

DA 12-0696

IN THE SUPREME COURT OF THE STATE OF MONTANA

2013 MT 225N

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CITY OF HELENA,

Plaintiff and Appellee,

v.

SHAWN OWEN DETIENNE,

Defendant and Appellant.

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APPEAL FROM: District Court of the First Judicial District,  
In and For the County of Lewis and Clark, Cause No. BDC 2012-171  
Honorable Jeffrey M. Sherlock, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Palmer A. Hoovestall, Hoovestall Law Firm, PLLC; Helena, Montana

For Appellee:

Tinothy C. Fox, Montana Attorney General, Mardell Ployhar, Assistant  
Attorney General; Helena, Montana

Jeffrey Hindoien, Helena City Attorney, Todd D. Baker, Deputy City  
Attorney; Helena, Montana

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Submitted on Briefs: July 17, 2013  
Decided: August 13, 2013

Filed:

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Clerk

Justice Brian Morris delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), 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 Shawn Detienne (Detienne) appeals the order of the First Judicial District Court, Lewis and Clark County, denying his motion to suppress. We affirm.

¶3 Helena Police Officer Tim Coleman (Coleman) noticed a car in the parking lot next to Valley Bank on September 11, 2011, at approximately 2:45 a.m. The engine was running and the car's lights were on. The driver, who was later identified as Detienne, was in the driver's side seat lying against the door.

¶4 Officer Coleman decided to conduct a welfare check due to his concern that the "individual inside the vehicle was having medical [issues] or was highly intoxicated." Coleman knocked on the car several times, but was unsuccessful in awakening the person.

¶5 Coleman opened the door to turn the car off when he noticed "a really strong odor of alcohol coming from the vehicle." Coleman proceeded to conduct a DUI investigation. Coleman arrested Detienne for driving under the influence.

¶6 Detienne filed a motion with the Municipal Court to suppress the evidence of his intoxication after he was unlawfully seized. The Municipal Court denied the motion after holding an evidentiary hearing. Detienne appealed the denial of his motion to suppress to the District Court.

¶7 The District Court held an oral argument on October 23, 2012. The District Court affirmed. The District Court determined that Officer Coleman possessed sufficient objective evidence to justify opening the door to the vehicle. The District Court further determined that the circumstances supported the likelihood that the person inside the car could be committing the offense of DUI. Detienne appeals.

¶8 Detienne argues on appeal that Coleman's action of opening the car to remove the keys after Coleman was no longer concerned about Detienne's welfare constitutes an unlawful seizure. Detienne further argues that his vehicle was properly parked with no damage or evidence of foul play. 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.

¶9 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for noncitable memorandum opinions. It is manifest on the face of the briefs and the record before us that substantial evidence supports the District Court's findings regarding Detienne's motion to suppress and that the District Court correctly applied well settled Montana law.

¶10 Affirmed.

/S/ BRIAN MORRIS

We concur:

/S/ MIKE McGRATH

/S/ LAURIE McKINNON  
/S/ MICHAEL E WHEAT  
/S/ JIM RICE