

ORIGINAL

FILED

08/20/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 18-0075

DA 18-0075

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 204N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DONNIE STANDLEY,

Defendant and Appellant.

FILED

AUG 20 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Sweet Grass, Cause No. DC-2016-06
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Gregory Hood, Assistant Appellate
Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Tammy K Plubell, Assistant
Attorney General, Helena, Montana

Daniel Guzynski, Mary E. Cochenour, Sweet Grass County Special
Deputy Attorneys, Big Timber, Montana

Submitted on Briefs: July 17, 2019

Decided: August 20, 2019

Filed:


Clerk

Justice Laurie McKinnon 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 Donnie Standley (Standley) appeals his felony incest conviction from the Sixth Judicial District Court, Sweet Grass County. We affirm.

¶3 The State charged Standley with incest on April 6, 2016, stemming from an incident that took place the night of his daughter's (K.V.) eleventh birthday on September 22, 2009. When the incident occurred, K.V. and Standley shared a bed and a bedroom in Standley's parents' home in Reed Point, Montana. K.V. testified at trial that she awoke the night of her party when she felt her pants being pulled down. After she saw Standley's silhouette, he initiated sexual contact with her until she hit at him and told him to get away from her. Standley was newly divorced from his wife (K.V.'s step-mother) when the incident occurred. His ex-wife had attended K.V.'s party and spent the night at Standley's parents' house to avoid driving back to her residence in Billings. Standley testified that, prior to him laying down on the bed he shared with K.V., he had asked his ex-wife to come and sleep with him instead of sleeping on the couch. He stated that he had fallen asleep with K.V. on the bed next to him while waiting for his ex-wife to come into the bedroom. Standley maintained that while he was aware

that the sexual contact had occurred, he was not aware that the recipient of his contact was K.V. until he fully awoke, at which point he immediately stopped the contact. Standley testified that he believed his ex-wife was the recipient of his sexual advances.

¶4 The District Court delivered 28 jury instructions at Standley's trial in May of 2017. Standley's counsel objected to two jury instructions, neither of which is relevant to this appeal. The jury convicted Standley of incest following a three-day trial, and Standley was subsequently sentenced to 100 years in prison with 75 years suspended. Standley contests his conviction on appeal, arguing that the District Court did not properly instruct the jury and that his trial counsel was ineffective. We find the jury was fully and fairly instructed and counsel was not ineffective. Accordingly, we affirm.

¶5 Standley argues two issues on appeal which we address in turn. First, Standley argues that the District Court committed plain error by failing to instruct the jury on the requisite mental state for each element of the charged offense. "Plain error review is discretionary, and we apply it on a case-by-case basis." *State v. Favel*, 2015 MT 336, ¶ 13, 381 Mont. 472, 362 P.3d 1126. "Before this Court will find plain error, the appealing party must: (1) show that the claimed error implicates a fundamental right and (2) firmly convince this Court that failure to review the claimed error would result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the trial or proceedings, or compromise the integrity of the judicial process." *Favel*, ¶ 23 (internal quotations and citations omitted).

¶6 A district court has broad discretion in instructing a jury. Jury instructions are sufficient as long as they fully and fairly instruct the jury as to the charged crimes. The District Court in the instant case delivered jury instructions in accord with Montana’s Criminal Jury Instruction Guidelines. *See* MCJI 5-127, -127(a). Standley has not proven that the District Court’s jury instructions constitute plain error. The District Court fully and fairly instructed the jury, and thus the claimed error has not implicated a fundamental right nor is the Court convinced that failure to review the claimed error would result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the trial or proceedings, or compromise the integrity of the judicial process. Therefore, we will not invoke plain error review.

¶7 The second issue on appeal is whether Standley’s counsel was ineffective in failing to object to the District Court’s jury instruction and failing to submit the proper mental state instruction. Ineffective assistance of counsel (IAC) claims present mixed issues of law and fact that we review de novo. *State v. Clary*, 2012 MT 26, ¶ 12, 364 Mont. 53, 270 P.3d 88. “Generally, to establish ineffectiveness, a defendant must show that (1) counsel’s representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *City of Libby v. Hubbard*, 2018 MT 2, ¶ 14, 390 Mont. 108, 408 P.3d 532 (citing *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2065, 2068, 80 L. Ed. 2d 674 (1984)). A District Court has broad discretion when delivering jury instructions. *See State v.*

Santiago, 2018 MT 13, ¶ 7, 390 Mont. 154, 415 P.3d 972. Jury instructions, as a whole, in a criminal case are intended to fully and fairly instruct the jury on the law applicable to that instant case. *See Santiago*, ¶ 7.

¶8 Standley was charged with the crime of incest pursuant to § 45-5-507(1), MCA, which states:

A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

¶9 The record reflects that the District Court delivered 28 jury instructions. Jury Instruction 26 explicitly provided the jury the separate elements of the crime that must be proven beyond a reasonable doubt in order to convict Standley of the charged offense:

To convict the Defendant of incest, the State must prove the following elements:

1. That the Defendant had sexual contact with K.V.;

AND

2. That K.V. was the Defendant's descendent;

AND

3. That the Defendant acted knowingly.

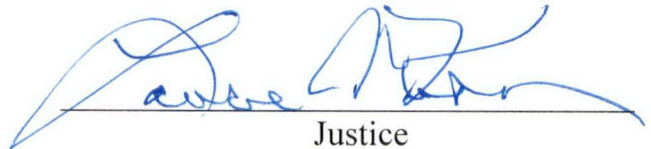
If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

¶10 Jury Instructions 19, 20, 21, 22, and 25 explicitly defined each element of the applicable law required for the jury to find Standley guilty of incest. Instruction 22 specifically instructed the jury on how to interpret state of mind instructions, including

knowingly and purposely, in order to infer the defendant's state of mind based on the evidence presented. Based on our review of the record, we find that the jury was fully and fairly instructed on the elements of the law required for a conviction, including state of mind requirements. Therefore, there existed no issue with the jury instructions for Standley's counsel to object to. Because there was no problem with the jury instructions, we find that Standley's counsel did not act ineffectively and accordingly affirm.

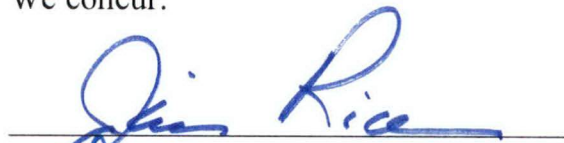
¶11 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

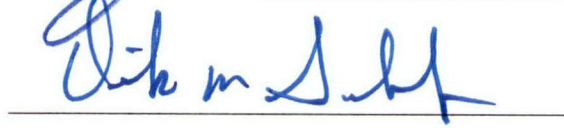
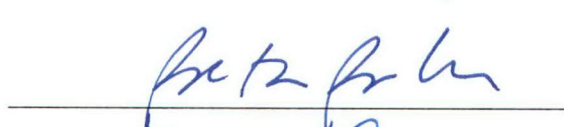
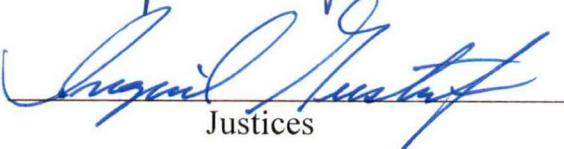
¶12 Affirmed.



Justice

We concur:






Justices