DA 18-0351

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 141

RYAN DEAN INDRELAND,

Petitioner and Appellant,

v.

MONTANA DEPARTMENT OF JUSTICE,
MOTOR VEHICLE DIVISION,

Respondent and Appellee.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV 17-965
Honorable Karen Townsend, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

David M. Maldonado, Stevenson Law Office, Missoula, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Tammy A. Hinderman, Assistant Attorney General, Helena, Montana

Kirsten Pabst, Missoula County Attorney, Mark Hardelnan, Deputy County Attorney, Missoula, Montana

Submitted on Briefs: February 27, 2019

Decided: June 18, 2019

Filed:

Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Ryan Dean Indreland (Indreland) appeals from an order of the Fourth Judicial District Court, Missoula County, denying his petition to reinstate his driver's license after it was suspended following his refusal to submit to a post-arrest blood or breath test under § 61-8-402, MCA. We affirm and address the following issue:

> *Did the District Court err by determining that the arresting officer had reasonable grounds to believe Indreland was driving under the influence?*

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In September 2017, a woman called 911 to report a suspected drunk driver operating a truck on a main road in Missoula. She told the 911 operator the truck's license plate number and explained that the truck had business decals, specifically indicating the telephone number and website address on the truck. The 911 operator inquired why the caller believed the person was drunk, and the woman said the driver almost rear-ended her sister, was swerving, and almost ran into an underpass pillar. She stated that, when they drove by the truck, the driver's head was hanging down and it looked like he was sleeping. She declined to provide her name or indicate that she would sign a complaint.

¶3 The same woman called 911 a few minutes later and spoke with the same operator. The woman indicated that the driver had pulled into a parking lot and parked behind a restaurant. She said the driver was still sitting in the truck and identified the truck as a silver Dodge Dakota. The woman again stated that she did not wish to identify herself by name or sign a complaint. The 911 operator told the woman that a Highway Patrol Trooper was in the area looking for the truck. The woman saw Trooper Panas pull into the parking

lot, pulled her car up to Trooper Panas's patrol vehicle, and had an interaction with the Trooper that lasted approximately five seconds during which she pointed out the offending truck.

¶4 Trooper Panas later testified that, when he pulled into the parking lot, a female in a white SUV flagged him down, described the truck driver's erratic driving, and pointed out the truck. Trooper Panas noted that the truck was parked crookedly, outside of the lines of two parking spaces, and pulled up behind the truck. The truck matched the woman's description as to type, color, license plate number, and business decals. He noted the driver was just sitting in the truck, not moving or indicating that he was going to get out.

¶5 Trooper Panas approached the truck and asked the driver to roll down his window. When the driver eventually complied, Trooper Panas immediately detected an odor of alcohol. He also noted the driver paused a lot during their interaction, seemed sluggish, had trouble finding documents, and had bloodshot eyes. Trooper Panas eventually identified Indreland as the driver, placed him under arrest for driving under the influence, and asked him to submit to a breath or blood test. Indreland refused the test. Because Indreland refused to provide a breath or blood test, his license was suspended pursuant to Montana's implied consent law, § 61-8-402, MCA.

¶6 Indreland subsequently filed a petition to reinstate his driver's license in District Court. He argued Trooper Panas did not have sufficient particularized suspicion to request Indreland submit to a test because the woman who called 911 was not a reliable informant. The State argued the woman was reliable and that her calls, coupled with

Trooper Panas's independent observations, amounted to sufficient particularized suspicion to request the test. The District Court ultimately agreed with the State, determining the woman was a reliable informant. The District Court accordingly determined that Trooper Panas had sufficient particularized suspicion to request Indreland submit to testing under § 61-8-402, MCA, and denied Indreland's petition to reinstate his driver's license. Indreland appeals.

STANDARD OF REVIEW

¶7 We review a district court's ruling on a driver's license reinstatement petition to determine whether the district court's findings of fact are clearly erroneous and whether its conclusions of law are correct. *Brown v. State*, 2009 MT 64, ¶ 8, 349 Mont. 408, 203 P.3d 843. The suspension of a driver's license is presumed correct and, accordingly, the petitioner bears the burden of proving the suspension was improper. *Brown*, ¶ 8.

