DA 19-0177

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 28N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SHANE ALAN MURPHY,

Defendant and Appellant.

APPEAL FROM: District Court of the Tenth Judicial District,
In and For the County of Fergus, Cause No. DC-2018-36
Honorable Jon A. Oldenburg, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Torger S. Oaas, Attorney at Law, Lewistown, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Jonathan M. Krauss, Special Assistant Attorney General, Helena, Montana

Kent M. Sipe, Fergus County Attorney, Diane Cochran, Deputy County Attorney, Lewistown, Montana

Submitted on Briefs: November 20, 2019

Decided: February 4, 2020

Filed:

Clerk

Justice James Jeremiah Shea 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, 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 Shane Murphy appeals the Order of the Tenth Judicial District Court, Fergus County, denying his motion to suppress evidence leading to his arrest and conviction for driving under the influence (DUI), a violation of § 61-8-401(1)(a), MCA. We affirm.

¶3 On the night of January 25, 2018, Deputy Koch, while patrolling near the area of Main Street and 2nd Ave North in Lewistown, Montana, observed a motor vehicle leaving a bar with its rear license plate unilluminated by a white light, as required by § 61-9-204, MCA. Koch stopped the vehicle. After initiating contact with Murphy, the driver, Koch suspected him of DUI, and commenced a DUI investigation. A blood test revealed Murphy's blood alcohol concentration at the time of the blood draw to be .26 percent.

¶4 Murphy was charged in Fergus County Justice Court with one count of DUI in violation of § 61-8-401(1)(a), MCA, or alternatively, aggravated DUI in violation of § 61-8-465, MCA, and one count of failing to properly equip his vehicle with a white license plate light, in violation of § 61-9-204, MCA.

¶5 Murphy moved to suppress the evidence leading to his DUI arrest, arguing that because his red taillights sufficiently illuminated his license plate and met the requirements of Montana law, Deputy Koch lacked particularized suspicion to initiate a traffic stop and escalate the stop into a DUI investigation. The Justice Court denied Murphy's motion, and the case proceeded to bench trial on May 10, 2019. Murphy was convicted of aggravated DUI and the license plate light charge.

¶6 Murphy appealed his conviction to the District Court for a trial de novo. On August 21, 2018, Murphy moved the District Court to suppress the evidence leading to his arrest, on the same grounds that he raised in Justice Court. The District Court denied Murphy's motion. Murphy later pled guilty to an amended charge of DUI per se, a violation of § 61-8-406(1), MCA. Pursuant to the plea agreement, Murphy reserved his right to appeal the District Court's denial of his motion to suppress.

¶7 When a district court in a de novo proceeding denies a motion to suppress evidence, we review the district court's ruling for whether its findings of fact were clearly erroneous, and whether its interpretation and application of the law were correct. *See* § 46-17-311, MCA; *State v. Neiss*, 2019 MT 125, ¶ 13, 396 Mont. 1, 443 P.3d 435 (citing *State v. Kenfield*, 2009 MT 242, ¶ 15, 351 Mont. 409, 213 P.3d 461). Findings of fact are clearly erroneous if they are not supported by substantial evidence, the court misapprehended the effect of the evidence, or our review of the record convinces us that a mistake has been made. *Kenfield*, ¶ 15 (citations omitted). A district court's interpretation and construction of a statute is a matter of law which we review de novo for correctness.

State v. Plouffe, 2014 MT 183, ¶ 18, 375 Mont. 429, 329 P.3d 1255 (citations omitted); *State v. Lacasella*, 2002 MT 326, ¶ 10, 313 Mont. 185, 60 P.3d 975 (citations omitted).

¶8 The Fourth Amendment to the United States Constitution and Article II, § 11, of the Montana Constitution protect individuals from unreasonable government searches and seizures, "including unjustified traffic stops." *State v. Reeves*, 2019 MT 151, ¶ 7, 396 Mont. 230, 444 P.3d 394 (citing *State v. Elison*, 2000 MT 288, ¶ 15, 302 Mont. 228, 14 P.3d 456). "To justify a traffic stop, law enforcement must have a particularized suspicion that the occupant of the vehicle is committing, has committed, or will commit an offense." *Reeves*, ¶ 7 (citing § 46-5-401(1), MCA).

¶9 Particularized suspicion is objective data from which an experienced law enforcement officer can make certain inferences and a resulting suspicion that the person to be stopped is or has been engaged in unlawful behavior. *State v. Wilson*, 2018 MT 268, ¶ 28, 393 Mont. 238, 430 P.3d 77 (citing *Elison*, ¶ 15). Whether particularized suspicion exists is a factual question determined by evaluating the totality of the circumstances confronting the officer at the time of the stop, including a consideration of "the quantity, substance, quality, and degree of reliability of information known to the officer." *Wilson*, ¶ 28 (citing *State v. Hoover*, 2017 MT 236, ¶ 17, 388 Mont. 533, 402 P.3d 1224; *State v. Meza*, 2006 MT 210, ¶ 25, 333 Mont. 305, 143 P.3d 422). The particularized suspicion standard requires an officer to have more than "mere generalized suspicion or an undeveloped hunch of criminal activity," but the officer does not need to be certain or

ultimately correct that a person is engaged in criminal activity. *Wilson*, ¶ 28 (citing *Hoover*, ¶ 18).

¶10 "A statutory violation alone is sufficient to establish particularized suspicion for an officer to make a traffic stop." *State v. Zimmerman*, 2018 MT 94, ¶ 15, 391 Mont. 210, 417 P.3d 289 (quotations omitted). However, an officer's "clear misapprehension of the law" does not give rise to a particularized suspicion. *See Lacasella*, ¶ 31 (reversing district court's denial of defendant's motion to suppress because "[t]he data upon which particularized suspicion was founded . . . was gathered based upon [the law enforcement officer's] clear misapprehension of the law" regarding Montana's license plate display requirements).

¶11 Murphy does not dispute that his license plate was not illuminated by a white light. Murphy argues that his red taillights sufficiently illuminated his rear license plate and complied with Montana law, therefore Deputy Koch lacked particularized suspicion to initiate a traffic stop, which led to Murphy's DUI arrest. Specifically, Murphy asserts that § 61-9-204(3), MCA, which requires that "[e]ither a taillamp or a separate lamp must illuminate with a white light the rear registration plate," should be read jointly with § 61-9-209(3), MCA, which requires "[a]ll lighting devices, reflectors, and stoplights mounted on the rear of a vehicle must display or reflect a red color . . . ." Reading these two statutes together, Murphy argues, "a Montana driver is legal if his **RED** taillamps **OR** a separate **WHITE** lamp illuminate his license plate." (Emphasis in original.) We disagree.

¶12 Murphy's argument only holds water if we stop reading § 61-9-209(3), MCA, after the words "red color." But the statute does not end there. Relevant to Murphy's argument, the statute reads:

> All lighting devices, reflectors, and stoplights mounted on the rear or on the sides near the rear of a vehicle must display or reflect a red color, *except . . . the light illuminating the license plate that must be a white lamp . . .* .

Section 61-9-209(3)(b), MCA (emphasis added). Whether we read §§ 61-9-204(3) and -209(3), MCA, in isolation or jointly, as Murphy argues, the license plate must be illuminated by a white light.

¶13 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. We affirm.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR
/S/ INGRID GUSTAFSON