

DA 23-0408

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 145

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CANDICE LEA DAVIS,

Defendant and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DC-22-125
Honorable Jennifer B. Lint, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Dustin M. Chouinard, Markette & Chouinard P.C., Hamilton,
Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Mardell Ployhar,
Assistant Attorney General, Helena, Montana

William E. Fulbright, Ravalli County Attorney, Amanda Smith,
Deputy County Attorney, Hamilton, Montana

Submitted on Briefs: May 8, 2024
Decided: July 9, 2024

Filed:



Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Candice Lea Davis (Davis) appeals the denial of her motion to suppress from the Twenty-First Judicial District Court, Ravalli County. We affirm.

¶2 We restate the issues on appeal as follows:

1. *Was there probable cause to believe Davis was driving under the influence (DUI) when she was placed in handcuffs and taken to the Sheriff's Office for testing?*
2. *Did the District Court err when it denied Davis's motion to suppress all statements and tests made after she was placed in handcuffs?*

FACTUAL AND PROCEDURAL BACKGROUND

¶3 On December 11, 2021, at around 1:00 a.m., Davis drove her vehicle off the left side of Rickett's Road in Ravalli County, striking several mailboxes. After striking the mailboxes, Davis crossed over the road and became high-centered on a rock berm. Davis left her vehicle and walked home. She returned to the accident in a different vehicle.

¶4 Officers responded to the scene after the accident was reported later that morning. At approximately 3:30 a.m., Patrol Trooper Andrew Barbera (Trooper Barbera) arrived and observed Davis's SUV high-centered on a rock berm. He also observed a truck with a male driver and a female passenger, later identified as Davis, and an extension cord tied to both the truck and SUV. Davis did not have a driver's license but provided Trooper Barbera with her name and date of birth, which Trooper Barbera used to verify her identity.

¶5 While speaking with Davis, Trooper Barbera quickly noted the odor of alcohol from inside Davis's vehicle and that Davis had red and watery eyes. When asked what caused the accident, Davis simply replied, "[d]eer." Trooper Barbera also observed that when he

asked Davis a question, she would cover her mouth with her jacket and look away, which Trooper Barbera believed was an attempt to mask the odor of alcohol coming from her breath. Trooper Barbera noted that Davis had drifted off the left side of the road, crashed into a mailbox, crossed over the road to the right side, and then hit and became stuck in a rock berm.

¶6 To determine how the accident occurred, Trooper Barbera asked Davis some routine questions. He learned she had been driving home from work at Kodiak Jax—an establishment that serves alcohol. He asked Davis if she had anything to drink and she said she had her “shifter”—a colloquial term which Trooper Barbera knew referred to an end-of-shift drink. At this point, Trooper Barbera told Davis she was under investigation for DUI but that she was not under arrest. Trooper Barbera attempted to administer standardized field sobriety tests (SFSTs) but found it difficult due to very cold and extremely windy weather conditions. Davis was shivering and Trooper Barbera testified law enforcement is trained to conduct SFSTs under the best conditions possible and that the conditions that morning did not meet that standard.

¶7 Trooper Barbera determined it would be better to transition the investigation to the DUI processing room located at the Sheriff’s Office only a few minutes away. He told Davis she was not under arrest but that she would be handcuffed while being transported. Trooper Barbera testified this was standard operating procedure because suspected impaired drivers can be unpredictable, which can lead to potentially dangerous situations.

¶8 Once at the Sheriff's Office, Trooper Barbera took Davis to the DUI processing room and removed her handcuffs. He told her again she was under investigation for suspected DUI and proceeded to conduct the SFSTs. Because the results of the SFSTs led Trooper Barbera to believe Davis was impaired, he requested Davis provide a breath sample, which she agreed to do. After obtaining the results, Trooper Barbera arrested Davis for DUI and informed her of her *Miranda* rights.

¶9 Davis was issued citations for DUI, operating a vehicle with an expired registration, reckless driving, and two misdemeanor counts involving her failure to give notice that she had caused an accident resulting in property damage. Davis was convicted on all counts in Justice Court at a bench trial. She appealed to the District Court for a trial de novo.

¶10 In District Court, Davis filed a motion to suppress. She argued she was subjected to a custodial interrogation without first being advised of her *Miranda* rights and that all statements she made should be suppressed. Additionally, Davis argued no determination had been made to arrest her prior to taking her into custody and therefore all evidence obtained after she was handcuffed should be suppressed. The State argued that Trooper Barbera's detention of Davis was justified because he had particularized suspicion she was driving under the influence as a result of his roadside investigation. The State further reasoned it was appropriate for Trooper Barbera to transport Davis to the Sheriff's Office to conduct the SFSTs because the inclement weather made doing them at the scene impractical.

¶11 The District Court held an evidentiary hearing on the motion to suppress, during which Trooper Barbera testified. He testified that he very quickly suspected a DUI because he smelled alcohol at the outset of his investigation. Additionally, he noted Davis had red and watery eyes and that she continually attempted to cover her mouth when speaking to him. He indicated he did not consider Davis under arrest when he handcuffed her to transport her and that he removed the handcuffs once they arrived at the investigation room. Trooper Barbera also testified he did not recall asking Davis any questions outside of what was relevant to administer the tests. He recalled asking only whether Davis had something in her mouth and whether she had consumed alcohol since the accident.

¶12 The District Court issued an order denying Davis's motion to suppress, reasoning that Trooper Barbera had particularized suspicion to extend the stop at each step of his investigation. It determined Davis and the circumstances of the accident created a particularized suspicion that she was driving while impaired. The District Court also found that due to the weather conditions, relocating Davis to perform the SFSTs at the Sheriff's Office afforded Davis the best opportunity to provide accurate results and was not only reasonable, but humane. Finally, the District Court found that Davis had not been subject to a custodial interrogation in violation of *Miranda* because Trooper Barbera had not interrogated her; he repeatedly told Davis she was not under arrest when transporting her to the Sheriff's Office; handcuffing her was for safety during transportation; Trooper Barbera did not threaten Davis with arrest in order to force her to comply; and he

communicated to Davis the reason for going to the Sheriff's Office prior to transporting her.

¶13 Following the denial of her motion to suppress, Davis pleaded no contest to DUI pursuant to a plea agreement and reserved her right to appeal the District Court's order denying her motion to suppress.

STANDARD OF REVIEW

¶14 This Court "review[s] a district court's denial of a motion to suppress evidence for whether the court's findings of fact are clearly erroneous and whether those findings were correctly applied as a matter of law." *State v. Vegas*, 2020 MT 121, ¶ 8, 400 Mont. 75, 463 P.3d 455 (citing *State v. Ruggirello*, 2008 MT 8, ¶ 15, 341 Mont. 88, 176 P.3d 252). "A court's findings of fact are clearly erroneous if they are not supported by substantial credible evidence, the court has misapprehended the effect of the evidence, or our review of the record convinces us that a mistake has been committed." *Vegas*, ¶ 8 (quoting *Ruggirello*, ¶ 15).

DISCUSSION

¶15 *1. Was there probable cause to believe Davis was driving under the influence when she was placed in handcuffs and taken to the Sheriff's Office for testing?*

¶16 On appeal, Davis argues she was arrested without probable cause when she was handcuffed and placed in the backseat of Trooper Barbera's patrol vehicle and taken to the Sheriff's Office. She argues that when she was handcuffed she was "seized" and she should have been given her *Miranda* rights. The State responds that Davis was only temporarily detained for investigative purposes and was arrested after she performed poorly on SFSTs

and Trooper Barbera obtained the results of the breath test. Additionally, the State maintains the temporary seizure of Davis was permissible as Trooper Barbera had particularized suspicion to believe that Davis was driving under the influence.

¶17 The Fourth Amendment to the United States Constitution and Article II, Section 11, of the Montana Constitution prohibit unreasonable searches and seizures. “The purpose of these provisions is ‘not to eliminate all contact between the police and citizenry,’ but rather ‘to prevent arbitrary and oppressive’ government interference with individual privacy and security.” *State v. Bailey*, 2021 MT 157, ¶ 20, 404 Mont 384, 489 P.3d 889 (quoting *United States v. Mendenhall*, 446 U.S. 544, 553-54, 100 S. Ct. 1870, 1877 (1980)). We have explained:

A constitutional seizure of a person occurs when a government officer ‘in some way’ restrains a person’s liberty by means of physical force or show of authority that, under the totality of the circumstances, would cause an objectively reasonable person to believe that the person is not free to leave the presence of the officer.

City of Missoula v. Kroschel, 2018 MT 142, ¶ 10, 391 Mont. 457, 419 P.3d 1208 (citing *State v. Clayton*, 2002 MT 67, ¶ 12, 309 Mont. 215, 45 P.3d 30). Save for “certain recognized exceptions to the warrant requirement, warrantless searches and seizures of persons are *per se* unreasonable under the Fourth Amendment and Article II, Section 11, of the Montana Constitution.” *Kroschel*, ¶ 10 (citing *State v. Ballinger*, 2016 MT 30, ¶ 16, 382 Mont. 193, 366 P.3d 668). A temporary investigative stop is one exception to the warrant requirement and allows an officer to:

briefly stop and detain a person for investigative purposes without a warrant or probable cause for an arrest if, based on *specific and articulable facts known to the*

officer, including rational inferences therefrom based on the officer’s training and experience, the officer has an objectively reasonable, particularized suspicion that the person is engaged, or about to engage, in criminal activity.

Kroschel, ¶ 11 (emphasis in original). “For an officer to arrest someone without first obtaining a warrant, the officer must have probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.” *State v. Hafner*, 2010 MT 233, ¶ 15, 358 Mont. 137, 243 P.3d 435 (citing § 46-6-311, MCA).

¶18 Here, Trooper Barbera was dispatched to the scene of an accident where he observed Davis’s vehicle high-centered on a rock berm attached to a truck with an extension cord. He quickly smelled the odor of alcohol coming from inside the vehicle. Trooper Barbera noted Davis had red and watery eyes and, when answering questions, she covered her mouth in what he viewed as an attempt to mask the odor coming from her breath. He attempted to conduct SFSTs but due to adverse weather conditions decided it would be better to transport Davis to the Sheriff’s Office to continue his investigation. He informed Davis she was not under arrest but that he would be handcuffing her just to transport her. He removed the handcuffs once they arrived, conducted the SFSTs, requested a breath test, and arrested Davis based on the results of the tests.

¶19 This Court considered similar facts in *Hafner*. In *Hafner*, police responded to a report of a vehicle in a ditch and, upon arrival, smelled alcohol on Hafner and observed that he had bloodshot and glassy eyes. *Hafner*, ¶ 5. As the weather conditions were icy, the responding officer elected not to conduct the SFSTs at the scene and instead took

Hafner to the Sheriff's Office. Hafner refused to take the SFSTs or consent to a breathalyzer and was charged with a DUI. He filed a motion to suppress arguing the facts supported only a finding of particularized suspicion for DUI, not probable cause for an arrest, and therefore he could only be temporarily detained to conduct SFSTs. Hafner reasoned that because he refused the SFSTs, there were no additional facts to support probable cause. The district court denied Hafner's motion finding that probable cause did exist at the time of his arrest. We held there was probable cause for Hafner's arrest. *Hafner*, ¶ 19. We noted that upon arrival, Hafner's vehicle was found in a ditch, Hafner smelled of alcohol, had glassy and bloodshot eyes, slurred speech, and had trouble following directions. We concluded that the officer's "assessment of all relevant circumstances, evaluated in light of [his] knowledge [as] a trained law enforcement officer,' provided sufficient probable cause to arrest Hafner for DUI." *Hafner*, ¶ 19 (quoting *Missoula v. Forest*, 236 Mont. 129, 132, 769 P.2d 699, 701 (1989)).

¶20 Davis argues *Hafner* is distinguishable on the facts and, unlike in *Hafner*, Trooper Barbera acknowledged he did not have probable cause to arrest Davis until after he performed sobriety tests at the Sheriff's Office. However, like *Hafner* and despite Trooper Barbera's subjective belief, there was probable cause to believe Davis had committed a DUI at the time she was handcuffed, even though she was not arrested until she performed poorly on the SFSTs and took a breath test. Trooper Barbera responded to an accident where he observed Davis's vehicle high-centered on a rock berm. The vehicle was attached to another vehicle by an extension cord. He immediately smelled alcohol emanating from

Davis's vehicle and Davis admitted to having a "shifter" at work. Trooper Barbera observed Davis had red and watery eyes, and noticed she kept covering her mouth to mask her breath. Trooper Barbera investigated the accident and discovered Davis had drifted off the left side of the road, struck a mailbox, crossed over to the right side of the road, and hit a rock berm. There was no explanation for the accident other than Davis drifting off the road, which is consistent with impaired driving.

¶21 "Probable cause exists 'where the facts and circumstances within an officer's personal knowledge prove sufficient to warrant a reasonable person to believe that someone is committing or has committed an offense.'" *State v. Hesser*, 2024 MT 134, ¶ 11, ___ Mont. ___, ___ P.3d ___ (quoting *State v. Kelm*, 2013 MT 115, ¶ 25, 370 Mont. 61, 300 P.3d 687). Here, there was probable cause to believe Davis had committed the offense of DUI even before the administration of SFSTs and a breath test. The fact that Trooper Barbera continued his investigation by administering SFSTs and a breath test—routine steps in a DUI investigation—and chose to transport Davis to the Sheriff's Office to provide better testing conditions does not change the fact that the circumstances existing prior to Davis being handcuffed established probable cause.

¶22 We conclude given these facts and circumstances that Trooper Barbera had probable cause to believe Davis had committed the offense of DUI at the time she was handcuffed. We additionally note, as the District Court found, that Trooper Barbera could have detained and transported Davis to the Sheriff's Office in handcuffs based only on particularized

suspicion. Particularized suspicion for an investigative stop allows for a detention. Here, the detention would have been reasonable even if there was only particularized suspicion.

¶23 2. *Did the District Court err when it denied Davis’s motion to suppress all statements and tests made after she was placed in handcuffs?*

¶24 “The Fifth Amendment of the United States Constitution and Article II, Section 25 of the Montana Constitution protect a person from compelled self-incrimination.” *Kroschel*, ¶ 22. “When an individual ‘is taken into custody or otherwise deprived of his freedom by the authorities in any significant way *and is subjected to questioning*,’ he ‘must be adequately and effectively apprised of his [*Miranda*] rights” *Kelm* ¶ 29 (quoting *Miranda v. Arizona*, 384 U.S. 436, 467, 478, 86 S. Ct. 1602, 1624, 1630 (1966)) (emphasis in original). Failure to provide a *Miranda* warning “prior to custodial interrogation ‘generally requires exclusion of *any statements obtained*.’” *Kelm*, ¶ 29 (quoting *State v. Morrissey*, 2009 MT 201, ¶ 28, 351 Mont. 144, 214 P.3d 708) (emphasis in original).

¶25 Davis argues that all statements and test results that occurred after she was handcuffed must be suppressed because she was not advised of her *Miranda* rights but was in custody. The State concedes that Davis was likely in custody for purposes of *Miranda* when she was handcuffed and transported in a patrol car, and that her encounter at the investigation room remained custodial. However, the State argues Davis has not met her burden on appeal to demonstrate she was subjected to custodial interrogation prior to her having been read her *Miranda* rights. The State cites *State v. Gittens*, in which this Court declined to consider a defendant’s *Miranda* violation because the defendant failed to “identify any particular statements that he made in the interim between his arrest and the

Miranda warnings” and did “not offer an analysis of whether any such statements were volunteered, or made pursuant to a ‘custodial interrogation.’” 2008 MT 55, ¶ 19, 341 Mont. 450, 178 P.3d 91 (internal citations omitted).

¶26 Like *Gittens*, Davis has failed to identify any statements made after she was handcuffed and in custody that need to be suppressed. Trooper Barbera testified that at the Sheriff’s Office he did not ask Davis any questions “[o]utside of what is relevant and pertains to the standardized field sobriety tests specifically. . . .” Additionally, the District Court found that Trooper Barbera did not interrogate Davis in the patrol car or at the Sheriff’s Office and, therefore, Davis was never subject to a custodial interrogation which would implicate *Miranda*. We agree.

¶27 In *Kelm*, this Court considered a similar factual scenario. Police pulled Kelm’s vehicle over after observing her weaving and crossing the center line on the road. *Kelm*, ¶ 6. Kelm had glassy and bloodshot eyes and performed poorly on a horizontal gaze nystagmus test (HGN). Due to extremely cold weather, Kelm agreed and was transported to the Sheridan County Jail in handcuffs where she failed the SFSTs and was arrested for DUI. The district court suppressed all statements and testing because Kelm was not read her *Miranda* rights immediately following her arrest. On appeal, the State—as here—conceded that Kelm was likely arrested the moment she was placed in handcuffs, but maintained that the district court “erred when it suppressed evidence obtained from Kelm that was not derived from custodial interrogation. . . .” *Kelm*, ¶ 28. This Court agreed, concluding “Kelm was not entitled to a *Miranda* warning prior to the second HGN test, the

field sobriety tests that she completed at the jail, or the Intoxilyzer breath test . . . because the results of those tests were not self-incriminating statements that must be suppressed in the absence of a *Miranda* waiver.” *Kelm*, ¶ 28. We held that “[a]lthough the constitutional protections under *Miranda* are afforded during a custodial interrogation, those protections generally do not attach during field sobriety tests or breath tests because ‘the privilege against self-incrimination does not extend to real or objective evidence.’” *Kelm*, ¶ 30 (quoting *State v. Van Kirk*, 2001 MT 184, ¶ 22, 306 Mont. 215, 32 P.3d 735).

¶28 Here, Davis has failed to offer any statements she made following being handcuffed that warrant suppression, particularly given that *Miranda* does not attach to SFSTs and breath tests. Therefore, we conclude that Davis’s *Miranda* rights were not violated, and the District Court did not err when it denied her motion to suppress.

CONCLUSION

¶29 There was sufficient probable cause to believe Davis had committed the offense of DUI when she was placed in handcuffs and taken to the Sheriff’s Office for testing. The District Court correctly found there was no custodial interrogation and Davis’s *Miranda* rights were not violated. The District Court did not err in denying Davis’s motion to suppress.

¶30 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH

/S/ JAMES JEREMIAH SHEA

/S/ INGRID GUSTAFSON

/S/ JIM RICE