

DA 17-0417

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 305N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

RONALD O. LATRAY,

Defendant and Appellant.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DC 15-0333
Honorable Rod Souza, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Koan Mercer, Assistant Appellate
Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Anna Saverud, Assistant
Attorney General, Helena, Montana

Scott D. Twito, Yellowstone County Attorney, Julie Mees, Deputy County
Attorney, Billings, Montana

Submitted on Briefs: November 14, 2018

Decided: December 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 Appellant Ronald Orville LaTray (LaTray) appeals his conviction of Driving Under the Influence of Alcohol (DUI), a felony, and Operating a Motor Vehicle without Liability Protection in Effect, a misdemeanor, following a plea of *nolo contendere* to both counts, wherein he reserved his right to appeal the denial of his motion to suppress and dismiss. We affirm.

¶3 On March 24, 2015, at approximately 8:42 p.m., LaTray was driving southbound in the left lane on South 27th Street in Billings. A marked Montana Highway Patrol vehicle, driven by Probationary Trooper Daniel Schuler (Schuler), was in the left lane behind LaTray's vehicle. Montana Highway Patrol Trooper Toman Baukema was in the front passenger seat, acting as a field training officer. The troopers were travelling toward I-90 to investigate a report of an intoxicated driver on the interstate, but their lights and siren were not activated. The troopers changed lanes from the left lane to the right lane as they approached the intersection of South 27th Street and State Avenue, increasing their speed from 32 miles per hour to 45 miles per hour, anticipating a merger onto I-90. The speed limit for this section of South 27th Street was 35 miles per hour. As the troopers were

passing LaTray's vehicle, which was still proceeding in the left lane, LaTray activated his right turn indicator and, as the troopers continued to pass LaTray, he increased his speed and initiated a lane change into the right lane immediately in front of the troopers. To avoid colliding with LaTray, the troopers braked and steered to the right. LaTray continued driving and began merging onto I-90 from the right lane. The troopers activated their lights and initiated a traffic stop based on LaTray's unsafe lane change. The stop developed into a DUI investigation and LaTray was placed under arrest.

¶4 LaTray filed a motion to suppress and dismiss based on lack of particularized suspicion and the troopers' violation of the speed limit. At the evidentiary hearing on the motion, the District Court reviewed the dashboard camera from the patrol vehicle and the testimony of both troopers. Trooper Schuler testified that he believed LaTray's vehicle was going to collide with the patrol vehicle, so he braked suddenly and steered the patrol vehicle to the right. The District Court denied LaTray's motion, finding particularized suspicion based on LaTray's unsafe lane change, in violation of §§ 61-8-328(1), and 61-8-336, MCA, irrespective of whether the troopers had violated the speed limit. LaTray appeals.

¶5 "We review a district court's 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. Foster*, 2017 MT 118, ¶ 6, 387 Mont. 402, 394 P.3d 916.

¶6 On appeal, LaTray asserts a lack of particularized suspicion for the stop, arguing that “[a]n officer cannot create justification to stop a motorist through the officer’s own unlawful driving conduct.”

¶7 A law enforcement 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.” *Foster*, ¶ 9 (quoting § 46-5-401(1), MCA) (citations omitted). Particularized suspicion is based on “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.” *Foster*, ¶ 10 (citation omitted). Whether particularized suspicion exists is a factual inquiry, evaluated by the totality of the circumstances, which includes the quantity or content of the information available to the officers and the quality or degree of reliability of that information. *Foster*, ¶ 10. Particularized suspicion may also be established where an officer witnesses a statutory violation. *State v. Haldane*, 2013 MT 32, ¶ 26, 368 Mont. 396, 300 P.3d 657; *State v. Schulke*, 2005 MT 77, ¶ 16, 326 Mont. 390, 109 P.3d 744.

¶8 Here, the troopers had objective data that LaTray was engaged in wrongdoing when he changed lanes and cut in front of their patrol vehicle, requiring the troopers to brake and maneuver away to avoid a collision. An unsafe lane change is a statutory violation. *See* §§ 61-8-328(1), 61-8-336, MCA. LaTray’s lane change was unsafe because he moved his vehicle from the left lane without ascertaining that the move could be made safely, and then initiated the lane change unsafely. *See* §§ 61-8-328(1), 61-8-336, MCA. This action

was personally witnessed by both troopers, giving them particularized suspicion to initiate the traffic stop. The fact that the troopers were driving above the speed limit has no bearing on whether LaTray properly executed a lane change in accordance with the statute, which requires a driver to ascertain whether it is safe to do so. LaTray's unsafe lane change was an observable fact giving rise to particularized suspicion. The District Court's finding of particularized suspicion was not clearly erroneous, and its denial of LaTray's motion to suppress was correct as a matter of law.

¶9 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.

¶10 Affirmed.

/S/ JIM RICE

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR