DA 23-0106

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 199N

CITY OF CUT BANK,

Plaintiff and Appellee,

v.

CHAD MICHAEL LARSON,

Defendant and Appellant.

APPEAL FROM: District Court of the Ninth Judicial District,
In and For the County of Glacier, Cause No. DC-22-6
Honorable David J. Grubich, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Kevin H. Ness, Johnson, Berg, & Saxby, PLLP, Kalispell, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Tammy K Plubell, Assistant Attorney General, Helena, Montana

Robert Smith, Cut Bank City Attorney, Cut Bank, Montana

Submitted on Briefs: August 30, 2023

Decided: October 24, 2023

Filed:

Clerk

Chief Justice Mike McGrath 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 Defendant Chad Larson Appeals a District Court order denying his motion to dismiss a May 17, 2021 misdemeanor driving under the influence (DUI) charge, arguing a new trial before the District Court would violate his constitutional due process rights. We affirm.

¶3 On May 17, 2021, Larson was arrested and charged with a misdemeanor DUI after being stopped by Cut Bank City Police Officer Elijah Katchur. Officer Katchur acted on a tip by Cut Bank resident Jonnie Fenner that, at 11:21 p.m., she witnessed an unfamiliar vehicle parked in her neighbor's lawn. She explained she saw the driver step out of his vehicle then immediately reenter it and pull away. Officer Katchur pulled Larson over minutes later, then took him to the police station to perform a field sobriety test. Officer Katchur issued Larson a notice to appear at Cut Bank City Court and drove him home.

¶4 During the City Court proceeding, Larson moved to suppress all evidence for lack of reasonable suspicion, arguing Officer Katchur failed to independently verify Fenner's tip before stopping him.

¶5 Officer Katchur was first made aware Fenner had a video recording of her observations when he served a subpoena on Fenner in anticipation of an evidentiary hearing set for August 24. Larson did not learn about the Fenner video recording until the hearing on his motion to suppress on October 5, 2021.

¶6 Larson subsequently filed a motion to dismiss for a violation of his due process rights for full disclosure under *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963). The City delivered the Fenner video recording to Larson on October 25. The City Court granted Larson's motion on January 18, 2022, dismissing his charges.

¶7 The State appealed the Justice Court's order to dismiss to the Ninth Judicial District Court on January 24, 2022.[1] Larson filed a motion to dismiss the appeal on January 31. On September 19, the District Court denied Larson's motion. Larson then changed his plea to guilty on February 1, 2023, preserved his right to appeal, and filed a notice of appeal to this Court on February 9.

¶8 Larson appeals the District Court's order denying his motion to dismiss, arguing a trial de novo would violate his due process rights because it gives the State a "second bite at the apple." The State argues the District Court has responsibility to try the case de novo under § 46-20-103(2)(a), MCA.

¶9 We review a district court dismissal order de novo, and its legal conclusions for correctness. *State v. Willis*, 2008 MT 293, ¶ 11, 345 Mont. 402, 192 P.3d 691 (citing *State*

[1] The State may appeal from any court order the substantive effect of which is to dismiss a case. Section 46-20-103(2)(a), MCA.

v. Rensvold, 2006 MT 146, ¶ 14, 332 Mont. 392, 139 P.3d 154); *State v. Strizich*, 286 Mont. 1, 5, 952 P.2d 1365, 1367 (1997).

¶10 We have previously ruled that an appeal from a motion to suppress in a city court (not of record) must proceed before a district court on a new trial, pursuant to §§ 46-17-311 and 46-20-103(2), MCA. *State v. Kesler*, 228 Mont. 242, 246, 741 P.2d 791, 794 (1987). In *Kesler*, a justice court issued a suppression order in a DUI case because the State violated a local rule requiring the arresting officer's report be made available within a prescribed period. 228 Mont. at 243, 741 P.2d at 792. The State appealed to district court. Rather than filing a motion to suppress prior to a new trial, Kesler asked the district court to re-affirm the justice court's order. *Kesler*, 228 Mont. at 243-44, 741 P.2d at 792. The district court denied Kesler's motion because it lacked supervisory or appellate reviewing powers over the justice court and therefore did not have subject matter jurisdiction. *Kesler*, 228 Mont. at 244, 741 P.2d at 792.[2] On appeal, we held the statutory language providing for de novo—rather than appellate review of the suppression order was unambiguous. *Kesler*, 228 Mont. at 245, 741 P.2d at 792. Further, we explained the district court did not violate Kesler's due process rights because he could have filed a motion to suppress before the district court and elected not to. *Kesler*, 228 Mont. at 246, 741 P.2d at 794.

¶11 We have since reaffirmed that the State may appeal de novo an adverse justice court ruling on a motion to suppress. *Willis*, ¶¶ 22–23. In *Willis*, the defendant moved the justice

[2] Although appeals from courts *not-of-record* must be tried anew in district court under § 46-17-311, MCA, district courts do have appellate powers to review decisions rendered by courts *of-record*. Section 3-11-110, MCA.

court to suppress statements he made during and following his arrest, arguing they were obtained in violation of his constitutional rights against self-incrimination. *Willis*, ¶ 23. The justice court granted Willis' motion to suppress, which the State appealed in district court. *Willis*, ¶¶ 9-10. Willis then moved the district court to dismiss, arguing it lacked appellate jurisdiction. *Willis*, ¶ 10. The district court granted Willis' motion to dismiss, and we reversed, ruling the State should have been afforded a de novo trial in district court. *Willis*, ¶¶ 10, 25.

¶12 Like *Kesler*, the statutory language is unambiguous when applied to the facts here. A dismissal order from a city court not-of-record is appealable to district court, where the case "must be tried anew." Sections 46-17-311(1), 46-20-103(2)(a), MCA. The State appropriately filed for a trial de novo in District Court. Like *Kesler*, Larson could have renewed his motion to suppress before the District Court and raised his due process claims there. Instead, Larson moved to dismiss, arguing a new trial would violate his due process rights by providing the State a chance to re-litigate its claims.

¶13 Larson's reliance on *Rensvold* is not compelling. There, we ruled that a defendant has a constitutional right to two jury trials when a statute provides for a trial de novo by a district court. *Rensvold*, ¶ 31. The justice court had dismissed the State's case and Rensvold's DUI charge without prejudice when the prosecutor failed to appear at a hearing. *Rensvold*, ¶ 6. Rather than re-filing the case in justice court, the prosecutor appealed the dismissal order directly to district court, seeking a review of the decision. *Rensvold*, ¶¶ 6-7. Rensvold moved to dismiss the appeal, arguing he was entitled to the justice court trial as well as a second jury trial in district court. *Rensvold*, ¶ 9. The district court granted his

motion and dismissed the charges. *Rensvold*, ¶ 11. We affirmed on both statutory and constitutional grounds, holding the statute provided a clear process, trial de novo, for proceeding in the district court. *Rensvold*, ¶ 32. Here, unlike *Rensvold*, the State did not attempt an end-run around the City Court trial, but rather followed the clear and unambiguous appeals process prescribed by §§ 46-17-311(1) and 46-20-103(2)(a), MCA. The District Court did not err in denying Larson's motion to dismiss.

¶14 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.

¶15 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE