

IN THE SUPREME COURT OF THE STATE OF MONTANA

CAUSE NO. DA 23-0408

STATE OF MONTANA,

Plaintiff and Appellee,

vs.

CANDICE LEA DAVIS

Defendant and Appellant.

APPELLANT'S REPLY BRIEF

On Appeal from the Montana Twenty-First Judicial District Court, Ravalli County

Cause No. 22-125

Honorable Jennifer B. Lint, District Judge, Presiding

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ARGUMENT

Appellant Candice Davis (“Davis”) was arrested without probable cause when she was cuffed, placed in the back of Montana Highway Patrol Trooper Barbera’s (“Barbera”) patrol car, and transported from Ricketts Road in rural Ravalli County, to the Ravalli County Detention Center in Hamilton, and all evidence stemming from her arrest should have been suppressed.

Moreover, the State concedes *Miranda* attached “when Davis was placed in the back of Barbera’s patrol car”, but nonetheless takes the position that *Miranda* did not apply when Davis arrived at the Ravalli County Detention Center. (*State’s Br.*, 21) However, Barbera’s failure to provide a *Miranda* warning when Davis was handcuffed transported was not cured when Barbera uncuffed Davis at the detention center. Accordingly, any statements made by Davis from the time of being handcuffed by Barbera should have been ordered suppressed.

ARGUMENT

I. APPELLANT WAS UNLAWFULLY ARRESTED (SEIZED)

The State argues that Barbera was within his authority to temporarily seize Davis, including when she was handcuffed, placed in the back his patrol car, and transported from rural Rickett’s Road into Hamilton and the detention facility. (*State’s Br.* 12-15). The State adds that “information provided probable cause to

believe that Davis failed to report damage she caused to property, as required by Mont. Code Ann. §61-7-107 and drove recklessly under Mont. Code Ann. §61-8-301. The State's argument is misplaced.

Accepting *arguendo* that Barbera was justified in making contact and temporarily seizing Davis, her seizure lasted well beyond what was reasonably necessary to confirm or dispel his suspicions. Moreover, the State's argument regarding probable cause is not supported by the record below. The district court did not find probable cause, nor did the State argue that probable cause existed to arrest Davis until after she was subjected to field sobriety testing at the detention center. Barbera himself testified he did not find probable cause to arrest Davis until after she performed field sobriety tests at the detention facility—indeed the State concedes that if “the testing had dispelled Barbera's suspicions, Davis would have been released.” (Tr. 12:1-23; Tr. 23:15-23; *State's Br.*, 16).

The State relies on *City of Missoula v. Kroschel*, 2018 MT 142, 391 Mont. 457, *State v. Bailey*, 2021 MT 157, 404 Mont. 384, 489 P.3d 889, and *State v. Schlichenmayer*, 2023 MT 79, 412 Mont. 119, 529 P.3d 789 for the proposition that Barbera permissibly expanded his investigative stop into a DUI investigation that reasonably included being transported to the detention center.

As in *Kroschel*, there is no dispute here that Barbera effected a constitutional

seizure of Davis. *Id.*, ¶12. However, in *Kroschel*, the officer was presented with an uncooperative suspect who was apparently visibly intoxicated and provided false information. *Id.* ¶¶ 12, 18. There, additional facts arose through the officer's diligent efforts to confirm or dispel the initial basis for the stop, and took the officer in a different direction, ultimately culminating in probable cause to arrest the suspect for obstruction of justice. (*Id.*, 20) Here, however, Barbera himself testified he did not have probable cause to arrest Davis until after she was subjected to testing at the detention center. (Tr. 12:1-23; Tr. 23:15-23; *State's Br.*, 16)

In *Schlichenmayer*, law enforcement responded to a call that a female had crashed a vehicle and appeared intoxicated. *Id.*, ¶3. Upon arriving on scene, the officers made contact with the suspect, who was still sitting in the driver's seat of the vehicle and was in an emotional state. *Id.*, ¶5. In addition to having bloodshot eyes, smelling of alcohol, and admitting she consumed alcohol, the suspect stated she "used her vehicle to look like she was going to hit" her boyfriend. When interacting with the officers on scene she continued to be overly emotional and struggled to follow verbal instructions. (*Id.*, ¶¶6-8) She was ultimately arrested for criminal endangerment, became belligerent and berated the officers involved. After being transported to the detention center, the suspect was asked to perform SFSTs,

and provided a breath sample. (Id., ¶10). Here again, the facts at bar are critically different. The State's argument is that Davis wasn't arrested at all until after she performed field sobriety tests at the detention facility.

In *Bailey*, a Montana Highway Patrol Trooper responded to a single vehicle rollover crash, after a person reported seeing that the vehicle rolled over on its side and beer cans on the ground nearby (the vehicle that had rolled over was no longer on scene when the trooper arrived). (Id., ¶2). While on scene, the trooper observed a vehicle matching the description of the caller, with damage consistent with a rollover, driving nearby and initiated a traffic stop. (Id. ¶3) The driver got out of the vehicle and engaged the trooper, advising him that he had been sucked into the shoulder of the road and tipped over. (Id., ¶4). The trooper asked the driver to sit in the back of his patrol vehicle (but did not place him in handcuffs) because the trooper was still investigating the crash, needed to ask the driver some questions, it was cold outside, and because the trooper was concerned the driver may have been impaired and "having him sit in the backseat of the patrol vehicle would make it easier to detect any odor of alcohol" Id., ¶6 After conversing with the driver, the trooper smelled alcohol, had the driver perform field sobriety tests, and submit to a preliminary breath sample, which was positive for alcohol. Thereafter, the driver was placed under arrest. (Id.)

Like *Schlichenmayer* and *Kroschel* the facts in *Bailey* are distinguishable, but also informative. There, the officer was presented with cold weather and difficult conditions, but still conducted his investigation in the field before arresting the driver and transporting him to jail. *Bailey*, ¶9. This court found the driver's arrest was lawful, but also that *Miranda* did not attach to the conversation between the trooper and the driver. (*Id.*, ¶37) Aside from the obvious distinction that the driver was not taken into custody to perform sobriety tests at the jail, the application of *Miranda* is significant to the case at bar.

Here, the State concedes that *Miranda* attached once Davis was placed in handcuffs and transported to the detention facility. (*State's Br.*, 11) In other words, the State concedes that Davis's detention was tantamount to formal arrest—not a mere continuation or expansion of a DUI investigation. As such, there should be no dispute that Davis's detention went well beyond a temporary stop. Davis was literally arrested and transported to the detention facility.

When Barbera arrived on scene at approximately 3:30 a.m., Davis had already been detained and on scene for some period of time. (Tr. 6:20-25) It is uncontested that Barbera did not determine there was probable cause to arrest Davis until approximately 5:15 a.m., well after transporting her to the detention center (*Id.*)

Barbera testified he could not recall the temperature the night in question but indicated it could have been single digits. (Tr. 28:1-3). He indicated he “started” to perform an HGN test, but apparently did not complete the test, and performed no others, before handcuffing Davis, placing her in the back of his patrol car, and transporting her to the detention center. (Id., 29:13-25). Barbera acknowledged he could have performed a portable breath test before transporting Davis to the detention facility, and that he had done so prior to administering field sobriety tests “in some incidences...when the psychophysical tests of the SFSTs cannot be performed.” (Id., 31:10-25; 32:14).

Even after subjecting Davis to hours of detention, both at the scene of the accident and at the detention facility, the record does not establish what specific facts Barbera relied on beyond his initial observations determine probable cause supported formally arresting Davis. What is clear and uncontested is that Davis was detained for an extended period and was literally arrested and taken to the detention facility without probable cause. The sole justification and purported basis that extended Davis’s stop and resulting DUI investigation was that it was cold and windy.

Montana winters are indeed cold, but to allow warrantless seizures to be extended on the subjective basis of temperature alone would certainly have a

chilling effect on Montana’s well established heightened protection against warrantless searches and seizures. *State v. Questo*, 2019 MT 212, ¶12, 395 Mont. 224. (citing Art. II, §11, Mont. Const.; *State v. Graham*, 2007 MT 358, ¶12, 340 Mont. 366-*internally citing* Art. II, §10, Mont. Const.)

This Court should hold that Barbera unlawfully arrested Davis without probable cause (and exceeded his authority to temporarily seize Davis) when he handcuffed, placed Davis in the back of his patrol car, and transported her into Hamilton and the Ravalli County Detention Center, and that the DUI charge against her was otherwise not supported by probable cause.

II. THE STATE CONCEDES *MIRANDA* APPLIES

On appeal, the State concedes “the district court’s conclusion that Davis was not in custody until her formal arrest in the interrogation room is incorrect.” (*State’s Br.*, 21). However, the State nonetheless suggests Davis has not met her burden because she has “failed to identify any particular statements that were made in the interim and did not provide analysis whether such statements were volunteered or made pursuant to custodial interrogation”, citing *State v. Gittens*, 2008 MT 55, 341 Mont. 450, 178 P.3d 91.

As noted by the State, however, that *Miranda* attached when Davis was cuffed and placed in Barbera’s patrol car was not contested by the State in district

court prior to or at hearing. (State’s Br., 21; citing ROA 9 at 6-7) “...the State agreed that *any* statements Davis made while being transported in the patrol car were likely not admissible, but argued that statements made after handcuffs were removed from Davis in the investigation room were admissible.”(emphasis added) Thus, there was no dispute that *any* statement made while Davis was being transported to the detention facility was protected by *Miranda*, and the issue wasn’t developed further. The principal dispute was whether, as argued by the State, *Miranda* effectively “unattached” when the handcuffs placed on Davis were removed at the detention center.

In that regard, Davis maintains the position stated in her opening brief. There is no basis to conclude *Miranda* unattached before *Miranda* warnings are given, and the failure to give the warning should be extended to the entire duration of time from Davis being handcuffed, to her release. Moreover, while Davis concedes *Miranda* warnings are not required during brief roadside investigations, the extended duration of her detention warrants application of *Miranda* to all communications with Barbera at the detention center. (App. Op. Br., 12-14)

In as much as evidentiary issue may exist related to admissibility of specific statements made by Davis, this Court should reverse the district court’s order, and remand for further hearing.

CONCLUSION

Considering the foregoing, and Davis's opening brief, the district court's order denying her motion to suppress and dismiss should be reversed.

DATED this 4th day of March 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11, I certify that this Opening Brief of the Appellant is printed with proportionally spaced Times New Roman text typeface of 14 points; its double-spaced; and the word count calculated by Microsoft Word is 3,965, excluding Certificate of Service and Certificate of Compliance.

/s/ Dustin M. Chouinard
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CERTIFICATE OF SERVICE

I, Dustin M. Chouinard, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 03-04-2024:

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