DA 17-0686

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 76N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JUSTIN DALLAS MARKS,

Defendant and Appellant.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. DDC 2016-222
Honorable James P. Reynolds, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Caitlin Boland Aarab, Boland Aarab PLLP, Great Falls, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Tammy K Plubell, Assistant Attorney General, Helena, Montana

Leo J. Gallagher, Lewis and Clark County Attorney, Fallon Stanton, Deputy County Attorney, Helena, Montana

Submitted on Briefs: February 20, 2019

Decided: April 2, 2019

Filed:

Clerk

Justice Jim Rice 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 Following a bench trial in Lewis and Clark County Justice Court, Justin Marks was found guilty of driving under the influence (DUI) in violation of § 61-8-401, MCA. Marks appealed his conviction to the First Judicial District Court, arguing the Justice Court erred by denying his motion to suppress and dismiss the criminal charge. The District Court affirmed. Marks appeals to this Court, arguing that under the doctrine of collateral estoppel, the District Court's earlier determination to reinstate his license in a reinstatement proceeding settled the issue of whether the arresting office had particularized suspicion to stop Marks and commence a DUI investigation, and required the Justice Court to grant his motion to suppress the evidence and to dismiss the criminal charge.

¶3 On October 8, 2015, Lewis and Clark Deputy Sheriff Chris Rebo was traveling northbound on Montana Avenue outside of Helena when he observed a Lincoln Continental town car make a "fairly wide" turn, cross the fog line, and then overcorrect by drifting over the center lane as it turned onto Montana Avenue. Deputy Rebo followed the vehicle into a service station parking lot and initiated contact with the driver, who was identified as Marks. After detecting the scent of alcohol and noticing that Marks seemed

to be having difficulty balancing, Deputy Rebo asked if Marks had been drinking. Marks admitted he had consumed alcohol and taken prescription medications that day. Deputy Rebo initiated field sobriety tests. Marks refused to perform the walk-and-turn test but cooperated in the one-legged stand test, which revealed indications of impairment to Rebo. After refusing to provide a breath sample for a preliminary alcohol screening, Marks was placed under arrest, read the implied consent advisory, and asked to provide a blood sample. Marks again refused and was ultimately charged with DUI in violation of § 61-8-401(1)(d), MCA. Marks' driver's license was administratively suspended as a result of his refusals to provide breath and blood samples pursuant to § 61-8-402(4), MCA.

¶4 Marks filed a civil petition in the District Court to challenge his license revocation under § 61-8-403, MCA. The District Court scheduled a hearing on the petition for February 2, 2016. However, due to an unknown error, the Lewis and Clark County Attorney's Office was apparently not given notice of the hearing and thus, did not have Deputy Rebo available to testify. The District Court denied the State's request for a continuance and proceeded with the hearing. Based upon only Marks' testimony, the District Court found that Deputy Rebo "did not have reasonable grounds to believe that [Marks] had been driving . . . while under the influence of alcohol."

¶5 Marks then filed a motion in Justice Court to suppress all evidence from the DUI investigation and dismiss the criminal charge against him. Marks argued the District Court's determination within the reinstatement proceeding that Deputy Rebo lacked "reasonable grounds" to believe Marks had been driving under the influence of alcohol

under § 61-8-403, MCA, was the equivalent to a ruling that the deputy lacked "particularized suspicion" necessary to stop Marks and conduct the DUI investigation under § 46-5-401, MCA. The Justice Court denied the motion, reasoning first that the State had not received notice of the hearing and thus "due process was not followed," and also concluding that the reinstatement proceeding did not determine issues for purposes of the criminal proceeding. A bench trial was held in the Justice Court and Marks was convicted of DUI in violation of § 61-8-401, MCA.

¶6 Marks appealed to the District Court, arguing the Justice Court erred by denying his Motion to Suppress and Dismiss. The District Court affirmed the Justice Court's ruling, reasoning, "[t]he determination of whether the officer has particularized suspicion to warrant a stop is a completely different question" from whether the officer had reasonable grounds to believe Marks had been drinking and driving under § 61-8-403, MCA. The existence of particularized suspicion, the District Court concluded, "is not answered by the District Court's [reinstatement] decision."

¶7 On an appeal from a court of record, the district court functions as an intermediate appellate court. *Stanley v. Lemire*, 2006 MT 304, ¶ 24, 334 Mont. 489, 148 P.3d 643. Therefore, we review the Justice Court's decision, independent of the District Court's ruling, "as if the appeal had originally been filed in this Court." *Stanley*, ¶ 26. Accordingly, we review the Justice Court's denial of Marks' suppression motion to determine whether the findings were clearly erroneous and whether they were applied correctly as a matter of law. *State v. Gill*, 2012 MT 36, ¶ 10, 364 Mont. 182, 272 P.3d 60. A finding is clearly

erroneous if it is not supported by substantial evidence, if the effect of the evidence has been misapprehended by the lower court, or if this Court's review of the record leads to the firm conviction that a mistake has been made. *Gill*, ¶ 10.

¶8 On appeal to this Court, Marks again contends that "[b]ecause the District Court had already ruled that Deputy Rebo did not have particularized suspicion to investigate Marks, the doctrine of collateral estoppel barred the Justice Court from reconsidering that issue," and was required to grant his motion to dismiss. The doctrine of collateral estoppel, also known as issue preclusion, "bars the reopening of an issue that has been litigated and determined in a prior suit." *Baltrusch v. Baltrusch*, 2006 MT 51, ¶ 15, 331 Mont. 281, 130 P.3d 1267 (citation omitted). Collateral estoppel prevents the relitigation of an issue if four elements are satisfied:

> (1) the identical issue raised was previously decided in a prior adjudication;
>
> (2) a final judgment on the merits was issued in the prior adjudication;
>
> (3) the party against whom collateral estoppel is now asserted was a party or in privity with a party to the prior adjudication; and
>
> (4) the party against whom preclusion is asserted must have been afforded a full and fair opportunity to litigate any issues which may be barred.

Baltrusch, ¶ 18. The State answers that elements one and four were not satisfied in Marks' case and thus, collateral estoppel does not apply.

¶9 Marks notes our repeated statement that "the 'reasonable grounds' requirement in § 61-8-403(4)(a), MCA, is the equivalent of a 'particularized suspicion' to make an investigative stop," *Brown v. State*, 2009 MT 64, ¶ 11, 349 Mont. 408, 203 P.3d 842

(citations omitted), and thus argues the reinstatement ruling that the arresting officer lacked "reasonable grounds" to believe the accused was driving under the influence, "is equivalent to a ruling that [the officer] lacked 'particularized suspicion' to make an investigative stop." While the respective determinations may be equivalent, the legal implications are not. "The implied consent and license seizure provisions of § 61-8-402, MCA, are a civil administrative proceeding 'separate and distinct' from a criminal charge of driving under the influence." *State v. Minett*, 2014 MT 225, ¶ 10, 376 Mont. 260, 332 P.3d 235 (quoting *In re Suspension of Driver's License of Blake*, 220 Mont. 27, 31, 712 P.2d 1338, 1341 (1986)). The criminal action on a charge of DUI "proceeds independently" from the civil administrative proceedings related to the driver's license. *In re Blake*, 220 Mont. at 31, 712 P.2d at 1341 (overruled on other grounds by *Bush v. Mont. DOJ, Motor Vehicle Div.*, 1998 MT 270, ¶ 11, 291 Mont. 359, 968 P.2d 716); *see also Ditton v. DOJ Motor Vehicle Div.*, 2014 MT 54, ¶¶ 26-27, 374 Mont. 122, 319 P.3d 1268 ("A hearing held under § 61-8-403, MCA, is a civil proceeding, separate and distinct from a criminal trial on the charge of operating a motor vehicle while under the influence of alcohol" and therefore "collateral estoppel, or issue preclusion, does not apply.") (internal quotations and citations omitted). Here, the District Court's consideration of whether Marks' driver's license should be reinstated was a separate and distinct issue from the Justice Court's mandate to assess the legality of the stop for purposes of the criminal proceeding.

¶10 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the

Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶11 Affirmed.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA