

DA 17-0318

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 304N

TODD ALLEN JORGENSEN,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Seventeenth Judicial District,
In and For the County of Blaine, Cause No. DV-2016-19
Honorable Daniel A. Boucher, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jeremy S. Yellin, Attorney at Law, Havre, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Katie F. Schulz, Assistant
Attorney General, Helena, Montana

Kelsie W. Harwood, Blaine County Attorney, Chinook, Montana

Submitted on Briefs: November 8, 2018

Decided: December 11, 2018

Filed:



Clerk

Chief Justice Mike McGrath 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 Defendant Todd Allen Jorgenson appeals from a Seventeenth Judicial District order denying his petition for the return of his driver's license following Jorgenson's refusal to provide a breath sample. We affirm.

¶3 At 7:00 p.m. on September 24, 2016, Deputy Ritterbagh (Deputy) stopped Jorgenson on Highway 2 outside of Havre, Montana, for speeding. The Deputy clocked Jorgenson traveling eighty-three miles per hour in a seventy-mile-per-hour-speed zone and witnessed Jorgenson crossing the center and fog lines. Jorgenson failed to promptly respond to the Deputy's emergency lights and shifted into reverse instead of park once he pulled over. As the Deputy approached Jorgenson's vehicle, he smelled alcohol and noticed Jorgenson's bloodshot eyes and slurred speech. Jorgenson admitted to consuming alcohol and stated he would fail a field sobriety test. Because Jorgenson appeared to use a cane, the Deputy required Jorgenson to complete only the horizontal gaze nystagmus (HGN) portion of the field sobriety test. Jorgenson provided a breath sample on the preliminary breath tester, which showed his blood alcohol concentration (BAC) at 0.183. The Deputy arrested Jorgenson for driving under the influence of alcohol (DUI). At the detention center, Jorgenson refused to provide a breath sample for

the Intoxilyzer 8000, resulting in the suspension of his driver's license. The State charged Jorgenson with DUI.

¶4 Jorgenson challenged the suspension of his license. The District Court denied Jorgenson's petition for reinstatement following a May 15, 2017 evidentiary hearing. Jorgenson appeals.

¶5 A district court's decision in driver's license reinstatement proceedings is limited to: (1) whether a peace officer had reasonable grounds to believe that the person was driving while under the influence of alcohol or drugs; (2) whether the person was placed under arrest for DUI; and (3) whether the person refused to submit to one or more tests designated by the officer. Section 61-8-403(4)(a)(i), MCA; *Ditton v. DOJ Motor Vehicle Div.*, 2014 MT 54, ¶ 26, 374 Mont. 122, 319 P.3d 1268. This Court reviews a district court's findings of fact for clear error and conclusions of law for correctness. *Brunette v. State*, 2016 MT 128, ¶ 11, 383 Mont. 458, 372 P.3d 476. A district court's findings of fact are clearly erroneous if they are not supported by substantial evidence, the district court misapprehends the effect of the evidence, or review of the record convinces this Court a mistake was made. *In re License Suspension of Cybulski*, 2008 MT 128, ¶ 14, 343 Mont. 56, 183 P.3d 39. "The suspension of a driver's license is presumed to be correct; therefore, the petitioner bears the burden of proving that the State's action was improper." *Brunette*, ¶ 11.

¶6 On appeal, Jorgenson argues that the Deputy's testimony lacked credibility and that the District Court erred by failing to find he was illegally stopped, resulting in an illegal investigation and arrest for DUI.

¶7 The reasonable grounds requirement of § 61-8-403(4)(a)(i), MCA, is the equivalent of particularized suspicion; it is a factual determination based on the totality of the circumstances confronting an officer. *Ditton*, ¶ 30. This Court has held that objective facts like erratic driving, swerving across lane lines, failure to respond to emergency lights, the smell of alcohol, slurred speech, and admissions of alcohol consumption can amount to reasonable grounds for an officer to believe a person is driving under the influence of alcohol. *Clark v. State ex. rel. Driver Improvement Bureau*, 2005 MT 65, ¶ 7, 326 Mont. 278, 109 P.3d 244; *State v. Henderson*, 1998 MT 233, ¶ 5, 291 Mont. 77, 966 P.2d 137; *Brown v. State*, 2009 MT 64, ¶ 23, 349 Mont. 408, 203 P.3d 842; *Muri v. State*, 2004 MT 192, ¶ 16, 322 Mont. 219, 95 P.3d 149.

¶8 This Court will not disturb the District Court's determination of the Deputy's credibility at the evidentiary hearing. *See Weer v. State*, 2010 MT 232, ¶ 18, 358 Mont. 130, 244 P.3d 311. The record reflects that the Deputy had particularized suspicion to stop Jorgenson because Jorgenson was speeding and crossing the center and fog lines. *Kummerfeldt v. State*, 2015 MT 109, ¶ 11, 378 Mont. 522, 347 P.3d 1233.¹

¶9 The Deputy had reasonable grounds to believe Jorgenson was driving under the influence of alcohol because Jorgenson crossed the center and fog lines, failed to promptly respond to the Deputy's emergency lights, put his vehicle into reverse instead of park once pulled over, smelled of alcohol, had bloodshot eyes, slurred his speech, admitted to consuming alcohol, and stated he would likely fail a field sobriety test. The

¹ While the District Court misstated that initiation of a traffic stop requires probable cause rather than particularized suspicion, the District Court properly applied the law.

Deputy had reasonable grounds to make the arrest for DUI, and it is undisputed that Jorgenson declined to take the breathalyzer test at the detention center.

¶10 Jorgenson failed to prove that the State's suspension of his license was improper. The record supports that the Deputy had reasonable grounds to believe Jorgenson was driving under the influence of alcohol, the Deputy arrested Jorgenson for DUI, and that Jorgenson refused to take the breathalyzer test. The District Court properly evaluated the record and, consistent with the requirements of § 61-8-403(4)(a)(i), MCA, denied Jorgenson's petition to reinstate his driver's license.

¶11 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.

¶12 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ JIM RICE