DA 19-0526

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 33N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

THOMAS WILLIAM PRICE,

Defendant and Appellant.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. DDC-2018-189
Honorable James P. Reynolds, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Christopher R. Betchie, Hull, Swingley & Betchie, P.C., Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Damon Martin, Assistant Attorney General, Helena, Montana

Leo Gallagher, Lewis and Clark County Attorney, Helena, Montana

Submitted on Briefs: December 30, 2020

Decided: February 9, 2021

Filed:

Clerk

Justice Beth Baker 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 Thomas William Price appeals an order of the First Judicial District, Lewis and Clark County, denying Price's appeal of the Justice Court's denials of a motion to suppress and motion to dismiss for lack of speedy trial. We affirm.

¶3 On January 7, 2017, Price was traveling westbound toward MacDonald Pass, near Helena. Price apparently fell asleep behind the wheel; another motorist came upon Price's vehicle—stopped in the driving lane—and attempted to wake him. The motorist reported to police dispatch that Price woke up and, startled, drove his car off the road and into a nearby snowbank.

¶4 Lewis and Clark County Sheriff's Deputy LeeAnn Pekovitch responded to the scene at approximately 5:15 a.m. She asked Price where he had been, where he was heading, and whether he had anything to drink. Price stated he was driving from Butte and, though he "had a few drinks" over the course of the previous day, he last drank at 8:00 p.m. Pekovitch observed that Price smelled of alcohol, had bloodshot eyes, and spoke with slurred speech. Because of the minus-15-degree temperature, darkness, and snow and ice on the road, Pekovitch performed a cursory pat-down of Price and instructed him to sit in her patrol car for his safety.

¶5 Based on indications that Price was intoxicated, Pekovitch requested the additional assistance of Montana Highway Patrol Trooper Amanda Villa. Given the weather and road conditions, Villa requested that Pekovitch transport Price to the Baxendale Volunteer Fire Department, six miles away, to conduct a Driving Under the Influence of Alcohol ("DUI") investigation. Pekovitch informed Price of Villa's request, performed a more thorough pat-down, and handcuffed Price for the duration of the ride to the fire department.

¶6 At the fire department, Villa administered three standard field sobriety tests ("SFST") and a preliminary breath test on Price. Based on the SFST results and Price blowing a .231 on the breath test, Villa placed Price under arrest for violating § 61-8-401(1)(a), MCA. Villa then transported Price to a nearby hospital for a blood draw, which Price did not refuse. After the blood draw, Villa transported Price to jail, where for the first time that morning he received a *Miranda* warning.

¶7 Price appeared in Lewis and Clark County Justice Court on January 9, 2017, and pleaded not guilty. Price's attorney requested all reports and videos relating to the incident, which the State provided before the February 15 omnibus hearing. At the hearing, Price elected a bench trial and indicated he had no motions to file and had received all discovery. The Justice Court set a bench trial for March 24, 2017. Despite indicating no motions would be filed, a week later Price filed a motion to suppress his statements to law enforcement and his SFST results. The Justice Court scheduled a hearing on this motion for April 17 and reset the trial date to May 10, 2017.

¶8 On March 21, Price learned that an officer's bodycam video and his blood toxicology report had yet to be produced. The State provided the blood report two days

later, but Price did not receive the bodycam video until April 14. On April 17, the day of the rescheduled evidentiary hearing on his motion to suppress, Price moved the Justice Court to continue the hearing to allow more time to review the new evidence. The Justice Court moved the hearing to May 11 and reset the trial to June 2. After the evidentiary hearing, the Justice Court granted the parties additional briefing time. The State made several requests for additional time to file its response brief, resulting in the Justice Court indefinitely continuing the bench trial. On October 10, Price filed a notice of submittal and request for ruling on his motion to suppress; the Justice Court denied the motion two days later. On October 18, the Justice Court set a new trial date for December 22, 2017. Price moved to dismiss for lack of speedy trial on December 6, which the Justice Court denied on February 27, 2018. Price pleaded guilty several days later and appealed the denial of both motions to the District Court; the District Court affirmed on both issues.

¶9 Price argues before this Court that the Justice Court erred in dismissing his motion to suppress his statements, SFST results, and blood test results because law enforcement took him into custody and interrogated him without advising him of his *Miranda* rights. He also argues that the Justice Court erred by not dismissing his DUI charge for lack of speedy trial on both statutory and constitutional grounds.

¶10 "We review cases that originate in justice courts of record and are appealed to a district court as if the appeal originally had been filed in this Court." *State v. Maile*, 2017 MT 154, ¶ 7, 388 Mont. 33, 396 P.3d 1270. A trial court's determination that a defendant was not entitled to *Miranda* warnings is reviewed for correctness. *Maile*, ¶ 8

(citing *State v. Elison*, 2000 MT 288, ¶¶ 12, 34, 302 Mont. 228, 14 P.3d 456). A trial court's findings of fact on a motion to suppress are reviewed for clear error; a finding of fact is clearly erroneous "if it is not supported by substantial evidence, if the trial court misapprehended the effect of the evidence, or if this Court has a definite or firm conviction that the trial court committed a mistake." *Maile*, ¶ 8 (citing *State v. Loh*, 275 Mont. 460, 475, 914 P.2d 592, 601 (1996)). "Whether a misdemeanor charge must be dismissed for violating a defendant's statutory speedy trial right requires an interpretation and application of § 46-13-401(2), MCA, and presents a question of law that this Court reviews for correctness." *State v. Knippel*, 2018 MT 144, ¶ 10, 391 Mont. 495, 419 P.3d 1229 (citation omitted). We likewise review for correctness whether the constitutional right to a speedy trial has been violated. *See State v. Ariegwe*, 2007 MT 204, ¶ 119, 338 Mont. 442, 167 P.3d 815.

¶11 Price argues that he was subject to a custodial interrogation without being advised of his *Miranda* rights and therefore the fruits of that interrogation—which he claims are his statements to law enforcement, SFST results, and breath and blood tests—must be suppressed as involuntary. Determining whether law enforcement subjected a defendant to a custodial interrogation is a two-step inquiry: 1) whether the defendant was in custody and 2) whether the defendant was interrogated. *Maile*, ¶ 12 (citation omitted). When a person is taken into custody and subject to interrogation, he must be read his *Miranda* rights. *State v. Morrisey*, 2009 MT 201, ¶ 28, 351 Mont. 144, 214 P.3d 708 (citing *Miranda v. Arizona*, 384 U.S. 436, 477-79, 86 S. Ct. 1602, 1629-30 (1966)). In the context of *Miranda* rights, interrogation "refers not only to express questioning, but also to any

words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *State v. Olson*, 2003 MT 61, ¶ 18, 314 Mont. 402, 66 P.3d 297 (citation and internal quotation marks omitted).

¶12 Price does not point to any specific question as subjecting him to law enforcement interrogation in violation of *Miranda*. The only questioning mentioned in Price's briefing is that, upon initially contacting him, Pekovitch asked "questions about where he was coming from, going to, and if he had been drinking." Pekovitch already had reason from the motorist's report to suspect that Price may have been intoxicated; her initial brief questions did not require a *Miranda* warning. *See Elison*, ¶ 32 ("an officer may ask the detainee a moderate number of questions to determine the detainee's identity and to try to obtain information confirming or dispelling the officer's suspicions before the requirements of *Miranda* attach"). Price's responses to these initial questions are not suppressible.

¶13 This Court also has held that SFSTs and breath tests are outside *Miranda's* purview because "the privilege against self-incrimination does not extend to real or objective evidence." *State v. Kelm*, 2013 MT 115, ¶ 30, 370 Mont. 61, 300 P.3d 687 (citation and internal quotations omitted). The tests are not suppressible for lack of a *Miranda* warning. Further, Price admits Villa read him Montana's implied consent advisory before administering the breath test; the advisory makes it clear a suspect may refuse to take both the breath and blood tests. Price's DUI citation indicates he did not refuse the blood test; it is therefore considered voluntary and not suppressible. *See generally* § 61-8-402, MCA;

City of Great Falls v. Allderdice, 2017 MT 58, ¶¶ 14-16, 387 Mont. 47, 390 P.3d 954 (concluding the municipal court correctly denied defendant's motion to suppress a blood test when the defendant took no actions to withdraw her implied consent). Price has not demonstrated that, even if he was in custody, law enforcement subjected him to an interrogation. The District Court's conclusion on the issue is affirmed.

¶14 Price additionally argues his DUI should be dismissed for lack of speedy trial on both statutory and constitutional grounds. "We apply § 46-13-401(2), MCA, to misdemeanor speedy trial claims, because the statute provides more enhanced protections than the constitutional speedy trial guarantee." *Knippel*, ¶ 13. Section 46-13-401(2), MCA, reads:

> After the entry of a plea upon a misdemeanor charge, the court, unless good cause to the contrary is shown, shall order the prosecution to be dismissed, with prejudice, if a defendant whose trial has not been postponed upon the defendant's motion is not brought to trial within 6 months.

Where § 46-13-401(2), MCA's, protections are unavailable, a defendant still may assert constitutional speedy trial rights. *City of Helena v. Heppner*, 2015 MT 15, ¶ 18, 378 Mont. 73, 341 P.3d 640 (citation omitted). We analyze constitutional speedy trial right violations under the four-factor test found in *Ariegwe*. "The test balances: (1) the length of delay; (2) the reasons for the delay; (3) the accused's response to the delay; and (4) the prejudice to the accused. . . . No one factor is dispositive by itself." *State v. Kurtz*, 2019 MT 127, ¶ 7, 396 Mont. 80, 443 P.3d 479 (citing *Ariegwe*, ¶¶ 34, 112) (internal quotation marks omitted).

¶15 We agree with the District Court that the State demonstrated good cause under § 46-13-401(2), MCA. Price entered his initial not-guilty plea on January 9, 2017; the statutory six-month period therefore expired on July 9, 2017. The Justice Court allowed Price to file an untimely motion to suppress, which foreseeably resulted in the postponement of the trial date. At Price's request, the Justice Court then continued the motion to suppress hearing at least one time. To accommodate the State's request to respond to Price's already untimely motion, the Justice Court ultimately postponed the trial past July 9. As the District Court explained, "[t]he State's good cause [was] the necessity to address Price'[s] motion to suppress." *See State v. Fitzgerald*, 283 Mont. 162, 166-67, 940 P.2d 108, 111 (1997) ("any pretrial motion for continuance filed by a defendant which has the incidental effect of delaying the trial beyond the six[-]month time limit could be said to 'postpone trial' for purposes of § 46-13-401(2), MCA").

¶16 Price's constitutional argument fails as well. Under the *Ariegwe* balancing test, Price has not demonstrated prejudice attributable to the delayed trial. Price presents to this Court the same evidence of prejudice he presented in his briefs to the Justice and District Courts, claiming the delay "severely prejudiced" him for various reasons. In its order denying his motion to dismiss, however, the Justice Court noted Price did not in fact testify that any delay "severely prejudiced" him. Rather, he testified about how a suspended driver's license might affect his employment if convicted. Any anxiety a conviction might cause Price speaks to the nature of the charged crime, not to any delay in bringing him to trial. *See Ariegwe*, ¶ 154. Further, the Justice Court found that Price started a new job and increased his income since his arrest—going so far as to call the Defense's

briefed arguments "disingenuous." Nothing in the record gives us reason to question this finding. Finally, Price offered no evidence of impairment of his defense from the alleged speedy trial violation, which "constitutes the most important factor in our prejudice analysis." *State v. Steigelman*, 2013 MT 153, ¶ 29, 370 Mont. 352, 302 P.3d 396. We conclude that the persuasive showing of no prejudice outweighs the remainder of the *Ariegwe* factors.

¶17 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. The District Court's interpretation and application of the law were correct, and its order denying Price's appeal is affirmed.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ INGRID GUSTAFSON
/S/ JIM RICE