a Ford Explorer SUV, Ford Mustang, two travel trailers, and a boat and trailer that were no longer present on his property. Title records further indicated that title to the Ford Explorer had transferred to Snyder in December 2013 and that the Mustang was subsequently registered in the name of Snyder's friend. Law enforcement later found the Ford Explorer and the two travel trailers on Snyder's property. After Snyder disclosed that Brown's boat and trailer were at her parents' home, her boyfriend retrieved them and turned them in to law enforcement. The total estimated value of the titled vehicles and trailers removed from Brown's property was $21,800.

¶12 While she denied that she stole Brown's vehicles, boat, and trailers and instead provided alternative explanations, Snyder admitted that she was responsible for every withdrawal from Brown's bank account from a casino ATM, that she had a gambling problem, and that Brown authorized her to use his debit card only for the limited purpose

of paying for his prescription medication. Snyder further admitted awareness of the bank and foreclosure notices sent to Brown's home but had no explanation for why they were not present in his home or why he was not otherwise aware of them.

¶13 The State ultimately charged Snyder with committing two counts of elder exploitation, a felony in violation of §§ 52-3-825(3)(a) and -803(3)(b), MCA (2011-13). Under Count I, the State alleged that, between August 25, 2012, and December 4, 2013, Snyder purposely or knowingly exploited Brown with the intent or result of depriving him of approximately $49,000. Under Count II, the State alleged that Snyder purposely or knowingly exploited Brown with the intent or result of depriving him of his accrued retirement and social security income, rental income, titled vehicles and trailers, and certain monies in addition to those at issue under Count I. Following trial, the jury returned guilty verdicts on both counts. The District Court ultimately sentenced Snyder to two consecutive ten-year terms of commitment to the Montana Department of Corrections. The Court suspended the first five years of the first sentence and the entirety of the second. The Court further imposed $78,506.45 in restitution. Snyder timely appeals.

¶14 Whether as definitional non-hearsay or as exceptions under M. R. Evid. 803(3), Snyder first asserts that the District Court erroneously admitted various hearsay statements made by Brown to the bank employee and APS investigator upon their separate visits to his home.[1] Though she generally objects to the "great deal of hearsay testimony . . .

[1] Snyder further asserts that the APS investigator's testimony as to Brown's identification of his family, doctor, where he banked, and that he had previously granted his power of attorney to Snyder but did not want it to continue were also inadmissible hearsay but "irrelevant."

introduced" and that the APS investigator's testimony was "riddled with hearsay," the only specific items of alleged hearsay addressed by Snyder on appeal are Brown's purported statements to the:

(1) APS investigator that he was not paying his own bills—Snyder was;[2]

(2) APS investigator that the locked room in his home was Snyder's room;

(3) APS investigator that Brown previously granted Snyder his power of attorney but did not want it to continue;

(4) bank employee that he was surprised and unaware of the occurrence and reason for the bank foreclosure on his property because "he didn't get anything in the mail from [the bank]"; and

(5) bank employee that the locked room in his home was "her room," she keeps it locked, he never went in there, and that the room was his granddaughter's room.

The District Court overruled Snyder's initial and continuing hearsay objections based on the State's assertion that it was not offering Brown's out-of-court statements as proof of the truth of the matters asserted but, rather, to prove his confused mental state, i.e., to show that he was readily susceptible to, and ultimately the victim of, "exploitation" as defined by § 52-3-803(3)(b), MCA.

¶15 As a threshold matter, the record is ambiguous as to whether, or to what extent, the District Court admitted the disputed testimony as definitional non-hearsay, *see* M. R. Evid. 801-02 (definition and prohibition of hearsay), or as definitional hearsay admitted by

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[2] In her recitation and analysis of these assertions of error, Snyder further makes passing reference, with cursory assertion, to similar testimony of the lead Missoula police detective regarding her observations of Brown's state of confusion based on his subsequent statements to the detective. Due to lack of specificity and supporting analysis, we will not separately address those passing and cursory references as separate assertions of error.

exception under M. R. Evid. 803(3) (then-existing mental state). However, the State's definitional non-hearsay argument is dubiously unconvincing because the probative value of the disputed statements for the asserted non-hearsay purpose necessarily depends on the truth of the matters asserted in the statements. The State's argument under M. R. Evid. 803(3) is similarly problematic because, as pertinent here, the Rule permits admission of otherwise inadmissible hearsay only to prove a "declarant's *then-existing* state of mind" at the time of the relevant occurrence or circumstance—not to prove his or her state of mind at an earlier time. M. R. Evid. 803(3) (emphasis added).

¶16 However, we need not engage in the hairsplitting necessary to fully resolve these issues because the disputed statements were at most cumulative to far more compelling evidence of Snyder's guilt. Asserted evidentiary errors, whether in isolation or cumulatively, are generally non-structural trial errors that are not presumptively prejudicial. *State v. Van Kirk*, 2001 MT 184, ¶¶ 37-40, 306 Mont. 215, 32 P.3d 735 (distinguishing between structural and non-structural error for purposes of harmless error review under § 46-20-701(1), MCA). Non-structural trial error is amenable to comparative "qualitative assessment" of the "prejudicial impact" of the tainted evidence relative to the other trial evidence. *Van Kirk*, ¶ 40. Because trial error is harmless only if there is no reasonable probability that the erroneously admitted evidence contributed to the conviction, evidentiary error is generally harmless only if other untainted evidence compellingly proved the same fact as the tainted evidence. *Van Kirk*, ¶ 47.

¶17 Here, independent of the disputed hearsay evidence, there was compelling evidence that Snyder was aware that Brown suffered from progressive dementia impairing his ability

to comprehend and manage his own affairs. In regard to Count I, Snyder unequivocally admitted that she had a gambling problem, that she was responsible for casino ATM withdrawals from Brown's bank account in excess of $40,000, and that Brown authorized her to use his debit card only for the limited purpose of paying for his prescription medication. Brown's bank records further reflected other irregular ATM withdrawals and purchasing activity not typical of elderly men. In regard to Count II, there was similarly untainted evidence that Snyder removed titled vehicles and trailers from Brown's property, of the occurrence of highly suspect vehicle title and registration transfers from Brown to Snyder and one of her friends, and that law enforcement subsequently located his travel trailers on Snyder's property and recovered his boat and trailer from her parents' property. We hold that the admission of the disputed hearsay testimony was at most harmless error.

¶18 Snyder further asserts that the District Court abused its discretion in contravention of M. R. Evid. 1006 by allowing the State to present the summary testimony and a summary exhibit through lead Missoula police detective (Detective Lear) regarding her review of Brown's financial records and the withdrawal and spending trends manifested therein. Snyder asserts that the admission of the summary testimony and exhibit contravened M. R. Evid. 1006 because the State did not present the testimony and summary through a qualified expert who was not a primary investigating officer and who did not provide other lay testimony in support of the State's case.

¶19 As a threshold matter, regardless of a general objection on an ancillary matter, Snyder made no similar contemporaneous objection in District Court. We generally "will not address issues raised for the first time on appeal." *State v. Hatfield*, 2018 MT 229,

¶ 52, 392 Mont. 509, 426 P.3d 569 (citing *State v. Taylor*, 2010 MT 94, ¶ 12, 356 Mont. 167, 231 P.3d 79). We will typically exercise plain error review of unpreserved issues only when necessary to avoid "a manifest miscarriage of justice" that would result from failure to review a question that implicates "the fundamental fairness" of lower court proceedings "or may compromise the integrity of the judicial process." *Taylor*, ¶ 12 (citing *State v. Jackson*, 2009 MT 427, ¶ 42, 354 Mont. 63, 221 P.3d 1213).

¶20 Here, Snyder tacitly acknowledges that the financial information summarized constituted the "contents of voluminous" records not subject to convenient examination in court as referenced in M. R. Evid. 1006. Snyder further acknowledges that the State timely disclosed and made the underlying financial records "available" to the defense prior to trial as required by M. R. Evid. 1006. Aside from foundational reference to the detective's training and experience and the cursory assertion that the detective testified as an expert "for all intents and purposes," Snyder has not demonstrated, and the record does not reflect, that the detective's testimony exceeded the bounds of permissible lay opinion testimony under M. R. Evid. 701.

¶21 Finally, despite reference to various dangers and precautions regarding summary evidence discussed in *United States v. Lemire*, 720 F.2d 1327 (D.C. Cir. 1983), Snyder has asserted no textual basis in M. R. Evid. 1006 or other authority supporting the blanket proposition that the State may never present Rule 1006 summary evidence through a primary investigating law enforcement officer who may also provide other non-expert fact testimony in support of a prosecution. We hold that Snyder waived her assertion of error

regarding the summary testimony and exhibit presented through Detective Lear and has further failed to adequately show that the issue is suitable for plain error review.

¶22 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶23 We affirm.

/S/ DIRK M. SANDEFUR

We concur:

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ JIM RICE