Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-517

JULY TERM, 2003

State of Vermont v. Dale Youngman	}	APPEALED FROM: District Court of Vermont, Unit No. 3, Caledonia Circuit DOCKET NO. 25-3-02 Cacs Trial Judge: Kathleen Manley

In the above-entitled cause, the Clerk will enter:

Defendant Dale Youngman appeals from the adverse judgment in his civil suspension proceeding and pursuant to his conditional plea of nolo contendere to driving under the influence. He argues that the trial court erred in: (1) denying his motion to suppress the evidence; and (2) admitting his breath test where the State failed to prove that it had been taken in compliance with valid health department regulations. We affirm.

In March 2002, defendant was driving on Route 2 in St. Johnsbury, Vermont, when a state trooper, driving behind him, was informed by his dispatcher that defendant' s registration had expired. The officer did not pull defendant over, but when defendant pulled into a gas station, the officer pulled in behind him. While defendant was getting gas, the officer exited his car and approached defendant' s vehicle to inquire about the status of his registration. Defendant produced a valid registration, but the officer smelled a strong odor of alcohol coming from inside defendant' s car and noticed that defendant' s eyes were watery and bloodshot. Defendant acknowledged that he had been drinking. The officer then asked defendant to park his vehicle and sit in the front seat of the police cruiser. When defendant did so, the officer smelled a strong odor of alcohol coming from defendant. At the officer' s request, defendant performed field sobriety exercises and provided a preliminary breath test. Based on the results of these tests, defendant was processed for driving under the influence of intoxicating liquor (DUI).

Before trial, defendant moved to suppress the evidence against him, arguing, among other things, that the " legitimate purpose" of the officer' s stop had been effectuated when defendant produced a valid registration certificate, and thus any continued detention constituted an unreasonable expansion of a completed investigatory stop. The trial court denied defendant' s motion, explaining that the officer had a valid reasonable suspicion that defendant was driving under the influence, which arose during the officer' s legitimate investigation of the status of defendant' s license and registration. The court found that further detention was warranted to investigate the circumstances that provoked this suspicion. At the hearing, the court also admitted the results of defendant' s breath test. The court entered judgment for the State in the civil suspension proceeding and accepted defendant' s conditional plea of nolo contendere to driving under the influence. This appeal followed.

Defendant first argues that the court improperly denied his motion to suppress the evidence against him because the officer " seized" him by demanding his license, registration, and proof of insurance. Defendant asserts that this seizure became illegitimate in scope and duration after defendant produced a valid vehicle registration. According to defendant, because the officer did not smell alcohol on him until after he exited his vehicle, the officer lacked a sufficient basis to issue an exit order and continue detaining him.

We review motions to suppress de novo. State v. Pierce, 173 Vt. 151, 152 (2001). A police officer is authorized to make

an investigatory stop based on a reasonable and articulable suspicion of criminal activity. Id. at 154 ("A brief seizure is justified if the officer has a reasonable and articulable suspicion that the defendant is engaged in criminal activity."); State v. Kindle, 170 Vt. 296, 298 (2000). The officer must have more than an unparticularized suspicion or hunch of criminal activity, but needs considerably less than proof of wrongdoing by a preponderance of the evidence. State v. Welch, 162 Vt. 635, 636 (1994) (mem.). We have held that while " the mere approaching and questioning of a person seated in a parked vehicle does not constitute a seizure, activity which inhibits a person' s freedom of movement does." State v. Burgess, 163 Vt. 259, 261 (1995) (internal quotation marks and citations omitted).

In this case, the officer did not " seize" defendant by asking for his license and registration. Courts have uniformly held that " requesting a license and registration does not constitute a seizure unless the officer does not return these documents." State v. Sutphin, 159 Vt. 9, 13 (1992) (Dooley, J., concurring) (citing 3 W. LaFave, Search and Seizure §9.2(h), at 414 n.252). As the trial court noted, the officer formed a reasonable and articulable suspicion that defendant had been driving under the influence during his initial conversation with defendant. The officer stated that when he approached defendant to inquire about the status of his registration, he smelled a strong odor of alcohol coming from defendant' s vehicle, and observed that defendant' s eyes were watery and bloodshot. Defendant indicated that he had been drinking. These facts support the court' s conclusion that the officer had a reasonable and articulable suspicion that defendant had engaged in criminal activity, warranting further detention.

We reject defendant' s argument that the officer lacked a sufficient basis to order defendant to exit his vehicle. See State v. Sprague, 2003 VT 20, __ Vt. __, 824 A.2d 539. In Sprague, we stated that " [t]he facts sufficient to justify an exit order need be no more than an objective circumstance that would cause a reasonable officer to believe it was necessary to protect the officer' s, or another' s, safety or to investigate a suspected crime." Id. at & 20. In this case, the officer reasonably suspected defendant of driving under the influence. This provided a sufficient basis to ask defendant to exit his vehicle. See id. at & 22. We therefore conclude that the trial court properly denied defendant' s motion to suppress.

Defendant next argues that the court erred in admitting the results of his breath test because the State did not show that the test was taken in compliance with valid health department regulations. We rejected this argument in State v. McQuillan, 2003 VT 25, & 12, __Vt. __, __ A.2d __. Defendant' s second claim of error is therefore without merit.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned