

DA 17-0727

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 9

CITY OF BILLINGS,

Plaintiff and Appellee,

v.

ROBERT MARTIN RODRIGUEZ,

Defendant and Appellant.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DC 17-0735
Honorable Mary Jane Knisely, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Michael Marchesini, Assistant
Appellate Defender, Helena, Montana

For Appellee:

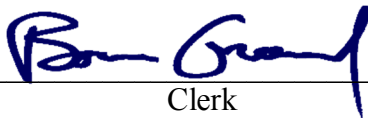
Timothy C. Fox, Montana Attorney General, Jon Bennion, Chief Deputy
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Submitted on Briefs: December 4, 2019

Decided: January 21, 2020

Filed:


Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Robert Martin Rodriguez appeals a Thirteenth Judicial District Court order reversing a judgment entered by the City of Billings Municipal Court granting Rodriguez’s Motion to Suppress and Dismiss. We reverse.

¶2 We address the following issue on appeal:

Whether the District Court erred in determining that the Billings Police Officer possessed particularized suspicion to stop Rodriguez’s vehicle based solely on the discrepancy between the vehicle’s color and the color listed on the registration.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 On February 12, 2017, Billings Police Officer Michael Beechie was engaged in “proactive policing” on Bench Boulevard in Billings, Montana, checking license plates on vehicles to verify registration. Beechie saw Rodriguez driving eastbound in a white 2016 Chevrolet Cruze. Beechie ran Rodriguez’s plate through his computer system license database and the plate returned as registered to a red 2016 Chevrolet Cruze. The make, model, year, and license plate number all matched Rodriguez’s car. Beechie decided to conduct a traffic stop to investigate the color discrepancy between the vehicle and that listed on the registration. After the stop, Beechie verified that the Vehicle Identification Number on the vehicle matched the registration, determining the car was not stolen. Beechie also smelled marijuana as he approached the vehicle. Rodriguez admitted to having recently smoked marijuana and handed Beechie marijuana pipes, a marijuana grinder, and a plastic bag of marijuana. Rodriguez was not arrested; however, on February 27, 2017, he was charged with Criminal Possession of Dangerous Drugs and Criminal Possession of Drug Paraphernalia, both misdemeanors.

¶4 On April 24, 2017, Rodriguez filed a Motion to Suppress and Dismiss, arguing that the vehicle's color discrepancy did not establish particularized suspicion that Rodriguez was engaged in car theft or other criminal activity necessary to justify the vehicle stop. At a May 25, 2017 suppression hearing, Beechie testified as to his suspicions warranting the stop. Beechie explained that there was a high number of stolen vehicles and license plates recently in the Billings area and that the stolen cars included new vehicles, old vehicles, and "a lot of old Hondas." Beechie testified that car thieves frequently spray-paint stolen cars or steal and swap license plates from cars of the same model in order to conceal crimes; however, Beechie did not testify as to how often vehicles with a color inconsistency listed on the registration are determined to be stolen vehicles. Beechie acknowledged that many people repaint their own cars and that doing so is innocent behavior.¹ Beechie further testified that he was not aware of any reports of a stolen 2016 Chevrolet Cruze at the time of the stop and he did not detect any physical signs to suggest that Rodriguez's vehicle had been spray painted. Additionally, Beechie stated that he did not observe any signs to indicate that Rodriguez's license plates had been transferred, but instead, noted that both plates were "clean and matched."

¶5 Without issuing findings of fact and conclusions of law, the Municipal Court granted Rodriguez's motion to suppress and dismissed the case with prejudice. The City appealed. On October 13, 2017, the District Court reversed, holding that the color

¹ At the suppression hearing, Beechie stated that it should be a vehicle owner's responsibility to ensure his or her vehicle registration information, including color, is accurate. Despite his suggestion, Montana law does not prohibit a vehicle owner from repainting his or her vehicle or require that an owner notify the Motor Vehicle Division ("MVD") upon changing a vehicle's color. *See generally* Mont. Code Ann. tit. 61, ch. 3.

discrepancy of the vehicle, coupled with Beechie's knowledge of the high number of vehicle thefts in the area, established particularized suspicion to justify the investigatory stop of Rodriguez's vehicle. Rodriguez appeals.

STANDARDS OF REVIEW

¶6 When a case is appealed from a municipal court of record to a district court, the district court acts as an intermediate appellate court. *City of Helena v. Broadwater*, 2014 MT 185, ¶ 8, 375 Mont. 450, 329 P.3d 589. We review the district court's decision in such an appeal as if the appeal was originally filed in this Court, applying the appropriate standard of review. *City of Great Falls v. Allderdice*, 2017 MT 58, ¶ 7, 387 Mont. 47, 390 P.3d 954. We review a lower court's grant or denial of a motion to suppress to determine whether the court's findings are clearly erroneous and whether those findings were applied correctly as a matter of law. *State v. Old-Horn*, 2014 MT 161, ¶ 13, 375 Mont. 310, 328 P.3d 638.

DISCUSSION

¶7 *Whether the District Court erred in determining that the Billings Police Officer possessed particularized suspicion to stop Rodriguez's vehicle based solely on the discrepancy between the vehicle's color and the color listed on the registration.*

¶8 This issue is one of first impression in Montana, as this Court has not previously addressed whether a discrepancy between a vehicle's color and that listed on its registration, standing alone, is sufficient to establish particularized suspicion. Rodriguez argues that the District Court erred in reversing the Municipal Court's grant of the motion to suppress because Beechie lacked particularized suspicion necessary to justify the vehicle stop. We agree.

¶9 Both the Fourth Amendment to the United States Constitution and Article II, Section 11, of the Montana Constitution protect citizens from unreasonable searches and seizures, including brief investigatory stops such as traffic stops. *State v. Zimmerman*, 2018 MT 94, ¶ 15, 391 Mont. 210, 417 P.3d 289. Section 46-5-401(1), MCA, permits a law enforcement officer to stop any person or vehicle 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. *State v. Foster*, 2017 MT 118, ¶ 9, 387 Mont. 402, 394 P.3d 916.

¶10 Particularized suspicion exists when an officer has objective data and articulable facts from which an officer can make certain inferences, and a resulting suspicion that the subject is, or has been, engaged in wrongdoing. *City of Missoula v. Moore*, 2011 MT 61, ¶ 16, 360 Mont. 22, 251 P.3d 679; *State v. Reeves*, 2019 MT 151, ¶ 8, 396 Mont. 230, 444 P.3d 394. Particularized suspicion requires more than mere generalized suspicion or an undeveloped hunch of criminal activity. *State v. Hoover*, 2017 MT 236, ¶ 18, 388 Mont. 533, 402 P.3d 1224. Whether particularized suspicion exists is a question of fact to be evaluated under the totality of the circumstances. *State v. Gill*, 2012 MT 36, ¶ 15, 364 Mont. 182, 272 P.3d 60. When evaluating the totality of the circumstances, a court considers the content of the information available and reliability of that information. *Gill*, ¶ 15. If an officer lacks particularized suspicion to conduct an investigatory traffic stop, courts apply the exclusionary rule, rendering evidence obtained through the unlawful search or seizure inadmissible in criminal proceedings. *State v. Therriault*, 2000 MT 286, ¶ 57, 302 Mont. 189, 14 P.3d 444.

¶11 Under the totality of the circumstances, beyond the color discrepancy of the vehicle, Beechie did not possess objective data and articulable facts from which he could infer Rodriguez was engaged in criminal behavior. When Beechie ran the license plate number through his computer database, the make, model, year, and license plates of the vehicle all matched the registration. Beechie was not specifically aware of any stolen 2016 Chevrolet Cruzes in the area, but was generally aware that recently stolen cars included old cars, new cars, and “Hondas.” Nor did Beechie observe any physical signs to suggest that Rodriguez’s car had been spray painted or that the license plates had been transferred. Additionally, Beechie did not testify at the suppression hearing as to how common it is, based on his experience, for vehicles with a color inconsistency listed on the registration to be deemed stolen vehicles. Instead, Beechie only possessed generalized knowledge that there was a high number of car thefts in the area and that car thieves “frequently” spray paint stolen vehicles.

¶12 Further, a vehicle’s color inconsistency between its paint job and registration is not criminal behavior in and of itself. It is not against Montana law to repaint a vehicle, nor does Montana law require a vehicle owner to inform the MVD upon changing the color of a vehicle. In fact, at the suppression hearing, Beechie acknowledged routine, non-criminal explanations for a vehicle’s color discrepancy, such as a lawful owner painting his or her car and failing to update its registration information or typographic errors submitted by the MVD. “When the only basis for suspecting a specific person of wrongdoing is inferences that could be drawn from the conduct of virtually any

law-abiding person, the resulting suspicion cannot, by definition, be particularized.”
Reeves, ¶ 13.

¶13 Without objective data to support Beechie’s suspicion of Rodriguez, that suspicion must necessarily have been based on guesswork or inarticulable hunches. *See Reeves*, ¶ 11 (citations omitted). Standing alone, the color discrepancy between Rodriguez’s vehicle and that listed on the vehicle’s registration is simply too thin to constitute particularized suspicion. The District Court erred in determining otherwise.

CONCLUSION

¶14 Because Beechie lacked particularized suspicion necessary to conduct a stop of Rodriguez’s vehicle, the District Court erred in overturning the Municipal Court’s order to suppress and dismiss.

¶15 Reversed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ BETH BAKER

/S/ DIRK M. SANDEFUR