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Bowen Greenwood
Clerk of Supreme Court
State of Montana

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 21-0075

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 266N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ANTHONY WEIMER,

Defendant and Appellant.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DC-20-207A
Honorable Amy Eddy, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Anthony Craig Weimer, Self-represented, Kalispell, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Tammy K Plubell, Assistant
Attorney General, Helena, Montana

Travis Ahner, Flathead County Attorney, Stacy Boman, Deputy County
Attorney, Kalispell, Montana

Submitted on Briefs: September 15, 2021

Decided: October 12, 2021

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 Anthony Weimer challenges his conviction of Criminal Mischief, a felony, in violation of § 45-6-101(1)(a), MCA, in a bench trial before the Eleventh Judicial District Court, Flathead County. He raises numerous issues on appeal. As the record does not contain a written waiver of Weimer's right to a jury trial, we reverse and remand for a new trial.

¶3 On June 27, 2020, Weimer backed his dually pickup truck onto the lawn of the courthouse in downtown Kalispell. He put a chain around the Ten Commandments Monument (Monument) and pulled the Monument from its base, dragging it across the lawn, sidewalk, and into the middle of the road in front of the Flathead County Justice Center. He stopped, put the chain back in his truck, and drove toward the Kalispell Police Department. Police officers intercepted him outside the police department building and arrested him. Weimer's actions caused over \$7,000 of damage.

¶4 At the status and evidentiary hearing on October 5, 2020, Weimer's counsel informed the court Weimer wanted "to have a judge trial and not a jury trial in this case."

The court rescheduled the trial for a bench trial. A written waiver of the right to a jury trial was never filed with the court.

¶5 The District Court held a bench trial on November 23, 2020. The District Court found Weimer guilty. The court imposed a three-year deferred sentence.

¶6 We review conclusions of law for correctness and findings of fact for clear error. *State v. Dahlin*, 1998 MT 113, ¶ 10, 289 Mont. 182, 961 P.2d 1247. Generally, “this Court will not consider issues raised for the first time on appeal when the appellant had the opportunity to make an objection at the trial level.” *Dahlin*, ¶ 13 (quoting *State v. Weeks*, 270 Mont. 63, 86, 891 P.2d 477, 491 (1995)). We may choose to review unpreserved claims under the common law plain error doctrine on a case-by-case basis, when a criminal defendant’s fundamental rights are implicated and failure to review the claimed error may result in a manifest miscarriage of justice, may leave unsettled the question of the fundamental fairness of the trial or proceedings, or may compromise the integrity of the judicial process. *Dahlin*, ¶ 14.

¶7 Among his numerous arguments, Weimer argues the District Court erred in holding a bench trial because he did not waive his right to a jury trial in writing, as required under § 46-16-110(3), MCA, and *Dahlin*. The State did not address this argument in its response briefing.

¶8 Section 46-16-110(3), MCA, provides: “Upon written consent of the parties, a trial by jury may be waived.” In *Dahlin*, this Court held the district court erred in relying on the oral representation of defense counsel that the defendant had waived his right to a jury

trial and to proceed to convict the defendant in a bench trial. *Dahlin*, ¶¶ 20, 24. We applied plain error review and reversed the defendant’s conviction, explaining “in order for a criminal defendant to waive his right to a jury trial, that waiver must be in writing with the consent of both parties and filed with the district court” under § 46-16-110(3), MCA, and Article II, Section 26, of the Montana Constitution. *Dahlin*, ¶ 23.

¶9 The record does not contain a written waiver of Weimer’s right to a jury trial, an oral confirmation on the record from Weimer personally, or anything else equivalent to a written waiver of the right to a jury trial. As in *Dahlin*, the District Court relied on the oral representation of Weimer’s counsel that Weimer had waived his right to a jury trial and proceeded to convict Weimer in a bench trial. Based on precedent in *Dahlin*, we apply plain error review and reverse Weimer’s conviction. We remand the case for a new trial.

¶10 As we reverse and remand for a new trial, we decline to address Weimer’s additional arguments on appeal as they are rendered moot with the grant of a new trial or can be raised for the first time before the District Court upon remand.

¶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. 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.


¶12 Reversed and remanded for a new trial.



Justice

We concur:



Chief Justice







Justices