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CASENOTE; *City of Missoula v. Tye*: Expanding the Scope of the Informant Reliability Analysis

Morgan Chandler

I. INTRODUCTION

“Citizen informants can provide useful information and play an important role in law enforcement. At the same time, however, it is imperative to recognize the potential for abuse if the information provided by a citizen informant is not reliable.”¹ This statement provides context for the central conflict of *City of Missoula v. Tye*,² in which the Montana Supreme Court held that fabricated information from a 911 caller was sufficiently reliable to establish particularized suspicion for an investigative stop of a suspected impaired driver.³ The Court applied a three-factor test previously articulated in the 1997 case of *State v. Pratt*⁴ to assess whether the 911 caller’s report containing fabricated information was reliable.⁵

II. FACTUAL AND PROCEDURAL BACKGROUND

The Defendant, Briana Tye (“Tye”), was charged with aggravated driving under the influence (“DUI”) in Missoula Municipal Court.⁶ Tye filed a motion to suppress evidence on the basis that the officers lacked particularized suspicion to stop her.⁷ The Municipal Court denied Tye’s motion.⁸ Tye then appealed the Municipal Court’s decision to the Fourth Judicial District Court.⁹

Tye was arrested pursuant to a 911 call from a citizen informant who reported a possible drunk driver.¹⁰ The informant, Rami Haddad (“Haddad”), told the 911 dispatcher that while he was driving on Hillview Way, he observed a vehicle pull out in front of him and swerve across the road.¹¹ Haddad reported to the dispatcher that he was unable to provide a physical description of the driver or the vehicle’s license plate number.¹² Haddad stated that he was willing to be contacted by law enforcement and

¹ *State v. Pratt*, 951 P.2d 37, 42 (Mont. 1997).

² 372 P.3d 1286 (Mont. 2016).

³ *Id.*

⁴ 951 P.2d 37.

⁵ *Tye*, 372 P.3d at 1289 (citing *Pratt*, 951 P.2d at 42).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 1288.

¹¹ *Id.*

¹² *Id.*

“possibly” sign a complaint if the vehicle was located.¹³ Although Haddad provided his first name, last name, and phone number to the 911 dispatcher, he declined to provide his residential address.¹⁴

Officers located a vehicle matching the description provided by Haddad in his 911 report.¹⁵ When the officers conducted an investigative stop and made contact with Tye, she was standing near her parked vehicle.¹⁶ During their encounter with Tye, the officers observed that “she was swaying, had watery eyes, slow slurred speech, and smelled of alcohol.”¹⁷ Based on Tye’s apparent intoxication, officers arrested her.¹⁸

The officers soon discovered that Haddad had fabricated the information he reported to the 911 dispatcher.¹⁹ Haddad admitted that he did not observe Tye driving but called 911 from his residence after Tye drove away from his home intoxicated.²⁰ Haddad explained that he had fabricated the information he provided to 911 because he was friends with Tye and did not want her to know he was the complainant.²¹

Tye appeared and pled not guilty to the DUI charge in Missoula Municipal Court.²² Tye subsequently moved to suppress all evidence obtained from her contact with the officers, contending that the officers lacked particularized suspicion to initiate an investigative stop because the 911 report contained fabricated information and the tip was thus unreliable.²³ The Missoula Municipal Court denied Tye’s motion to suppress, concluding that the officers “reasonably relied” on the information provided by Haddad, even though some of that information was fabricated.²⁴ Tye appealed the lower court’s order to the district court, which affirmed the municipal court’s decision.²⁵ Tye then appealed to the Montana Supreme Court.²⁶

Tye argued on appeal that the officers lacked particularized suspicion to stop her under the *Pratt* test.²⁷ The Montana Supreme Court examined the record independently from the district court’s decision and affirmed the lower court’s decision under a clearly erroneous standard of review.²⁸ The Court held that Haddad’s report was reliable in accordance

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 1289.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* (citing *City of Missoula v. Armitage*, 335 P.3d 736, 738 (Mont. 2014)).

with *Pratt* and its progeny and that it established the requisite particularized suspicion for the officers to stop Tye.²⁹

III. LEGAL ANALYSIS

Both the Fourth Amendment to the United States Constitution and Article II, § 11 of the Montana Constitution protect individuals against unreasonable searches and seizures.³⁰ These constitutional protections also extend to investigative stops, which must be justified by “particularized suspicion.”³¹ In Montana, a peace officer is authorized to stop a vehicle when the officer has a particularized suspicion that an occupant of that vehicle has committed, is committing, or is about to commit an offense.³² Particularized suspicion includes “(1) objective data and articulable facts from which [a peace officer] can make certain reasonable inferences and (2) a resulting suspicion that the person to be stopped has committed, is committing, or is about to commit an offense.”³³ To determine whether or not particularized suspicion existed at the time of the stop, a court must consider the totality of the circumstances, “including the quantity and quality of the information available to the officer at the time of the stop.”³⁴

When an informant’s report provides the basis for an officer’s particularized suspicion, the report must contain “some indicia of reliability.”³⁵ In Montana, the standard for evaluating the reliability of an informant’s report was set forth in *Pratt*.³⁶ In *Pratt*, the defendant challenged the reliability of information provided by an informant, a gas station employee who believed the defendant was intoxicated when he observed him enter the gas station and called to report him to the police.³⁷ The employee provided specific information regarding the defendant’s vehicle and the direction in which it was travelling.³⁸ Based on the employee’s report, officers stopped and arrested the defendant.³⁹ The Court found the employee to be a reliable informant and upheld the stop of the defendant as lawful, adopting a three-factor test to assess the reliability of an informant’s report.⁴⁰ Under this test, a court must consider: (1) whether the informant exposed herself to criminal or civil liability by providing identifying information to law enforcement; (2)

²⁹ *Id.* at 1289–1292.

³⁰ *Id.* at 1289.

³¹ *Id.* at 1289–1290 (quoting MONT. CODE ANN. § 46-55-401(1) (2015)).

³² MONT. CODE ANN. § 46-5-401(1); *State v. Gopher*, 631 P.2d 293 (Mont. 1981).

³³ *State v. Marcial*, 308 P.3d 69, 74 (Mont. 2013) (quoting *State v. Wagner*, 303 P.3d 285, 288 (Mont. 2013)).

³⁴ *Tye*, 372 P.3d at 1290 (citing *City of Missoula v. Moore*, 251 P.3d 679, 684 (Mont. 2011)).

³⁵ *Moore*, 251 P.3d at 684 (quoting *Pratt*, 951 P.2d at 42).

³⁶ *Pratt*, 952 P.2d at 42.

³⁷ *Id.* at 39.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 42.

whether the informant's personal observations provide the basis for the informant's report, and; (3) whether the officer's own observations corroborated the informant's observations.⁴¹

In *Tye*, the Court held that Haddad was a reliable informant.⁴² The Court determined that the first and second *Pratt* factors were met. Haddad had provided his name and phone number to the 911 dispatcher, and the officers reasonably inferred that the informant's detailed report was based on his personal observations.⁴³ Additionally, the Court determined that the third *Pratt* factor was satisfied because officers corroborated the "innocent" details of the informant's report, such as the defendant's vehicle color, make, model, and location.⁴⁴

A. *The Pratt Factors*

Informant reports are both useful and important to law enforcement, but the Court has expressed concern about the "potential for abuse" that may arise from officers acting upon unreliable reports.⁴⁵ Unlike previous applications of *Pratt*, the Court in *Tye* was forced to wrestle with a troubling fact: Haddad, motivated by his own interests, fabricated his personal observations when reporting a possible DUI, and the officer relied on this fabricated information to conduct an investigative stop and ultimately an arrest. While the Court appropriately applied the *Pratt* factors in *Tye*, this case marks the first time the Court dealt with an informant whose fabricated personal observations led to a fruitful investigation. As a result, the *Tye* holding stretches the traditional *Pratt* analysis to allow an officer to reasonably rely on a fabricated 911 report, which seems to be the type of situation the Court cautioned against in *Pratt*.

1. *The First Pratt Factor*

In assessing an informant's reliability, a court must first consider whether or not the informant identified himself to law enforcement, "and thus expose[d] himself to criminal and civil liability if the report is false."⁴⁶ Information provided by an informant may form the basis for particularized suspicion to justify an investigative stop.⁴⁷ *Tye* argued that Haddad did not satisfy the first *Pratt* factor because he declined to provide

⁴¹ *Tye*, 372 P.3d at 1290 (citing *Pratt*, 951 P.2d at 42–43).

⁴² *Id.* at 1290.

⁴³ *Id.*

⁴⁴ *Id.* at 1291 (citing *Moore*, 251 P.3d at 685).

⁴⁵ *Pratt*, 951 P.2d at 42.

⁴⁶ *Tye*, 372 P.3d at 1290 (citing *Pratt*, 951 P.2d at 42–43).

⁴⁷ *Pratt*, 951 P.2d at 41 (citing *Boland v. State*, 792 P.2d 1 (Mont. 1990); *State v. Ellinger*, 725 P.2d 1201 (Mont. 1986)).

his residential address to the 911 dispatcher.⁴⁸ However, the Court has “consistently held that an informant exposes himself to criminal and civil liability when he identifies himself to a 911 dispatcher,” which Haddad did by providing his name and phone number.⁴⁹ While Haddad declined to provide his address and was hesitant to sign a complaint, he had sufficiently satisfied the initial *Pratt* factor by providing his name and phone number to the 911 dispatcher.

