

DA 25-0465

IN THE SUPREME COURT OF THE STATE OF MONTANA

2026 MT 209

STATE OF MONTANA,

Plaintiff and Appellant,

v.

LILLY LAROQUE,

Defendant and Appellee.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DC-2023-603
Honorable Andrew Breuner, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

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Decided: September 1, 2026

Filed:


Clerk

Chief Justice Cory J. Swanson delivered the Opinion of the Court.

¶1 The State of Montana appeals from a June 25, 2025 order of the Eighteenth Judicial District Court. The District Court granted Laroque’s motion to suppress evidence of a warrantless blood draw. We affirm.

¶2 We restate the issue on appeal as follows:

Issue: Whether the District Court’s finding of fact that Laroque did not consent to a blood draw was clearly erroneous.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 On August 3, 2023, Lilly Laroque was the driver of a pickup truck that collided with a vehicle driven by Delaney Doherty in Gallatin County. The crash occurred at a moderate curve on a two-lane highway after Laroque’s pickup crossed the center line into the opposite lane and collided head-on with Doherty’s car. Both drivers experienced serious injuries. Laroque was transported to Bozeman Deaconess Hospital and was subsequently transported to a Billings hospital. Responders flew Doherty by helicopter to Bozeman Deaconess Hospital, where she died due to injuries sustained in the crash.

¶4 At the crash scene, law enforcement officers discovered items in Laroque’s vehicle associated with marijuana consumption, including a yellow pipe with burnt residue, a vape pen, lighters, multiple empty and partially empty packages from a marijuana dispensary, and a marijuana grinder. At the time of the crash, Laroque was only twenty years old and unable to legally purchase marijuana in Montana. Investigators later learned that Laroque was known to send text messages while driving, used marijuana regularly, and sent a

snapchat from her phone—likely while driving—three minutes prior to the crash being reported.

¶5 While Laroque was in the Bozeman hospital for treatment, Sergeant Derek Stoner came to the treatment room to request a blood sample from her. Sergeant Stoner made an audio recording of this interaction. Shortly after the recording began, Sergeant Stoner asked Laroque three times if she could hear him. Laroque did not respond until the third request.¹ Sergeant Stoner then informed Laroque he was with the Montana Highway Patrol and he was there to read her a form. Sergeant Stoner then read the Implied Consent Advisory form to Laroque.²

¶6 During Sergeant Stoner’s reading, hospital personnel interrupted to examine Laroque. The hospital personnel asked Laroque, “are you able to wake up for a second? Can you open up your eyes for me?” The hospital personnel then touched Laroque’s feet, asked if she could feel it, and requested her to wiggle her toes. During the interaction with hospital personnel, Laroque was compliant and responsive.

¶7 After the hospital personnel finished the examination, Sergeant Stoner resumed reading the Implied Consent Advisory form. After reading the form, Sergeant Stoner asked Laroque, “will you take a blood test?” When Laroque did not respond, Sergeant Stoner

¹ It is difficult to ascertain from the audio recording, but it seems Laroque responded with a moan rather than a clear verbal affirmation of “mm-hmm.” However, in its Order on Defendant’s Outstanding Pretrial Motions, the District Court used a transcript of the recording which referred to Laroque’s response as a moan.

² The Implied Consent Advisory is a form produced by the Montana Department of Justice. It includes informing the test subject the officer seeks a blood or breath sample, the person has a right to refuse and a right to an independent blood test, and if the person refuses to provide a sample, he or she may receive a suspension of driver’s license. *See* § 61-8-1016, MCA.

continued to ask if she could hear him and asked two more times if she would take a blood test, with no response from Laroque. Sergeant Stoner ended the recording and directed medical staff to draw Laroque's blood. The blood sample was then sent to the Montana Crime Lab and a toxicology report indicated Laroque's blood contained 7.0 ng/ml of THC. The legal limit for driving under the influence of marijuana in Montana is 5.0 ng/ml of THC. At the suppression hearing, Sergeant Stoner testified he also delivered a "preservation request form" to the hospital laboratory to facilitate a future investigative request for "any other biological or blood samples."

¶8 Laroque later moved to suppress the Crime Lab blood sample and toxicology report under the Fourth Amendment to the United States Constitution and Article II, Sections 10 and 11, of the Montana Constitution. Laroque alleged she was subject to an unlawful search when Sergeant Stoner directed medical staff to draw blood without a search warrant, and no exception to the warrant requirement applied. Laroque argued she was incapable of providing consent at that time due to the condition she was in after the wreck, and the Montana Implied Consent laws do not automatically create consent sufficient to meet the requirements of the United States and Montana Constitutions.³ Laroque also argued the blood draw was not justified by exigent circumstances.

¶9 In its response argument, the State did not defend the blood draw on the grounds of exigent circumstances. It defended the officer's authority to obtain a blood draw without

³ In her reply brief, Laroque clarified she was not raising a constitutional challenge to Montana's Implied Consent statute. Rather, she argues the Implied Consent statute does actually create the "consent" exception to the Constitution's protection against unreasonable searches and seizures.

a search warrant under the Implied Consent scheme. The State relied on *City of Great Falls v. Allderdice*, 2017 MT 58, ¶¶ 13-16, 387 Mont. 47, 390 P.3d 954, arguing this Court “found that Allderdice’s passive compliance to the blood test was insufficient to constitute a withdrawal of her implied consent and simply ignoring the question is not sufficient to withdraw implied consent.” In other words, the State contends under state law the motorist had already given implied consent to a blood draw by virtue of having a driver’s license and operating a motor vehicle on the ways of the state. Laroque did not affirmatively withdraw her implied consent when she was conscious and was questioned by Sergeant Stoner, and therefore his blood draw was legal.

¶10 At the suppression hearing, the State called Sergeant Stoner as its only witness. Sergeant Stoner testified he went to Laroque’s hospital room to check on her and obtain a blood sample. He testified Laroque was conscious when he read the Implied Consent Advisory to her, interrupted by hospital personnel talking to Laroque and checking on her. Sergeant Stoner testified the medical staff drew her blood at the officer’s request. The recording of Sergeant Stoner’s interaction with Laroque was admitted into evidence. The recording reveals that after completing the advisory, the officer asked Laroque if she would take a blood test, to which she did not respond. He asked if she could hear him, and she did not respond. He asked two more times if she would take a blood test, and she did not respond.

¶11 After the hearing, the District Court granted Laroque’s motion to suppress the blood sample and toxicology report. The court ruled the State had not established any exception to the warrant requirement, no exigent circumstances justified the warrantless collection of

the blood, and the Implied Consent statute did not justify the blood draw. The District Court distinguished *Allderdice* from this case because Allderdice repeatedly acknowledged she understood the advisement and did not display any action to resist the test. Here, there was no indication Laroque understood the Implied Consent Advisory, she never replied to the request for consent, and Sergeant Stoner read the form “in a fast manner.” The court also declined to apply the good faith exception to prevent the exclusion of the blood draw and toxicology report because this Court has never applied the exception and there were eight judges within Bozeman city limits who could have processed the warrant application.

¶12 Once the blood and toxicology reports were suppressed, Laroque moved to dismiss the charge for lack of probable cause. The State filed a notice of appeal before the District Court acted on Laroque’s motion to dismiss.

STANDARD OF REVIEW

¶13 “We review a district court’s decision on a motion to suppress to determine whether the factual determinations are clearly erroneous and whether the conclusions of law are correct.” *State v. Clinkenbeard*, 2025 MT 54, ¶ 5, 421 Mont. 137, 565 P.3d 1259 (internal citations omitted). “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 is definitely and firmly convinced that the trial court made a mistake.” *Allderdice*, ¶ 8. Substantial evidence is “more than a mere scintilla,” but can be less than a preponderance of the evidence. *Allderdice*, ¶ 8.

DISCUSSION

¶14 *Issue: Whether the District Court’s finding of fact that Laroque did not consent to a blood draw was clearly erroneous.*

¶15 The State first argues the blood draw was authorized by Montana’s Implied Consent law and therefore the District Court erred in suppressing the blood evidence and toxicology report on grounds that Laroque did not consent. Laroque counters the warrantless blood draw violated her rights against unreasonable searches and seizures under the Fourth Amendment of the United States Constitution and Article II, Section 11, of the Montana Constitution. She further argues the District Court correctly found she did not consent to the blood draw, so the consent exception against warrantless searches does not apply to this search.

¶16 The Fourth Amendment to the United States Constitution and Article II, Section 11, of the Montana Constitution both provide protections against unreasonable searches and seizures without a warrant. This Court has held, absent one of the narrowly delineated exceptions, warrantless searches and seizures are per se unreasonable. *State v. Laster*, 2021 MT 269, ¶ 10, 406 Mont. 60, 497 P.3d 224.

¶17 Nevertheless, “[v]oluntary consent to a government search or seizure is an independent exception to the warrant requirement of the Fourth Amendment and Article II, Section 11 of the Montana Constitution.” *Laster*, ¶ 40 (internal citations omitted). Under the Implied Consent statute, “we examine the totality of the circumstances and whether substantial evidence exists in the record to support the trial court’s conclusion” whether a blood test was consensual. *Allderdice*, ¶ 12 (citing *State v. Zakovi*, 2005 MT 91,

¶ 29, 326 Mont. 475, 110 P.3d 469). “Because voluntariness of consent is a question of fact,” we uphold the trial court’s findings of fact unless they are clearly erroneous. *Allderdice*, ¶ 12.

¶18 The State argues the Implied Consent statute provided Laroque’s consent unless she withdrew it. This is a legal framework adopted in all 50 states requiring motorists, “as a condition of operating a motor vehicle within the State, to consent to BAC testing if they are arrested or otherwise detained on suspicion of a drunk-driving offense.” *Missouri v. McNeely*, 569 U.S. 141, 161, 133 S. Ct. 1552, 1556 (2013).

¶19 Montana has enacted an Implied Consent statute. It states in relevant part:

A person who operates or is in actual physical control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to a test or tests of the person’s blood, breath, or oral fluid for the purpose of determining any measured amount or detected presence of alcohol[,] or blood or oral fluid for the purpose of determining any measured amount or detected presence of drugs in the person’s body.

. . . .

(2)(a) The test or tests must be administered at the direction of a peace officer when:

(iii) the peace officer has probable cause to believe that the person was driving or in actual physical control of a vehicle or commercial motor vehicle:

. . . .

(C) and the person has been involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

. . . .

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent requested in subsection (1).

Section 61-8-1016(1)(a), (2)(a)(iii)(C), (3), MCA. The statute requires an officer to inform the motorist she can withdraw her consent, but doing so “will result in the suspension for up to 1 year of that person’s driver’s license.” Section 61-8-1016(2)(c), MCA.

¶20 The statute thus provides a conscious motorist has impliedly consented to an evidentiary search, but she can refuse and suffer a license suspension consequence. An unconscious motorist or one who is in a condition rendering her “incapable of refusal” is considered not to have withdrawn her consent.

¶21 The State never argued the blood draw was permissible under § 61-8-1016(3), MCA, on the basis that Laroque was unconscious or incapable of refusal. Instead, the State argued Laroque was conscious and did not withdraw her implied consent. Sergeant Stoner testified Laroque was conscious when he found her in the hospital room and read her the Implied Consent Advisory. His testimony and the audio recording of their interaction indicated Laroque moaned in response to questions, and it recorded questions by medical personnel asking Laroque if she was awake. The audio recording and testimony also demonstrated Laroque did not respond to Sergeant Stoner’s three requests that she provide a blood test. The District Court consequently found there was no indication Laroque understood the Implied Consent Advisory.

¶22 At the District Court and on appeal, the State argues this case is similar to *Allderdice*. There, a law enforcement officer encountered a wrongly-parked car with an unconscious driver, just after 2:00 a.m. After summoning medical help and breaking a

window, the officer revived the driver, Allderdice, and smelled the odor of an alcoholic beverage coming from her. Allderdice was then taken to the hospital, and the officer requested a blood draw pursuant to a DUI investigation. The officer read Allderdice the Implied Consent Advisory, and asked after each paragraph whether she understood. She responded affirmatively each time she was asked if she understood. Upon completion of the advisory, the officer asked Allderdice if she would take a blood test. She closed her eyes and did not respond to the question, or to subsequent repeated requests. The officer then directed medical staff to take the blood sample. *Allderdice*, ¶¶ 3-4.

¶23 The State argues Laroque’s conduct was similar to Allderdice’s, and we should follow the same holding that she did not withdraw her consent, merely because she did not respond to Sergeant Stoner’s request for a blood draw. Laroque responds that *Allderdice* is distinguishable because she was more responsive and awake than Laroque ever demonstrated, and Allderdice affirmatively stated she understood the Implied Consent Advisory. Laroque argues our holding in *Allderdice*, ¶ 16, that she passively complied with the blood test by closing her eyes and refusing to answer, is distinguishable from Laroque’s conduct of never having her eyes open or showing understanding of the request.

¶24 The District Court made findings of fact that Laroque did not exhibit understanding to consent to meet the Implied Consent Advisory requirements of § 61-8-1016, MCA. The court distinguished our holding in *Allderdice* by noting Laroque was “overwhelmingly non-responsive” after arriving at the hospital from a severe head-on collision. The court further found the State did not present evidence that Laroque “ignored or otherwise elected not to respond to Sgt. Stoner’s inquiry. In fact, the evidence raises a question about whether

Laroque even had the physical ability to express an objection to the blood draw.” The District Court concluded with the finding, “there is no substantial evidence on which the Court can conclude that Laroque understood the Implied Consent Advisory; what was being asked; or in any meaningful way voluntarily consented to a warrantless blood draw *passively* or otherwise.” (Emphasis added.)

¶25 The State asks us to find the District Court’s findings of fact were clearly erroneous. *Clinkenbeard*, ¶ 5. The clear error standard is difficult to meet. “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 is definitely and firmly convinced that the trial court made a mistake.” *Allderdice*, ¶ 8.

¶26 The court rested its lack of consent finding on several facts in the record. The court concluded Laroque’s “non-verbal state appears to have been related to injuries sustained in the car crash and not the result of a decision not to respond to the officer’s request.” The State did not raise evidence to indicate Laroque ignored Sergeant Stoner’s consent request or even elected not to respond. The State offered very little evidence about Laroque’s non-verbal communications. And finally, the State did not provide evidence to prove Laroque understood the Implied Consent Advisory.

¶27 The record supplies substantial credible evidence to support the court’s findings. It is not evident the court misapprehended the effect of the evidence, nor that it made a clear mistake. We thus conclude the District Court’s findings of fact were not clearly erroneous and therefore affirm the order suppressing the blood draw.

Good Faith Doctrine

¶28 Alternatively, the State requests this Court reverse the suppression order on the grounds the good faith doctrine justified the warrantless blood draw. Laroque argues we should reject that argument because it was not raised below. In the alternative Laroque argues this Court has never recognized the good faith doctrine as an exception to the Montana Constitution, and we should not do so here. We agree with Laroque.

¶29 The exclusionary rule is “a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.” *United States v. Calandra*, 414 U.S. 338, 348, 94 S. Ct. 613, 620 (1974). Under the rule, “evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure.” *Calandra*, 414 U.S. at 347, 94 S. Ct. at 619. The United States Supreme Court has recognized it does not require an “unbending application of the exclusionary sanction,” for doing so would “impede unacceptably the truth-finding functions of judge and jury.” *United States v. Leon*, 468 U.S. 897, 907, 104 S. Ct. 3405, 3412 (1984). The Supreme Court has allowed room for exceptions such as “when law enforcement officers have acted in objective good faith or their transgressions have been minor.” *Leon*, 468 U.S. at 908, 104 S. Ct. at 3412.

¶30 We decline to address the good faith exception in this case because the State did not raise that argument below.⁴ “A party may not raise new arguments or change its legal

⁴ The State argues in its brief “the exclusionary rule should not be applied where the deterrent effect of exclusion is greatly outweighed by the substantial societal cost exacted by the

theory on appeal.’’ *Smith v. State*, 2024 MT 225, ¶ 21, 418 Mont. 210, 557 P.3d 55 (quoting *State v. Martinez*, 2003 MT 65, ¶ 17, 314 Mont. 434, 67 P.3d 207).

CONCLUSION

¶31 The District Court’s findings of fact were not clearly erroneous. There was substantial credible evidence for the court to conclude Laroque did not consent to the warrantless blood draw. We do not review the State’s good faith doctrine argument because it was raised for the first time on appeal. We therefore refuse to overturn the court’s decision on the motion to suppress.

¶32 Affirmed.

/S/ CORY J. SWANSON

We Concur:

/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ JIM RICE

exclusionary rule” The cost is indeed significant in this case. But the record does not demonstrate why the State cannot obtain equivalent evidence via an investigative subpoena for Laroque’s medical records pursuant to § 46-4-301(3), MCA. *State v. Hesser*, 2024 MT 134, ¶ 11, 417 Mont. 84, 551 P.3d 277. Sergeant Stoner testified he submitted a preservation notice to the hospital lab for Laroque’s medical records in the event additional blood evidence was needed.