DA 23-0735

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 225

CHRISTIAN MICHAEL SMITH,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. ADV-23-490
Honorable David J. Grubich, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Nathan J. Hoines, James R. Olsen, Hoines Law Office, P.C., Great Falls, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Thad Tudor, Assistant Attorney General, Helena, Montana

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Submitted on Briefs: September 11, 2024

Decided: October 8, 2024

Filed:

Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Christian Michael Smith appeals the Eighth Judicial District Court's ruling upholding the suspension of his driver's license. We address the following issues:

> *Issue One: Did the District Court err by determining that the officer who responded to Smith's accident had a basis under § 61-8-1016, MCA, to request Smith to submit to a blood test?*
>
> *Issue Two: Did the District Court err by finding that Smith refused to submit to a blood test?*

¶2 We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 On the morning of September 2, 2023, Montana State Trooper Perry Woodland responded to a motorcycle accident on Morony Dam Road in Cascade County. Upon arrival, Woodland observed a severely damaged motorcycle in the ditch. The weather was clear and sunny, and there were no visible impairments on the paved road. By the time Woodland arrived on scene, paramedics had already placed Smith on a gurney, put him in a neck brace, and loaded him into an ambulance. Woodland spoke to Smith and noted that he was obviously injured. Smith told Woodland that he was the driver and related what he remembered up to the moment of the crash, and "then just waking up on the side of the road." Smith admitted to drinking periodically during the evening before the accident. Woodland could not perform a standard field sobriety test because the paramedics indicated that Smith's injuries required immediate transportation to the hospital for treatment.

¶4 Woodland followed the ambulance to the hospital, where he learned that Smith had received medication to alleviate his pain from a dislocated shoulder, broken foot, and head injury. Woodland read Smith the implied consent advisory and requested a blood sample. Smith initially agreed to provide a blood sample, but then Smith's mother arrived and questioned Woodland about the legality of Woodland reading the implied consent to Smith and his agreeing to the blood test. After speaking with his mother, Smith told Woodland, "I don't want that." Woodland understood the statement as a withdrawal of Smith's consent to the blood sample and Woodland did not seek a blood draw. Smith's driver's license was automatically suspended pursuant to Montana's implied consent statute, § 61-8-1016, MCA.

¶5 Smith petitioned the District Court for reinstatement of his license and moved to stay the suspension pursuant to § 61-8-1017, MCA. In his petition and brief, Smith argued that he "refused to have his blood tested" because Woodland did not have particularized suspicion to believe he was intoxicated. The State argued that Woodland had particularized suspicion to believe Smith was intoxicated, but even if that basis for requesting the test was lacking, the implied consent statute still applied because Woodland had probable cause to believe Smith was the driver of a vehicle involved in an accident resulting in serious bodily injury. Section 61-8-1016(2)(a)(iii)(C), MCA.

¶6 Woodland was the sole witness at the hearing. He testified about his observations of the accident scene and his interactions with Smith, the medical providers, and Smith's mother. The District Court found that Woodland did not have particularized suspicion to

believe Smith was driving under the influence. However, the District Court found that Woodland had probable cause to believe Smith was the driver of a vehicle involved in an accident resulting in serious bodily injury; therefore, § 61-8-1016(2)(a)(iii)(C), MCA, provided the basis for Woodland to request the blood test. The District Court found that Smith withdrew his initial consent to the blood test when he said, "I don't want that," after speaking with his mother. The District Court denied Smith's petition and upheld the suspension.

STANDARDS OF REVIEW

¶7 "We review a district court's ruling on a petition to reinstate a driver's license to determine whether the district court's findings of fact are clearly erroneous and whether its conclusions of law are correct." *Brown v. State*, 2009 MT 64, ¶ 8, 349 Mont. 408, 203 P.3d 842. A district court's findings of fact are clearly erroneous if they are not supported by substantial evidence, if the court misapprehended the effect of the evidence, or if our review of the record convinces us that the court made a mistake. *Kummerfeldt v. State*, 2015 MT 109, ¶ 8, 378 Mont. 522, 347 P.3d 1233. The petitioner bears the burden of proving that the suspension was improper because license suspensions are presumed to be correct. *Brown*, ¶ 8.

DISCUSSION

¶8 Drivers on Montana's public roadways are considered to have given consent to certain tests for the purpose of determining the presence of alcohol or drugs in a person's body. Section 61-8-1016(1)(a), MCA. Section 61-8-1016(2)(a)(iii)(C), MCA, provides in

relevant part that the test or tests must be administered at the direction of a law enforcement officer when the officer "has probable cause to believe that the person was driving or in actual physical control of a vehicle . . . involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death." Section 61-8-1016(2)(a)(iii)(C), MCA. "Serious bodily injury" is defined as an injury that:

> (i) creates a substantial risk of death;
>
> (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or
>
> (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

Section 45-2-101(66)(a), MCA.

