

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0326

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ERIC BOUDETTE,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana First Judicial District Court,
Lewis & Clark County, The Honorable Michael McMahon, Presiding

APPEARANCES:

AUSTIN KNUDSEN
Montana Attorney General
BRAD FJELDHEIM
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
brad.fjeldheim@mt.gov

ERIC D. BOUDETTE
P.O. Box 821
Townsend, MT 59644

DEFENDANT AND APPELLANT
PRO SE

KEVIN DOWNS
Lewis & Clark County Attorney
CHARLES LANE
Deputy County Attorney
Courthouse – 228 Broadway
Helena, MT 59601

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF THE ISSUES 1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 2

I. The offense2

II. Procedural history5

 A. Pretrial litigation 5

 1. June 1, 2021 5

 2. June 8, 2021 5

 3. June 18, 2021 6

 4. August 2, 2021 7

 5. August 20, 2021 8

 6. November 16, 2021 8

 7. March 25, 2022 9

 B. The May 31, 2022 jury trial10

 C. Post trial litigation.....16

 1. Motion for a new trial16

 2. Appeal to the district court17

SUMMARY OF THE ARGUMENT20

ARGUMENT.....21

I. Standard of review21

II. Lewis and Clark County was the proper jurisdiction for this offense22

III. Trooper Villa had objective, specific, and articulable facts to support her belief that Boudette was in need of assistance, and, as a result of her legally obtained observations, established sufficient facts to escalate to a DUI investigation23

IV. There was no perjury, no prosecutorial misconduct, and if there was any inaccuracy in the evidence presented, it did not deny Boudette a fair and impartial trial28

 A. Trooper Villa did not commit perjury28

 B. Boudette has failed to show that he was prejudiced by the alleged prosecutorial misconduct30

CONCLUSION32

CERTIFICATE OF COMPLIANCE.....33

TABLE OF AUTHORITIES

Cases

<i>Hendricks v. State</i> , 2006 MT 22, 331 Mont. 47, 128 P.3d 1017	23
<i>Hulse v. Mont. Dep't of Just., Motor Veh. Div.</i> , 1998 MT 108, 289 Mont. 1, 961 P.2d 75	25
<i>People v. Carlson</i> 677 P.2d 310, 316 (Colo. 1984)	25
<i>State v. Clark</i> , 2008 MT 391, 347 Mont. 113, 197 P.3d 977	21
<i>State v. Cybulski</i> , 2009 MT 70, 349 Mont. 429, 204 P.3d 7	19
<i>State v. Davis</i> , 2016 MT 206, 384 Mont. 388, 378 P.3d 1192	21
<i>State v. Dobrowski</i> , 2016 MT 261, 385 Mont. 179, 382 P.3d 490	22, 30
<i>State v. Fenton</i> , 1998 MT 99, 288 Mont. 415, 958 P.2d 58	21
<i>State v. Hayden</i> , 2008 MT 274, 345 Mont. 252, 190 P.3d 1091	28
<i>State v. Labbe</i> , 2012 MT 76, 364 Mont. 415, 276 P.3d 848	30
<i>State v. Lovegren</i> , 2002 MT 153, 310 Mont. 358, 51 P.3d 471	<i>passim</i>
<i>State v. Makarchuk</i> , 2009 MT 82, 349 Mont. 507, 204 P.3d 1213	28
<i>State v. McDonald</i> , 2013 MT 97, 369 Mont. 483, 299 P.3d 799	28

<i>State v. Mizenko</i> , 2006 MT 11, 330 Mont. 299, 127 P.3d 458	21
<i>State v. Nelson</i> , 2004 MT 13, 319 Mont. 250, 84 P.3d 25	26, 27
<i>State v. Parrish</i> , 2010 MT 212, 357 Mont. 477, 241 P.3d 1041	21
<i>State v. Reiner</i> , 2003 MT 243, 317 Mont. 304, 77 P.3d 210	18
<i>State v. Schulke</i> , 2005 MT 77, 326 Mont. 390, 109 P.3d 744	17
<i>State v. Spaulding</i> , 2011 MT 204, 361 Mont. 445, 259 P.3d 793	26
<i>Woehler v. Messer</i> 2017 MT 153, 388 Mont. 447, 400 P.3d 228	19

Other Authorities

Montana Code Annotated

§ 3-5-303	21
§ 3-10-115	21
§ 46-3-110	22
§ 46-3-114(1)	22
§ 46-13-401(2)	8
§ 46-16-702	16
§ 61-8-401(1)(a)	1
§ 61-8-405(2)	1
§ 61-8-1002(1)(a)	1
§ 61-8-1019(2)	31

STATEMENT OF THE ISSUES

1. Did the justice court correctly deny the Appellant's motion to dismiss for lack of jurisdiction because the evidence showed the charged offense was committed in Lewis and Clark County?
2. Did the justice court correctly deny the Appellant's motion to suppress based on the community caretaker doctrine because the trooper responded to an accident report and found the Appellant, who showed obvious signs of impairment, alone in a vehicle stuck in a snowy ditch in a rural area at 2 a.m. in below-zero temperatures?
3. Did the justice court correctly deny the Appellant's motion for a new trial because he failed to provide any support for his prosecutorial misconduct claim that the prosecutor suborned perjury from the arresting trooper?

STATEMENT OF THE CASE

On February 14, 2021, the State cited Eric Boudette (Boudette) with one count of DUI in violation of Mont. Code Ann. § 61-8-401(1)(a) (first offense).¹ (Justice Court Record (J.C.) at 5 (Citation, dated 2/14/21).) Boudette, who has appeared *pro se* throughout the proceedings, filed ten pretrial motions, many of which challenged the authority of the justice court. In multiple motions, Boudette

¹ This statute has since been recodified as Mont. Code Ann. § 61-8-1002(1)(a).

challenged the jurisdiction of the justice court. In a motion to suppress, he argued that he was illegally searched and seized by the arresting trooper. The justice court denied these motions.

On May 31, 2022, a jury convicted Boudette of DUI, first offense. (5/31/22 Rec. at 2:13:20-22.) On June 29, 2022, Boudette filed a motion for new trial and alleged the prosecutor committed misconduct by suborning perjury from a witness. (J.C. at 177.) The justice court denied the motion. (7/27/22 Rec. at 2:06:33-37.)

Boudette appealed to the district court. (D.C. Doc. 5.) The district court rejected Boudette's arguments and affirmed his conviction. (D.C. Doc. 9.)

STATEMENT OF THE FACTS

I. The offense

On February 14, 2021, at approximately 1:16 a.m., two women were traveling southbound on Canyon Ferry Road when they observed a white car in the ditch. (J.C. at 38.)² They were concerned for the male occupant's welfare, as the temperature was approximately negative 20 degrees at the time. (*Id.*) They called

² This is page four of seven of Trooper Villa's report, made part of the record as Attachment 2 to Boudette's June 1, 2021 motion to dismiss for lack of "territorial jurisdiction."

911, informed the dispatcher that the male driver was “impaired,” and asked that law enforcement “hurry” as he was acting “odd.” (*Id.*)³

Trooper Villa arrived on scene at about 2:04 a.m. and spoke with the two women before approaching the vehicle in the ditch. (J.C. at 38.) They told Trooper Villa that the male in the car had turned off his engine and refused to get into their vehicle to warm up. (*Id.*)

Trooper Villa approached the vehicle and, upon opening the door, could smell the odor of alcohol coming from Boudette and could see a red Solo “go” cup in his center console. (J.C. at 38.) Boudette’s pants were undone, his clothes were disheveled, and his eyes were very watery and bloodshot. (*Id.*) Trooper Villa also noted Boudette’s speech was “extremely slurred and confused.” (*Id.*)

Boudette continuously stated he was fine and told Trooper Villa to leave him alone. (J.C. at 38.) She explained that due to the extreme weather, she could not just leave him in a vehicle with no heat. (*Id.*) Boudette refused to identify himself and refused to get out of his vehicle. (*Id.*)

Trooper Lucas Herl arrived on scene and assisted in coaxing Boudette out of his vehicle to get some warmth inside a squad car. (J.C. at 38.) When Boudette got out of his car, he was visibly swaying. (*Id.*) Eventually, the troopers were able to

³ Attachment 2 to Boudette’s motion for a new trial is a six-page transcript of the 911 call. (J.C. at 186-92.)

convince Boudette to get into Trooper Villa's squad car while they examined his vehicle. (*Id.*)

Due to the weather and Boudette's lack of cooperation, Trooper Villa did not perform any field sobriety tests at the scene. (5/31/22 Rec. at 11:01:08-27; Tr. at 22.)⁴ Trooper Villa transported Boudette to the Lewis and Clark County Jail. (*Id.*)

At the jail, Trooper Villa read the implied consent advisory to Boudette and asked him to provide a blood sample. (5/31/22 Rec. at 11:01:45-52; Tr. at 23.)

Boudette only responded by asking to speak to a lawyer, and Trooper Villa reiterated that *Miranda* rights do not apply to an implied consent advisory. (*Id.* at 11:01:53-11:02:02; Tr. at 23.) Because he would not respond as to whether he would take a test requested by her, Trooper Villa determined that Boudette refused the test. (*Id.* at 11:02:03-08; Tr. at 23.)

Boudette did state that he wanted an independent blood test. (5/31/22 Rec. at 11:20:23-29; Tr. at 35.) Trooper Villa asked the jail staff to expedite his release, which they indicated they would do. (*Id.* 11:20:01-55; Tr. at 35-36.) Trooper Villa then left the jail at about 3:50 a.m. (*Id.* at 11:10:05-07; Tr. at 28.). To her knowledge, there were no impediments to Boudette obtaining his own independent blood sample when she left the jail. (*Id.* at 11:10:12-21; Tr. at 28.) There is no

⁴ All transcripts in the justice court record were created by Boudette. For convenience, the State will use dual citations to the trial recording and the transcript and will note any discrepancies.

evidence in the record as to what occurred after Trooper Villa left the jail or why Boudette did not obtain an independent test.⁵

II. Procedural history

A. Pretrial litigation

The State charged Boudette with one count of DUI, first offense, on February 14, 2021. (J.C. at 5.) Boudette filed the first of his ten pretrial motions on June 1, 2021.

1. June 1, 2021

Boudette filed a motion titled “CAVEAT,” which claimed that where he was arrested was located in Broadwater County, and therefore Lewis and Clark County did not have jurisdiction over his case. (J.C. at 13-14.) This motion was first denied on the record at a June 8, 2021 hearing. (CD labeled “Hearing on Motion” [6/8/21 Rec.] at 1:47:30-1:52:21.)

2. June 8, 2021

On June 8, 2021, a hearing was held on Boudette’s motion. (6/8/21 Rec.) Boudette’s portion of the hearing begins at 1:45:58. (*Id.*)

⁵ On about June 14, 2022, Boudette obtained a document from the Lewis and Clark County Jail that he alleges shows he was released from jail at 4:27 p.m., on February 14, 2021. (D.C. Doc. 5 at 83, Attachment 7 to Appellant’s Opening Brief.)

Boudette argued that the mile marker where the arrest took place (16.2) was in Broadwater County. (6/8/21 Rec. at 1:46:33-1:47:24.) Over the course of the hearing, the justice court pointed out that regardless of where he was arrested or where his car eventually came to a stop, the State could still present evidence to prove that the conduct of driving the motor vehicle took place in Lewis and Clark County. (*Id.* at 1:47:25-1:50:31.) Boudette countered that since there was “no information” on how his vehicle got to the location where he was stuck in the ditch, the correct jurisdiction was where the arrest took place. (*Id.* at 1:51:39-54.)

Boudette’s motion was denied. (6/8/21 Rec. at 1:52:21.) A jury trial was scheduled for June 24, 2021. (*See* J.C. at 53, subpoena for Michelle McArthur, filed 6/11/21.)

3. June 18, 2021

Boudette filed two motions on June 18, 2021, a “Motion to Continue Motion Date For Two Weeks” (J.C. at 56) and a “Motion to Continue [June 24, 2021] Trial Date For Two Weeks” (*id.* at 59). These two motions were not addressed on the record, although the State filed a written objection to the continuance request. (*Id.* at 65.) The State requested that, if the continuance was granted, Boudette be deemed to have waived his statutory speedy trial right. (*Id.*)

Boudette also filed a “Written request that the State disclose any facts about the, untruthfulness or false swearing of Trooper 1969 Amanda Villa.” (J.C. at 62.)

In the motion, he alleged, “The Defense is aware that Trooper 1969 Amanda Villa has violated Monana law, and has used untruthfulness, and false swearing.” (*Id.*) The State immediately filed a response denying any such knowledge about Trooper Villa. (*Id.* at 63.)

Boudette’s fourth filing on this date was a “Petition for Writ of Prohibition,” filed in the district court. (J.C. at 72.) The petition sought to have the case dismissed for lack of “territorial jurisdiction.” (*Id.* at 73.) Boudette also alleged “prosecutorial misconduct,” specifically that the prosecutor had presented “fabricated false evidence [at the June 8, 2021 hearing].” (*Id.* at 74.) The petition was denied by the district court on June 23, 2021. (*Id.* at 69.)

4. August 2, 2021

Boudette filed a “Motion to suppress evidence because of arresting Trooper’s unlawful search and seizure.” (J.C. at 77.) Boudette argued that once he told Trooper Villa he was fine, she could no longer legally ask him questions or investigate the crash. (*Id.* at 78.)

Boudette filed a “Motion to dismiss with prejudice for Prosecutorial misconduct.” (J.C. at 92.) This time, it was based on an alleged discovery violation. (*Id.* at 92.) Additionally, Boudette moved to supplement previous motion attachments based on “newly discovered exculpatory evidence.” (*Id.* at 107.) The evidence he referred to was a self-made transcript of a phone conversation

Boudette had with the 911 caller, Michelle McArthur. (*Id.* at 110.) The aforementioned motions were argued and denied at an August 20, 2021 hearing. (CD labeled “Hearing on Motion,” [8/20/21 Rec.] at 2:41:23-2:55:00.)

5. August 20, 2021

Prior to the hearing, Boudette filed two additional motions. One was a “Motion to supplement the attachments of [previous motions].” (J.C. at 107.) This was briefly addressed, and, while no definitive pronouncement was made, all of Boudette’s prior motions and attachments were eventually placed into the record as attachments to his opening brief to the district court. (D.C. Doc. 5.)

Boudette also filed an “Objection to Judge Trial.” (J.C. at 116.) A bench trial was set after Boudette failed to appear at a jury confirmation hearing on August 9, 2021. (8/20/21 Rec. at 2:48:10-16.) At the hearing, the justice court stated, “If you’d like a jury trial, I’m more than happy to set it for you.” (*Id.* at 2:48:22-25.)

The parties revisited Boudette’s motion to dismiss because of the jurisdiction issue, which was again denied by the justice court. (8/20/21 Rec. at 2:51:02-26.)

6. November 16, 2021

The record shows that Boudette’s jury trial was continued more than once. (J.C. at 105, 121, 123, 135.) On November 16, 2021, Boudette filed a “Motion to Dismiss for the State’s violation of 46-13-401(2) MCA Speedy trial.” (*Id.* at 124.)

The State filed a response, and summarized the procedural history of the case, stating:

The Defendant in this case entered a plea of Not Guilty on 2/16/21 and trial was initially set for June 24th, 2021. On June 18th, the Defendant filed a motion to continue the trial, to which the State filed a response opposing the continuance. The trial was then reset for September 2nd, 2021 after the Defendant filed a number of motions to suppress and dismiss, all of which were denied. On August 8th, 2021 at the time set for Jury Confirmation hearing, Defendant failed to appear and thereby waived his right to a jury trial.

(*Id.* at 127-28.)

Boudette next filed a “Reply to State’s Response of 16 November 2021.” (J.C. at 129.) In his reply, Boudette claimed that his motions were late due to the timing of the State’s discovery, and added that “[an alleged discovery delay] should not have happened. These come about when the Court’s exercise [sic] the lower laws of court rules, and statutes to avoid the higher law of GOD, and the People’s limits placed on government through the Constitution’s [sic] of the United States of America, and Montana’s State Constitution.” (*Id.* at 130.)

7. March 25, 2022

Boudette’s motion to dismiss due to a speedy trial violation was denied on the record at a March 25, 2022 hearing. (CD labeled “Hearing on Motion” [3/25/22 Rec.] at 3:01:00-25.) In denying the motion, the justice court stated, “I think at least a sizeable proportion of delays would be the result of motions and continuances asked for by the defendant.” (*Id.* at 3:01:35-42.)

B. The May 31, 2022 jury trial

The State's one and only witness at trial was Trooper Amanda Villa. (5/31/22 Rec. at 10:45:05-07.) She testified that on February 14, 2021, at approximately 1 a.m., she was dispatched to a possible crash on Highway 284, also known as Canyon Ferry Road. (*Id.* at 10:46:21-56; Tr. at 10.) The temperature at the time was approximately 20 degrees below zero. (*Id.* at 10:48:35-44; Tr. at 12.) Trooper Villa was a nine-year veteran of the Montana Highway Patrol and had significant training and experience with investigating crash scenes and DUI offenses. (*Id.* at 10:45:10-50; Tr. at 9-10.)

Upon arriving at the scene, Trooper Villa observed tire marks in the ditch that went off a for substantial distance leading up to a vehicle that was stuck in a deep culvert. (5/31/22 Rec. at 10:47:06-19; Tr. at 11.) The reporting party's pickup truck was still on scene as well. (*Id.* at 10:47:19-24; Tr. at 11.) Trooper Villa approached the vehicle that was in the ditch, and observed that there was a single male occupant, who would subsequently be identified as Boudette. (*Id.* at 10:47:38-54; Tr. at 11.)

According to Trooper Villa's testimony, "When I first made contact with him when I opened the vehicle there was a moderate odor of alcoholic beverage

inside the vehicle. There was also a red solo go cup as the bars call them in the cup holder. He had watery bloodshot eyes, his speech was very slow, or slurred, and confused, and most of our interaction conversation-wise was only one to two word answers.” (5/31/22 Rec. 10:49:42-10:50:05; Tr. at 13.)

Trooper Villa testified that based upon her experience with DUI’s, she felt Boudette was at a “high level alcohol concentration level.” (5/31/22 Rec. at 10:50:05-18; Tr. at 14.) She added that his comments were typically non-responsive to her questions, and Boudette kept saying he was fine and asking her to leave. (*Id.* at 10:50:19-29; Tr. at 14.) She testified, “I didn’t leave because I was still investigating a possible crash, I hadn’t had an opportunity to look around the vehicle. *At that point also due to the weather conditions my biggest concern was his welfare if we left him in the vehicle to potentially freeze to death.*” (*Id.* at 10:50:29-44; Tr. at 14 (emphasis added).)

The State introduced Trooper Villa’s squad video, which recorded her conversations with Boudette, as Exhibit 1. (5/31/22 Rec. at 10:51:32-36; Tr. at 15.) The video showed the tire tracks that she had observed leading to Boudette’s vehicle. (*Id.* at 10:55:39-10:56:00; Tr. at 18.) Trooper Villa testified that, based on the orientation of the vehicle and the depth of the snow, she believed it would have to be towed out of the ditch. (*Id.* at 10:56:33-52; Tr. at 18-19.)

When Exhibit 1 was published to the jurors, they were able to hear conversations Trooper Villa had with Boudette. (5/31/22 Rec. at 10:58:16-56; Tr. at 20.) Specifically, they heard Trooper Villa tell Boudette, “It’s obvious you’ve been drinking. I can smell it, you can’t walk, your eyes are all watery and bloodshot.” (Exhibit 1 at 2:22:24-30.)⁶

After another trooper arrived on scene, they were eventually able to coax Boudette to exit his vehicle and sit inside Trooper Villa’s squad car. Boudette moved very slowly and had difficulty walking up the hill. (5/31/22 Rec. at 10:59:12-24; Tr. at 20.) Boudette continued being evasive and refusing to provide his last name. (*Id.* at 11:00:00-10; Tr. at 21-22.) Trooper Villa observed that the keys to Boudette’s vehicle were located in the ignition. (*Id.* at 11:00:41-51; Tr. at 22.)

Trooper Villa testified that Boudette was placed under arrest for DUI. (5/31/22 Rec. at 11:00:53-58; Tr. at 22.) Due to his argumentative and belligerent behavior, as well as the extreme weather conditions, Trooper Villa did not believe

⁶ It is difficult to ascertain this language from the trial recording, but when obtained directly from Exhibit 1, the audio is clear. Trooper Villa’s credibility has been repeatedly challenged, and Boudette claims that she had “no facts whatsoever to meet the threshold for a DUI arrest.” (Appellant’s Br. at 11.) The roughly 40 minutes of recorded conversations at the scene in Exhibit 1 suggest otherwise. The recording demonstrates Trooper Villa behaved professionally, testified accurately, and displayed a great deal of patience. It also strains credulity to listen to these conversations and suggest that Boudette was anything other than highly intoxicated.

it would be safe to conduct field sobriety tests as part of this arrest. (*Id.* at 11:01:08-27; Tr. at 22.) She transported Boudette to the Lewis and Clark County Jail. (*Id.* at 11:01:41-44; Tr. at 23.)

At the jail, Trooper Villa read the implied consent advisory to Boudette, and asked him for a blood sample. (5/31/22 Rec. at 11:01:45-52; Tr. at 23.) Boudette would only respond by asking to speak to a lawyer, and Trooper Villa reiterated that *Miranda* rights do not apply to an implied consent advisory. (*Id.* at 11:01:53-11:02:02; Tr. at 23.) Because he would not respond as to whether he would take a test requested by her, Trooper Villa determined that Boudette refused the test. (*Id.* at 11:02:03-08; Tr. at 23.)

During her cross-examination, Trooper Villa explained to Boudette why she responded to the scene of the accident as she did:

So, it is a welfare call, but it's also a slide off, which falls under the criteria of a crash investigation. And once I made contact with you, and I believe a crime has been committed or is about to be committed, then I have an obligation to investigate that crime. Also, I can't legally leave somebody in negative twenty degree temperatures in a car to freeze to death, unless I've made contact with them.

(5/31/22 Rec. at 11:05:33-54; Tr. 25-26.)

On redirect, Trooper Villa was asked how long her interaction with Boudette had lasted. She responded that she spent about 40 minutes with him at the scene, and the drive to the jail took about another hour. (5/31/22 Rec. at 11:09:04-10; Tr. at 27.) She clarified that the location where she encountered Boudette was

in Lewis and Clark County, stating, “So, the tire marks went off the road well within Lewis and Clark County, also we could see the welcome to Broadwater sign probably thirty or forty feet south of us.” (*Id.* at 11:09:21-31; Tr. at 28.) Trooper Villa testified that Boudette fell asleep in the back of the squad car during the transport. (*Id.* at 11:09:39-47; Tr. at 28.)

During this same segment of her redirect, Trooper Villa and the prosecutor had the following exchange:

ATTORNEY: Okay. So, at what time was Mr. Boudette released that day?

TROOPER VILLA: From the jail?

ATTORNEY: Yes.

TROOPER VILLA: Approximately an hour or less from the time he was booked in.

ATTORNEY: Okay. And when roughly was he booked in?

TROOPER VILLA: I believe I cleared the jail at 3:50-ish.

ATTORNEY: Okay.

TROOPER VILLA: So, he would have been booked in right after or right when I was dropping him off.

ATTORNEY: Okay. And to your knowledge there was nothing precluding Mr. Boudette from once he was booked and released from stopping him in getting his own independent blood sample?

TROOPER VILLA: No.

(5/31/22 Rec. at 11:09:48-11:10:21; Tr. at 28.)

During the ensuing recross-examination, Boudette questioned Trooper Villa about his request for an independent test and his release from jail:

MR. BOUDETTE: Yeah. Okay, so you're, during this period where you're reading the implied consent, you specifically told the defendant that even if he refused the test he could go get an independent blood test?

TROOPER VILLA: At your own expense and at your own convenience.

MR. BOUDETTE: And did the defendant indicate to you one or more times that he wanted to have an independent blood test and was willing to pay for it.

TROOPER VILLA: Yes. However, I talked to the jail staff and indicated when you were gonna get released, and they said within the hour you could have went and got an independent test after the fact.

MR. BOUDETTE: Okay.

TROOPER VILLA: So, I didn't prevent you from getting a test by asking the jail to expedite you getting out of there.

MR. BOUDETTE: How do you know when the defendant was released from jail?

TROOPER VILLA: Less than an hour after you were booked from the booking sheet I've reviewed.

(5/31/22 Rec. at 11:20:05-55; Tr. at 35-36.)

Trooper Villa clarified her actions during her second redirect examination:

ATTORNEY: Are you required to transport Mr. Boudette to conduct an independent blood sample if the state doesn't conduct a blood sample?

TROOPER VILLA: No, so ideally, I would have sent him to the hospital but because we already had a difficulty arresting him, putting him in my car, and then we also had to have two jailers help get him out of my car, that would have required me to re-arrest him, attempt to get him back in the car in the hospital re-arrest, and it didn't seem based on his cooperation level that it was going to be safe for him or for me or jail staff or hospital staff So, at that point in time I indicated to the jail staff, could you please try to get him bonded out as quickly as you can, and they said that they would try to. I just cannot [prevent], physically [prevent] him from going and getting an independent test once he's released.⁷

(5/31/22 Rec. 11:25:11-11:26:06; Tr. at 39-40.)

Boudette was convicted by the jury of DUI. (5/31/22 Rec. at 2:13:20-22; Tr. at 81-2.)

C. Post trial litigation

1. Motion for a new trial

On June 29, 2022, Boudette filed a motion for a new trial. (J.C. at 177 (Motion for new trial authorized under Mont. Code Ann. 46-16-702).) In the motion, he included a “Memorandum & Facts” section, alleging that the prosecutor committed prosecutorial misconduct when he suborned perjury from Trooper Amanda Villa. (*Id.* at 178.) The State responded on June 12, 2022. (*Id.* at 346.) Sentencing was set for July 27, 2022. (*Id.* at 356.)

⁷ Boudette's transcript indicates “permit” instead of “prevent,” as used twice in the last sentence of the quotation. The recording is clear that Trooper Villa said “prevent” both times.

On July 27, 2021, Boudette’s motion was denied by the justice court. (7/27/22 Rec. at 2:06:33-37.) Boudette was sentenced the same day to 180 days in jail, with credit for 1 day served. (J.C. at 365 (Order for Sentencing Conditions).)

2. Appeal to the district court

Boudette appealed to the district court, and filed his “Opening Brief” on September 13, 2022. (D.C. Doc. 5.) Boudette made numerous allegations in the brief. (*Id.* at 1-7.) He narrowed his issues down to three, under the heading “Appeal Issues Raised.” (*Id.* at 8.) Issue “A” was that a “Rainier [sic] Welfare Check can not be turned into a Criminal investigation.” (*Id.*) Issue “B” stated, “Geographic Jurisdiction was in Broadwater County.” (*Id.*) Issue “C” alleged “Prosecutorial Misconduct.” (*Id.*) However, Boudette’s brief also raised the statutory speedy trial issue again. (*Id.* at 7.)

The State requested an extension to file a responsive brief but did not actually file one, as indicated in the district court’s order denying Boudette’s motions. (D.C. Doc. 9 at 1.) The district court did not require additional arguments on the matter, and cited *State v. Schulke* for the proposition that the appeal was confined to an underlying record review and questions of law. (*Id.*, citing *State v. Schulke*, 2005 MT 77, ¶ 28, 326 Mont. 390, 109 P.3d 744.)

The district court first addressed the statutory speedy trial issue and, in denying this motion, accurately noted that Boudette had filed a motion to continue

his original jury trial setting, and also that he had failed to appear at a jury confirmation hearing. (D.C. Doc. 9 at 3.)

With respect to the “unlawful search and seizure,” the district court differentiated the facts of this case from those in *State v. Reiner*, 2003 MT 243, 317 Mont. 304, 77 P.3d 210. (D.C. Doc. 9 at 3, citing *Reiner*, ¶ 22.) The district court pointed out that in *Reiner*, the officer’s testimony was that he was not concerned for Reiner’s well-being, but rather investigating a potential DUI. (*Id.*) The district court also pointed out that *Reiner* “reiterated the community caretaker doctrine articulated in *State v. Lovegren*, 2002 MT 153, ¶ 25, 310 Mont. 358, 366, 51 P.3d 471, 475-76.” (D.C. Doc. 9 at 3.)

The district court summarized the record of this case, noting that it was shortly after 2 a.m. when Trooper Villa arrived on the scene, in 20 degrees below zero weather, which Boudette himself described at trial as an “arctic ice storm.” (D.C. Doc. 9 at 4.) Boudette was stuck in a snowy ditch in a rural area for what he claimed at trial was “four and a half hours.” (*Id.*) He had no heat in his vehicle and had blood on his hands.⁸ (*Id.*) The district court observed, “Boudette repeatedly insisted that he should be left alone, but failed to address the officer’s concerns that

⁸ The district court’s findings here may have been derived in part from Exhibit 1. Trooper Villa did not testify about Boudette’s bloody hands during the trial. (See Exhibit 1 at 2:07:13-27 (Trooper Villa asking Boudette about the blood on his hands).)

he was stuck in a snowy ditch in a rural area with no source of heat in the middle of a brutally cold mid-winter night.” (*Id.*) The district court concluded:

It is abundantly clear to this Court that the facts of this situation would lead not only an experienced officer but any rational mind to conclude that Boudette needed help. The officer attempted to assist Boudette by offering to warm up in the officer’s car and by refusing to leave Boudette alone in a situation where he could freeze to death. While Boudette insisted that he was fine and should be left alone, the third prong of the community caretaker doctrine focuses on the officer’s assurance that the situation is safe, not the individual in peril’s wishes.

(*Id.* at 4-5.)

The district court next addressed Boudette’s claims of “Prosecutorial Misconduct. (D.C. Doc. 9 at 5.) The court noted that Boudette failed to identify any legal standard or engage in any legal analysis on this issue, and stated that this Court has “repeatedly held that it is not [the Court’s] responsibility to conduct legal research on behalf of a party or to develop legal analysis that might support a party’s position.” (*Id.*, citing *Woehler v. Messer*, 2017 MT 153, ¶ 10, 388 Mont. 447, 400 P.3d 228, and *State v. Cybulski*, 2009 MT 70, ¶ 13, 349 Mont. 429, 204 P.3d 7.)

With respect to Boudette’s claim that the offense occurred in Broadwater County, the district court concluded that the evidence was consistent with the jurisdiction being “just inside Lewis & Clark County.” (D.C. Doc. 9 at 6-7.) The district court reasoned that even if Boudette’s vehicle had come to a stop in

Broadwater County, his tire tracks and other evidence demonstrated he had in fact been driving inside of Lewis and Clark County. (*Id.* at 6-7.)

This appeal followed.

SUMMARY OF THE ARGUMENT

The justice court correctly rejected Boudette's various challenges to its jurisdiction because the testimony of Trooper Villa, corroborated by her squad video, established that Boudette was driving his motor vehicle in Lewis and Clark County when he slid off the road and into the ditch.

The justice court correctly denied Boudette's motion to suppress evidence. Given the weather conditions and the observations of Trooper Villa, a reasonable officer would have concluded it was necessary to check on Boudette's well-being and assist him until he was removed from peril. During her lawful presence at the scene, Trooper Villa determined Boudette was obviously impaired and lawfully arrested him for DUI.

The justice court correctly denied Boudette's motion for a new trial, because Boudette failed to provide any support for his prosecutorial misconduct claim. Trooper Villa did not provide false testimony and nothing in the records shows the prosecutor suborned perjury.

Boudette's conviction should be affirmed.

ARGUMENT

I. Standard of review

When a decision from a justice court of record is appealed, the district court functions as an intermediate court and its review is confined to the record and issues of law. *State v. Davis*, 2016 MT 206, ¶ 5, 384 Mont. 388, 378 P.3d 1192; Mont. Code Ann. §§ 3-5-303, 3-10-115. On appeal of the district court’s decision, this Court reviews the record independently, applying the clearly erroneous standard to the justice court’s factual findings and reviewing discretionary rulings for abuse of discretion. *Id.*

This Court reviews evidentiary decisions for an abuse of discretion. *State v. Mizenko*, 2006 MT 11, ¶ 8, 330 Mont. 299, 127 P.3d 458. “The determination of whether evidence is relevant and admissible is left to the sound discretion of the trial judge and will not be overturned absent a showing of abuse of discretion.” *State v. Fenton*, 1998 MT 99, ¶ 11, 288 Mont. 415, 958 P.2d 58.

Likewise, this Court reviews a district court’s denial of a motion for a new trial under the abuse of discretion standard. *State v. Parrish*, 2010 MT 212, ¶ 14, 357 Mont. 477, 241 P.3d 1041 (citing *State v. Clark*, 2008 MT 391, ¶ 20, 347 Mont. 113, 197 P.3d 977).

Finally, this Court reviews allegations of prosecutorial misconduct de novo, considering the prosecutor’s conduct in the context of the entire proceeding.

State v. Dobrowski, 2016 MT 261, ¶ 8, 385 Mont. 179, 382 P.3d 490 (citation omitted).

II. Lewis and Clark County was the proper jurisdiction for this offense.

“In all criminal prosecutions, the charge must be filed in the county where the offense was committed unless otherwise provided by law.” Mont. Code Ann. § 46-3-110. “[I]f the county in which the offense was committed cannot be readily determined, the offender may be charged in any county in which it appears that an element of the offense occurred.” Mont. Code Ann. § 46-3-114(1).

Trooper Villa testified that the incident occurred in Lewis and Clark County. (D.C. Doc. 9 at 6-7; Tr. at 27-28.) When asked how she came to that conclusion, she testified, “So, the tire marks went off the road well within Lewis and Clark County, also we could see the welcome to Broadwater sign probably thirty or forty feet south of us.” (5/31/22 Rec. at 11:09:21-31; Tr. at 28.)

Trooper Villa’s testimony was corroborated by her squad video, which was introduced at trial as Exhibit 1 and published to the jury. The squad video showed the tire tracks Trooper Villa relied upon for her conclusion that Boudette went off the road “well within” Lewis and Clark County. (5/31/22 Rec. at 10:55:51-10:56:00; Tr. at 17-18.) This Court has stated, “On appeal, we will not disturb a district court’s determination of witness credibility; this determination rests

exclusively within the province of the finder of fact.” *Hendricks v. State*, 2006 MT 22, ¶ 16, 331 Mont. 47, 128 P.3d 1017 (citation omitted).

As the district court observed, “There was ample evidence from which to infer that Boudette was driving in Lewis and Clark County before he crashed just inside either Broadwater or Lewis and Clark County, the exact location of which is immaterial to whether he was driving in Lewis and Clark County.” (D.C. Doc. 9 at 7.)

III. Trooper Villa had objective, specific, and articulable facts to support her belief that Boudette was in need of assistance, and as a result of her legally obtained observations, established sufficient facts to escalate to a DUI investigation.

Montana’s version of the community caretaker doctrine was articulated by this Court in *Lovegren*, ¶¶ 13-16. In that case, an officer came upon a vehicle at about 3:05 a.m., parked on the side of a rural highway. *Id.* ¶ 3. The motor was running, but the lights were off, so the officer stopped his vehicle to investigate. *Id.* Lovegren appeared to be asleep in the driver’s seat. *Id.* ¶ 4. The officer knocked on the window, but Lovegren did not respond. *Id.*

The officer then opened the car door, at which point Lovegren woke up and stated, “I was drinking.” *Lovegren*, ¶ 4. The officer noticed indications of intoxication, including the odor of alcohol and bloodshot eyes, and initiated a DUI investigation. *Id.* Lovegren moved to suppress all of the evidence obtained during

the investigation on the grounds that the officer lacked particularized suspicion of criminal activity to “stop” him. *Id.* ¶ 6. The district court concluded particularized suspicion was not required because the officer had a duty to investigate for Lovegren’s own safety. (*Id.*)

This Court fashioned a three-part test “in relation to the community caretaker doctrine,” which provides:

First, as long as there are objective, specific and articulable facts from which an experienced officer would suspect that a citizen is in need of help or is in peril, then that officer has the right to stop and investigate. Second, if the citizen is in need of aid, then the officer may take appropriate action to render assistance or mitigate the peril. Third, once, however, the officer is assured that the citizen is not in peril or is no longer in need of assistance or that the peril has been mitigated, then any actions beyond that constitute a seizure implicating not only the protections provided by the Fourth Amendment, but more importantly, those greater guarantees afforded under Article II, Sections 10 and 11 of the Montana Constitution as interpreted in this Court’s decisions.

