

SUPREME COURT OF THE STATE OF MONTANA

State v. Luckett

2007 MT 47 (2007) · No. DA 06-0224 · Decided February 21, 2007

OPINION

LEAPHART, J.

No. DA 06-0224 IN THE SUPREME COURT OF THE STATE OF MONTANA 2007 MT 47
STATE OF MONTANA, Plaintiff and Respondent, v. WILLIAM BENJAMIN LUCKETT,
Defendant and Appellant. APPEAL FROM: The District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DC-05-0767, Honorable Susan P. Watters,
Presiding Judge COUNSEL OF RECORD: For Appellant: Brad L. Arndorfer, Arndorfer Law
Firm, P.C., Billings, Montana For Respondent: Honorable Mike McGrath, Attorney General;
Pamela Bucy, Assistant Attorney General; Jessie Lundberg, Legal Intern, Helena Montana Dennis
Paxinos, County Attorney; Laura E. Watson, Deputy County Attorney, Billings, Montana
Submitted on Briefs: January 10, 2007 Decided: February 21, 2007 Filed:

_____ Clerk Justice W. William Leaphart delivered
the Opinion of the Court. ¶1 Defendant William Luckett appeals the order of the Thirteenth
Judicial District Court, Yellowstone County, finding that a police officer had the requisite
particularized suspicion necessary to make an investigative stop of his vehicle.

We affirm. ¶2 We state the issue as follows: Did the District Court err in denying Luckett’s motion
to dismiss based on its finding that the arresting officer had particularized suspicion to conduct an
investigative stop of Luckett’s vehicle? FACTUAL AND PROCEDURAL BACKGROUND ¶3
On February 11, 2005, around 7:20 p.m., Deputy Reyna of the Yellowstone County Sheriff’s
Department was patrolling the area of the Pelican Truck Stop near Billings, Montana.

Deputy Reyna observed two men, later identified as Luckett and Harold Creighton, standing in the
parking lot, drinking beer. Three other men later joined Luckett and Creighton in the parking lot.
Shortly thereafter, Deputy Reyna observed either Luckett or Creighton place his beer on the
ground and enter a Ford Crown Victoria. Luckett was later identified as the driver of the Crown
Victoria.

Deputy Reyna followed Luckett as Luckett drove onto Interstate 90. Deputy Reyna testified that
he followed Luckett to “make sure they were okay” as he had just witnessed the two men drinking
beer. ¶4 Once on Interstate 90 Deputy Reyna followed Luckett, who was headed west towards
Laurel, Montana.

The other men in Lockett's group also were driving on Interstate 90 and were in a white pickup truck that was traveling between Deputy Reyna and Lockett. Despite the white pickup truck between him and Lockett's Crown Victoria, 2 Deputy Reyna was still able to observe Lockett's driving.

In particular, Deputy Reyna observed Lockett driving at 50 miles per hour in a 75 miles per hour speed zone while weaving and also crossing the fog line on at least two occasions. Lockett exited Interstate 90 at Laurel where Deputy Reyna proceeded to initiate a traffic stop. Based upon his contact with Lockett, Deputy Reyna believed Lockett was under the influence of alcohol. ¶5 Lockett was subsequently charged with driving under the influence of alcohol (DUI) and careless driving.

Lockett filed a motion to dismiss arguing lack of particularized suspicion. The District Court denied the motion. Pursuant to a plea agreement, Lockett subsequently entered a guilty plea reserving the right to appeal the District Court's denial of his motion to dismiss. Lockett timely appeals. STANDARD OF REVIEW ¶6 The grant or denial of a motion to dismiss in a criminal proceeding is a question of law which we review to determine whether the district court's conclusion of law is correct.

State v. Trombley, 2005 MT 174, ¶ 5, 327 Mont. 507, ¶ 5, 116 P.3d 771, ¶ 5 (citing City of Missoula v. O'Neill, 2004 MT 328, ¶ 5, 324 Mont. 124, ¶ 5, 102 P.3d 21, ¶ 5). When the question is one of particularized suspicion, the district court's determination in that regard is reviewed under the clearly erroneous standard. Trombley, ¶ 5 (citing State v. Steen, 2004 MT 343, ¶ 5, 324 Mont.

272, ¶ 5, 102 P.3d 1251, ¶ 5). DISCUSSION ¶7 Did the District Court err in denying Lockett's motion to dismiss based on its finding that the arresting officer had particularized suspicion to conduct an investigative stop of Lockett's vehicle? 3 ¶8 Lockett contends that the District Court erred when it denied his motion to dismiss because Deputy Reyna did not possess the necessary particularized suspicion to justify an investigative stop.

A peace officer may stop a vehicle that is observed in circumstances that create particularized suspicion that the occupant of the vehicle has committed, is committing, or is about to commit an offense. Section 46-5-401, MCA.

To determine whether such particularized suspicion exists, the State must show: (1) objective data from which an experienced officer could make certain inferences, and (2) a resulting suspicion that the occupant of the vehicle in question is or has been engaged in some wrongdoing. State v. Britt, 2005 MT 101, ¶ 8, 327 Mont. 1, ¶ 8, 111 P.3d 217, ¶ 8. Whether particularized suspicion exists is a question of fact dependent on the totality of the circumstances surrounding the investigative stop.

