DA 21-0206

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 310N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MICHAEL HENRY DITTON,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DC-20-391B
Honorable Rienne H. McElyea, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Michael Henry Ditton, Self-Represented, Bozeman, Montana

For Appellee:

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

Greg Sullivan, Bozeman City Attorney, Ed Hirsch, Assistant City Attorney, Bozeman, Montana

Submitted on Briefs: October 27, 2021

Decided: December 7, 2021

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 Michael Henry Ditton (Ditton) appeals a March 8, 2021 Opinion and Order from the Eighteenth Judicial District Court, Gallatin County, affirming the Bozeman Municipal Court's denial of Ditton's motion to dismiss his charge of Driving Under the Influence of Alcohol (DUI). We affirm.

¶3 On February 21, 2020, Bozeman Police arrived at the scene of an automobile accident after Ditton had driven his vehicle "the wrong way through [a fast-food restaurant] drive-thru and driven off an embankment." Police conducted a preliminary breath test of Ditton, which revealed Ditton's blood-alcohol-concentration (BAC) to be 0.151—almost twice the legal limit in Montana. Police took Ditton into custody at the scene, at which point, Ditton informed Police he was diabetic and that his blood sugar had spiked. Police transported Ditton from the scene to Bozeman Deaconess Hospital for monitoring and for a blood draw. Ditton was charged with two misdemeanor offenses: Careless Driving under § 36.03.260 of the Bozeman Municipal Code and DUI (third offense) under § 61-8-

401(1)(a), MCA. Ditton had previously been convicted of two other DUI offenses in the State of Montana, stemming from two separate incidents occurring in 2002 and 2006.[1]

¶4 Before releasing Ditton from custody at the hospital, Police provided Ditton with two one-page documents: a "Notice to Appear and Complaint" for Ditton's careless driving charge and a "Notice to Appear and Complaint" for Ditton's DUI charge. Each of the two documents stated Ditton's name and address, the specific offense that Ditton was charged with, the time and date of the offense, the location of the offense, Ditton's BAC of 0.151 at the scene, and requested Ditton's appearance in Municipal Court for arraignment on a date not later than March 5, 2020. Additionally, in a section titled "Description," each Notice to Appear and Complaint read "See APC"—referring to an Affidavit of Probable Cause. Ditton was not provided a copy of this APC at the time of his release from custody, as it had not yet been prepared by Bozeman Police. Later that day, Bozeman Police Officer Ian Anderson (Officer Anderson) completed the APC for the charges levied against Ditton. On this same day, the State filed its careless driving and DUI charges against Ditton with the Bozeman Municipal Court. The State included Officer Anderson's APC as an attachment to its filing before the court.

¶5 Amongst other details, Officer Anderson's APC stated that he observed the following at the scene of Ditton's arrest: Ditton's vehicle was "high-centered on curbing"; Ditton took "a drink of a Coors Light beer" while talking to Police; Ditton "admitted to

[1] Prior to his current appeal, Ditton also appealed each of his two previous DUI convictions before this Court. We upheld Ditton's convictions in both cases. *See State v. Ditton (Ditton I)*, 2006 MT 235, 333 Mont. 483, 144 P.3d 783; *State v. Ditton (Ditton II)*, 2009 MT 57, 349 Mont. 306, 203 P.3d 806.

consuming martinis at two separate bars prior to driving"; Ditton's eyes appeared "bloodshot and watery"; there was a "very strong odor of an alcoholic beverage coming from [Ditton]"; Ditton was "swaying and had difficulty balancing"; and Ditton provided a "voluntary breath sample," which indicated a "BAC of 0.151." Although Ditton was not physically served a copy of Officer Anderson's APC prior to his eventual arraignment on March 5, 2020, the record demonstrates that Ditton's case file was an "open file to the public," meaning the APC document was freely available for Ditton to review after its filing with the court on February 21, 2020.

¶6 At his Municipal Court arraignment on March 5, 2020, Ditton pled not guilty to both careless driving and DUI. On June 17, 2020, Ditton received a copy of Officer Anderson's APC in response to a discovery request. On June 25, 2020, Ditton filed a Verified Motion to Dismiss and for Sanctions (Ditton's motion to dismiss), which argued that the two "Notice[s] to Appear and Complaint[s]" that Ditton received were deficient for failing to "state an offense" and for failing to provide Ditton with "adequate notice" of the charges offered against him. Ditton's arguments relied on the fact that the State had not provided him with a physical copy of Officer Anderson's APC along with its two "Notice[s] to Appear and Complaint[s]" on February 21, 2020. Ditton's motion to dismiss also alleged the Municipal Court did not make a proper "probable cause determination to allow [for] filing of the complaints, in violation of § 46-11-110, MCA[.]" On July 6, 2020, the Municipal Court issued a written, three-sentence order stating that "the Court finds probable cause to believe the offenses alleged were committed by Defendant."

¶7 On July 23, 2020, the Municipal Court held a hearing on Ditton's motion to dismiss and issued a ruling from the bench denying Ditton's motion. At the hearing, the Municipal Court stated that—despite its July 6, 2020 written finding of probable cause—it had still reviewed each Notice to Appear and Complaint and Officer Anderson's APC prior to Ditton's initial arraignment, and it determined "that there was sufficient probable cause at the time" that the State's complaint against Ditton was filed.

¶8 On August 24, 2020, Ditton entered into a plea agreement with the State in which he reserved the right to appeal the Municipal Court's denial of his motion to dismiss. Under the plea agreement, Ditton's careless driving charge was dismissed, and Ditton pled guilty to the modified DUI charge of "Operation of [a] Noncommercial Vehicle by Person with Alcohol Concentration of 0.08 or more, 3rd offense," under § 61-8-406(1)(a), MCA (DUI per se). On September 8, 2020, the Municipal Court sentenced Ditton for DUI per se. On this same date, Ditton filed his notice of appeal with the District Court, and the Municipal Court stayed imposition of his sentence.

¶9 In his appeal before the District Court, Ditton claimed the Municipal Court erred by denying his motion to dismiss. Ditton asserted two arguments similar to those contained in his motion to dismiss. First, Ditton alleged that the State's Notice to Appear and Complaint for his initial DUI charge was defective, both statutorily and under constitutional due process. Specifically, Ditton argued that he should have been provided Officer Anderson's APC along with this Notice to Appear and Complaint and that the Notice to Appear and Complaint's "Description" section—which read "See APC"—did not adequately establish probable cause or inform him of the charge against him. Second,

Ditton argued that—under § 46-11-110, MCA—the Municipal Court was required to make a written probable cause determination prior to his arraignment.

¶10 On March 8, 2021, the District Court issued a detailed, nine-page Memorandum Opinion and Order (March 2021 order) upholding the Municipal Court's denial of Ditton's motion to dismiss and affirming Ditton's conviction and sentence for DUI per se. In response to Ditton's first argument, the District Court's March 2021 order concluded that "there is no requirement that a defendant must be presented with the same factual basis to support a charge at the time he is issued a notice to appear" and that "prior to entering a plea in court, a defendant must only be presented with a copy of the charging document." Furthermore, applying the "common understanding" rule, as articulated in *State v. Hardaway*, the District Court determined that the Municipal Court did not err in holding the Notice to Appear and Complaint document presented to Ditton met the relevant legal requirements. 2001 MT 252, ¶ 67, 307 Mont. 139, 36 P.3d 900. The District Court also found Ditton's contention "that the finding of probable cause must be in writing [under § 46-11-110, MCA] lack[ed] legal support"; instead, the District Court, citing *Ditton I*, ¶ 24, held that "§ 46-11-110, MCA, only requires that a [probable cause] finding be made, not that it be made in writing."

¶11 Ditton's current appeal raises three issues, which we restate as follows: (1) did the Notice to Appear and Complaint initially provided to Ditton sufficiently inform him of the nature of the DUI charge against him such that his statutory and due process rights were

not violated[2]; (2) did the Municipal Court make a proper probable cause determination under § 46-11-110, MCA; and (3) did the District Court's order adequately address Ditton's constitutional claims?

¶12 "Pursuant to § 3-6-110, MCA, a district court's review of a municipal court's orders and judgments is limited to a review of the record and questions of law." *Ditton II*, ¶ 14 (quoting *City of Billings v. Mouat*, 2008 MT 66, ¶ 9, 342 Mont. 79, 180 P.3d 1121); *see also Ditton I*, ¶ 18. "We review a district court's findings of fact in this context to determine if they are clearly erroneous, and its conclusions of law [are reviewed] for correctness." *Ditton II*, ¶ 14 (citations omitted). "Questions of constitutional law are subject to plenary review." *Ditton I*, ¶ 18 (citing *State v. Webb*, 2005 MT 5, ¶ 9, 325 Mont. 317, 106 P.3d 521).

¶13 Ditton's appeal contains three main arguments, the first of which argues that the Notice to Appear and Complaint provided to Ditton for his DUI charge was "defective"—both statutorily and under constitutional due process. Ditton makes three sub-arguments in support of this contention. First, Ditton contends that the document constituted defective notice of his charges because, in failing to contain any text beyond "See APC" in its "Description" section, it failed to adequately "set forth the nature of the offense," as required under § 46-6-310(2)(c), MCA (requirements for a proper "[n]otice to appear" in criminal proceedings). However, Ditton's argument ignores the sentence located directly

[2] Ditton's appeal also alleges that defects in his initial Notice to Appear and Complaint for careless driving help bolster his argument that the Notice to Appear and Complaint for his DUI charge was defective; nevertheless, we will not address the Notice to Appear and Complaint for Ditton's careless driving charge on the grounds that this charge has already been dismissed.

above the document's "Description" section, which clearly states that Ditton had been "charged with" his "3rd" offense of "§ 61-8-401(1)(a) . . . Driving Under [the] Influence [of] Alcohol[.]" Contrary to Ditton's assertions, the plain language of § 46-6-310(2)(c), MCA, only requires that the charge itself be plainly stated in the notice document, as Ditton's DUI charge was here. Thus, no violation of § 46-6-310(2)(c), MCA, occurred.

¶14 Next, Ditton argues that this Notice to Appear and Complaint was "defective" because the document's "Description" section of "See APC" failed to meet the statutory requirements for bringing a charge, as set forth in § 46-11-401(1), MCA, because it does not state enough of the facts constituting the offense. However, Ditton's argument again fails under the plain text of § 46-11-401(1), MCA, as well as under this Court's established case law. Amongst its other requirements, § 46-11-401(1), MCA, states only that "[t]he charge must be a *plain, concise, and definite* statement of the offense charged, including the name of the offense . . . the name of the person charged, and the time and place of the offense." (Emphasis added.) All these requirements were met in Ditton's case, as the District Court's order noted that the Notice to Appear and Complaint "stated that [Ditton was] charged with violating § 61-8-401(1)(a), MCA, Driving Under the Influence of Alcohol (3rd) on February 21, 2020 at 1417 N. 7th Ave. at 17:04 where [Ditton] took a [blood-alcohol] test with a BAC result of 0.151." Additionally, Ditton's argument ignores this Court's established precedent holding that a charging document is considered sufficient under both § 46-11-401, MCA, and Montana common law if a person of "common understanding" would be appraised of the charge against him. *Hardaway*, ¶ 67; *State v. Goodenough*, 2010 MT 247, ¶ 20, 358 Mont. 219, 245 P.3d 14. The facts listed in

the State's Notice to Appear and Complaint are *more* than enough to meet this minimum "common understanding" threshold, and we thus affirm the District Court's holding that "a person of common understanding would be fairly apprised of the charge against [Ditton]."

¶15 Ditton's final sub-argument that the Notice to Appear and Complaint provided to him was "defective" alleges that the State's failure to include the APC with this document violated Ditton's "due process" rights under the United States and Montana Constitutions. However, Ditton's argument that his due process was violated is unclear at best, and it appears to rest entirely upon his assertions that the State's Notice to Appear and Complaint was defective due to violations of §§ 46-6-310(2)(c) and 46-11-401(1), MCA—assertions which this Court has already addressed. Indeed, Ditton fails to articulate a clear, distinguishable argument that would permit this Court to hold that the State's Notice to Appear and Complaint—despite its compliance with §§ 46-6-310(2)(c) and 46-11-401(1), MCA—still violated Ditton's due process. As a result, we reject the entirety of Ditton's first argument that the State's Notice and Complaint was legally "defective."

¶16 Ditton's second major argument alleges the Municipal Court failed to make a proper probable cause determination prior to his arraignment; as a result, Ditton claims the Municipal Court lacked subject matter jurisdiction over his case. Notably, Ditton does not contest that Officer Anderson's APC contained enough facts to show probable cause for his DUI charge.[3] Instead, Ditton's second argument alleges two specific *procedural*

[3] Indeed, Ditton expressly stated the following during the parties' July 2020 hearing: "I'm not arguing with whether or not [Officer Anderson's APC] states probable cause. I can see it."

defects which he claims resulted in no formal probable cause determination being made under § 46-11-110, MCA. However, both of Ditton's contentions fail. Moreover, because a valid probable cause determination occurred under § 46-11-110, MCA, we need not address Ditton's argument that subject matter jurisdiction was lacking.

¶17 The text of § 46-11-110, MCA (titled "[f]iling complaint"), states that "[w]hen a complaint is presented to a court charging a person with the commission of an offense, the court shall examine the sworn complaint or any affidavits, if filed, to determine whether probable cause exists to allow the filing of a charge." Invoking the language of this statute, Ditton argues that, because Officer Anderson's APC was not attached to the Notice to Appear and Complaint provided to him, no probable cause existed to support the charge in the "complaint" that was "presented" to him. Thus, Ditton argues that the "filing of a charge" was improper under § 46-11-110, MCA. However, no violation of § 46-11-110, MCA, occurred on these grounds. Rather, the text of § 46-11-110, MCA, provides that probable cause need only be provided when a "complaint is presented *to a court*." (Emphasis added.) The record clearly establishes that the State attached a copy of Officer Anderson's APC to the complaint that it filed with the *Municipal Court* back on February 21, 2020, and Ditton's appeal does not argue that Officer Anderson's detailed APC contained insufficient probable cause for the DUI charge at issue. Thus, the fact that the APC was not attached to the Notice to Appear and Complaint provided to Ditton at Bozeman Deaconess Hospital is irrelevant under § 46-11-110, MCA.

¶18 Next, Ditton further argues that, under § 46-11-110, MCA, the Municipal Court was required to make a written determination of probable cause prior to his arraignment on

March 5, 2020. Because the text of § 46-11-110, MCA, makes no mention of this writing requirement, Ditton's appeal relies on language from the dissent in Ditton's 2006 case before this Court, which claims § 46-11-110, MCA "unambiguously requires that the probable cause determination be made before [a] charge is filed." *Ditton I*, ¶ 71 (J. Nelson, dissenting). Based on this, Ditton then argues that the Municipal Court was required to make a *written* determination of probable cause prior to his arraignment on March 5, 2020. In support, Ditton cites dicta from this Court's decision in *Ditton I*, which stated that "[a]s a practical matter, a written indication that the municipal judge has reviewed the complaint or affidavit and determined the existence of probable cause . . . would be helpful on appellate review." *Ditton I*, ¶ 24. However, Ditton's argument here merely rehashes a *failed argument* from *Ditton I*, as the majority in that case expressly held that "§ 46-11-110, MCA, only requires that the [probable cause] finding be made, not that it be in writing." *Ditton I*, ¶ 24.

¶19 Instead, the text of § 46-11-410, MCA, only requires that a municipal court judge "examine the sworn complaints or any affidavits, if filed" and, based on this, make an implicit determination of "whether probable cause exists to allow the filing of a charge." At the parties' July 2020 hearing, the Municipal Court noted that it had done *exactly* this. According to the court's own statements during that hearing, it had reviewed the complaint, as well as Officer Anderson's APC, and made the determination "that there was sufficient probable cause at the time" the State's complaint was initially filed—that is, prior to Ditton's March 2020 arraignment. As a result, the Municipal Court's method of

determining probable cause was sufficient under § 46-11-110, MCA, and the court did not err by failing to issue this determination in writing prior to Ditton's arraignment.

¶20 Ditton's third major argument asserts that, in adjudicating his initial appeal, the District Court erred by failing to address his "constitutional due process" claims. Ditton points to the fact that the District Court's nine-page order did not once mention the words "due process" or "constitution." Ditton's assertion is easily dismissed, however, as the District Court addressed all parts of Ditton's argument. In addition to holding that the State's Notice to Appear and Complaint was not statutorily defective under Title 46, MCA, the District Court also held that the Notice to Appear and Complaint was not defective under the "common understanding rule." Although not expressly articulated by the District Court, the "common understanding rule" goes beyond the mere text of Title 46, MCA, and is heavily derived from the principles of constitutional due process governing notice and charging documents. *See Gautt v. Lewis*, 489 F.3d 993, 1003 (9th Cir. 2007) (reaffirming that constitutional due process requires that a criminal defendant receive fair notice of the charges against him and a chance to be heard); *State v. Tower*, 267 Mont. 63, 67, 881 P.2d 1317, 1320 (1994) (noting the "general rule that due process requires that a person charged with an offense must be duly advised of the nature and cause of the accusation against him"). Thus, the District Court's invocation of the common understanding rule effectively addressed the constitutional claims in Ditton's first argument.

¶21 In conclusion, the procedures that the Municipal Court followed and the Notice to Appear and Complaint provided to Ditton in this matter were consistent with this Court's established precedent and with the statutory procedures governing the initiation of

misdemeanor charges. We affirm the District Court's decision that the Municipal Court did not err in denying Ditton's motion to dismiss.

¶22 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.

¶23 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ JIM RICE