Lovegren, ¶ 25.

The facts from which an experienced officer determined Boudette might be in peril or in need of assistance were aptly summarized by the district court:

“Boudette repeatedly insisted that he should be left alone, but failed to address the officer’s concerns that he was stuck in a snowy ditch in a rural area with no source of heat in the middle of a brutally cold mid-winter night.” (D.C. Doc. 9 at 4.)

As to the second prong of the *Lovegren* test, in this type of weather, the peril facing Boudette could not be mitigated until Trooper Villa convinced him to move

into the warmth of her squad car. By the time she coaxed Boudette into doing that, Trooper Villa had established a legal basis to escalate to a DUI investigation.

Trooper Villa did not receive the spontaneous confession, “I was drinking,” like occurred in *Lovegren*, nor did she need one. Based on her experience, and based on Boudette’s speech, evasiveness, appearance, the odor of an alcoholic beverage, and the fact that he was stuck in a snowy ditch in dangerously cold weather with no heat, *and did not want assistance*, Trooper Villa established a legally sufficient basis to escalate to a DUI investigation. “[A]n individual has no reasonable expectation of privacy in his physical characteristics or behavior such as handwriting, speech, height, weight, gait, appearance or smell.” *Hulse v. Mont. Dep’t of Just., Motor Veh. Div.*, 1998 MT 108, ¶ 32, 289 Mont. 1, 961 P.2d 75 (citing *People v. Carlson*, 677 P.2d 310, 316 (Colo. 1984)).

As Trooper Villa explained to Boudette after several minutes at the scene, “It’s obvious you’ve been drinking, I can smell it, you can’t walk, your eyes are all watery and bloodshot.” (Exhibit 1 at 2:22:24-30.)

Facts that distinguish this incident from *Lovegren* make an even stronger case that Trooper Villa acted lawfully under the community caretaker doctrine. For example, the weather was not mentioned in *Lovegren*, although it occurred on October 31, 1998. *Id.* ¶ 3. This incident occurred on February 14, 2021, and the temperature was about 20 degrees below zero. (5/31/22 Rec. at 10:48:36-45; Tr. at

12.) Due to the frigid and potentially lethal temperatures and their location on a rural highway, even if Trooper Villa had observed no indicia of intoxication, it would have been a dereliction of her duties to walk away from Boudette at that point. She could not ethically leave him under those conditions, to “potentially freeze to death,” regardless of his personal wishes.

Further, Lovegren’s vehicle was presumably operational, on the side of the road with the engine running. *Lovegren*, ¶ 3. As the district court stated here, Boudette was “stuck in a snowy ditch in a rural area with no source of heat in the middle of a brutally cold mid-winter night.” (D.C. Doc. 9 at 4.) The district court logically concluded that this set of circumstances would lead “any rational mind to conclude that Boudette needed help.” (*Id.*)

This Court has approved similar approaches by officers under the community caretaker doctrine. For example, in *State v. Spaulding*, 2011 MT 204, 361 Mont. 445, 259 P.3d 793, this Court affirmed a district court’s determination that a vehicle pulling suddenly over to the side of a remote road in a rural area in cold weather constituted sufficient objective, specific, and articulable facts to justify an officer’s approach to check if the driver was in need of assistance. *Spaulding*, ¶ 27.

Likewise, in *State v. Nelson*, 2004 MT 13, 319 Mont. 250, 84 P.3d 25, an officer observed a pickup truck pulled off the highway with its engine running, but

no lights. *Nelson*, ¶ 4. It was New Year’s Day in 2002, and the temperature was “near zero degrees.” *Id.*

In applying the test articulated in *Lovegren*, this Court stated,

Officer Kinsey observed a truck pulled off of a rural highway with its engine running. It was New Year’s Day. It was dark outside. The temperature was near zero. Officer Kinsey saw no one in the truck as she passed by the first time, but upon approaching the truck on foot, saw Nelson in the driver's seat. Nelson appeared to be passed out or asleep. When she got to the door, Nelson woke up and stared ahead. He did not acknowledge the officer until she opened the door, at which time she smelled alcohol and observed that Nelson’s eyes were blood-shot and he appeared confused.

. . . [T]he primary purpose of her investigation was to determine whether any possible occupants of the vehicle needed assistance. As in *Lovegren*, Officer Kinsey could have been remiss in her duty had she stopped her inquiry before she determined whether Nelson needed assistance. Her subsequent observation of Nelson's state of intoxication, including his admission that he had been drinking, was more than enough justification for her to undertake further investigation.

Nelson, ¶¶ 8-9.

Trooper Villa would have been severely “remiss in her duty” if she simply followed Boudette’s commands and left him in a snowy ditch with no heat in 20 degrees below zero temperatures. As she testified, “At that point also due to the weather conditions my biggest concern was his welfare if we left him in the vehicle to potentially freeze to death.” (5/31/22 Rec. at 10:50:19-54; Tr. at 14.) Her subsequent observations of Boudette’s state of intoxication were more than enough evidence for her to undertake further investigation and arrest him for DUI.

IV. There was no perjury, no prosecutorial misconduct, and if there was any inaccuracy in the evidence presented, it did not deny Boudette a fair and impartial trial.

“A prosecutor’s misconduct may be grounds for reversing a conviction and granting a new trial if the conduct deprives the defendant of a fair and impartial trial.” *State v. McDonald*, 2013 MT 97, ¶ 10, 369 Mont. 483, 299 P.3d 799 (quoting *State v. Hayden*, 2008 MT 274, ¶ 27, 345 Mont. 252, 190 P.3d 1091). This Court “will not presume prejudice from the alleged misconduct, rather the defendant must show that the argument violated his substantial rights.” *McDonald*, ¶ 10 (quoting *State v. Makarchuk*, 2009 MT 82, ¶ 24, 349 Mont. 507, 204 P.3d 1213). Boudette has failed to show his substantial rights have been violated.

