

DA 18-0662

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 245N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CELINA ESPINOZA,

Defendant and Appellant.

APPEAL FROM: District Court of the Seventeenth Judicial District,
In and For the County of Valley, Cause No. DC-2017-41
Honorable Yvonne Laird, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

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

For Appellee:

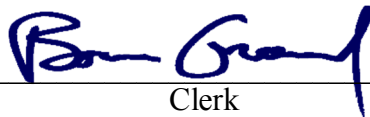
Timothy C. Fox, Montana Attorney General, Michael P. Dougherty,
Assistant Attorney General, Helena, Montana

Dylan J. Jensen, Valley County Attorney, Glasgow, Montana

Submitted on Briefs: September 4, 2019

Decided: October 15, 2019

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 Celina Espinoza (Espinoza) appeals the denial of her Motion to Suppress and Dismiss by the Montana Seventeenth Judicial District Court, Valley County.

¶3 Late in the evening of August 20, 2017, Montana Highway Patrol Trooper David Moon pulled over Espinoza's vehicle on Highway 24 for speeding. Moon approached the passenger side of Espinoza's vehicle and, after waiting for some time for Espinoza to notice him, began speaking with Espinoza. Moon asked if she could turn off the music playing in the car, and Espinoza had a difficult time doing so. When Moon asked for her driver's license and vehicle registration, Espinoza struggled to retrieve them. She could not produce her proof of insurance. Espinoza was very talkative, laughed throughout the conversation, and repeatedly told Moon that she had slowed down because she had seen a deer or dog, despite the fact Moon was not inquiring about her slowing down. When asked, Espinoza vaguely explained she was "going to Chrystal's house" in St. Marie, north of Glasgow. Espinoza's 6-year-old son was in the passenger seat and Moon observed that the vehicle had a "lived in" look. Moon recognized Espinoza as being connected to an investigation earlier that day when he had assisted officers with a search of a vehicle

stopped outside of Espinoza's home. At the time, Espinoza had identified the vehicle as belonging to individuals who she claimed were trying to break into her home, although Moon knew she had previously permitted them to stay at her house. The search of that vehicle produced methamphetamines, marijuana, cash, and guns, and was therefore suspected of being involved in illegal drug distribution. Based on his observations and knowledge, Trooper Moon believed Espinoza may be driving under the influence of drugs or alcohol, and may also be planning on purchasing or disposing of drugs at St. Marie. Thus, he asked her to step out of the vehicle and come back to his patrol car for further investigation.

¶4 Walking back to the patrol car, Moon noticed that Espinoza smelled of alcohol, had bloodshot and dilated eyes, and had a white tongue and white marks in the corners of her mouth. Espinoza stated her mouth was dry and asked for water. Patrol dispatch reported that Espinoza had multiple prior drug charges. Moon administered field sobriety tests, detecting five clues of impairment, including difficulty balancing on more than one occasion and failing to follow the test instructions. Espinoza provided a breath sample, which registered a blood alcohol level of .035. Based on the test results and his observations, Moon believed Espinoza was under the influence of illegal drugs and could not safely operate a vehicle, and placed her under arrest for DUI.

¶5 Moon asked Espinoza if any of a list of illegal drugs were in her vehicle. Espinoza answered "no" to each drug, but Moon believed he detected unique body movements when she answered regarding the presence of methamphetamine in her vehicle. Based on

information obtained during the stop that led him to believe Espinoza was involved with narcotics, and after advising Espinoza, Moon deployed his police canine, Sammy. Sammy alerted to the driver's door of Espinoza's vehicle. Moon obtained a warrant to search Espinoza's car, which produced drug paraphernalia and a baggy with white residue. Later tests at the State crime lab revealed the white residue was methamphetamine. Likewise, Espinoza's consensual blood test was positive for methamphetamine.

¶6 Espinoza was charged with driving under the influence of drugs or alcohol, second offense, criminal possession of dangerous drugs, second offense, criminal possession of drug paraphernalia, and criminal child endangerment. Espinoza filed a Motion to Suppress and Dismiss, contending that all of the physical evidence obtained by Moon's investigation must be suppressed because he lacked a valid legal reason to ask her to leave her vehicle, lacked particularized suspicion to expand the investigation, lacked probable cause to arrest her for DUI, and lacked particularized suspicion to conduct the canine search. The District Court concluded Moon initially lacked particularized suspicion of any crime except speeding, and thus to extend the stop, but held Moon's actions were valid because particularized suspicion was not necessary in order to ask Espinoza to step out of her vehicle, citing federal authority. The District Court also denied the Motion's challenge as to particularized suspicion for the canine search and probable cause for Espinoza's arrest. Espinoza pled guilty to criminal possession of dangerous drugs (2nd offense), in violation of § 45-9-102, MCA, and driving under the influence (2nd offense), in violation of

§ 61-8-401, MCA, and reserved her right to appeal the denial of her Motion to Suppress and Dismiss, which she challenges on appeal.

¶7 This Court reviews a district court's denial of a motion to suppress to determine whether the court's findings of fact are clearly erroneous and whether the facts are correctly applied as a matter of law. *City of Great Falls v. Allerdice*, 2017 MT 58, ¶ 8, 387 Mont. 47, 390 P.3d 954 (citing *State v. Old Horn*, 2014 MT 161, ¶ 13, 375 Mont. 310, 328 P.3d 638).

¶8 Espinoza first argues the District Court erred when it found the law did not require Trooper Moon to have particularized suspicion to ask Espinoza to exit her vehicle. The Fourth Amendment of the United States Constitution and Article II, Sections 10 and 11 of the Montana Constitution protect individuals from unreasonable searches and seizures. *State v. McKeever*, 2015 MT 177, ¶ 14, 379 Mont. 444, 351 P.3d 676. However, "a law enforcement officer may stop and temporarily detain a person for investigative purposes without probable cause for arrest if, based on specific and articulable facts known to the officer, including rational inferences therefrom based on the officer's training and experience, the officer has an objectively reasonable, particularized suspicion that the person is engaged, or about to engage, in criminal activity." *State v. Hoover*, 2017 MT 236, ¶ 17, 388 Mont. 533, 402 P.3d 1224 (citing *State v. Elison*, 2000 MT 288, ¶ 15, 302 Mont. 228, 14 P.3d 456; *State v. Roberts*, 1999 MT 59, ¶ 12, 293 Mont. 476, 977 P.2d 974; *State v. Reynolds*, 272 Mont. 46, 49-50, 899 P.2d 540, 542 (1995); *State v. Gopher*, 193 Mont. 189, 193-94, 631 P.2d 293, 295-96 (1981); *United States v. Cortez*, 449 U.S. 411,

417-18, 101 S. Ct. 690, 694-95 (1981); *Terry v. Ohio*, 392 U.S. 1, 16-19, 88 S. Ct. 1868, 1877-79 (1968)). Because we conclude that Trooper Moon had particularized suspicion to extend the investigation, we need not reach the District Court's conclusion that particularized suspicion was not necessary to ask Espinoza to get out of the vehicle. This Court determines the existence of particularized suspicion based on the totality of the circumstances surrounding the stop. *State v. Meza*, 2006 MT 210, ¶ 25, 333 Mont. 305, 143 P.3d 422. Espinoza was stopped for speeding. She took extended time to notice Trooper Moon at her passenger window; had difficulty turning off the music and in retrieving her driver's license and registration; was overly talkative and laughed throughout the conversation with Moon; repeatedly explained to Moon that she had slowed for a dog or a deer without being asked about slowing down; and was known by Trooper Moon to be acquainted with individuals who had stayed at her home and were involved in a recent vehicle search at her home that yielded drugs, money, and guns. Under the totality of these circumstances, Moon had specific, articulable facts upon which to reasonably suspect that Espinoza may be driving under the influence of alcohol or drugs. Therefore, Moon had particularized suspicion to ask Espinoza to exit her vehicle to investigate a possible DUI, and the District Court did not err, although denying the Motion on a different rationale.

¶9 Espinoza argues Moon lacked particularized suspicion to deploy his canine to search her vehicle for illegal drugs. Particularized suspicion for a canine search requires that the officer's objective data and inferences lead the officer to reasonably conclude that the individual being searched, or the person's vehicle, is involved in narcotics activity.

State v. Estes, 2017 MT 226, ¶¶ 16-17, 388 Mont. 491, 403 P.3d 1249. After Espinoza got out of the vehicle, Moon observed that she smelled of alcohol, had bloodshot and dilated eyes, had a white tongue and white corners of her mouth, complained of being thirsty, exhibited clues of impairment on the field sobriety tests, gave a breath test that revealed the presence of alcohol, was unable to confirm her destination with a young child in the car late at night, was identified by Moon as being linked to individuals recently involved in drug trafficking, was known to have multiple prior drug charges, and exhibited unique physical movements in Moon's observation when asked about the presence of methamphetamine in her vehicle. These observations, considered in totality, presented an objective factual basis from which Moon could reasonably suspect that Espinoza was involved in narcotic activity. Therefore, the District Court did not err by concluding that particularized suspicion existed to conduct the canine search, which led to issuance of the search warrant that revealed the presence of drug paraphernalia and methamphetamine.

¶10 Finally, Espinoza asserts the District Court erred in holding there was probable cause to arrest her at the time Moon placed her under arrest for DUI. We conclude there was a sufficient basis for Moon's arrest of Espinoza for DUI, including the facts articulated above, but even if there was insufficient cause at the time she was placed under arrest, the quickly moving investigation based upon particularized suspicion promptly produced sufficient cause for her arrest, including the canine search. Thus, there was no "fruit of the poisonous tree" here that required suppression. *State v. Ellis*, 2009 MT 192, ¶ 48,

351 Mont. 95, 210 P.3d 144 (citations omitted). Therefore, the District Court did not err in denying Espinoza's Motion to Suppress and Dismiss on all asserted grounds.

¶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. Except as otherwise discussed herein, the District Court's findings of fact are not clearly erroneous and its interpretation and application of the law were correct.

¶12 Affirmed.

/S/ JIM RICE

We concur:

/S/ LAURIE McKINNON

/S/ BETH BAKER

/S/ DIRK M. SANDEFUR

/S/ JAMES JEREMIAH SHEA