DISCUSSION

¶8 Title 61, chapter 8, part 4, MCA, criminalizes driving under the influence of alcohol and drugs and also contains Montana's implied consent laws. People who operate or who are in actual physical control of vehicles on Montana's public roadways are considered to have impliedly consented to two types of tests: (1) a pre-arrest preliminary alcohol screening test to estimate the person's alcohol concentration; and (2) a post-arrest blood or breath test to determine the presence of alcohol, drugs, or both. Sections 61-8-402, -409, MCA.

¶9 Regarding the first type of test—the pre-arrest preliminary alcohol screening test—a person operating or in actual physical control of a vehicle on Montana's public roadways is considered to have consented to a preliminary alcohol breath test. Section 61-8-409(1), MCA. An officer having a particularized suspicion that the person was driving or operating a vehicle while under the influence of alcohol or in violation of §§ 61-8-410 or -465, MCA, may request the driver take the test. Section 61-8-409(1), MCA. The officer's suspicion must be particular to the driver's operation of or control over a vehicle while under the influence of alcohol. If an officer pulled a driver over for a reason unrelated to concerns about driving under the influence of alcohol but, upon interacting with the driver, gained a particularized suspicion that the person was under the influence of alcohol or violating §§ 61-8-410 or -465, MCA, the officer could request the driver submit to a preliminary alcohol screening test pursuant to § 61-8-409, MCA.

¶10 Even though the person is considered to have consented to the preliminary alcohol screening test by operating or being in actual physical control of a vehicle on Montana's public roadways, he has the right to refuse the test. Section 61-8-409(1), (3), MCA. "However, the refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402." Section 61-8-409(4), MCA. If a person challenges his driver's license suspension based on his refusal to submit to a preliminary alcohol screening test, the court must hold a hearing at which the issues are "limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical

control of a vehicle upon ways of this state open to the public while under the influence of alcohol" and whether the person refused to submit to the test. Section 61-8-409(5), MCA. Section 61-8-409, MCA, is focused on pre-arrest procedures and accordingly uses a particularized suspicion standard.

¶11 Regarding the second type of test—the post-arrest blood or breath test to determine the presence of alcohol, drugs, or both—a person operating or in actual physical control of a vehicle on Montana's public roadways is considered to have consented to a test or tests of his blood or breath to determine the presence of alcohol or drugs. Section 61-8-402(1), MCA. The test or tests must be administered post-arrest at the direction of a peace officer when an officer has reasonable grounds to believe a person was operating or in actual physical control of a vehicle on Montana's public roadways while under the influence of alcohol, drugs, or both. Section 61-8-402(2)(a)(i), MCA. If an arrested person refuses to submit to the requested test or tests, the arresting officer must, on behalf of the Department of Justice, immediately seize the person's driver's license. Section 61-8-402(4), MCA; § 61-1-101(16), MCA (defining "department" as "the department of justice"). The officer will then issue a five-day temporary driving permit to the arrested person and notify him of his right to a hearing as provided in § 61-8-403, MCA. Section 61-8-402(7), MCA. The officer forwards his report to the Department of Justice, which, upon receipt, suspends the person's license for a specified period of time. Section 61-8-402(4), (8), MCA.

¶12 A person whose license is suspended pursuant to § 61-8-402, MCA, may challenge the suspension by timely filing a petition in district court. Section 61-8-403(1), MCA. Once the district court receives the petition, it must set the matter for a hearing. Section 61-8-403(2), MCA. At the hearing, the district court "shall take testimony and examine the facts of the case, except that the issues are limited to whether":

> a peace officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person was placed under arrest for [driving under the influence or for aggravated driving under the influence] . . . [and] the person refused to submit to one or more tests designated by the officer.

