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

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2006-204 & 2006-425

OCTOBER TERM, 2006

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Washington Circuit
Scott Perreault	}	
	}	DOCKET NOS. 155-11-05-Wncs &
		1413-11-05 Wncr

Trial Judge: Walter M. Morris, Jr.

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

Defendant appeals his conviction for DUI, claiming that the trial court erroneously denied his motion to suppress. Defendant argues that there was not enough evidence to justify an investigatory stop and thus the resulting evidence should be suppressed. We affirm.

The basic facts are not in dispute. On November 4, 2005, defendant entered Barre Town Elementary School to retrieve his stepson from a school dance. At 8:50pm, principal Tim Crowley noticed that defendant

smelled of alcohol and notified Officer Jammie Parry, who was at the dance to provide security. Officer Parry also noticed the odor of alcohol when defendant walked past him. Officer Parry followed defendant and his stepson as they left the building. Outside, Officer Parry observed defendant walk to his vehicle, which defendant had left in the fire lane in front of the school with the engine on, and get in. Officer Parry approached the driver=s side of the vehicle and asked to speak with defendant, and defendant agreed. During this conversation, Officer Parry detected a strong alcohol smell and noticed that defendant=s eyes were bloodshot and watery. When asked if he had been drinking, initially defendant denied consuming alcohol and then admitted he had four or five drinks, the last one just before he left to pick up his stepson. Officer Parry did not observe defendant actually operate the vehicle, nor did he discern any irregularities in defendant=s speech or gait.

Officer Parry then asked defendant to shut off his vehicle and to provide identification. Defendant complied, and Officer Parry radioed for the patrol officer, Officer Gary Sheridan, to come and assist. When Officer Sheridan arrived, defendant informed him that he had consumed four beers between 6:00pm and 8:30pm. Defendant performed field sobriety exercises and submitted a breath sample for a field sobriety test. Based on the results, Officer Sheridan took defendant into custody for DUI processing. At 10:12pm, defendant submitted a sample of breath for an evidentiary test, and the result revealed a blood alcohol content of 0.122%.

Defendant filed a motion to suppress all evidence resulting from Officer Parry=s stop, arguing that the police did not have a sufficient articulable suspicion to warrant an investigatory stop. At the hearing, the trial court heard arguments from both sides and ruled that the credible evidence, including the strong odor of alcohol, defendant=s red and bleary eyes, and defendant=s admission that he had consumed four to five drinks, provided a reasonable basis for the detention. Defendant appealed.

Our review of a motion to suppress involves a mixed question of law and fact. State v. Freeman, 2004 VT 56, & 7, 177 Vt. 478 (mem.). We review the trial court=s factual findings under a clearly erroneous standard and the legal conclusions de novo. Id. As an initial matter, we conclude that the trial court=s factual findings are supported by the record and not clearly erroneous.[1] Thus, we must determine whether the trial

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court erred in holding that Officer Parry s order to turn off the car was reasonable under the circumstances.

The parties do not dispute that a seizure occurred when Officer Parry ordered defendant to turn off his car and produce identification. A warrantless investigatory seizure is justified if the officer had specific and articulable facts that would warrant a reasonable belief that a suspect is engaging in criminal activity, or to maintain public safety. State v. Jestice, 2004 VT 65, & 9, 177 Vt. 513 (mem.). Generally, A[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.@ State v. Sprague, 2003 VT 20, & 20, 175 Vt. 123.

Defendant argues that based on the totality of the circumstances Officer Parry lacked a reasonable and articulable suspicion that defendant was operating a motor vehicle under the influence of alcohol. Specifically, defendant submits that at the time of Officer Parry=s order, the evidence simply indicated that defendant had consumed alcohol and an officer must have more than simple knowledge of alcohol consumption to constitute reasonable suspicion. Defendant relies on State v. Sprague, where we decided that police improperly ordered defendant to leave his vehicle without any objective evidence of wrongdoing. Defendant points out that Officer Parry never observed defendant acting in an intoxicated manner or driving erratically, and that this fact distinguishes this case from others where we found a reasonable basis for an investigatory stop. See, e.g., State v. Boardman, 148 Vt. 229, 231 (1987) (concluding there was reasonable suspicion where officer observed the defendant=s vehicle cross the enter line).

We conclude that the record evidence provided an ample basis for Office Parry=s request that defendant turn off and exit his vehicle. This case is not analogous to Sprague as defendant contends. Most importantly, in that case, we underscored that Athe record evidence [was] virtually bereft of any reasonable, objective basis for the officer=s exit request.@ State v. Sprague, 2003 VT 20, & 21. In contrast, here, Officer Parry had evidence of possible criminal activity that justified defendant=s detention. Officer Parry articulated objective facts showing that defendant was in control of his operable vehicle and prepared to drive away and that supported his suspicion that defendant was driving under the influence. These facts included defendant=s admission that he

had consumed four to five drinks after denying consumption, the odor of alcohol, and defendant=s red and watery eyes. Although Officer Parry did not observe defendant driving his vehicle erratically, this is not a prerequisite for suspicion of driving under the influence. Indeed, it would be poor policy to require police officers to wait for persons to drive erratically before stopping to investigate further where the objective evidence already creates a suspicion of wrongdoing. Under these circumstances, it was reasonable for Officer Parry to order defendant to turn off his car and to investigate further. The court did not err in denying defendant=s motion to suppress.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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[1] On appeal, defendant argues that the trial court erroneously concluded that defendant had four to five drinks Ain his system@ at the time Officer Parry asked him to turn off his car. Defendant points out that the only information Officer Parry had was that defendant had consumed four to five drinks, but he had no information as to the time period. Therefore, defendant submits, it was erroneous to find that these drinks were all in defendant=s system. We conclude that the trial court=s finding that defendant had consumed four to five drinks is supported by the record; we do not rely on the inference that these drinks were all Ain his system.@