

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 17-0727

CITY OF BILLINGS,

Plaintiff and Appellee,

v.

ROBERT MARTIN RODRIGUEZ,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, The Honorable Mary Jane Knisely, Presiding

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STATEMENT OF THE ISSUE

Whether particularized suspicion exists when the officer suspects a car theft or stolen license plates based on a color discrepancy in a vehicle's registration, an undisputed increase in thefts of cars and license plates in the officer's city, and the officer's own experience and knowledge regarding common practices used to alter the color or license plate of a stolen vehicle?

STATEMENT OF THE CASE

Appellant Robert Martin Rodriguez (Rodriguez) appeals from the district court's order reversing the municipal court's holding on whether to suppress evidence based on the determination that law enforcement had particularized suspicion to stop and investigate Rodriguez's vehicle as a possible stolen vehicle. (D.C. Doc. 15.)

Rodriguez was charged with marijuana-related misdemeanors as a result of the traffic stop. (D.C. Doc. 2.) In the municipal court, Rodriguez moved to dismiss the case and suppress the evidence arguing Billings Police Officer Michael Beechie (Officer Beechie) did not have particularized suspicion for the traffic stop. (D.C. Doc. 2.) Without making Findings of Fact and Conclusions of Law, the municipal court granted Rodriguez's Motion to Suppress and dismissed the case with prejudice. (D.C. Doc. 2.) On appeal, the district court reversed the municipal

court by finding Officer Beechie's knowledge and observations were sufficient to create particularized suspicion to justify his investigatory stop of Rodriguez's vehicle. (D.C. Doc. 15.) Rodriguez now appeals. (D.C. Doc. 16.)

STATEMENT OF THE FACTS

On February 12, 2017, Officer Beechie of the Billings Police Department was patrolling on Bench Boulevard in the Billings Heights. (5/25/2017 M.C. Suppression Hearing ("Hrg.") at 1:15-:25.) Officer Beechie was engaged in "pro-active policing" by observing and running license plates to verify proper vehicle registration. (Hrg. at 1:30-38.) He observed Rodriguez driving a white 2016 Chevy Cruze and ran the license plate through the state's database. (Hrg. at 1:39-46.) The information regarding the plate showed it was registered to a red 2016 Chevy Cruze. (Hrg. at 1:46-52.)

Officer Beechie decided to conduct a traffic stop based on several factors, including the color discrepancy, his knowledge of a spike in local car thefts and stolen license plates, and his expertise regarding the concealment of stolen vehicles. (Hrg. at 1:52-2:02.) He testified regarding "a very high number" of stolen vehicles coming through Yellowstone County. (Hrg. at 2:40-44.) Many of the vehicles were taken right from the dealerships "brand new." (Hrg. at 2:50-55.) The 2016 Chevy Cruz was a newer vehicle at the time of the traffic stop in 2017.

Officer Beechie testified that car thieves “very frequently” spray paint a stolen vehicle or take a license plate from a similar model vehicle to conceal the fact the vehicle is stolen. (Hrg. at 3:30-48.) Under the totality of the circumstances, Officer Beechie stated these facts created a particularized suspicion that the 2016 Chevy Cruze was a stolen vehicle. (Hrg. at 4:00-01.)

During the traffic stop, Officer Beechie smelled marijuana. (M.C. City’s Response, 5/9/2017 at 1). In response to Officer Beechie’s inquiry, Rodriguez admitted to recently using marijuana and handed Officer Beechie three marijuana pipes, a marijuana grinder, and a plastic baggie with marijuana inside. (M.C. City’s Response, 5/9/2017 at 2). He was later charged with one count of Misdemeanor Criminal Possession of Dangerous Drugs under Mont. Code Ann. § 45-9-102(2), and one count of Misdemeanor Criminal Possession of Drug Paraphernalia under Mont. Code Ann. § 45-10-103.

SUMMARY OF THE ARGUMENT

As noted by the district court, there is sufficient evidence in the record supporting the conclusion that Officer Beechie had particularized suspicion to stop and investigate Rodriguez’s vehicle. Officer Beechie, as a part of routine traffic work, ran the license plate of Rodriguez’s vehicle and correctly concluded there was a discrepancy in the vehicle’s registration’s listed color and the vehicle’s

actual color. In conjunction with his knowledge of how car thieves repaint stolen vehicles or switch plates from similar vehicle models, Officer Beechie also testified to the local epidemic of stolen vehicles in Yellowstone County. This included a higher volume of stolen newer vehicles, which also matched the description of Rodriguez's vehicle.

Based on the totality of the circumstances as listed by the district court, Officer Beechie had sufficient information overall to suspect that Rodriguez was driving a stolen vehicle and, therefore, had a particularized suspicion to pull the vehicle over for further investigation. The Court should affirm the district court's findings that Officer Beechie had particularized suspicion to stop Rodriguez.

ARGUMENT

I. Standard of review.

A. Review of municipal court orders.

On appeal from a municipal court, the district court functions as an intermediate appellate court. Mont. Code Ann. § 3-5-303. When a district court acts as an intermediate appellate court, "[t]he appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority." Mont. Code Ann. § 3-6-110(1). The Court's review of the case is as if the appeal was originally filed with the Court, and the Court examines

the record independently of the district court's decision. *City of Missoula v. Williams*, 2017 MT 282, ¶ 8, 389 Mont. 303, 406 P.3d 8. This Court reviews a ruling on a motion to suppress evidence to determine whether the court's findings of fact are clearly erroneous and whether the court's interpretation and application of the law are correct. *State v. Marcial*, 2013 MT 242, ¶ 10, 371 Mont. 348, 308 P.3d 69.

B. Review of suppression motions and findings of particularized suspicion.

This Court reviews a district court's denial of a motion to suppress evidence to determine whether the lower court's findings of fact are clearly erroneous and whether the court correctly applied those findings as a matter of law. *State v. Conley*, 2018 MT 83, ¶ 9, 391 Mont. 164, 415 P.3d 473. The Court reviews a finding that an officer had particularized suspicion to conduct an investigatory stop to determine whether the finding was clearly erroneous. *State v. Rutherford*, 2009 MT 154, ¶ 9, 250 Mont. 403, 208 P.3d 389. Whether particularized suspicion exists is determined in light of the totality of the circumstances. *State v. Henderson*, 1998 MT 233, ¶ 12, 291 Mont. 77, 966 P.2d 137. The totality of the circumstances takes the officer's knowledge and training into consideration. *Id.*

II. Based on the totality of the circumstances, the district court's finding of particularized suspicion was not clearly erroneous.

The Fourth Amendment to the U.S. Constitution and article II, section 11 of the Montana Constitution prohibit unreasonable searches and seizures. These limitations include investigative stops of motor vehicles. *State v. McMaster*, 2008 MT 294, ¶ 13, 345 Mont. 408, 191 P.3d 443 (citing *United States v. Cortez*, 449 U.S. 411, 417 (1981); *State v. Gopher*, 193 Mont. 189, 194, 631 P.2d 293, 296 (1981)). This right has also been specified in Mont. Code Ann. § 46-5-401(1):

In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense.

A particularized suspicion does not require that the officer be certain that an offense has been committed. *Henderson*, ¶ 12. The State has the burden to show: 1) objective data from which an experienced officer can make certain inferences; and 2) a resulting suspicion that the occupant of the vehicle is or has been engaged in wrongdoing or was a witness to criminal activity. *Kleinsasser v. State*, 2002 MT 36, ¶ 12, 308 Mont. 325, P12, 42 P.3d 801, P12 (citing *Gopher*, 193 Mont at 194, 631 P.2d at 296). The focus of the particularized suspicion inquiry is "entirely on what facts were available to the officer." *State v. Massey*, 2016 MT 316, ¶ 9, 385 Mont. 460, 385 P.3d 544.

A. Montana has clear and reasonable motor vehicle laws to ensure motor vehicles are properly registered.

Licensing and registration of motor vehicles is one of the most basic regulatory functions of state government. In 1837, the United States Supreme Court held that state and local governments have an inherent power to enact regulations concerning the health, safety, welfare, and morals of the public. *Charles River Bridge v. Warren Bridge Co.*, 36 U.S. 420 (1837). In exercising its police and regulatory powers, states are allowed to enact reasonable regulations requiring the titling and registration of motor vehicles and licensing of motor vehicle drivers. 7 Am. Jur. 2d *Automobiles and Highway Traffic* § 15 (2017). The primary purposes of these laws is to supervise vehicles, their movement and control, and to establish their identity. *Id.*, § 57.

The Montana Supreme Court relied on the U.S. Supreme Court's *Charles River Bridge* decision in *City of Billings v. Skurdal*, 224 Mont. 84, 87, 730 P.2d 371 (1986). In doing so, the Court recognized that regulations enacted pursuant to the state's police power "will be presumed reasonable absent a clear showing to the contrary." *Id.* (quoting *Betty v. City of Sidney*, 79 Mont. 314, 319, 257 P. 1007, 1009 (1927)). Operation of a motor vehicle and abiding by the regulations and statutory licensing procedures that follow is a privilege. *State v. Skurdal*, 235 Mont. 291, 295, 767 P.2d 304, 307 (1988). An individual's ability or privilege to operate a motor vehicle on public roads is "always subject to reasonable regulation

by the state in the valid exercise of its police power." *Id.* Reasonable regulations include Montana's requirements for vehicle registration, insurance, and mandatory seatbelt usage. *Id.*

Montana's regulations for titling and registration of motor vehicles can be found in Mont. Code Ann. § 61-3-101. An electronic record of title for a motor vehicle must contain a description of the motor vehicle. Mont. Code Ann. § 61-3-101(2)(b). The electronic record of registration for a motor vehicle must contain any data considered to be pertinent by the Department of Justice Motor Vehicle Division. Mont. Code Ann. § 61-3-101(3)(c). These descriptions and information include vehicle color, model, year, and make. A person may not operate a motor vehicle upon the public highways of Montana unless the motor vehicle is **properly** registered and has the proper license plates conspicuously displayed. Mont. Code Ann. § 61-3-103(1)(a). (Emphasis added) Further, it is unlawful to display license plates issued to one motor vehicle on another motor vehicle unless legally transferred. Mont. Code Ann. § 61-3-103(3)(a). Failure to comply with motor vehicle registration requirements constitutes a misdemeanor under Mont. Code Ann. § 61-3-601, and peace officers of all jurisdictions of the State of Montana are charged with the mandatory duty of enforcing these provisions. Mont. Code Ann. § 61-3-602, MCA. (quoting *State v. Martinez*, 2003 MT 65, ¶ 27, 314 Mont. 434, 67 P.3d 207.)

Checking for proper vehicle registration is important, routine work of any law enforcement officer. While relatively minor compared to other offenses, improper registration or traffic offenses are often the predicate to discovering more serious crimes. See *State v. Henderson* (drug possession and DUI prosecution as a result of temporary tag violation investigation); *State v. Turbiville*, 2003 MT 340, 318 Mont. 451, 81 P.3d 475 (expired registration tags and vehicle crossing the center line led to DUI prosecution); *State v. Haldane*, 2013 MT 32, 368 Mont. 396, 300 P.3d 657 (officer had particularized suspicion to pull over vehicle with temporary license plate obstructed by snow and trailer hitch – driver ultimately cited for DUI); *State v. Estes*, 2017 MT 226, 388 Mont. 491, 403 P.3d 1249 (expired North Dakota vehicle registration led to prosecution of marijuana and hashish offenses). The Court should be wary of limiting law enforcement’s use of these basic “pro-active policing” practices used to ensure public safety within the bounds of an individual’s constitutional rights.

B. There was sufficient objective data available to the officer beyond mere color discrepancy to develop a particularized suspicion for the traffic stop.

The facts presented to the municipal court and the district court in this case are undisputed. Based on those facts, the district court overturned the municipal courts order to suppress and found Officer Beechie had particularized suspicion through a totality of the circumstances analysis:

- (1) There was a high number of license plates and vehicles stolen in the Billings area;
- (2) The stolen vehicles were of a wide variety, including new cars stolen from dealerships;
- (3) Car thieves typically attempt to alter the color of stolen vehicles by spray painting them or swapping license plates from the stolen vehicle with license plates from vehicles of the same make and model;
- (4) There was a color discrepancy between the Cruze's actual color and the color listed on the registration.

The circumstances surrounding vehicle stop involving Rodriguez gave rise to even more of a particularized suspicion than in *State v. Henderson*. In *Henderson*, a law enforcement officer made an investigatory stop because he could not read the letters of a temporary vehicle registration through the vehicle's tinted windows. The Court concluded that the inability of an officer to see a registration sticker because it was displayed behind a tinted car window was sufficient to give rise to particularized suspicion that the vehicle was not properly registered and justified an investigatory stop ("Section 61-3-301, MCA, requires that all vehicles operated on the public highways of Montana be properly registered with the state and have the proper number of license plates conspicuously displayed on the front and rear ends of the vehicle."). *Id.* at ¶¶ 13-14. The Court noted that the State produced substantial evidence that the officer who initiated the investigatory stop could not view the letters on the temporary tag because of the dark tinted windows. *Id.* The Court concluded that the district court misapprehended the effect of the evidence when it found that the officer had no reasonable grounds to suspect that

an offense was being committed and reversed its decision to suppress the evidence obtained as a result of the traffic stop. *Id.* at ¶ 16.

In the present case, Officer Beechie had particularized suspicion that the vehicle Rodriguez was driving was not properly registered due to facts known to him beyond the mere color discrepancy. At the suppression hearing, Officer Beechie noted a “high volume” of stolen vehicles and stolen license plates in Yellowstone County. He stated that many new vehicles, which included cars like Rodriguez’s, were targeted for theft. This objective and undisputed data presented by Officer Beechie in the municipal court is more than sufficient in a totality of the circumstances analysis to justify the stop.

C. Reliance on out-of-state case law is unnecessary due to the additional objective data in the present case giving rise to the suspicion a vehicle or license plates had been stolen.

Rodriguez hopes the Court overlooks the facts in the present case and existing Montana case law in favor of two out-of-state case law regarding vehicle color discrepancy. With these two cases, he argues there is a split in how jurisdictions deal with vehicle color discrepancy as a basis for a traffic stop. However, neither of the cases Rodriguez cites is helpful to him because there was no evidence presented of additional facts or data known to the arresting officer that would add to the particularized suspicion analysis for the stolen vehicle or license plate.

In *United States v. Uribe*, a Seventh Circuit case, an officer pulled over a blue Nissan that was registered as a white Nissan. 709 F.3d 646 (2013). There the officer stated he stopped the vehicle “to check for registration compliance.” *Id.* at 649. During the traffic stop, a law enforcement canine positively alerted the officers to drugs being present. *Id.* When considering whether to suppress the drug evidence based on the specifics of the traffic stop, the Seventh Circuit acknowledged any facts pertaining to the possibility of vehicle theft would certainly be factored into the analysis of reasonable suspicion.

(Ordinarily, this is where we would review all the circumstances known to the officer that weigh in favor of or against a finding of reasonable suspicion and consider the officer's experience, expertise, and understanding of the context of the stop to determine whether the observed conduct was objectively, reasonably, and articulably suspicious.)

Id. at 652. However, the government had presented no evidence in district court regarding the officer's concern of a car theft or whether there had been an outbreak of car thefts in the area. (“Without testimony or an affidavit from Deputy Simmons (or anyone else), we know nothing about the extent of his experience with car theft, how the police department trains its officers to detect stolen vehicles, or whether anything about the context of the stop raises the level of suspicion.”) *Id.*

Rodriguez's reliance on a Florida case is equally unhelpful to his case. In *State v. Teamer*, an officer ran the number of a bright green Chevrolet that was registered as a blue Chevrolet. 151 So.3d 421 (Fla. 2014). *Id.* at 424. The owner

was arrested after further investigation turned up marijuana and crack cocaine. In that case, the court noted the deputy acknowledged he was not “aware of any reports of stolen vehicles or swapped plates in the area.” *Id.* It went on further to quote *Uribe* in the lack of presenting any additional facts that may give rise to further suspicion of criminal activity. (“[T]he government provided no evidence to tip the scales from a mere hunch to something even approaching reasonable and articulable suspicion, despite attempting to justify a detention based on one observed incident of completely innocent behavior in a non-suspicious context.”) *Id.* at 428.

Both of these cases are quite different from the case before the Court now. When the Billings city prosecutor put Officer Beechie on the stand, he testified to his experience with stolen vehicles, the outbreak of stolen vehicles and license plates in the Billings area, the prevalence of new vehicles being the target of thefts, and how he used all of this information collectively to form a particularized suspicion that Rodriguez was driving a stolen vehicle or a vehicle with stolen license plates. The defense at the suppression hearing offered no rebuttal to Officer Beechie’s qualifications, expertise, nor his assertion about the outbreak of vehicle thefts and license plate thefts. For those reasons, the present case is distinguishable from the two out-of-district cases cited by Rodriguez.

Additionally, there are other jurisdictions that have found a color discrepancy alone is sufficient for an officer to pull over a vehicle due to a concern the vehicle is stolen or the license plates have been illegally switched. In *Andrews v. State*, a Georgia appellate court held that it was reasonable for an officer to infer from a color discrepancy that a car's license plate had been switched in violation of Georgia law. 289 Ga. App. 679, 658 S.E.2d 126, 127-28 (Ga. Ct. App. 2008). An Indiana appellate court found that a color discrepancy supported reasonable suspicion that a "vehicle had a mismatched plate, and as such, could be stolen or retagged." *Smith v. State*, 713 N.E.2d 338, 342 (Ind. Ct. App. 1999). Unlike the present case that has several additional facts known to Officer Beechie leading up to the traffic stop of Rodriguez, the courts in Georgia and Indiana made the finding of reasonable suspicion seemingly without any evidence presented on the fact that stolen vehicles or license plates were on the rise in any of these jurisdictions.

Rodriguez's reliance on the out-of-state cases is misplaced because there was undisputed, objective data presented by Officer Beechie regarding the possibility of Rodriguez driving a stolen vehicle beyond the vehicle's color discrepancy.

CONCLUSION

Officer Beechie had sufficient particularized suspicion to pull over Rodriguez's vehicle based on undisputed, objective facts, including the color discrepancy, his knowledge regarding common practices of either spray painting a stolen vehicle or changing the license plate, and the fact that Billings had experienced a significant increase in the theft of new cars. The Court should uphold the district court's decision and deny the motion to suppress evidence related to the investigatory stop.

Respectfully submitted this 13th day of September, 2019.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,346 words, excluding certificate of service and certificate of compliance.

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CERTIFICATE OF SERVICE

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