¶9 Refusal to provide a sample under § 61-8-1016, MCA, results in immediate seizure and suspension of the person's driver's license. Section 61-8-1016(4)(c)(i), MCA. The suspension or revocation may be challenged by filing a petition in district court. Section 61-8-1017(1), MCA. When determining whether the petitioner's driver's license is subject to suspension or revocation, a district court may only consider two issues: (1) whether the officer had a basis under § 61-8-1016, MCA, to request a test; and (2) whether the person refused to submit to one or more tests designated by the officer. Section 61-8-1017(4), MCA. Smith asserts that the District Court erred in its determination as to both of these issues.

¶10 *Issue One: Did the District Court err by determining that the officer who responded to Smith's accident had a basis under § 61-8-1016, MCA, to request Smith to submit to a blood test?*

¶11 Smith concedes he drove the motorcycle, and that he sustained injuries in the accident. As it pertains to this issue, the only dispute is whether Woodland lacked probable cause to believe that the accident resulted in serious bodily injury, as defined by § 45-2-101, MCA, providing the basis under § 61-8-1016, MCA, for Woodland to request the test.

¶12 We have not previously addressed what constitutes probable cause for purposes of § 61-8-1016(2)(a)(iii), MCA, when the officer made the request pre-arrest, and the lower court found no particularized suspicion to believe the person was driving under the influence. We have previously addressed the probable cause standard for seeking a blood draw pursuant to a search warrant authorized by § 61-8-402, MCA.[1] We held that while the statute permitted law enforcement to apply for a warrant to draw blood to determine the presence of alcohol, the State still "must demonstrate probable cause" for the search warrant to issue. *State v. Giacomini*, 2014 MT 93, ¶ 13, 374 Mont. 412, 327 P.3d 1054. The probable cause standard for purposes of seeking a blood sample under § 61-8-1016(2)(a)(iii), MCA, would logically comport with the probable cause standard for a search under other circumstances. Probable cause for purposes of a search exists "if the facts and circumstances within the officer's personal knowledge . . . are sufficient to

[1] Since recodified at § 61-8-1016(4)(b), MCA.

warrant a reasonable person to believe" that another person is committing or has committed an offense. *State v. Stoumbaugh*, 2007 MT 105, ¶ 34, 337 Mont. 147, 157 P.3d 1137 (describing probable cause to search). Importing the probable cause standard for a search to § 61-8-1016(2)(a)(iii)(C), MCA, means that probable cause to request a test of blood, breath, or oral fluid exists if the facts and circumstances within the officer's personal knowledge are sufficient to warrant a reasonable person to believe that the individual was the driver of a vehicle involved in a motor vehicle accident resulting in serious bodily injury, as defined in § 45-2-101, MCA, or death. "Probable cause is evaluated in light of an officer's knowledge and all relevant circumstances." *Stoumbaugh*, ¶ 34.

¶13 Smith highlights Woodland's testimony that he "didn't know the full extent of [Smith's injuries]" as providing an insufficient basis for the District Court's finding of serious bodily injury. Smith argues that Woodland did not have adequate personal knowledge of Smith's injuries to determine their seriousness. Smith compares his injuries to those in *City of Billings v. Grela*, where a district court found probable cause for serious bodily injury when the defendant suffered organ damage, broken bones, and was intubated. 2007 Mont. Dist. LEXIS 822, ¶¶ 8, 13. Smith argues that his condition, "and more importantly Trooper Woodland's understanding of his condition at the time he requested a blood test falls far short of the example in *Grela*." While *Grela* may certainly provide an *example* of serious bodily injuries, it is nothing more than that. It is not, as Smith appears to suggest, a benchmark or a standard for determining whether an injury constitutes a "serious bodily injury" as defined in § 45-2-101, MCA.

¶14 Section 61-8-1016(2)(a)(iii)(C), MCA, does not require a law enforcement officer to diagnose the precise severity of an individual's injuries and their projected healing time. The statute only requires there to be facts and circumstances within the officer's personal knowledge sufficient to warrant a reasonable person to believe that the individual sustained serious bodily injury, as defined in § 45-2-101, MCA. The record provides several facts and circumstances within Woodland's personal knowledge at the time he requested Smith to submit to the blood draw that satisfy the statute's definition. Upon arriving on scene, Woodland observed Smith already on a gurney, loaded in an ambulance, and wearing a neck brace. In the brief time they were able to speak at the scene, Smith told Woodland he remembered the "crash suddenly happen[ing] and then just waking up on the side of the road," indicating that Smith lost consciousness for some period of time. Woodland's contact with Smith at the scene was cut short because he had to be transported to the hospital. By the time Woodland requested a blood sample from Smith, Woodland was aware that Smith had suffered "obvious" injuries, including a broken foot, dislocated shoulder, and an unspecified head injury. Notwithstanding Smith's attempt to minimize the severity of his injuries, § 45-2-101, MCA, does not require someone to be at death's door to meet the definition of "serious bodily injury." In relevant part, the statute defines "serious bodily injury" as an injury that "can reasonably be expected to result in . . . protracted loss or impairment of the function or process of a bodily member." Section 45-2-101(66)(a)(iii), MCA. In that regard, the State points out that we have previously addressed the meaning of "protracted" as used in this same definition.

Referencing cases from other jurisdictions, we noted that "[a] victim's broken jaw preventing him from chewing food for six weeks constituted a 'protracted impairment' of a body member or organ," and injuries that resulted in the victim's inability to spontaneously open his left hand, which endured for more than two months, may be considered protracted. *State v. Trull*, 2006 MT 119, ¶ 34, 332 Mont. 233, 136 P.3d 551 (citations omitted). Prior to asking Smith to submit to a blood test, Woodland was aware that Smith had a broken foot and a dislocated shoulder. That alone would be sufficient to warrant a reasonable person to believe that Smith's ability to use those appendages would be impaired for a period of weeks or even months.

¶15 The District Court finding that Woodland had probable cause to believe that Smith's accident resulted in serious bodily injury, as defined by § 45-2-101, MCA, was not clearly erroneous. The District Court did not err by holding that there was a basis under § 61-8-1016, MCA, for Woodland to request Smith to submit to a blood test.

¶16 *Issue Two: Did the District Court err by finding that Smith refused to submit to a blood test?*

¶17 Smith advances two arguments as to the District Court's finding that he refused to submit to the blood test. First, Smith claims that his statement "I don't want that" does not constitute a clear refusal because it is vague, and Woodland merely assumed it meant that Smith withdrew his initial affirmative consent. The State asserts the context of Smith's mother's involvement, which came after his initial consent to the test but before his

statement "I don't want that," establishes Smith's refusal. The State argues the District Court correctly found Smith refused to submit to the test.

¶18 A driver refuses to submit to a test when the driver engages in "some action, whether verbal or nonverbal, that withdraws" the implied consent provided by statute. *City of Great Falls v. Allerdice*, 2017 MT 58, ¶ 16, 387 Mont. 47, 390 P.3d 954 (internal quotations omitted). The driver bears the burden of proving that the officer incorrectly "conclud[ed] that there was a refusal to submit to a test." *Wessel v. DOJ, Motor Vehicle Div.*, 277 Mont. 234, 240, 921 P.2d 264, 267 (1996).

¶19 After examining the record, we decline to disturb the District Court's finding that Smith refused the blood test. Smith's position as to whether or not he refused the blood test has been somewhat of a moving target. In his brief in support of his petition to the District Court, Smith stated that his license was suspended because, after "[i]mplementing all his rights as a citizen of Montana, Mr. Smith refused to have his blood tested." Smith concluded his brief by stating: "Mr. Smith's license was taken and suspended *because he refused to take a blood test* when the State did not have the particularized suspicion to ask him to do so." (Emphasis added.) At the hearing, Smith argued that he actually consented to the test and it was his mother who withdrew his initial consent, which she had no legal authority to do because he was an adult. Smith argued that Woodland erroneously interpreted Smith's statement "I don't want that"—which Smith made after speaking with his mother—as a refusal to submit to the blood test. But Smith did not offer any evidence or alternative explanation as to what else he could have been referring by the statement.

Woodland was the only witness at the hearing. The District Court was in the best position to assess Woodland's credibility and determine the weight to give to his testimony. *Ditton v. DOJ Motor Vehicle Div.*, 2014 MT 54, ¶ 33, 374 Mont. 122, 319 P.3d 1268. The District Court's finding that Smith refused the test when he told Woodland "I don't want that" was not clearly erroneous.

¶20 Smith's final argument on appeal is that he was "incapable of refusing a blood test" because he was under the influence of pain medication when Woodland requested that he submit to the test at the hospital. The State argues that Smith raises this argument for the first time on appeal.

¶21 The State asserts—and our review of the District Court record confirms—that at no point in his petition to the District Court, in his brief to the District Court, or during his oral argument before the District Court,[2] did Smith claim that he was "incapable of refusing a blood test." "The rule is well established that this Court will not address an issue raised for the first time on appeal. A party may not raise new arguments or change its legal theory on appeal. The reason for the rule is that it is fundamentally unfair to fault the trial court for failing to rule on an issue it was never given the opportunity to consider." *State v. Martinez*, 2003 MT 65, ¶ 17, 314 Mont. 434, 67 P.3d 207 (internal citations omitted). We

[2] At one point during his examination of Woodland, Smith's counsel asked Woodland about a statement he made at the hospital that Smith was "mentally not there." The full extent of Smith's counsel's inquiry on that point was just to confirm that Woodland made the statement. Smith's counsel did not follow up on the statement and made no argument that Smith was incapable of refusing the blood test. To the contrary, in his closing argument to the District Court, Smith's counsel argued that Smith was "fairly conscious [and] he consented . . . to the blood draw."

decline to consider Smith's argument, raised for the first time on appeal, that he was incapable of refusing the blood test.

¶22 The District Court did not err when it found that Smith refused to submit to a blood test.

CONCLUSION

¶23 Smith has failed to meet his burden that the suspension of his driver's license was improper. The District Court's ruling upholding the suspension of Smith's driver's license for refusing to consent to a blood test is affirmed.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ JIM RICE