

MONTANA SUPREME COURT

In re D.R.B.

320 Mont. 516 (2004) · Decided April 7, 2004

OPINION

In re D.R.B.

320 Mont. 516

NELSON, J.

JUSTICE NELSON

delivered the Opinion of the Court. ¶1 D.R.B. appeals the judgment of the Thirteenth Judicial District Court, Yellowstone County, denying his motion to suppress evidence Officer Kathy Carson (Officer Carson) found on his person. ¶2 We address the following issues on appeal and affirm: ¶3 1. Was Officer Carson's investigative stop of D.R.B. supported by particularized suspicion? ¶4 2. Did Officer Carson exceed the scope of the investigative stop? ¶5 3. Did Officer Carson have reasonable cause to conduct a frisk of D.R.B.?

FACTUAL AND PROCEDURAL BACKGROUND

¶6 At approximately 11:00 p.m., on March 31, 2001, Officer Carson of the Billings Police Department was on patrol in her police vehicle when she observed a young person behind a vehicle. ¶7 She presumed this person was removing the license plate from that vehicle, which was parked near a residence. Thinking this person *518was in the process of stealing the license plate from that vehicle, Officer Carson stopped her police vehicle and made contact with the youth. ¶8 At that point, she recognized the youth as D.R.B., with whom she had come in contact five or six times during her law enforcement career. From her previous contacts, Officer Carson knew that the youth did not reside at the nearby residence and that the youth did not own a vehicle. Officer Carson asked D.R.B. what he was doing, and D.R.B. replied that he was putting a license plate on the vehicle. ¶9 However, due to the time of night and the fact that Officer Carson knew that D.R.B. did not reside at the nearby residence, nor did he even own a vehicle, Officer Carson believed that D.R.B. might have a weapon on his person. Officer Carson then conducted a pat-down search. While conducting this pat-down search, Officer Carson felt a hard metal object. Believing the object could be a knife, Officer Carson removed the object from D.R.B.'s pocket. The hard metal object turned out to be a marijuana pipe. ¶10 At about the same time Officer Carson was conducting the pat-down search, D.R.B.'s girlfriend came out of the residence and told Officer Carson that she had asked D.R.B. to put her license plate on the vehicle. ¶11 D.R.B. filed a motion to suppress the drug paraphernalia evidence obtained from his person, arguing that Officer Carson did not have particularized suspicion for the investigative stop. ¶12 Following a suppression hearing, the District Court denied D.R.B.'s motion to suppress. D.R.B. then filed a

motion and brief to reconsider the denial of his motion to suppress. The District Court denied this motion as well, after which D.R.B. changed his plea, reserving his right to appeal the District Court's denial of his motion to suppress. ¶13 The District Court adjudicated D.R.B. to be delinquent and entered a disposition order. D.R.B. was given credit for time served and released. ¶14 D.R.B. now appeals the District Court's denial of his motion to suppress.

STANDARD OF REVIEW

¶15 We review a district court's findings of fact to determine whether they are clearly erroneous. *State v. Logan*, 2002 MT 206, ¶ 12, 311 Mont. 239, ¶ 12, 53 P.3d 1285, ¶ 12. We review a district court's conclusions of law for correctness. *Logan*, ¶ 12. Because the facts here *519are undisputed, our review is limited to whether the District Court's application and interpretation of the law was correct.

DISCUSSION

¶16 1. Was Officer Carson's investigative stop of D.R.B. supported by particularized suspicion?

¶17 D.R.B. argues that Officer Carson did not have particularized suspicion in stopping him. Specifically, D.R.B. argues that "[Replacing a license plate at eleven o'clock at night in baggy clothes is no more suspicious than tooling around in the garage preparing for a duck hunt in camouflage long-underwear, or repairing an engine of a vehicle wearing dark, greasy overalls." Under the totality of circumstances, D.R.B. argues that Officer Carson did not have particularized suspicion because: (1) she only observed D.R.B. working behind a vehicle, albeit late at night; (2) she was not responding to a report of suspicious activity; and (3) D.R.B. "did not try to hide, run, move furtively, or stare suspiciously" upon Officer Carson's approach and resultant questioning.

¶18 The State argues that D.R.B.'s conduct was "inherently suspicious," given that Officer Carson observed D.R.B. behind a vehicle at eleven o'clock at night, she knew that D.R.B. did not reside at the residence where the vehicle was parked, and she knew that D.R.B. did not own a vehicle. Thus, in totality, the State argues that Officer Carson had particularized suspicion to believe that D.R.B. was engaged in the theft of a license plate. ¶19 Section 46-5-401, MCA, states that: [i]n order to obtain or verify an account of the person's ... conduct ... a peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense.

¶20 The above-quoted statute codifies a two-part test we adopted in *State v. Gopher* (1981), 193 Mont. 189, 631 P.2d 293, regarding the existence of particularized suspicion. Under this two-part test, for an officer to have particularized suspicion, there must exist (1) objective data from which the officer can make certain inferences; and (2) a resulting suspicion that the person is engaged in wrongdoing. *Gopher*, 193 Mont. at 194, 631 P.2d at 296. Hence, based on an officer's training, that officer can draw the necessary inferences and make the necessary deductions that "might well elude an untrained person" when determining whether a person is engaged in wrongdoing. *520*Gopher*, 193 Mont. at 192, 631 P.2d at 295 (quoting *United States v. Cortez* (1981), 449 U.S. 411, 418, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, 629). In addition, an officer need not be certain an

offense is being committed or has been committed before initiating a valid investigative stop. *State v. Morsette* (1982), 201 Mont. 233, 241, 654 P.2d 503, 507. ¶21 Here, during her patrol, Officer Carson observed a young person behind a vehicle at eleven o'clock at night. Given the time of night and the fact that a young person was involved, Officer Carson presumed the young person was stealing the license plate, so she stopped her vehicle and made contact with the youth. At that point, Officer Carson recognized the youth as D.R.B. She knew that D.R.B. did not reside at the residence where the car was parked and she knew that D.R.B. did not own a vehicle. ¶22 We hold that Officer Carson had objective data-viewing a young person behind a vehicle at eleven o'clock at night-from which to make an inference that the youth was stealing the license plate. Most individuals do not work on their license plates at eleven o'clock at night. Further, we hold that based on the objective data that Officer Carson observed, a suspicion that the youth was involved in wrongdoing resulted, especially given that upon confronting the youth, Officer Carson recognized the youth as D.R.B. and knew that he did not reside at that residence nor did he even own a vehicle. ¶23 Therefore, we hold that Officer Carson had particularized suspicion to support her investigative stop of D.R.B. ¶24 2. Did Officer Carson exceed the scope of the investigative stop? ¶25 D.R.B. argues that Officer Carson exceeded the scope of her investigatory stop because after she initiated her stop "her initial suspicion for which the 'stop was predicated' was quashed" by D.R.B.'s "reasonable explanation" regarding what he was doing behind the vehicle. Hence, D.R.B. argues that "Officer Carson was no longer within the legal limits of her authority," given that he "provided no other reason for her to suspect anything more...." ¶26 The State argues that Officer Carson did not exceed the scope of her investigatory stop. Specifically, the State argues that once Officer Carson discovered that the young person who was acting suspiciously was D.R.B., it was reasonable for her to investigate further because: (1) she knew that D.R.B. did not live at the residence where the vehicle was parked and (2) she knew that D.R.B. did not own a vehicle. Hence, Officer Carson had probable cause to believe D.R.B. had committed an *521offense and the "brief pat-down search for weapons in order to assure her safety as she continued the investigation" did not exceed the scope of her investigative stop. ¶27 According to § 46-5-403, MCA, an investigative stop "may not last longer than is necessary to effectuate the purpose of the stop." However, an investigative stop "may become further prolonged and the scope [of that investigative stop] enlarged as required by the circumstances," so long as "the scope of the investigation remains within the limits created by the facts upon which the [investigative] stop is predicated and the suspicion which they arouse." *Hulse v. State*, Dept. of Justice, 1998 MT 108, ¶ 40, 289 Mont. 1, ¶ 40, 961 P.2d 75, ¶ 40 (citations omitted). ¶28 [3] Here, upon confronting the youth regarding why he was working behind a vehicle at eleven o'clock at night, Officer Carson recognized the youth as D.R.B. At that point, she knew that he did not reside at the residence where the vehicle was parked and she knew that he did not own a vehicle. On these facts, Officer Carson's suspicions of D.R.B. were heightened, and we hold that Officer Carson's pat-down of him remained within the context of her initial investigative stop, namely that a young

person was stealing a license plate. ¶29 Therefore, we hold that Officer Carson did not exceed the scope of her investigative stop in performing a pat-down search for weapons of D.R.B. ¶30 3. Did Officer Carson have reasonable cause to conduct a frisk of D.R.B.? ¶31 D.R.B. argues that Officer Carson did not have reasonable cause to conduct a frisk of him because she only observed a young person working behind a vehicle at night in front of a residence and “mistakenly assumed” that this young person was stealing a license plate. Such a “hunch,” D.R.B. argues, cannot satisfy the “reasonable prudent man” standard to establish the reasonable cause necessary to conduct a stop and frisk, especially given that Officer Carson conducted the frisk as part of a “standard procedure.” ¶32 The State argues that because Officer Carson knew that D.R.B. did not live at the residence where the vehicle was parked and that he did not own a vehicle, she was afraid that he might have a weapon hiding in his baggy clothes. Hence, the State argues that it was not unreasonable for Officer Carson, in confronting D.R.B. at night under those circumstances, to conduct a weapons frisk out of concern for her safety.

*522¶33 For a stop and frisk to be valid at its inception, two criteria must be met. First, “the State must ... establish objective data from which an experienced officer can make certain inferences.” Second, there must exist a resulting suspicion that the person was engaged in wrongdoing. *State v. Dawson*, 1999 MT 171, ¶ 17, 295 Mont. 212, ¶ 17, 983 P.2d 916, ¶ 17 (officer had reasonable cause to stop and frisk the defendant where the officer did not have prior dealings with the defendant and, therefore, was unaware of whether the defendant posed a threat); *State v. Collard* (1997), 286 Mont. 185, 191, 951 P.2d 56, 60-61 (officer had reasonable cause to believe that the defendant was the robber and might be armed where the officer observed that the defendant was sweating, had mud splashes on his pants, and was wearing wet boots).

¶34 The District Court determined that based on Officer Carson’s testimony, it was not standard procedure to frisk all citizens during an investigative stop. Rather, it was standard procedure to frisk citizens in circumstances that gave rise to a reasonable cause for concern regarding the officer’s safety. We agree. ¶35 Here, unlike the officer in *Dawson*, Officer Carson had prior dealings with D.R.B. However, it was based on these prior dealings that she had reasonable cause for concern regarding her safety because she knew that D.R.B. neither resided at that residence nor owned a vehicle. Hence, this knowledge, like the knowledge that the officer in *Collard* gained through observation of the defendant, gave her reasonable cause to believe that D.R.B. was committing an offense and might be armed. She did not have to accept D.R.B.’s seemingly innocent explanation of why he was working behind the vehicle at eleven o’clock at night. ¶36 Therefore, we hold that Officer Carson had reasonable cause to conduct a frisk of D.R.B. ¶37 Affirmed. JUSTICES WARNER, COTTER and RICE concur.