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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2007-138

FEBRUARY TERM, 2008

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| State of Vermont | } | APPEALED FROM: |
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| v. | } | District Court of Vermont, |
| | } | Unit No. 2, Rutland Circuit |
| | } | |
| Jonathan Raser | } | DOCKET NO. 200-12-05 RdCs |
| | | Trial Judge: M. Patricia Zimmerman |

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

Defendant appeals from the civil suspension of his driver's license.[*] He argues that the trial court's decision was incorrect as a matter of law. We affirm.

The trial court made the following findings of fact. At approximately 12:40 a.m. on December 19, 2006, a state trooper observed defendant exiting the parking lot of a restaurant in Killington, Vermont. Defendant made a right-hand turn onto North Killington Road, but he did not use a turn signal. The officer stopped him for violating 23 V.S.A. § 1064, which requires drivers to signal their intention before changing direction. After stopping defendant, the officer smelled alcohol emanating from defendant, and when defendant exited his vehicle, the officer observed that defendant's eyes were bloodshot and watery. Defendant failed field sobriety exercises, and his preliminary breath test indicated that he was impaired. Defendant was later given an evidentiary breath test at the police barracks after more than a fifteen-minute observation period during which defendant did not burp, belch, or vomit. The test result was .163%. When the trooper administered the test, the DataMaster machine was functioning properly. The evidence ticket showed no error messages or any other indication that the machine was not operating properly.

At the time he was stopped, defendant stated that he had consumed three beers at 7:00 p.m. and had had his last drink at midnight. The state chemist indicated that based on these facts, she related the test result back to the time of operation at .182%. Based on another set of assumed facts with the last beer being consumed just prior to operation, the chemist related the test result back to the time of operation at .154%. The court found that the testing methods were

[*] Defendant filed a notice of appeal in the criminal case as well, but the appeal was dismissed for failure to appeal from a final judgment order.

valid and reliable, the test results were accurate and accurately evaluated, and the test had been taken and evaluated in compliance with the rules adopted by the Department of Health. Defendant declined to take a second DataMaster test or an independent test.

Based on these facts, the court turned to the legal arguments raised by defendant. As relevant to this appeal, defendant argued that: (1) there was no legal basis for the stop because there was a legislative difference between the definition of "highway" for purposes of the DUI statute, and "public highway" as used for motor vehicle violations in Chapter 13 of Title 23; and (2) if the two definitions are ambiguous, they cannot be enforced. Defendant also raised arguments as to the operability of the DataMaster and the validity of his test result.

The court rejected all of defendant's arguments. As to the statutory argument, the court explained that the motor vehicle operation laws, including the turn-signal statute, applied to operation "upon public highways only." 23 V.S.A. § 1011(a). The general definition of "public highway" in Title 23 extended to places open to general circulation of vehicles, including public parking lots. Id. § 4(13). Defendant did not dispute, and the evidence showed, that the parking lot at issue fell within this definition. