

DA 16-0531

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 222N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

TERESA GRAY COSTA,

Defendant and Appellant.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DC 13-358A
Honorable Amy Eddy, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Danny Tenenbaum, Assistant Appellate
Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Ryan Aikin, Assistant
Attorney General, Helena, Montana

Edward J. Corrigan, Flathead County Attorney, Kalispell, Montana

Submitted on Briefs: August 22, 2018

Decided: September 11, 2018

Filed:



Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Teresa Gray Costa appeals from her conviction, upon guilty plea, of violating § 61-8-406, MCA, commonly known as driving under the influence, *per se*. She challenges the denial of her motion to dismiss the charges for a lack of particularized suspicion for the stop of her vehicle. We have twice remanded the matter for further proceedings, first determining a final judgment had not been entered and, secondly, that the District Court had not had opportunity to rule. *State v. Costa*, No. 17, Or. (Mont. Sept. 2, 2015); *State v. Costa*, No. 25, Or. (Mont. Sept. 4, 2015).

¶3 Costa contends that law enforcement's stop of her vehicle leading to the driving charge against her was not supported by particularized suspicion, and was thus unlawful. "Before effectuating a stop, a police officer must observe 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.'" *City of Helena v. Brown*, 2017 MT 248, ¶ 9, 389 Mont. 63, 403 P.3d 341 (citing § 46-5-401(1), MCA). "A court's determination that particularized suspicion exists is a question of fact, which we review for clear error." *Brown*, ¶ 7 (citation omitted).

¶4 Costa does not contest the factual findings entered by the Justice Court, which addressed the functioning of Costa’s brake lights, the basis of the stop by Montana Highway Patrol Trooper Hawkins. The Justice Court found that, of Costa’s three brake lights, the central brake light and the right brake light functioned properly upon application of the brake. However, Costa’s left brake light was illuminated constantly, and was the reason Trooper Hawkins initiated the stop, whereupon he immediately detected a strong odor of an alcoholic beverage. The Justice Court, and the District Court on appeal, concluded that Costa’s constantly illuminated brake light was a violation of § 61-9-109(5), MCA, which provides “[a]ll lamps and equipment required by this chapter must be maintained in proper working order and adjustment at all times,” and thus the stop was properly initiated.

¶5 Costa asserts that because two of her brake lights were illuminated and operating properly, they satisfied § 61-9-206(1), MCA, which provides that “[a] person may not . . . drive a vehicle on the highways unless it is equipped with at least two properly functioning stop lamps.” Thus, because she had at least two properly functioning lamps, Costa argues the Justice Court and District Court erred by “expand[ing] § 61-9-109(5)’s mandate beyond lamps ‘required by this chapter.’”

¶6 However, as the State correctly notes, § 61-9-206(2), MCA, requires “[t]he stop lamp or lamps on the rear of a vehicle *must display a red light that is actuated upon application of the service (foot) brake . . .*” (emphasis added). Thus, independent of the requirement in subsection (1) of § 61-9-206, MCA, to have at least two properly functioning brake or “stop” lights, subsection (2) requires that a vehicle’s stop lights

display a red light actuated by the brake. Costa's arguments ignore that one of the brake lights on her vehicle was not actuated by the brake, but instead was constantly illuminated. This was a violation of subsection 2, despite the fact the malfunctioning light was one of three lights on the vehicle. The malfunctioning light, which could have caused confusion for following vehicles, certainly provided a basis for the trooper to infer a violation was occurring.

¶7 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's findings of fact were not clearly erroneous and its interpretation and application of the law were correct.

¶8 Affirmed.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR