

DA 17-0439

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 98N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOHN THOMAS ONOFREY,

Defendant and Appellant.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DC 17-32
Honorable Brenda Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Karl Knuchel, Aaron Brann, Karl Knuchel P.C., Livingston, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Jonathan M. Krauss,
Assistant Attorney General, Helena, Montana

Bruce E. Becker, Park County Attorney, Livingston, Montana

Submitted on Briefs: March 7, 2018

Decided: April 24, 2018

Filed:



Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Appellant John Thomas Onofrey (Onofrey) appeals from an order entered in the Sixth Judicial District Court, Park County, affirming Onofrey's judgment of conviction in the Park County Justice Court, Park County. We affirm.

¶3 On October 26, 2016, at approximately 1:30 a.m., Park County Sheriff's Deputy Dean DuVall was on patrol on Highway 89 near Gardiner when he observed a vehicle pass him northbound with no taillights illuminated. Deputy DuVall observed the vehicle cross the centerline multiple times on straight stretches of the roadway. Consequently, Deputy DuVall initiated a traffic stop and identified Onofrey as the driver by his license. During the interaction, Deputy DuVall noted Onofrey had slurred speech, a fixed gaze, fumbled with his fingers, had to be reminded to produce insurance and registration documents, and smelled of alcohol. Onofrey admitted to having three drinks. Deputy DuVall had Onofrey perform several field sobriety tests, which indicated impairment. Onofrey was placed under arrest for driving under the influence (DUI) and transferred to the hospital where a blood test was administered. The test results indicated Onofrey had a BAC of 0.145.

¶4 The State charged Onofrey in Justice Court with first offense DUI, in violation of § 61-8-401, MCA, and driving over a divided space, in violation of § 61-8-330, MCA. Onofrey filed a motion to suppress, alleging there was no particularized suspicion for the stop. The Justice Court held a hearing on Onofrey's motion on February 24, 2017, and concluded that there was particularized suspicion because Onofrey did not have properly working taillights and he crossed the centerline multiple times, both of which constituted traffic violations.

¶5 The Justice Court set a jury confirmation hearing for March 8, 2017, and advised Onofrey that he must appear or his right to a jury trial would be waived pursuant to § 46-16-120, MCA. A day before the jury confirmation hearing, Onofrey filed a motion to continue his trial and other deadlines. Assuming the motion would be granted, Onofrey and his counsel did not appear for the hearing and the Justice Court, which subsequently denied the motion, determined Onofrey waived his right to a jury trial. In accordance with the Justice Court's scheduling order and § 46-15-322, MCA, the State filed a designation of Doug Lancon as its lab analyst and toxicology expert and produced a copy of the lab report to the defense. Onofrey received no further explanation of the lab result from the State. The State also filed a motion for video testimony from Lancon, to which Onofrey failed to respond or object.

¶6 The Justice Court conducted a bench trial on April 5, 2017. The State called Lancon to testify by video conference. Onofrey objected to the video testimony and additionally claimed that the State failed to disclose reports regarding Lancon's opinion, although the

alcohol report was disclosed. The Justice Court overruled Onofrey's objection because the State had designated Lancon as a witness and disclosed the alcohol report. The Justice Court explained it would allow the State to use Lancon's testimony to lay a foundation for the alcohol report regardless of whether it called him as an expert.

¶7 Based on the evidence produced at trial, the Justice Court found Onofrey guilty of DUI, but not guilty of driving over the divided space. The Justice Court reaffirmed its position that there was particularized suspicion for the stop and concluded that the blood-test result of 0.145 BAC clearly indicated that Onofrey was impaired. The Justice Court imposed a jail sentence of ten days, with nine days suspended; ordered Onofrey pay \$785 in fines and court costs; ordered completion of the ACT program; and suspended Onofrey's license for six months. Onofrey appealed his conviction to the District Court, raising three issues: (1) that there was not particularized suspicion for the stop; (2) that he was denied his constitutional right to a jury trial; and (3) that the Justice Court abused its discretion in allowing a crime lab analyst to testify as a "fact witness who has expert knowledge" by way of video testimony. The District Court affirmed Onofrey's conviction. Onofrey appeals, raising the same issues he raised in District Court.

¶8 On appeal from justice court, the district court functions as an intermediate appellate court confined to review of the record and questions of law. *State v. Luke*, 2014 MT 22, ¶ 9, 373 Mont. 398, 321 P.3d 70; § 3-5-303, MCA; § 3-10-115(1), MCA. On appeal of a district court's appellate review of a lower court ruling, this Court reviews the lower court

ruling as if appealed directly to this Court without district court review. *State v. Maile*, 2017 MT 154, ¶ 7, 388 Mont. 33, 396 P.3d 1270.

¶9 Onofrey asserts Deputy DuVall had no particularized suspicion to stop his vehicle. Deputy DuVall testified that, upon his initial observation of Onofrey's vehicle, the vehicle's taillights were not functioning, the vehicle crossed the centerline multiple times, and the vehicle was driven off of the road once. Deputy DuVall's observations of at least two traffic violations provided him with particularized suspicion to stop Onofrey's vehicle. The Justice Court's findings of fact were supported by substantial evidence and are not clearly erroneous. Further, the Justice Court correctly applied the controlling law to the facts. *State v. Foster*, 2017 MT 118, ¶ 6, 387 Mont. 402, 394 P.3d 916.

¶10 Onofrey next argues that the Justice Court violated his constitutional right to a jury trial when it determined Onofrey waived that right by failing to appear at the jury confirmation hearing on March 8, 2017. This Court's precedent is clear, however, that a defendant's failure to appear at a jury confirmation hearing in a court of limited jurisdiction, after the court requires his personal appearance pursuant to § 46-16-120, MCA, may constitute a "default of appearance" within the meaning of Article II, Section 26 of the Montana Constitution. *See, e.g., State v. Sherlock*, 2018 MT 92, ¶¶ 8-9, ___ Mont. ___, ___ P.3d ___; *City of Missoula v. Cox*, 2008 MT 364, ¶¶ 7, 10, 346 Mont. 422, 196 P.3d 452. Here, Onofrey and his counsel failed to appear at the jury confirmation hearing after assuming a motion to continue would be granted. As the District Court correctly concluded, "The consequences of a non-appearance were simple and plain." The

Justice Court did not abuse its discretion in concluding Onofrey waived his right to a jury trial.

¶11 Lastly, Onofrey argues that the Justice Court abused its discretion when it allowed a crime lab analyst to testify by video. The disclosure statute set forth in § 46-15-322(1)(a)-(c), MCA, requires the State to provide the defense with written reports or statements of its experts and the names of “all persons whom the prosecutor may call as witnesses in the case in chief.” The State formally identified Lancon as a witness in its case-in-chief and provided the defense with a copy of the alcohol report. Onofrey does not dispute that he was provided notice that Lancon was a witness, that he was provided a copy of the alcohol report, or that the blood-test result was admissible at his trial. Despite knowing the contents of the report and who would testify concerning the report well in advance of trial, Onofrey argues that the State failed to comply with the discovery statutes by not setting forth the methodology, process, and calculations used by Lancon in arriving at the results. Here, the disclosure statute does not require the State to provide any further summaries of Lancon’s testimony or to specifically designate Lancon as an expert witness. Finally, Onofrey failed to object or respond to the State’s motion for video testimony of Lancon. Accordingly, the State’s motion was deemed well taken. *See* Montana Uniform Rules for the Justice and City Courts, Rule 6(c). The Court reviews discretionary trial court rulings, such as administration issues, for abuse of discretion. *City of Missoula v. Girard*, 2013 MT 168, ¶ 10, 370 Mont. 443, 303 P.3d 1283. The Justice Court did not abuse its

discretion by allowing Lancon to testify by video conferencing concerning the previously-disclosed alcohol report.

¶12 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶13 The District Court's order affirming the Justice Court's conviction is affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR