

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2006-348 & 2006-514

MAY TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Caledonia Circuit
Michael D. Wheeler	}	
	}	DOCKET NOS. 84-12-05 Cacs &
	}	860-11-05 Cacr

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

In response to appellant's April 30, 2007 motion for reargument, the April 25, 2007 three-justice panel decision is withdrawn, and a new three-justice panel decision will be issued along with this entry order. In all other respects the motion for reargument is denied.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice

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

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2006-348 & 2006-514

APRIL TERM, 2007

State of Vermont	}	APPEALED FROM:
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v.	}	District Court of Vermont,
	}	Unit No. 3, Caledonia Circuit
Michael D. Wheeler	}	
	}	DOCKET NOS. 84-12-05 Cacs
	}	860-11-05 Cacr

Trial Judge: William D. Cohen

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

Defendant appeals an order of the district court denying his motion to suppress evidence obtained when a state trooper stopped his vehicle and detained him. We affirm.

The following facts were presented through testimony at the suppression hearing. Shortly after midnight on November 17, 2005, a state trooper observed defendant stop at a three-way (or T-shaped) intersection, and then make a left turn. Defendant testified that he used his turn signal at the intersection; the trooper testified that defendant did not use his signal. The trooper activated his blue lights, stopped defendant, and approached the vehicle. According to the trooper's testimony, he detected the smell of alcohol coming from inside the vehicle. The trooper also testified that defendant had bloodshot and watery eyes. The trooper asked defendant to produce a license and registration. While waiting for defendant to locate his license and registration, the trooper asked him whether he had consumed any alcohol that evening. Defendant told the trooper that he had had three drinks. The trooper then asked defendant to exit the vehicle and perform field sobriety tests. After the trooper conducted a roadside alco-sensor test, defendant was arrested and processed for driving under the influence (DUI). His breath sample produced a blood-alcohol level that was nearly twice the legal limit.

At trial, defendant moved to suppress the evidence obtained through the stop, arguing that (1) there was no lawful basis for the stop; and (2) even if there was, the trooper's detention of defendant exceeded the valid purpose of the stop in scope and duration. The district court denied the motion. In determining that the trooper had a valid basis for the stop, the court found the

trooper's testimony that defendant failed to signal at the intersection more credible than defendant's claim to the contrary. Because defendant committed a traffic violation, the stop was valid. As to whether the detention exceeded the purpose of the stop in scope and duration, the court concluded that the trooper acted within his authority by asking defendant to produce a registration and license; that defendant's difficulty in locating his papers caused the extended detention; and that the stop lasted no longer than necessary to effectuate its purpose. On appeal, defendant argues that (1) the relevant statutes require a turn signal only when other motorists are in the vicinity; (2) even if the initial stop was valid, the expanded scope and duration of the stop was not; and (3) the district court failed to make sufficient findings and address all of his legal arguments concerning the initial stop and the alleged unlawful expansion of the stop.

We first address defendant's statutory argument. Defendant argues that, even assuming he did not use his turn signal, the relevant statute did not require him to signal under the circumstances. That statute provides, in relevant part, that, "[b]efore changing direction or materially slackening speed, a driver shall give warning of his intention with the hand signals as provided in section 1065 of this title, or with a mechanical or lighting device approved by the commissioner of motor vehicles." 23 V.S.A. § 1064(a). Defendant asserts that the plain language of this provision requires a driver to use his turn signal only when there is another vehicle present to warn. According to defendant, the purpose of the requirement is to communicate a warning to other drivers, and this purpose is not implicated when there are no other drivers with whom to communicate, as was the case here. We find no merit to this argument. Sections 1064(a) and 1065(b) plainly require motorists to signal their intention to turn for all turns, and nothing in the language of either section creates an exception for situations when other motorists are not present. This makes sense because it is quite possible, of course, for turning motorists to mistakenly believe that no other vehicles (or pedestrians) are approaching when in fact they are.¹ Because defendant committed a traffic violation, the trooper had a valid basis for the stop. State v. Theetge, 171 Vt. 167, 170 (2000) ("[W]hen an officer has a reasonable and articulable suspicion that a traffic violation has occurred, he or she may stop a vehicle to investigate.").

Given that the trooper had a valid basis for stopping defendant, the question becomes whether the trooper unlawfully extended the scope and duration of the stop. On this point, defendant argues that there was no credible observation of the commission of an offense that warranted asking him to exit the vehicle to perform dexterity tests. Again, we find no merit to this argument. In recognizing that a stop is justified only where there is articulable suspicion of wrongdoing, we have also acknowledged "the corollary requirement that the police intrusion proceed no further than necessary to effectuate the purpose of the stop." State v. Sprague, 2003 VT 20, ¶ 17, 175 Vt. 123.

¹ Defendant appears to assert as a separate basis for error the fact that the district court did not address his statutory interpretation argument. Because the argument presents a matter of law that we review de novo on appeal, State v. Eldredge, 2006 VT 80, ¶ 7, ___ Vt. ___, defendant was not prejudiced by the district court's failure to consider the issue. This is also true with respect to defendant's argument that the court failed to address his contention that the officer unlawfully extended the scope of the stop.

Once a vehicle has been stopped, a police officer is permitted to detain a driver to ensure the driver has a valid license and that the car is registered. State v. Hewey, 144 Vt. 10, 14 (1983). The trooper did so here. According to the trooper's testimony, after approaching defendant's vehicle, he smelled alcohol emanating from the vehicle and observed defendant's watery and bloodshot eyes. While waiting for defendant to produce the requested documents, the trooper asked defendant if he had been drinking, and defendant admitted having had three drinks. These circumstances—the odor of alcohol coming from the truck, defendant's bloodshot and watery eyes, the inordinate amount of time defendant took to locate his papers along with defendant's admission that he had consumed three drinks—were more than sufficient for the trooper to have a reasonable and articulable suspicion that defendant was driving while intoxicated. See State v. Freeman, 2004 VT 56, ¶ 9, 177 Vt. 478 (mem.) (where the trooper adduced objective facts justifying his suspicion that the defendant was driving while intoxicated, it was reasonable for the trooper to ask the defendant to exit her vehicle so that he could further investigate the matter).

Defendant argues, however, that in this case we should not defer to the district court's crediting the testimony of the trooper because the court did not make findings (1) on the credibility of the officer's testimony concerning observations of indicia of intoxication, or (2) on defendant's contention that cigar smoke in his truck cab would have made it impossible for the trooper to detect an odor of alcohol. We find this argument unavailing for several reasons. The court explicitly stated in its decision that, "[i]n this case, the Court concludes that the Trooper's testimony is more credible than the Defendant's" because of defendant's self-preserving motive to testify in his favor and because he was intoxicated and thus might not remember events as they actually occurred. While the court made this statement in the context of its resolution of the failure-to-signal issue, the statement suggests that the court generally credited the trooper's testimony. The court was not required to make specific findings on credibility of the witnesses with respect to each issue presented. See State v. Hagen, 151 Vt. 64, 65 (1989) (noting that issues surrounding the credibility of witnesses are left to the "sole determination" of the trial court, and stating that the trial court is not required to make findings explaining its reasons for rejecting certain testimony as incredible); see also Freeman, 2004 VT 56, ¶ 8 ("Given the inherent difficulty in evaluating demeanor, mannerisms, and tone of voice, in addition to the quality of testimony itself, we defer to the factfinder's determination of the credibility of the witness, and the persuasive effect of his testimony.").

In any event, we fail to see how defendant's testimony concerning the presence of cigar smoke in his truck raised doubts about the credibility of the trooper. Defendant's attack on the credibility of the trooper's testimony was based on his claim that the trooper could not have detected indicia of intoxication because of the cigar smoke present in the truck. According to defendant, the testimony was inherently incredible, given that the trooper did not mention the cigar smoke in his affidavit and could not have detected the odor of alcohol due to the aroma of the smoke. We see no reason for the officer to mention the cigar smoke in his affidavit, assuming that he noticed it; the presence of the smoke was simply not relevant to the stop and arrest, at least not until defendant raised the issue. As for the presence of the smoke, defendant offered no basis to support the notion that the odor of alcohol cannot be detected in the presence of cigar smoke.

More importantly, even assuming the truth of that doubtful proposition, there was undisputed evidence regarding other indicia of intoxication. Apart from the odor of alcohol, the trooper testified that the defendant had watery and bloodshot eyes. Moreover, the tape of the stop confirmed that defendant had difficulty locating his papers and admitted to the trooper that he had consumed three alcoholic drinks. Defendant does not argue on appeal (and did not argue at trial) that the trooper acted unlawfully in asking him questions about his drinking that evening. Nor does he contend that defendant's answers to those questions were insufficient to trigger a reasonable and articulable suspicion that defendant was intoxicated. In short, even putting aside the evidence of the odor of alcohol coming from the cab of defendant's truck, the remaining undisputed circumstances created, as a matter of law, a reasonable and articulable suspicion that defendant was intoxicated, thereby justifying the trooper's exit order for defendant to perform dexterity tests. Therefore, the trial court's failure to make findings on the scope and extent of the detention does not require a remand for further factfinding.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice