FILED
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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 17-0544

DA 17-0544

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 223N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ZACHARY HEINZ HADLEY,

Defendant and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DC-16-180
Honorable Jeffrey H. Langton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Kristina L. Neal, Assistant Appellate Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Brad Fjeldheim, Assistant Attorney General, Helena, Montana

William E. Fulbright, Ravalli County Attorney, Thorin Geist, Deputy County Attorney, Hamilton, Montana

Submitted on Briefs: August 21, 2019

Decided: September 17, 2019

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 Zachary Heinz Hadley appeals from a December 27, 2016 Twenty-First Judicial District Court order denying his motion to suppress and dismiss. We affirm.

¶3 On August 26, 2016, at approximately 12:33 a.m., Police Officer Garrett Koppes of the Hamilton Police Department was dispatched to Jennifer Towner's residence in Hamilton, Montana, in response to a 911 call placed by Towner. Towner said she observed Hadley, her husband or ex-husband, deflating the tires on her vehicle. Koppes phoned Towner, who repeated the information expressed in the 911 call and stated that Hadley was driving a rusty white jeep. While heading to Towner's, Koppes, who was familiar with Hadley, observed him in the driveway at his home unloading a white and tan jeep at approximately 12:42 a.m. Koppes stopped the patrol car on the street without blocking Hadley's exit from the driveway. As Koppes approached Hadley, he greeted him colloquially, asking, "What's up Zach?" Hadley responded, "How you doing man?" Koppes asked Hadley what had happened at Towner's residence. Hadley responded that he was having marital problems with Towner, that he was taking some of his belongings home, and that he had come directly from Towner's. Koppes then asked Hadley a series

of questions, including whether he did something to Towner's car, to which Hadley replied, "I don't think so."

¶4 Shortly after this initial exchange, a second officer arrived at the scene and parked across the street from Hadley's. Koppes reported that he observed Hadley's eyes were bloodshot and watery, that Hadley was swaying, and that Koppes could smell alcohol on his breath. Koppes asked Hadley if he had been drinking and Hadley replied that he had consumed "a few drinks." When Koppes asked Hadley if he had just driven home, Hadley changed his initial story, responding that he came from his mother's house and had been home for a couple of hours. Koppes felt the hood of Hadley's jeep and found it "very warm," indicating it had recently been running, at which point he informed Hadley he was going to conduct a Driving Under the Influence ("DUI") investigation. Koppes then began field sobriety tests.

¶5 During the tests, Hadley admitted that he was intoxicated but that he had not been driving. Hadley struggled with the horizontal gaze nystagmus test, refused to complete the walk and turn test, and had difficulty completing the one leg stand test. Hadley agreed to provide a breath sample in the portable breath test and blew a .229. Hadley was then placed under arrest for DUI and transported to the Ravalli County Detention Center. There, Hadley provided three breath samples, indicating a .186 blood alcohol concentration. Hadley was booked for DUI.

¶6 During the inventory search, officers discovered one white pill in Hadley's possession, determined to be a hydrocodone tablet, a schedule II controlled substance

pursuant to § 50-32-224, MCA. Hadley told Koppes he did not have a prescription for the drug.

¶7 On August 30, 2016, the District Court granted leave to the State to charge Hadley with Criminal Possession of Dangerous Drugs, a felony, in violation of § 45-9-102(4), MCA, and Aggravated DUI, a misdemeanor, in violation of § 61-8-465, MCA. On September 21, 2016, Hadley entered a plea of not guilty and the case was set for trial.

¶8 On November 15, 2016, Hadley filed a motion to suppress all evidence obtained in the search and subsequent arrest, arguing that the arrest was illegal. He sought to dismiss the case with prejudice for lack of particularized suspicion and probable cause to arrest. The District Court denied the motion on the bases that: (1) Hadley was not seized during the initial interaction with Officer Koppes in front of his house, and therefore particularized suspicion was not required; and (2) Officer Koppes had particularized suspicion to detain Hadley to conduct a DUI investigation.

¶9 On February 1, 2017, the parties advised the District Court that a plea agreement had been reached. Hadley withdrew his not guilty pleas and entered a guilty plea for the Criminal Possession charge and a no contest plea for the Aggravated DUI charge, reserving his right to appeal the denial of the motion to suppress and dismiss. The District Count accepted the pleas.

¶10 On July 18, 2017, the District Court imposed a three-year deferred sentence for the felony charge and ordered a $1000 fine, plus 180 days of service in the Ravalli County Detention Center, with 157 days suspended for the misdemeanor.

¶11 We review a district 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. Gill*, 2012 MT 36, ¶ 10, 364 Mont. 182, 272 P.3d 60. A district court's finding that particularized suspicion exists is a question of fact which we review for clear error. *Gill*, ¶ 10. A trial court's findings are clearly erroneous if not supported by substantial evidence, if the court has misapprehended the effect of the evidence, or if our review of the record leaves us with the firm conviction that a mistake has been made. *Gill*, ¶ 10.

¶12 On appeal, Hadley argues that the District Court erred in denying his motion to suppress because: (1) Koppes lacked particularized suspicion to conduct an investigatory stop of Hadley; and (2) Koppes lacked the requisite particularized suspicion to conduct a DUI investigation when the original stop was to investigate a potential criminal mischief offense, and insufficient escalating circumstances existed for the DUI investigation.

¶13 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 and DUI investigations. *State v. Zimmerman*, 2018 MT 94, ¶ 15, 391 Mont. 210, 417 P.3d 289. The fundamental purpose of the prohibition against unreasonable searches and seizures is not to eliminate all contact between peace officers and citizens, but to protect the privacy and security of individuals from unreasonable government interference. *State v. Clayton*, 2002 MT 67, ¶ 12, 309 Mont. 215, 45 P.3d 30. When there has been a Fourth Amendment violation, 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.

¶14 In determining whether a seizure occurred, the Court applies the *Mendenhall* test of whether, based on the totality of the circumstances, a reasonable person would have believed that he was not free to leave. *State v. Wilkins*, 2009 MT 99, ¶ 9, 350 Mont. 96, 205 P.3d 795 (citing *United States v. Mendenhall*, 446 U.S. 544, 553-54, 100 S. Ct. 1870, 1877 (1980)). Only when an officer has in some way restrained the liberty of a citizen, either by physical force or show of authority, may the court conclude that a seizure has occurred. *Clayton*, ¶ 12. The test for the existence of a "show of authority" is objective, considering only whether the officer's words and actions would have conveyed to a reasonable person that he was being ordered to restrict his movement. *Clayton*, ¶ 12. In *Mendenhall*, the United States Supreme Court identified a nonexhaustive list of factors that may indicate a person was seized, including "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person or citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Mendenhall*, 446 U.S. at 554, 100 S. Ct. at 1877. However, this test is necessarily imprecise and will vary depending on the context and circumstances. *Clayton*, ¶ 23.

¶15 The District Court correctly found that there was no seizure during the initial encounter between Koppes and Hadley; this encounter did not rise to the level of an unlawful seizure under the *Mendenhall* reasonableness standard. Koppes parked on a public street without blocking Hadley's driveway. Similarly, the accompanying officer

parked across the street. Neither officer activated their sirens or emergency lights, nor were their weapons brandished. Koppes, who knew Hadley, asked him questions informally and politely, to which Hadley responded voluntarily. Meanwhile, the accompanying officer stood passively by. Nothing about the initial interaction between Koppes and Hadley suggests that Hadley was required to respond. Taken together, the facts of the initial encounter indicate that a reasonable person would believe they would be free to leave. Thus, there was no seizure. Accordingly, this Court does not inquire into whether there was particularized suspicion.

¶16 On appeal, Hadley also asserts that Koppes lacked particularized suspicion to detain him and conduct a DUI investigation because the original stop was only to investigate potential criminal mischief.

¶17 If there has been a search or seizure, the State has the burden to prove it was reasonable by showing circumstances that create "a particularized suspicion that the person is or has been engaged in wrongdoing or was a witness to criminal activity." *State v. Case*, 2007 MT 161, ¶ 21, 338 Mont. 87, 162 P.3d 849. Field sobriety tests constitute a search under both the United States Constitution and the Montana Constitution and require particularized suspicion that a driver is impaired. *State v. Larson*, 2010 MT 236, ¶ 25, 358 Mont. 156, 243 P.3d 1130. Particularized suspicion exists when an officer possesses: (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. *Strom*, 2014 MT 234, ¶ 15, 376 Mont. 277, 333 P.3d 218. To establish particularized suspicion for field

sobriety tests, a peace officer need not rely solely on the facts supporting an investigative stop. *Larson*, ¶ 25. A lawful stop can escalate based upon an officer's subsequent observations, but the investigation must remain within the limits created upon which the stop was predicated. *Larson*, ¶ 25.

¶18 Here, there was not a seizure of Hadley prior to the administration of the field sobriety test, and the subsequent investigation was not limited to criminal mischief. Moreover, there was particularized suspicion to support the DUI investigation. Upon interacting with Hadley, Koppes noted that Hadley's eyes were bloodshot, that he was swaying, and that he smelled of alcohol. Hadley admitted he was intoxicated and changed his story multiple times regarding where he had come from. In summary, there was objective data and articulable facts to support particularized suspicion that Hadley had been driving under the influence, justifying Koppes' administration of the field sobriety test.

¶19 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 correctly denied the motion to suppress evidence and dismiss.

¶20 Affirmed.

/S/ MIKE McGRATH

We Concur:

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