

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 52038

STATE OF IDAHO,	)	
	)	Filed: October 14, 2026
Plaintiff-Respondent,	)	
	)	Melanie Gagnepain, Clerk
v.	)	
	)	THIS IS AN UNPUBLISHED
STEVEN ROBERT KUSCHNICK,	)	OPINION AND SHALL NOT
	)	BE CITED AS AUTHORITY
Defendant-Appellant.	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Peter G. Barton, District Judge.

Judgment of conviction for felony possession of a controlled substance, affirmed.

Erik R. Lehtinen, State Appellate Public Defender; Kiley A. Heffner, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Raúl R. Labrador, Attorney General; Allison C. Jaros, Deputy Attorney General, Boise, for respondent.

PETTY, Judge

Steven Kuschnick appeals from his judgment of conviction for felony possession of a controlled substance. Kuschnick contends that the district court erred by allowing a police officer to testify about Kuschnick's refusal to consent to a warrantless blood draw. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Kuschnick was driving a vehicle he owned that was unregistered. A police officer observed and confirmed that the vehicle was unregistered, conducted a traffic stop, and spoke to Kuschnick. While speaking with Kuschnick, the officer observed a white crystalline substance in the center console between the front seats. The substance later tested positive for methamphetamine. Kuschnick was charged with felony possession of a controlled substance (Idaho Code § 37-2732(c)), a persistent violator enhancement (I.C. § 37-2739), and several misdemeanors. The

felony possession of a controlled substance charge and persistent violator enhancement proceeded to trial; the misdemeanor charges were dismissed immediately prior to trial at the request of the State.

At trial, during direct examination by the State, the officer testified that Kuschnick did not consent to a warrantless blood draw:

[STATE]: Okay. And did you attempt to get a toxicology sample?

[OFFICER]: I did.

[STATE]: Okay. And that was not done?

[OFFICER]: Correct.

[STATE]: Why was that not done?

[DEFENSE]: Objection. Again, your Honor, relevance and [Idaho Rule of Evidence] 403.

THE COURT: Thank you. Overruled. Failed the [I.R.E.] 403. Go ahead, Officer.

[OFFICER]: The defendant did not consent to having his blood drawn.

At the conclusion of the officer's testimony, the district court allowed the jury to submit questions to the officer. One of the questions the jury asked, and defense counsel did not object to, was: "[h]ow often does blood being drawn involved in the consumption, the possession of illegal drugs?" The officer answered:

[OFFICER]: I would say--I would say it's--it's slightly less likely that they would--sorry. I would say that, more often than not, they do consent. But I feel it's just a little bit higher chance--that people who are suspected of using illegal drugs or narcotics may be under the influence. I feel like there's a little bit higher chance that they would say no or not consent to a blood draw. But that's obviously individual dependent. So I would say more often than not, they do. But I would say in general, it seems like there's a higher percentage chance they would say no.

Kuschnick's counsel did not object to the officer's testimony but did ask a follow-up question:

[DEFENSE]: Officer, based off the refusal to blood draw question--

[OFFICER]: Yes.

[DEFENSE]: --you said that you feel or you believe that there's a better chance of somebody--you don't have any data to prove that; right?

[OFFICER]: I don't.

[DEFENSE]: So that's just a guess on your part?

[OFFICER]: Yeah. I thought it came off that way. But yeah.

[DEFENSE]: I wanted to clarify it's not that there's police training or scientific studies or anything like that?

[OFFICER]: There's no data; correct.

In his closing argument, Kuschnick's counsel said: "My client refused to provide blood. The officer testified that that may be indicative of something. It could also be that people just don't like needles. It could be the fact that he doesn't have to." In its rebuttal closing argument, the State said:

[STATE]: What happened next? The defendant denied the blood draw. And [the officer] testified people can deny blood draws for a multitude of reasons, but sometimes that can mean that somebody is under the influence of a controlled substance if they had no alcohol in their system, and they were acting like they were under the influence of a controlled substance.

The jury found Kuschnick guilty of felony possession of a controlled substance. Kuschnick appeals.

II.

STANDARD OF REVIEW

A lower court's determination under Idaho Rule of Evidence 403 will not be disturbed on appeal unless it is shown to be an abuse of discretion. *State v. Enno*, 119 Idaho 392, 406, 807 P.2d 610, 624 (1991); *State v. Clark*, 115 Idaho 1056, 1059, 772 P.2d 263, 266 (Ct. App. 1989). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. *State v. Herrera*, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

III.

ANALYSIS

Kuschnick argues that the district court abused its discretion when it overruled his I.R.E. 403 objection and allowed the police officer to testify that Kuschnick refused to consent to a warrantless blood draw. Kuschnick also argues that this testimony violated his right under the Fourth Amendment to the United States Constitution to be free from unreasonable searches and seizures. The State concedes that, under the Fourth Amendment, it was improper for the police officer to testify that Kuschnick refused to consent to a blood draw. However, the State argues that Kuschnick did not raise these arguments at trial and, consequently, both arguments should be reviewed for fundamental error. The State argues that the error was harmless.

A. The District Court did not abuse its discretion when it overruled Kuschnick's Idaho Rule of Evidence 403 objection.

Kuschnick argues that the district court abused its discretion when it overruled his I.R.E. 403 objection because evidence that he refused to consent had only a slight probative value, if any at all, and it was unfairly prejudicial. He asserts that it “was unfairly prejudicial because it allowed the jury to improperly infer that he was guilty for exercising his constitutional rights.” In response, the State argues that at trial Kuschnick's objection “did not mention or allude to the Fourth Amendment in any way.”

On appeal, Kuschnick conflates his I.R.E. 403 objection and his Fourth Amendment argument. At trial, Kuschnick's objection referenced only relevance and I.R.E. 403. He did not clearly state a Fourth Amendment objection nor was that basis apparent from the context.

For an objection to be preserved for appellate review, either the specific ground for the objection must be clearly stated, or the basis of the objection must be apparent from the context. *State v. Hall*, 163 Idaho 744, 772, 419 P.3d 1042, 1070 (2018). An objection to the admission of evidence on one basis does not preserve a separate and different basis for excluding the evidence. *Id.* “When an objection is made, the trial court is only asked to determine the validity of that objection; it is not asked to determine whether there is another objection that would have been sustained had it been made.” *Id.* “[A] defendant who objects to the admission of evidence on one ground below is not precluded from asserting a constitutional challenge to that same evidence under the fundamental error doctrine on appeal.” *State v. Smith*, 168 Idaho 463, 479, 483 P.3d 1006, 1022 (2021). Generally, issues not raised below may not be considered for the first time on appeal. *State v. Fodge*, 121 Idaho 192, 195, 824 P.2d 123, 126 (1992). However, when a defendant alleges that a constitutional error occurred at trial and the alleged error was not followed by a contemporaneous objection, the claim of error must be reviewed under the fundamental error doctrine. *State v. Miller*, 165 Idaho 115, 119, 443 P.3d 129, 133 (2019).

Kuschnick has not demonstrated that the district court abused its discretion when it overruled the I.R.E. 403 objection. We now turn to whether the testimony was fundamental error.

B. Kuschnick has failed to show that the disputed testimony was fundamental error.

Kuschnick argues that it was a violation of his Fourth Amendment right against unreasonable searches and seizures for the police officer to testify that Kuschnick refused to

consent to the warrantless blood draw, and that the district court committed fundamental error by permitting this testimony.

The Fourth Amendment protects “the right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures.” U.S. CONST. amend. IV. A blood draw is a search and seizure under the Fourth Amendment. *State v. Jeske*, 164 Idaho 862, 868, 436 P.3d 683, 689 (2019) (citations omitted). “The United States Supreme Court and [the Idaho Supreme] Court have clarified that there is a constitutional right to refuse a warrantless blood draw.” *Id.*

In order to obtain relief under the fundamental error doctrine, the defendant must demonstrate three things. First, the defendant must show that one or more of the defendant’s unwaived constitutional rights were violated. *Miller*, 165 Idaho at 119, 443 P.3d at 133. Second, the error must be clear and obvious, meaning the record must demonstrate evidence of the error and evidence as to whether or not trial counsel made a tactical decision in failing to object. *Id.* Third, the defendant must demonstrate that the error affected the defendant’s substantial rights, which means the error identified in the first and second prongs of the test affected the outcome of the trial. *Id.* at 119-20, 443 P.3d at 133-34.

The State concedes the first and second prongs of the fundamental error doctrine: that the police officer’s testimony that Kuschnick refused to consent to the blood draw was a violation of his Fourth Amendment right and that the error was clear and obvious. Given the State’s concessions, we assume, without deciding, that there was a constitutional violation and that the error was clear and obvious.

We now turn to the third prong of the fundamental error analysis--whether the error affected Kuschnick’s substantial rights such that it affected the outcome of the trial. Kuschnick has not demonstrated his substantial rights were affected because any error that occurred did not affect the outcome of his trial. The evidence admitted against Kuschnick at trial included: the officer’s observation of methamphetamine in the center console of the vehicle Kuschnick was driving; Kuschnick was the only person in the vehicle, and he told the officer that it was his car; the officer asked Kuschnick to perform field sobriety tests and provide a breath sample, which indicated no alcohol in Kuschnick’s system even though he failed two field sobriety tests--the one-leg stand and the walk-and-turn test; and the officer observed that Kuschnick was fidgety, talkative, and “kind of mumbled.” Based on these tests and observations, the officer opined that

Kuschnick was under the influence of a controlled substance. The substance found in Kuschnick's vehicle tested positive for methamphetamine. All of this evidence was independent of Kuschnick's refusal to consent to a warrantless blood draw. Based on our review of the record, we cannot conclude the evidence that Kuschnick refused to consent to the warrantless blood draw affected the outcome of the trial.

We, therefore, hold that Kuschnick has failed to show he is entitled to relief based on the fundamental error doctrine.

III. CONCLUSION

The district court did not abuse its discretion when it overruled Kuschnick's I.R.E. 403 objection. Kuschnick has failed to show fundamental error resulting from the police officer's testimony that Kuschnick refused to consent to a warrantless blood draw. The judgment of conviction for felony possession of a controlled substance is affirmed.

Chief Judge TRIBE and Judge LORELLO, **CONCUR.**