2. *The Second Pratt Factor*

An informant is considered reliable when his or her report “is based on . . . personal observations.”⁵⁰ Additionally, an informant is presumed to be telling the truth when he or she “is motivated by good citizenship and [is] willing to disclose the circumstances by which the incriminating information became known.”⁵¹ In *Tye*, the Court relied on its previous decision in *City of Missoula v. Moore*⁵² to find that the second *Pratt* factor was satisfied.⁵³ However, *Tye* is factually distinguishable from *Moore*. In *Moore*, the informant’s tip was not fabricated. The defendant drove to a friend’s home, smelling of alcohol, and the friend called 911 to report the defendant.⁵⁴ The friend reported that she observed the defendant get into her vehicle, and she provided dispatch with details such as the car’s make, model, and color, and the direction in which she was driving.⁵⁵ Additionally, the defendant’s husband, who personally observed the defendant’s driving, also called 911 to report her driving while intoxicated, and he provided his full name, phone number, and home address.⁵⁶ In *Moore*, the Court determined that “an informant’s belief that a person is DUI must be based, in part, on his or her personal observations.”⁵⁷

The Court also cited *Navarette v. California*,⁵⁸ a case in which the United States Supreme Court held that information from an anonymous 911 caller was sufficiently reliable to establish particularized suspicion for investigative stops.⁵⁹ The *Navarette* factors set forth by the Supreme Court “weighed in favor of finding the caller’s information reliable” if the caller claimed personal knowledge of the dangerous driving by providing specific information regarding the vehicle and driving behavior, the report was “substantially contemporaneous” with the caller’s personal

⁴⁸ *Tye*, 372 P.3d at 1290.

⁴⁹ *Id.*

⁵⁰ *Id.* (citing *Pratt*, 951 P.2d at 42–43).

⁵¹ *Moore*, 251 P.3d at 684 (quoting *State v. Martinez*, 67 P.3d 207 (Mont. 2003)).

⁵² 251 P.3d 679 (Mont. 2011).

⁵³ *Moore*, 251 P.3d at 684.

⁵⁴ *Id.* at 681.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 684 (citing *State v. Clawson*, 212 P.3d 1056 (Mont. 2009)).

⁵⁸ *Navarette v. California*, 134 S. Ct. 1683 (2014).

⁵⁹ *Tye*, 372 P.3d at 1290 (citing *Navarette*, 134 S. Ct. at 1687–88).

observations, and the caller used the 911 system, which has certain safeguards in place if the report is determined later to be false.⁶⁰ In *Tye*, the Court concluded that *Navarette* is consistent with *Pratt* and its progeny because its test for reliability looks to whether “the informant’s report is based on personal observations.”⁶¹

Here, Haddad benefitted from the presumption that an informant is telling the truth at the time he made his report. However, Haddad was not truthful about how he knew what he knew. Haddad’s report that Tye was DUI was in part motivated by good citizenship, but the actual information he provided the 911 dispatcher was not derived from his personal observations, and it was motivated by Haddad’s personal interests in his friendship with Tye. This is distinguishable from both *Moore* and *Navarette*, where the informants’ reports contained information regarding their actual personal observations of the defendants. Furthermore, the *Moore* informants provided their full names, addresses, and telephone numbers.⁶² Here, Haddad declined to provide his address.⁶³ While Haddad did observe Tye before calling 911, Haddad fabricated not only his location and Tye’s location but also his personal observations of Tye’s impaired driving.⁶⁴ Despite Haddad’s fabrications, the Court correctly recognized that the officers, unaware of the untruthfulness of the report, were not required to personally assess the reliability of Haddad’s report at the time of the stop.⁶⁵

In *Moore*, the Court also concluded that an officer may infer that a report is based on an informant’s personal observations “if the report contains sufficient detail that it is apparent that the informant has not been fabricating the report . . . and the report is of the sort which in common experience may be recognized as having been obtained in a reliable way.”⁶⁶ Haddad was able to report the approximate location, make, model, color, and “gold badging” of Tye’s vehicle, but he claimed he was unable to see the license plate or identify Tye’s specific physical features.⁶⁷ Nevertheless, the Court decided that the inconsistencies in Haddad’s report did not weigh against his reliability because “there was no indication that Haddad was fabricating the information in his report” at the time of the stop, and so the officers were correct to rely on his information.⁶⁸ It is certainly plausible based on the level of detail in Haddad’s report that he personally observed Tye driving while intoxicated. The Court was correct in finding that, although Haddad’s was

⁶⁰ *Navarette*, 134 S. Ct. at 1689.

⁶¹ *Tye*, 372 P.3d at 1291 (citing *Moore*, 251 P.3d at 684; *Pratt*, 951 P.2d at 42–43).

⁶² *Moore*, 360 Mont. at 23.

⁶³ *Tye*, 372 P.3d at 1288.

⁶⁴ *Id.* at 1289.

⁶⁵ *Pratt*, 951 P.2d at 44.

⁶⁶ *Moore*, 251 P.3d at 684 (quoting *Pratt*, 951 P.2d at 42).

⁶⁷ *Tye*, 372 P.3d at 1288.

⁶⁸ *Id.* at 1291.

not entirely truthful, the officers appropriately presumed that his report was truthful because it was not apparent at the time of the stop that his personal observations were fabricated.

3. *The Third Pratt Factor*

In assessing the reliability of an informant's tip, a court also considers whether an officer's own observations "corroborate the informant's information."⁶⁹ Under the third *Pratt* factor, an officer may "corroborate an informant's report by observing illegal activity or by finding 'the person, the vehicle, and the vehicle's location substantially as described by the informant.'"⁷⁰ If the first two *Pratt* factors are satisfied, an officer may corroborate an informant's personal observations by "observing wholly innocent behavior."⁷¹

In *Tye*, the officers were only able to rely upon the innocent details of Haddad's report.⁷² Haddad provided the vehicle's description, its approximate location, and its direction of travel.⁷³ Because the first two *Pratt* factors were satisfied, the Court correctly found that this innocent information was sufficient for the officers to corroborate the entirety of Haddad's report.⁷⁴

B. *Expanding the Scope of the Pratt Analysis*

Informant reliability has regularly been challenged in Montana, but the Court has consistently found that an informant is reliable when her report is actually based on her personal observations.⁷⁵ *Tye* marks the first time the Court determined that an informant is reliable even though his report was based on fabricated personal observations. Because of *Tye*'s unique facts, the Court had to reconcile the requirements of particularized suspicion with a facially reliable informant whose report was later found to be fabricated. *Tye*'s holding has ultimately expanded the scope of *Pratt* and its progeny, and thus expanded the scope of particularized suspicion. *Tye* allows officers to develop particularized suspicion from a reasonable reliance on an informant's fabricated report.

⁶⁹ *Id.* at 1290 (citing *Pratt*, 951 P.2d at 42-43).

⁷⁰ *Id.* at 1291 (citing *Moore*, 251 P.3d at 685 (quoting *Pratt*, 951 P.2d at 45)).

⁷¹ *Id.* at 1291 (quoting *Moore*, 251 P.3d at 685).

⁷² *Id.* at 1288.

⁷³ *Id.* at 1291-1292.

⁷⁴ *Id.*

⁷⁵ See e.g. *Moore*, 251 P.3d 679; *Clawson*, 212 P.3d at 1059 (holding that an informant was reliable when she adequately identified herself and her location and the information she provided was based upon her actual observations of the defendant); See also *State v. Gill*, 272 P.3d 60, 64-66 (Mont. 2012) (holding that an informant's actual personal observations regarding the defendant's vehicle hitting a concrete barrier provided sufficient justification for the officer's stop); See also *State v. Rutherford*, 208 P.3d 389 (Mont. 2009) (holding that an informant was reliable because she provided a detailed and specific report of the defendant's impaired driving, which was based on her actual personal observations).

When the officers stopped Tye, they were permitted under *Moore* to reasonably infer that Haddad's report was based on his personal observations because there was "objective information available to both [them] and the 911 dispatcher," including an identified informant who had called 911 to "report that he was driving behind a drunk driver and provided a detailed description of the vehicle."⁷⁶ The Court determined that the detail in Haddad's report, "the contemporaneity of his report with the event he allegedly was observing, and his use of the 911 system all weigh[ed] in favor of finding his information reliable."⁷⁷

IV. CONCLUSION

In *Pratt*, the Court recognized the frequency with which courts and law enforcement encounter issues involving reports from citizen informants, and it sought to provide guidance on the proper use of informant reports.⁷⁸ *Tye* is certainly not the first case the Court has decided in which an informant's reliability has been challenged. However, *Tye* is unique because, unlike previous cases such as *Pratt* and *Moore*, the Court found reliable an informant whose report was based on fabricated personal observations. While Haddad may have observed Tye prior to calling 911, no part of Haddad's 911 report was based on his personal observations. However, at the time of the stop Haddad's report appeared reliable. It was only after Tye's arrest that officers found out Haddad was untruthful about his observations. While this fact may be troubling, the Court was constrained in its holding by the rules articulated by the *Pratt* line of cases.

⁷⁶ *Tye*, 372 P.3d at 1291.

⁷⁷ *Id.*

⁷⁸ *Pratt*, 951 P.2d at 42.