A. Trooper Villa did not commit perjury.

As he frames the issue, “Boudette’s claim of prosecutorial misconduct arises from his accusation that the prosecuting attorney and the Trooper were guilty of perjury and suborning perjury in their efforts to conceal the State’s unnecessary impediment upon Boudette obtaining an independent blood sample.” (Appellant’s Br. at 22.) Boudette’s assertion is that he was not released from jail after his arrest until 4:24 p.m. (*Id.* at 18.) But Trooper Villa did not lie when she answered his questions as follows:

MR. BOUDETTE: How do you know when the defendant was released from the jail?

TROOPER VILLA: Less than an hour after the fact you were booked from the booking sheet that I’ve reviewed.

MR. BOUDETTE: Okay. So if the booking sheet wasn't true, and if he was held until approximately two o'clock in the afternoon that day, how could the defendant have gotten a blood test if he wasn't released?

TROOPER VILLA: The booking sheet said that you released an hour after I left there, so I don't know. Once you're booked into the jail I explained to them I would like you to be released as quickly as possible, and they indicated they would make an effort to make that happen.

(5/31/22 Rec. 11:20:46-11:21:26; Tr. at 36.)

On the subsequent redirect examination, Trooper Villa clarified:

ATTORNEY: Do you have any reason to believe that the booking sheet that you reviewed prior to coming here today is inaccurate in any manner?

TROOPER VILLA: From what I could tell in the booking sheet I would believe it would be accurate because those are time stamped, but I don't work for the Lewis and Clark county jail, so you would have to ask them about their booking sheets.

(5/31/22 Rec. at 11:27:17-35; Tr. at 41.)

The "booking sheet" Trooper Villa referred to was not introduced into evidence, but it is contained as part of the justice court record. (J.C. at 7.) It documents a "Booking Date/Time" of 2/14/21 at 4:03, presumably a.m., based upon the testimony of Trooper Villa. (*Id.*)

Even if Boudette was not released from the jail until 4:27 p.m. on February 14, 2021, Trooper Villa's testimony was not perjury. She testified very clearly and even emphasized that she was aware of his release information only

from a booking sheet and conversations with jail staff. To the extent this may have constituted inadmissible hearsay, it was in direct response to Boudette asking her how she knew when he was released.

Because there is no credible basis to assert Trooper Villa perjured herself, Boudette's claim of prosecutorial misconduct is without merit.

B. Boudette has failed to show that he was prejudiced by the alleged prosecutorial misconduct.

Boudette fails to show his substantial rights were violated based upon the trial as a whole. *See Dobrowski*, ¶ 8 (citing *State v. Labbe*, 2012 MT 76, ¶ 11, 364 Mont. 415, 276 P.3d 848). At trial, Boudette relied on two discernable defenses.⁹ First, he claimed that the offense did not occur in Lewis and Clark County. (5/31/22 Rec. at 11:29:30-58; Tr. at 42 (moving for directed verdict as the State had not proven the “geographic location” of the offense).)

Second, he claimed that in Arizona, where he obtained his driver's license, he had a right to speak with an attorney prior to deciding whether to take a test requested by law enforcement. (5/31/22 Rec. at 11:48:28-47; Tr. at 48.) Boudette testified that “Arizona's laws are the exact opposite of what the trooper stated Montana requires.” (*Id.*)

⁹ Boudette couched the claim that Trooper Villa unreasonably impeded his ability to obtain an independent blood test in the prosecutorial misconduct/perjury argument, but he presented no relevant evidence to support this assertion and made no comments pertaining to this issue in his closing argument.

The evidence demonstrates unequivocally that Trooper Villa did not “unreasonably impede” Boudette’s right to an independent blood test. “The peace officer may not unreasonably impede the person’s right to obtain an independent blood test. The officer may but has no duty to transport the person to a medical facility *or otherwise assist the person in obtaining the test.*” Mont. Code Ann. § 61-8-405(2)¹⁰ (emphasis added).

There is no evidence indicating what occurred after Trooper Villa left the jail. Her understanding was that the jail staff were going to expedite Boudette’s booking process. (5/31/22 Rec. 11:20:46-11:21:26; Tr. at 36.) According to the “booking sheet,” that occurred at 4:03. (J.C. at 7.) Based upon Trooper Villa’s conversations with the jail staff, and the time she left the jail, it was reasonable for her to infer that it was 4:03 a.m. At any rate, what happened to Boudette after she left the jail is nothing more than speculation at this point.

Boudette was given the chance to present evidence that law enforcement had unreasonably impeded his request for an independent test. However, the only evidence he willingly presented was as follows:

The judge has ruled in this particular case that I can’t bring the rebuttal witness in about what time I was released. I’m just gonna testify that this is the truth, that I was released the same day I was

¹⁰ This statute has since been recodified with the identical language as Mont. Code Ann. § 61-8-1019(2).

arrested about two o'clock in the afternoon, not at five o'clock in the morning as Officer Villa is indicating.

(5/31/22 Rec. 11:43:37-11:44:00; Tr. at 45.)

Taken in context of the entire trial, when Boudette was released from jail was not relevant. He had an opportunity to present evidence that his ability to obtain an independent test was unreasonably impeded by law enforcement, and did not attempt to do so. He was not prejudiced by evidence of what time Trooper Villa inferred he had been released, and most of the evidence that came in related to that issue was as a result of Boudette's own questions.

CONCLUSION

The State respectfully requests this Court affirm Boudette's conviction.

Respectfully submitted this 17th day of November, 2023.

AUSTIN KNUDSEN
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: /s/ Brad Fjeldheim
BRAD FJELDHEIM
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 7,695 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

/s/ Brad Fjeldheim
BRAD FJELDHEIM

CERTIFICATE OF SERVICE

I, Brad Fjeldheim, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-17-2023:

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Kevin Downs (Govt Attorney)
228 E. Broadway
Helena, MT MT 59601
Representing: State of Montana
Service Method: eService

Eric Boudette (Appellant)
P.O. Box 821,
Townsend MT 59644
Service Method: Conventional

Electronically signed by Janet Sanderson on behalf of Brad Fjeldheim
Dated: 11-17-2023