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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-077

JUNE TERM, 2004

State of Vermont v. Matthew Ormsbee	}	APPEALED FROM: District Court of Vermont, Unit No. 2, Chittenden Circuit DOCKET No. 17-1-03 Cncs Trial Judge: Hon. Ben W. Joseph

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

The State appeals the district court' s decision on remand granting defendant' s motion to suppress and awarding him judgment in this civil suspension proceeding. We reverse the court' s decision and remand the matter for the court to award judgment in favor of the State.

The facts of this case are set forth in State v. Ormsbee, No. 2003-161 (Dec. 4, 2003), a three-justice-panel decision in which we reversed the district court' s initial ruling that the deputy sheriff who stopped defendant did not have reasonable grounds to believe that defendant was driving while intoxicated. On remand, without taking new evidence, the district court made additional findings and determined that there was no reasonable basis for the stop because the arresting officer would not have stopped defendant but for the fact that his vehicle was registered in the Town of Highgate rather than the Town of Winooski, where the stop occurred. According to the court, while it was " certain" that the officer had two reasons for making the stop " defendant' s excessive speed and the fact that defendant' s car was registered in another town " the officer would not have stopped defendant just because he was speeding ten miles over the posted limit, except for the out-of-town registration. In the court' s view, this conclusion revealed the officer' s subjective motivation and was significant because the stop reflected a discriminatory law enforcement policy, thereby raising an equal-protection issue.

We conclude that the district court' s decision must be reversed. " In determining the legality of a stop, courts do not attempt to divine the arresting officer' s actual subjective motivation for making the stop; rather, they consider from an objective standpoint whether, given all of the circumstances, the officer had a reasonable and articulable suspicion of wrongdoing." State v. Lussier, 171 Vt. 19, 23-24 (2000); accord State v. Thompson, 175 Vt. __, __, 816 A.2d 550, 553 n.2 (Vt. 2002) (test of reasonable suspicion is not officer' s subjective motivation for making stop, but rather whether totality of circumstances, viewed from objective standpoint, demonstrate that officer had reasonable suspicion of wrongdoing). Here, the evidence was undisputed that defendant was traveling at least ten miles an hour over the speed limit on a night when heavy snow and freezing rain were falling. According to the officer, the vehicle was traveling at " an extremely high rate of speed, given the conditions." The officer further testified that he followed defendant to see if there were any circumstances that may have contributed to the speed of the vehicle, and that he eventually stopped defendant for traveling in excess of the posted speed limit and too fast for the road conditions. On cross-examination, when asked if he had stopped defendant because his car was registered in another town, the officer replied that that was one of the factors for following him.

Understandably, the trial court was concerned about the possibility that motorists were being pulled over simply because their vehicles were registered out of town, but the record demonstrates that speeding was a legitimate basis for the police officer' s stop in this case. Irrespective of the officer' s subjective motivation for the stop or how excessive defendant' s speed was, the officer certainly had a reasonable basis to stop defendant " he was speeding. See Lussier, 171 Vt. at 24 n.1 (" the underlying motivation of the officer cannot be known, and therefore is not the focus of the court' s inquiry into whether the stop was legal"). The district court raised the specter of an equal protection violation based on discriminatory enforcement practices, but, even assuming that such a defense is available in a civil suspension proceeding, defendant failed to raise, let alone prove, any such violation. Cf. State v. George, 157 Vt. 580, 585 (1991) (" In order to trigger equal protection analysis at all, . . . a defendant must show that he was treated differently as a member of one class from treatment of members of another class similarly situated."). Indeed, the record lacks any evidence to support the notion that only out-of town drivers are ticketed for speeding in the Town of Winooski.

The district court' s February 10, 2004 decision is reversed, and the case is remanded for the court to enter judgment in favor of the State.

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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Paul L. Reiber, Associate Justice