

DA 19-0719

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 147N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

GREGORY M. SMITH,

Defendant and Appellant.

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APPEAL FROM: District Court of the Eighteenth Judicial District,  
In and For the County of Gallatin, Cause No. DC-19-46A  
Honorable Holly Brown, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Suzanne C. Marshall, Suzanne Marshall Law, P.C., Bozeman, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Michael P. Dougherty,  
Assistant Attorney General, Helena, Montana

Ed Hirsch, Prosecutor, Bozeman City Attorney's Office, Bozeman,  
Montana

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Submitted on Briefs: March 3, 2021

Decided: June 8, 2021

Filed:

  
Clerk

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Chief Justice Mike McGrath 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 Gregory Smith appeals from his conviction by a jury of the offense of partner family member assault (PFMA), a misdemeanor, pursuant to § 45-5-206(1)(a), MCA.

¶3 On March 10, 2018, Molly Busby-Schroeder (Schroeder) called 911 and reported that she had been assaulted. She requested help and was heard asking Smith to move his foot so that she could close the bedroom door. Schroeder advised dispatch that there were weapons in the home.

¶4 Upon arrival, officers spoke with Smith and Schroeder separately. Smith appeared agitated but told officers that nothing had happened. Smith stated that he and Schroeder had been dating for approximately seven years and also lived together. After further questioning, Smith admitted that an argument occurred after Schroeder arrived home an hour later than he expected. Smith stated that he cooked dinner and Schroeder would not get off her computer. Then he asked her to leave his house because she was being a "bitch."

¶5 Schroeder told officers that the argument started after she arrived home and would not cook Smith dinner. Smith was close enough to Schroeder that he was spitting on her while yelling and she put her hand up to block it. Smith knocked Schroeder's hand out of

the way and headbutted her. Schroeder went into a bedroom and tried to close the door, but Smith blocked it with his foot. Schroeder was scared for her safety. Smith was arrested for PFMA and transported to Gallatin County Detention Center.

¶6 At trial in City Court, Schroeder testified that she and Smith began dating in 2013 and moved in together in 2015 or 2016. At the time of the incident, Schroeder and Smith were not sharing a bedroom. When Schroeder arrived home later than expected, Smith was angry. Schroeder moved towards her bedroom as the argument escalated, and Smith continued to yell and pushed her towards the front door of the house. Smith was screaming at Schroeder and spit was hitting her face. Schroeder put her arms up to block the spit, and testified, “[He] grabbed my arms and threw them down . . . then he rammed his head into my head and said, ‘no bruises’ and he laughed, turned around, and walked away and I went into the bedroom to grab my phone to call 911.”

¶7 Schroeder testified that she was in pain immediately following the incident and that she felt “scared out of [her] mind.” She testified that she called 911 because she was scared for her life. The State played the 911 recording which was admitted into evidence. The following morning, Schroeder felt pain and soreness in her arms. She also continued to have head pain. Schroeder noticed swelling in her arms a couple of days later and saw bruising. She documented the bruising by taking a photograph that was admitted into evidence.

¶8 Two of the officers who had arrived on the scene after the incident testified at trial. One testified that Schroeder was in tears and appeared to be extremely stressed. The other officer testified that he spoke with Smith and that Smith appeared agitated and angry.

Smith's statement to the officer had been recorded and was admitted into evidence. Smith said on the recording that Schroeder was irrational and "being a bitch."

¶9 Smith testified that he and Schroeder got into an argument but denied that he was physically violent. Smith admitted that he told officers that Schroeder was being irrational and "a complete bitch." He also admitted to getting upset and yelling at Schroeder.

¶10 The jury convicted Smith of PFMA. He appealed to the District Court, which affirmed the conviction.

¶11 Smith argues that the State failed to produce sufficient evidence to support his conviction, that the prosecution committed prosecutorial misconduct, and that the District Court erred by including moving expenses as an element of restitution.

¶12 We review questions on the sufficiency of the evidence in a criminal matter to determine whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Spottedbear*, 2016 MT 243, ¶ 8, 385 Mont. 68, 380 P.3d 810 (citation omitted). "A person commits the offense of partner or family member assault if the person: (a) purposely or knowingly causes bodily injury to a partner or family member. . ." Section 45-5-206(1)(a), MCA. "Partner" includes persons who have been in a dating or intimate relationship. Section 45-5-206(2)(b), MCA. "Bodily injury" means "physical pain, illness, or an impairment of physical condition and includes mental illness or impairment." Section 45-2-101(5), MCA.

¶13 Both parties agree that they had been dating or in an intimate relationship. Based on Schroeder’s testimony, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

¶14 Smith argues that the prosecutor committed prosecutorial misconduct by using the word “victim” at trial when referring to Schroeder because by doing so the prosecutor was offering an opinion on Schroeder’s credibility. Generally, we decline to address issues of prosecutorial misconduct that were not objected to at trial. *State v. Lawrence*, 2016 MT 346, ¶ 6, 386 Mont. 86, 385 P.3d 968. Smith does not meet the burden of showing that his fundamental constitutional rights were violated when the prosecutor referred to Schroeder as a “victim” and referenced “victim blaming” and “violence against women” in closing argument. We decline to review this issue under the plain error doctrine. *State v. Lackman*, 2017 MT 127, ¶ 30, 387 Mont. 459, 395 P.3d 477.

¶15 Finally, Smith argues that the City Court erred by including moving expenses as an element of restitution. Section 46-18-201(5), MCA, provides that the judge “shall, as part of the sentence require payment of full restitution” when the victim of the crime has suffered a pecuniary loss. Schroeder provided the court with evidence of her pecuniary loss related to moving following the assault. That was sufficient information for the City Court judge to impose the restitution payment under § 46-18-201(5), MCA.

¶16 There was sufficient evidence presented at trial to support Smith’s conviction under § 45-5-206(1)(a), MCA. The City Court did not err in ordering restitution for moving expenses.

¶17 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.

¶18 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA  
/S/ LAURIE McKINNON  
/S/ INGRID GUSTAFSON  
/S/ JIM RICE