

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0044

STATE OF MONTANA,

Plaintiff and Appellee,

v.

TYLER BRANDON MATTHEWS,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, The Honorable Jessica T. Fehr, Presiding

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STATEMENT OF THE ISSUES

1. Whether, based on driving conduct that included a wide turn, abnormally slow speeds, drifting within his lane, and unusually rapid acceleration established sufficient particularized suspicion to initiate a traffic stop.

2. The State concedes that the fine in the justice court's written judgment was not consistent with the agreed upon and orally pronounced fine.

STATEMENT OF THE CASE

On December 30, 2019, the State charged Tyler Brandon Matthews (Matthews) by citation with one count of driving under the influence, first offense, under Mont. Code Ann. § 61-8-401(1)(a). (Doc. 2 at 8.)¹

On September 16, 2020, Matthews filed a motion to dismiss, alleging “Deputy Richter lacked the requisite particularized suspicion to initiate an investigatory stop of Matthews on the night of December 30, 2019.” (*Id.* at 87.)

On September 30, 2020, the State filed its response. (*Id.* at 102.) After an evidentiary hearing on December 8, 2020, the justice court issued an order denying Matthews’ motion on February 5, 2021. (*Id.* at 156.)

¹ District Court Document 2 is the justice court record, consisting of 280 pages.

On March 2, 2021, Matthews filed his notice of appeal to district court. (Doc. 1.) The district court affirmed the order of the justice court and dismissed Matthews' appeal. (Doc. 17.) This appeal follows.

STATEMENT OF THE FACTS

I. The evidentiary hearing

Detective Bethany Richter (Detective Richter) had been employed by the Yellowstone County Sheriff's Office for seven and a half years. (Doc. 9 at 8.) At the time of the stop, Detective Richter was a corporal, but has since been promoted or moved to detective. (*Id.*) Detective Richter's training and experience included a bachelor's degree in psychology, completion of the Montana Law Enforcement Academy, and 12-14 weeks of field training. (*Id.*) Detective Richter was also a drug recognition expert and had obtained her supervisor's certificate. (*Id.* at 8-9.)

Detective Richter described being trained to detect potential signs of impaired driving, stating: "There's several different indicators; driving too fast, driving too slow, weaving, swerving, drifting movement, not having your lights on, using your turn signals [at] inappropriate times, taking wide turns, taking narrow turns. There's a number of things that you would look at." (*Id.* at 11.)

Detective Richter testified that, as part of her duties while on patrol, she was aware of nearby establishments that served alcohol and explained that "[b]ars can

be problem areas,” which can cause “a multitude of issues.” (*Id.* at 12.) Further, she testified that, based on her experience, around 10 p.m. is a time of day when “the type of drivers you’re going to find changes” and there may be “increased impaired drivers” from restaurants closing. (*Id.* at 13.)

When asked how alcohol impacts driving behavior, Detective Richter explained that “those oncoming vehicles may look differently when they’re coming at you[,]” which might cause an impaired driver to swerve. (*Id.* at 15.) Further, the impaired driver might not be as likely to observe the lines on the road and may be inconsistent with accelerating or braking. (*Id.*)

Detective Richter had engaged in “several hundred” impaired driving investigations in her career. (*Id.* at 16.) She elaborated that not every investigation or stop of a potential impaired driver results in an arrest. (*Id.*)

At about 10:24 p.m., on December 30, 2019, Deputy Richter observed a silver SUV pull out in front of her squad car.² (*Id.* at 16-17.) Her attention was drawn to the vehicle because it was traveling abnormally slow and it made “a very wide turn onto the road.” (*Id.* at 17.) Despite the fact that the vehicle was traveling

² Despite testimony that this occurred on December 31, 2019, based upon the citation (Doc. 2 at 8), the date on the timestamp of State’s Exhibit 1, and other record evidence, the correct date of the offense appears to have been December 30, 2019.

at about 15 mph, it was “still managing to swerve back and forth from the center to the fog line several times.” (*Id.*)

Detective Richter testified that the behavior she initially observed was a “[v]ery, very, huge flag” that the driver might be impaired. (*Id.* at 18.)

Detective Richter continued, stating:

The vehicle continued [at] fifteen miles an hour. I’m going to estimate that would be—I’m absolutely estimating, but maybe 3—400 yards from that turn to where it turns into forty-five [mph] when it starts to go around the curve. And then the vehicle did something that surprised me even more. And also, there was an oncoming vehicle. And he swerved way to the—to the fog line to the right, avoiding the vehicle.

And then he just slammed on his gas, accelerating rapidly to forty-five, which I mean, I wouldn’t—people don’t drive like that when they know that there’s, one, law enforcement behind them. But it’s just such out of the ordinary behavior—driving behavior.

(*Id.*)

Detective Richter clarified that at this point she “firmly” believed that the driver was impaired. (*Id.*) Detective Richter was aware that there were several bars in this area. (*Id.* at 19.)

Detective Richter articulated why she chose to stop the vehicle where she did, stating: “there was an overwhelming amount of driving behavior that led me to believe this driver is either impaired or having some kind of medical emergency and needed to be shut down.” (*Id.* at 19-20.) Further, she knew they were

approaching a parking lot, which was a safer location to conduct a traffic stop than it would have been if the vehicle had turned onto the interstate. (*Id.* at 20.)

The video from Detective Richter's squad car that recorded the stop was introduced into evidence as State's Exhibit 1. (*Id.* at 22.) The squad car video was published for the justice court.³ (*Id.* at 25.)

On cross-examination, Detective Richter agreed that Matthews had not crossed over into the oncoming lane of traffic. (*Id.* at 27.) She clarified that the speed limit where Matthews first turned in front of her was 25 mph. (*Id.*) Detective Richter also agreed that Matthews was "well under the speed limit" as she followed him. (*Id.* at 29.)

Matthews did not present any evidence, and the justice court took the matter under advisement. (*Id.* at 45.)

II. The justice court's order denying the motion to suppress

On February 5, 2021, the justice court issued its order denying Matthews' motion to suppress evidence. (Doc. 2 at 156.) After documenting Detective Richter's substantial training and experience, which included "several hundred DUI investigations in her career," the justice court made numerous

³ Based on Matthews' attorney's objection to watching the squad car video beyond "when the lights come on" (*see* Doc. 9 at 24), State's Exhibit 1 was published until 01:48 into the recording (*id.* at 26).

findings of fact based upon Detective Richter's testimony and State's Exhibit 1.

(*Id.* at 156-60.)

The justice court summarized the facts that Detective Richter had articulated that justified the investigative stop of Matthews:

Detective Richter articulated several objective factors for her belief that the Defendant was operating his motor vehicle under the influence of alcohol including: 1) wide turn; 2) inconsistent speeds[;] 3) weaving within the Defendant's lane[;] 4) touching of the center line and fog line; 5) presence of several bars in the area; and 6) time of day. Additionally, Detective Richter testified that she possessed the requisite training and experience to infer that these observations are indicative of impaired driving.

(*Id.* at 163-64.)

On February 25, 2021, Matthews signed an acknowledgment and waiver of rights and a non-binding plea agreement. (*Id.* at 264.) Matthews reserved his right to appeal the justice court's order denying his motion to suppress. (*Id.*)

Matthews agreed to enter a plea to the amended offense of operation of a vehicle by a person under the influence of Delta-9-Tetrahydrocannabinol under Mont. Code Ann. § 61-8-411. (*Id.* at 267-68.) In exchange, the parties agreed to recommend a sentence of six months suspended, and payment of a \$600 fine. (*Id.* at 268.)

SUMMARY OF THE ARGUMENT

The district court correctly affirmed the justice court's conclusion that Detective Richter possessed particularized suspicion that Matthews was driving

while impaired. The detective observed Matthews take a wide turn directly in front of her squad vehicle, then drive at an abnormally slow speed of about 15 mph in a 25 mph zone, while drifting within his lane. Then, Matthews suddenly accelerated up to the 45 mph speed limit, prior to inexplicably slowing down again.

Detective Richter was obviously present when her squad car video recorded her stop of Matthews. Thus, she was in a much better position to accurately explain what was on the recording than anyone who was not present.⁴ The justice court, who also observed the squad car video, clearly found Detective Richter's testimony credible.

The district court's written sentence contains what appears to be a typographical error, indicating a fine of \$2,000. This matter should be remanded to correct the sentencing order to consistently reflect a fine of \$600.

ARGUMENT

I. Standard of review

This Court reviews a lower court's factual findings of particularized suspicion for clear error and its application of those facts to the law for correctness.

⁴ While the parties made no reference to her comments, State's Exhibit 1 includes audio which recorded Detective Richter speaking to another officer who was riding in her squad car. Detective Richter essentially gave a real time narrative of her observations. The descriptions of what she was observing in the moment were consistent with her testimony.

City of Missoula v. Sharp, 2015 MT 289, ¶ 5, 381 Mont. 225, 358 P.3d 204 (citing *State v. Larson*, 2010 MT 236, ¶ 15, 358 Mont. 156, 243 P.3d 1130).

Criminal sentences are reviewed for legality. *State v. Spagnolo*, 2022 MT 228, ¶ 4, 410 Mont. 457, 520 P.3d 330 (citations omitted).

II. The justice court correctly determined that Detective Richter had a sufficient particularized suspicion to justify a traffic stop.

A. Applicable law

To have a particularized suspicion to justify a temporary seizure, an officer must have: “(1) objective data and articulable facts from which he or she can make certain reasonable inferences; and (2) a resulting suspicion that the person to be stopped has committed, is committing, or is about to commit an offense.” *State v. Brown*, 2009 MT 64, ¶ 20, 349 Mont. 408, 203 P.3d 842.

Whether particularized suspicion supports an investigative stop is a question of fact that this Court evaluates in the context of the totality of the circumstances. *State v. McMaster*, 2008 MT 294, ¶ 13, 345 Mont. 408, 191 P.3d 443. Some of the facts this court considers in evaluating the totality of the circumstances for cases involving traffic stops are the time of day, the location of the stop, and the driving behavior. *State v. Weer*, 2010 MT 232, ¶ 10, 358 Mont. 130, 244 P.3d 311 (citations omitted).

“[T]he question is not whether any one of [the Defendant’s] driving aberrations itself was ‘illegal’ but rather, whether [the officer] could point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.” *State v. Brander*, 2004 MT 150, ¶ 6, 321 Mont. 484, 92 P.3d 1173 (citing *State v. Martinez*, 2003 MT 65, ¶ 21, 314 Mont. 434, 67 P.3d 207).

For example, in *Sharp, supra*, the officer observed the defendant, who was stopped at a traffic light, “launch” his truck “into a rapid acceleration” across the intersection. *Sharp*, ¶ 3. Citing precedent from *United States v. Cortez*, 449 U.S. 411 (1981), and *State v. Gopher*, 193 Mont. 189, 631 P.2d 293 (1981), this Court reiterated that a determination of particularized suspicion

does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.

Sharp, ¶ 8.

This Court went on to hold that, despite the fact that the officer had not confirmed that Sharp was driving over the posted 25 mph speed limit, “Sharp’s acceleration and speed in the intersection were observable facts in a series of events that would warrant further investigation.” *Sharp*, ¶ 11.

B. Detective Richter had sufficient particularized suspicion to suspect that Matthews was driving while impaired.

The justice court correctly concluded that Detective Richter had sufficient particularized suspicion that Matthews was driving while impaired to justify a traffic stop. Detective Richter observed Matthews take a wide turn directly in front of her, then drive at abnormally slow speeds while continuing to drift within his lane for three to four hundred yards. (Doc. 9 at 17-18.) While the degree of the wideness of the initial turn might reasonably be debated, the fact that Matthews was driving abnormally slow was an objective observation that was beyond dispute.

Further, Matthews' notably abnormal speed was compounded by his inability to drive in a straight line. (*Id.* at 17.) As Detective Richter testified, these behaviors, by themselves, were a "[v]ery, very huge flag" that Matthews might be impaired. (*Id.* at 18.)

Then, with Detective Richter directly behind him, Matthews suddenly accelerated. As Detective Richter described it, "[a]nd then he just slammed on his gas, accelerating rapidly to forty-five, which I mean, I wouldn't—people don't drive like that when they know that there's, one, law enforcement behind them. But [it's] just such out of the ordinary behavior—driving behavior." (*Id.*)

In other words, Matthews' acceleration was sudden and abnormal, similar to the driving behavior of the defendant in *Sharp*.

Matthews suggests that his driving was “somewhat irregular but lawful.” (Appellant’s Br. at 18.) Importantly, Matthews’ driving was not consistent with behavior that could be attributed to “virtually any law-abiding person.” *See State v. Reeves*, 2019 MT 151, ¶ 13, 396 Mont. 230, 444 P.3d 394 (reversing conviction based on facts and inferences by the officer that were “entirely consistent with a law-abiding person driving in a safe and prudent manner”).

As Detective Richter observed, the abnormal nature of Matthews’ driving conduct was exacerbated by the fact that her squad car was directly behind him. (Doc. 9 at 18.) *See Larson, supra*, ¶ 21 (“Moreover, the driver of the truck opted to engage in this conduct despite being in full view of two officers on the street, and two patrol cars, both of which had their light bars activated.”).

Detective Richter testified that, as she continued to follow, Matthews continued to drift within his lane. (Doc. 9 at 18.) Further, after rapidly accelerating to the posted speed of 45 mph in that stretch of road, Matthews did not maintain that speed. Prior to being stopped, he again slowed to below the posted speed limit. (*Id.*)

Matthews’ driving conduct would warrant further investigation under any circumstances. However, this all took place shortly after 10 p.m., when Detective Richter testified that, in her experience, “there may be increased impaired drivers.” (*Id.* at 13.) Further, Detective Richter was aware of three bars in

the vicinity of the stop, and “several bars on 312,” which would be in the area of where it appeared Matthews had been coming from. (*Id.* at 19.)

The totality of the circumstances established sufficient particularized suspicion to justify a traffic stop to determine if Matthews was impaired, which he was. This was not a “lucky guess” on the part of Detective Richter, but rather competent, constitutionally permissible work by an experienced officer. The justice court’s findings of fact were supported by substantial evidence, and the order denying Matthews’ motion to suppress should be affirmed.

III. The State concedes that the justice court’s written sentence should be remanded to amend the \$2,000 fine amount to \$600.

A district court’s “oral pronouncement of a criminal sentence . . . is the ‘legally effective sentence and valid, final judgment.’” *State v. Thompson*, 2017 MT 107, ¶ 8, 387 Mont. 339, 394 P.3d 197 (citing *State v. Johnson*, 2000 MT 290, ¶ 15, 302 Mont. 265, 14 P.3d 480 (quoting *State v. Lane*, 1998 MT 76, ¶ 40, 288 Mont. 286, 957 P.2d 9)). A “written judgment is merely evidence of the oral sentence.” *Johnson*, ¶ 15. Thus, “in the event of a conflict between the oral pronouncement of sentence and the written judgment and commitment, the oral pronouncement controls.” *Lane*, ¶ 48.

Here, the district court orally imposed a fine of \$600. (Change of Plea recording at 06:21-29.) Its written sentence included an apparent typographical

error that indicated the fine was \$2,000.⁵ (Doc. 2 at 273.) The State concedes that this matter should be remanded for the justice court to correct the error and amend the sentencing order to reflect a fine of \$600.

CONCLUSION

The justice court correctly determined that Detective Richter had a particularized suspicion to initiate the traffic stop, and Matthews' conviction should be affirmed. The justice court's written sentence should be remanded to correct the typographical error regarding the amount of the fine.

Respectfully submitted this 3rd day of February, 2025.

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⁵ Six lines below the \$2,000 fine amount, the justice court wrote that the defendant shall pay a fine of \$600. (Doc. 2 at 273.) Further, both the Time Payment Agreement and Yellowstone County Disposition Report reflected a fine of \$600. (Doc. 2 at 275, 279, respectively.)

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 2,904 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Thad Tudor
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CERTIFICATE OF SERVICE

I, Thad Nathan Tudor, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 02-03-2025:

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