Britt, ¶ 8. We evaluate the totality of the circumstances by considering the quantity, or content, and quality, or degree of reliability, of the information available to the officer. Britt, ¶ 8. ¶9 The District Court found that Deputy Reyna did have particularized suspicion to stop Lockett's vehicle and based its finding on the following facts: Deputy Reyna saw Lockett and another man drinking and observed them get into the Crown Victoria.

Deputy Reyna then observed Lockett's slow rate of speed on Interstate 90. Finally, Deputy Reyna observed Lockett weaving on the Interstate and specifically, crossing the fog line on two separate occasions. Based on these facts, the District Court found that Deputy Reyna had particularized suspicion to stop Lockett and investigate his suspicions. ¶10 Lockett makes several generalized arguments.

First, Lockett claims he was driving slowly because "with \$3.00 gas many people drive at 50 miles per hour." Lockett 4 also contends that Deputy Reyna's stop was a "random check" for alcohol. Lockett further argues that "[t]here was a vehicle between the officer and Mr. Lockett's vehicle traveling 50 mph but the officer didn't stop that one." Lockett lastly contends that Deputy Reyna's sole justification for the investigative stop was based on observing Lockett and Creighton drinking beer at the Pelican Truck Stop and thus, Deputy Reyna's stated reason was merely a pretext to investigate whether Lockett was under the influence of alcohol. ¶11 We note that Lockett fails to ever properly apply the applicable standard as to whether particularized suspicion exists here—that is, the totality of the circumstances surrounding Deputy Reyna's stop of Lockett's vehicle.

We find nothing in the record to substantiate Lockett's claims. Rather, it is clear that Deputy Reyna stopped Lockett based on witnessing Lockett and Creighton drinking, the two men subsequently driving away in the Crown Victoria while driving at a noticeably slow rate of speed on Interstate 90, the vehicle weaving along the highway, and the vehicle crossing the fog line.

Moreover, Deputy Reyna testified that although there was another vehicle between him and the Crown Victoria, he was nevertheless able to fully observe Lockett's driving. The record further indicates that Deputy Reyna had over four years experience in law enforcement and had completed multiple training sessions through the Montana Law Enforcement Academy, including training in DUI detection.

Given the objective data presented by the State through the observations of Deputy Reyna, which gave rise to his suspicions that Lockett was engaged in some wrongdoing, the District Court's finding 5 that there was particularized suspicion for conducting an investigative stop was not clearly erroneous. ¶12 In addition to arguing there was no factual basis for a finding of particularized suspicion, Lockett also seeks relief under the holding of *State v. Lafferty*, 1998 MT 247, 291 Mont.

157, 967 P.2d 363, that merely crossing the fog line, on its own, did not support a finding of particularized suspicion. *Lafferty*, ¶¶ 17-18. Here—unlike in *Lafferty*—Deputy Reyna testified, based on his training and experience, that he not only observed Luckett crossing the fog line, but also driving at an abnormal speed, weaving, and that he had previously witnessed Luckett and Creighton drinking beer.

Lafferty is clearly distinguishable. ¶13 Luckett further argues that this case is similar to *State v. Jarman*, 1998 MT 277, ¶¶ 15-16, 291 Mont. 391, ¶¶ 15-16, 967 P.2d 1099, ¶¶ 15-16, where we held an officer did not have particularized suspicion to conduct an investigative stop of an individual solely based on the officer's observations of the individual talking on a pay phone on a cold night in a high crime area, driving away, and leaving the pay phone off the hook.

We agree with the State that *Jarman* is distinguishable from the case at bar because in *Jarman* the behavior the officer observed did not connect the defendant to the crimes the officer suspected. *Jarman*, ¶ 15. Here Deputy Reyna's observations directly connected Luckett to a possible DUI violation. ¶14 Luckett finally advances *State v. Lee*, 282 Mont. 391, 938 P.2d 637 (1997), for the proposition that an officer's observation of a vehicle traveling 35 miles per hour in a 70 6 miles per hour speed zone is insufficient to establish particularized suspicion.

1 In *Lee*, we held that information provided by a citizen informant alone, with no other objective data observed by law enforcement, does not support a finding of particularized suspicion. *Lee*, 282 Mont. at 396, 938 P.2d at 640. *Lee* is clearly not on point with the case at bar as there is no citizen informant here and Deputy Reyna personally observed the events that preceded the investigative stop.

Thus, we will not address Luckett's argument with respect to *Lee*. CONCLUSION ¶15 Although Luckett claimed he was not drinking, Deputy Reyna observed Luckett and Creighton drinking beer at the Pelican Truck Stop. Deputy Reyna further watched Luckett and Creighton shortly thereafter drive onto Interstate 90. While on Interstate 90, it is uncontroverted that Luckett was driving abnormally slow for the conditions, crossed the fog line, and was weaving.

Accordingly, we hold the District Court's finding that Deputy Reyna had particularized suspicion to conduct an investigative stop of Luckett's vehicle was not clearly erroneous. ¶16 The judgment of the District Court is affirmed. /S/ W. WILLIAM LEAPHART 1 In his brief, Luckett erroneously claims that *Lee* involved a 70 miles per hour speed zone.

In actuality, *Lee* involved a 55 miles per hour speed zone. *Lee*, 282 Mont. at 393, 938 P.2d at 639.

7 We concur: /S/ KARLA M. GRAY /S/ PATRICIA COTTER /S/ JOHN WARNER /S/ BRIAN MORRIS 8