Section 61-8-403(4)(a)(i), (iv) MCA. Based on those issues "and no others, the court shall determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation." Section 61-8-403(4)(b), MCA. The plain language of § 61-8-403(4)(a)(i), (iv), MCA, sets forth a simple inquiry for the court to undertake when contemplating a driver's petition to reinstate his driver's license when the license was suspended for his failure to submit to testing under § 61-8-402(2)(a)(i), MCA: (1) whether a peace officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a vehicle on Montana's public roadways while under the influence of alcohol, drugs, or both; (2) whether the person was placed under arrest for driving under the influence or for aggravated driving under the influence; and (3) whether the person refused to submit to one or more requested tests.

Section 61-8-403(4)(a)(i), (iv), MCA; *see also Hulse v. Dep't of Justice, Motor Vehicle Div.*, 1998 MT 108, ¶ 11, 289 Mont. 1, 961 P.2d 75.

¶13 A driver's challenge to the suspension of his license based on his refusal to submit to a blood or breath test pursuant to § 61-8-402, MCA, is a civil administrative proceeding, separate and distinct from any criminal proceedings that may arise from the same events. *State v. Hislop*, 2016 MT 130, ¶ 11, 383 Mont. 482, 373 P.3d 834; *Thompson v. Dep't of Justice, Driver's License Bureau*, 264 Mont. 372, 376, 871 P.2d 1333, 1335 (1994); *In re the Petition of Burnham*, 217 Mont. 513, 517, 705 P.2d 603, 606 (1985). The statutes establishing implied consent laws protect the public from motorists driving under the influence by providing a civil penalty for refusing to submit to testing, while the statutes criminalizing driving under the influence punish the criminal behavior of driving under the influence. *Burnham*, 217 Mont. at 518, 705 P.2d at 607. The criminal and civil proceedings also place the burden of proof on opposite parties. When the State charges a driver with driving under the influence or aggravated driving under the influence in violation of §§ 61-8-401 or -465, MCA, the State bears the burden of proving the driver guilty beyond a reasonable doubt. On the other hand, when a driver challenges his license suspension under § 61-8-403, MCA, the driver bears the burden of proving the State's action was improper by a preponderance of the evidence. *See Brown*, ¶ 8.

¶14 Although the implied consent statutes provide that a driver consents to alcohol and drug testing by operating a vehicle on Montana's public roadways and further state that he may lose his license if he refuses requested testing, the statutes do not strip a driver of his

constitutional rights. The manner in which law enforcement interacts with the public remains controlled by well-established constitutional principles and protections. An officer may only briefly detain a person when the officer has particularized suspicion of criminal wrongdoing and may only arrest a person when the officer has probable cause to believe the person committed a criminal offense. A driver does not lose those protections just because he impliedly consented to alcohol and drug testing by operating a vehicle on Montana's public roadways.

¶15 Because a driver's challenge to the revocation or suspension of his license is a civil administrative proceeding, it proceeds independently from any criminal proceeding arising from the same events. However, the civil proceeding involves a *post-arrest* situation and, therefore, implicates certain criminal procedure considerations. Section 61-8-402(2)(a)(i), MCA, states that, in order for an officer to request a blood or breath test, the officer must have placed the driver under arrest for a violation of § 61-8-401, MCA (driving under the influence) or § 61-8-465, MCA (aggravated driving under the influence). By directly connecting itself to the statutes criminalizing the behavior of driving under the influence, § 61-8-402(2)(a)(i), MCA, contemplates the suspension of a driver's license only after an officer lawfully arrests the driver. That is, an officer must have had probable cause to arrest the driver—either apparent from the outset of the officer's observation of and interaction with the driver or ripening from sufficient particularized suspicion—in order for the officer to properly suspend a driver's license for refusing to test.

¶16 "An officer has the right to make an arrest if the arrest is supported by probable cause," which exists "when the facts and circumstances within the arresting officer's personal knowledge are sufficient to warrant a reasonable person to believe that the suspect has committed an offense." *Hulse*, ¶ 13. Particularized suspicion may ripen into probable cause to arrest based on events occurring after the stop and, accordingly, "an officer who makes an investigative stop is not precluded from making an arrest based on observations made during the stop." *Hulse*, ¶ 13 (quoting *Anderson v. Dep't of Justice, Motor Vehicle Div.*, 275 Mont. 259, 265, 912 P.2d 212, 215 (1996)).

¶17 In order for a driver's license suspension for refusing to test to be valid, the officer must lawfully arrest the person for driving under the influence or for aggravated driving under the influence. The State argues the arrest's legality has no bearing on the court's consideration of a driver's challenge to his license suspension because the implied consent statutes only require an "arrest," not a "valid arrest" or a "lawful arrest." The State is accordingly critical of requiring a lawful arrest in this context, arguing that, by doing so, the Court places requirements into §§ 61-8-402 and -403, MCA, which do not otherwise exist. We disagree. Sections 61-8-402(2)(a)(i), MCA, and -403(4)(a)(i), MCA, contemplate a *post-arrest* situation. A police officer must have probable cause to believe a person was driving or in actual physical control of a vehicle on Montana's public roadways while under the influence of alcohol, drugs, or both before lawfully arresting the person. An officer may only request a test under § 61-8-402(2)(a)(i), MCA, after effectuating that lawful arrest. Accordingly, if a driver's license was suspended after he

refused to test subsequent to an unlawful arrest, the suspension is invalid and the court should reinstate the driver's license. *See* § 61-8-403, MCA.

¶18 When a driver's license is suspended for his failure to submit to breath or blood tests pursuant to § 61-8-402(2)(a)(i), MCA, and the driver challenges the suspension, the court's review of the suspension under § 61-8-403(4)(a)(i), MCA, is limited to a consideration of: (1) whether an officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a vehicle on Montana's public roadways while under the influence of alcohol, drugs, or both; (2) whether the person was placed under arrest for driving under the influence or for aggravated driving under the influence; and (3) whether the person refused to submit to one or more requested tests. Section 61-8-403(4)(a)(i), (iv), MCA. Because the statutes contemplate a post-arrest situation, a driver's refusal to test may only result in the suspension or revocation of the driver's license if the arrest was lawful—i.e., supported by probable cause. Probable cause may be apparent from the outset of the officer's observation of and interaction with the driver or it may ripen from sufficient particularized suspicion.

¶19 In this case, Indreland contends Trooper Panas did not have sufficient particularized suspicion to approach his vehicle, resulting in an unlawful arrest. The State argues Trooper Panas had sufficient particularized suspicion to justify his approach of Indreland's vehicle. The District Court held that Trooper Panas had sufficient particularized suspicion, and we review that ruling to determine whether its findings of fact are clearly erroneous and

whether it correctly applied those findings to the law. *See State v. Foster*, 2017 MT 118, ¶ 6, 387 Mont. 402, 394 P.3d 916; *Brown*, ¶ 8.

¶20 "Particularized suspicion requires, in the totality of the circumstances, (1) objective data from which an officer can make certain inferences, and (2) a resulting particularized suspicion that the occupant of the motor vehicle is or has been engaged in wrongdoing or was a witness to criminal activity." *State v. Massey*, 2016 MT 316, ¶ 9, 385 Mont. 460, 385 P.3d 544 (quoting *State v. Flynn*, 2011 MT 48, ¶ 7, 359 Mont. 376, 251 P.3d 143) (internal quotations omitted). Whether particularized suspicion exists is a factual inquiry, to be evaluated by the totality of the circumstances, which includes a consideration of the quantity or content of the information available to the officer and the quality or degree of reliability of that information. *Foster*, ¶ 10.

¶21 An officer's particularized suspicion may be based on a citizen informant's report as long as the report contains sufficient indicia of reliability. *State v. Pratt*, 286 Mont. 156, 164, 951 P.2d 37, 42 (1997). To determine whether an informant's report is reliable, the court considers (1) whether the informant identified himself or herself to the authorities; (2) whether the informant's report is based on personal observations; and (3) whether the officer's observations corroborated the informant's information. *Pratt*, 286 Mont. at 165, 951 P.2d at 42-43.

¶22 The District Court determined that all three *Pratt* factors favored the information's reliability, and we conclude the court did not clearly error in its factual inquiry. As to the first *Pratt* factor, whether the informant identified herself, informants who are

"motivated by good citizenship and willing to disclose the circumstances by which the incriminating information became known [are] presumed to be telling the truth." *State v. Martinez*, 2003 MT 65, ¶ 34, 314 Mont. 434, 67 P.3d 207 (internal quotations omitted). The 911 caller in this case was motivated by good citizenship: she called 911 two times and remained in the restaurant parking lot until Trooper Panas arrived so she could point out the offending truck. Even though she did not wish to share her identity, her actions stemmed from a concern that Indreland's driving posed danger to others on the roadway and were, accordingly, motivated by good citizenship.

¶23 The second *Pratt* factor, whether the informant's report is based on personal observations, is especially important when an informant is reporting her belief that a person is driving under the influence. *See City of Missoula v. Moore*, 2011 MT 61, ¶ 21, 360 Mont. 22, 251 P.3d 679 ("An informant's belief that a person is [driving under the influence] must be based, in part, on his or her personal observations."). In this case, the 911 caller's report was unquestionably based on her personal observations. She described Indreland's truck as she was looking at it and then contemporaneously described his dangerous, seemingly impaired, driving.

¶24 Regarding the third *Pratt* factor, whether the officer's observations corroborated the informant's information, where an informant delivers information to an officer in person and her identity is discernible, and where the information she provided was based on personal observations of criminal activity, an officer may corroborate an informant's tip by observing wholly innocent behavior. *See Pratt*, 286 Mont. at 165, 168, 951 P.2d at 42,

44; *see also State v. Elison*, 2000 MT 288, ¶ 20, 302 Mont. 228, 14 P.3d 456. For instance, an officer may "corroborate the tip by observing suspicious behavior that alerts the officer to the existence of a possible violation." *Elison*, ¶ 20. An officer sufficiently corroborates the informant's tip when the officer finds "the person, the vehicle, and the vehicle's location substantially as described by the informant, . . . even though the officer did not observe any illegal or impaired driving . . . before the investigatory stop." *Pratt*, 286 Mont. at 165, 168, 951 P.2d at 43-44. In this case, Trooper Panas observed the truck substantially as described by the 911 caller: the truck was located where the caller stated it would be; was the same make, model, and color the caller reported; and contained the distinctive markings the caller described. Additionally, Trooper Panas observed that the truck was parked crookedly, outside of the lines of two parking spaces which, in his experience, was an indication of possible impairment. Accordingly, Trooper Panas's observations sufficiently corroborated the information provided by the 911 caller. The District Court correctly concluded that the 911 caller's report was sufficiently reliable and that, under the totality of the circumstances presented, an experienced law enforcement officer like Trooper Panas had a sufficient particularized suspicion that Indreland was driving under the influence to justify his approach of the vehicle.

¶25 Trooper Panas's subsequent interaction with Indreland, combined with the information Trooper Panas already knew and his observations that Indreland's truck was parked crookedly, provided him with probable cause to believe Indreland was operating the truck on Montana's public roadways while intoxicated. Trooper Panas immediately

detected an odor of alcohol when Indreland rolled down his window and noted that Indreland paused during their interaction, seemed sluggish, had trouble finding documents, and had bloodshot eyes. Those facts and circumstances, which were within Trooper Panas's personal knowledge, would sufficiently warrant a reasonable person to believe Indreland was driving under the influence of alcohol.

¶26 Trooper Panas lawfully arrested Indreland. Trooper Panas's approach of Indreland's vehicle was based on a sufficient particularized suspicion that ripened into probable cause to arrest. Trooper Panas had reasonable grounds to believe Indreland was operating a vehicle on Montana's public roadways while under the influence, meaning that Trooper Panas was well within his statutory rights to request Indreland submit to a post-arrest blood and/or breath test under § 61-8-402(2)(a)(i), MCA. Because Indreland refused, his license was appropriately suspended. *See* § 61-8-403(4)(a)(i), (iv), MCA. The District Court's order denying Indreland's petition to reinstate his driver's license is affirmed.

CONCLUSION

¶27 When a driver's license is suspended for his failure to submit to breath or blood tests pursuant to § 61-8-402(2)(a)(i), MCA, and the driver subsequently challenges the suspension of his license, the court's review is limited to the considerations contained in § 61-8-403(4)(a)(i), (iv), MCA. Because §§ 61-8-402(2)(a)(i) and -403(4)(a)(i), (iv), MCA, contemplate a post-arrest testing request, certain criminal procedure considerations are implicated. An officer must lawfully arrest a person for driving under the influence or

aggravated driving under the influence before requesting the person submit to a post-arrest blood or breath test under § 61-8-402(2)(a)(i), MCA.

¶28 In this case, Indreland was lawfully arrested: Trooper Panas had a sufficient particularized suspicion, stemming from a reliable informant's 911 call, that ripened into probable cause to arrest Indreland for driving under the influence. Trooper Panas also had reasonable grounds upon which to believe that Indreland was driving a vehicle on Montana's public roadways while under the influence. Therefore, Trooper Panas appropriately requested that Indreland submit to post-arrest testing under § 61-8-402(2)(a)(i), MCA, and Indreland's refusal to do so appropriately resulted in a suspension of Indreland's driver's license.

/S/ LAURIE McKINNON

We concur:

/S/ DIRK M. SANDEFUR
/S/ INGRID GUSTAFSON
/S/ JIM RICE

Chief Justice Mike McGrath, specially concurring.

¶29 While I agree that the District Court decision should be affirmed, I cannot support the majority's theory and analysis.

¶30 As the majority notes, a driver's challenge to the suspension of her driver's license is a civil administrative proceeding that is separate and distinct from the criminal action.

The majority decision here significantly alters the nature of a challenge to a license suspension.

¶31 The majority's holding necessarily transforms the proceeding into a hearing on whether the officer had probable cause to make the arrest. Such hearings are often time consuming and complicated, involving the testimony of witnesses and potentially complex evidentiary issues—issues best resolved in the criminal prosecution itself, pursuant to a properly noticed and scheduled hearing on a motion to suppress.

¶32 Montana's implied consent law, § 61-8-402(1), MCA, provides that:

> A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

This Court has continuously upheld this statute. *Muri v. State*, 2004 MT 192, 322 Mont. 219, 95 P.3d 149; *State v. Schauf*, 2009 MT 281, 352 Mont. 186, 216 P.3d 740; *Clark v. State ex rel. Driver Improvement Bureau*, 2005 MT 65, 326 Mont. 278, 109 P.3d 244; *Kummerfeldt v. State,* 2015 MT 109, 378 Mont. 522, 347 P.3d 1233.

¶33 We have further determined that driving in Montana is a privilege, not a right, and thus the implied consent laws do not violate individual constitutional safeguards. *Nichols v. DOJ*, 2011 MT 33, ¶ 17, 359 Mont. 251, 248 P.3d 813.

¶34 The challenge to a license suspension is by statute civil, and designed to be relatively short and uncomplicated. It must be filed in the district court within thirty days of the license suspension, regardless of whether the criminal case is before a court of limited

jurisdiction or another district court. The thirty-day requirement implies that a hearing should be held promptly.

¶35 At the hearing, assuming the driver refused to take the test, the district court must determine two issues: (1) did the officer have "reasonable grounds to believe" the driver was under the influence, and (2) was the driver arrested for that violation. Section 61-8-403(4)(a)(i), MCA. As written, both are relatively straightforward questions to decide. It is significant that the term "reasonable grounds" modifies "under the influence," not the language requiring arrest. However, for many years this Court has held that the "reasonable grounds" standard for making an investigative stop under § 61-8-403, MCA, is the effective equivalent of the "particularized suspicion" test for an investigative stop under § 46-5-401, MCA. *Anderson v. Department of Justice, Motor Vehicle Div*., 275 Mont. 259, 912 P.2d 212 (1996); *Bauer v. State*, 275 Mont.119, 910 P.2d 886 (1996); *Grindeland v. State*, 2001 MT 196, 306 Mont. 262, 32 P.3d 767. Consequently, a commonly deployed method of proving reasonable grounds by the State has been to demonstrate that the officer had particularized suspicion to make the stop, and this Court has endorsed that practice. *Grindeland*, ¶ 10 ("The 'reasonable grounds' standard for making an investigative stop under § 61-8-403(4)(a)(i), MCA, is the effective equivalent of the 'particularized suspicion' test . . . ."); *State v. Brander*, 2004 MT 150, 321 Mont. 484, 92 P.3d 1173 (using the same language to equate reasonable grounds with particularized suspicion); *Clark v. State ex rel. Driver Improvement Bureau*, 2005 MT 65, 326 Mont. 278, 109 P.3d 244.

¶36 If the Legislature wanted to require the existence of particularized suspicion or probable cause for an arrest it would have done so. *Mont. Vending, Inc. v. Coca-Cola Bottling Co*., 2003 MT 282, ¶ 21, 318 Mont. 1, 78 P.3d 499 ("If the intent of the legislature can be determined from the plain meaning of the words used in the statute, the plain meaning controls, and this Court need go no further nor apply any other means of interpretation.").

¶37 Questions raised in the hearing are to be resolved by application of civil law, imposing the appropriate civil burden of proof. And, of course, that begs the question of whether the whole process will need to be repeated a second time at a hearing on a motion to suppress in the criminal case.

¶38 It is unreasonable to expect the parties and the district court to prepare for and schedule a potentially complex proceeding to determine probable cause to arrest for a civil hearing that is designed to be conducted quickly, following the thirty-day requirement to file the petition. In 2018, 58,000 cases were filed in the district courts of Montana before forty-six district court judges.[1] Court dockets are extremely crowded and the odds of scheduling a timely, complex civil hearing as proposed by the majority are slim, at best. This is especially onerous for the district courts considering that most of the criminal cases in this area will be actually conducted in courts of limited jurisdiction.[2]

[1] Now forty-nine district court judges.

[2] Ironically, by the time many of these cases do get to a hearing the issue will be moot and the driver won't get a hearing at all.

¶39 Our decision here has unduly confused a simple, civil proceeding and pushed it into a needlessly complicated and time-consuming procedure involving criminal law analysis. The constitutional issues surrounding an arrest should be resolved in the context of a criminal proceeding in the court that has proper jurisdiction over the criminal proceeding.

¶40 I would affirm the District Court's decision in a memorandum opinion.

/S/ MIKE McGRATH

Justice James Jeremiah Shea joins the Special Concurrence of Chief Justice McGrath.

/S/ JAMES JEREMIAH SHEA

Justice Beth Baker, specially concurring.

¶41 The Court's decision today goes beyond what is necessary to decide this case. The State raises a new argument, for the first time on appeal, that this Court has incorrectly conflated the terms "reasonable grounds" in § 61-8-403(4)(a)(i), MCA, with "particularized suspicion" instead of "probable cause." As Indreland observes in his reply brief, the lone issue argued in the trial court was whether Trooper Panas possessed the requisite particularized suspicion to justify an investigative stop. That is the only issue Indreland raises on appeal.

¶42 Indreland demonstrates no error in the District Court's ruling. Trooper Panas had sufficient reason to stop Indreland for driving under the influence of alcohol. Indreland

does not dispute the arrest that followed. More is not needed to decide this case, and I would not address the State's arguments further. *See Hulse*, ¶ 18 (refusing to address the State's arguments concerning applicability of the exclusionary rule in civil license reinstatement hearings and the impropriety of using a motion in limine to attack the foundation of testimony regarding HGN test results because the arguments were raised for the first time on appeal). Especially because of its procedural posture, I do not think the case warrants reexamining existing precedent or creating new standards. I would hold that the District Court properly found the *Pratt* factors satisfied and that Indreland did not meet his burden to require reinstatement of his driver's license. I would affirm on that basis.

/S/ BETH BAKER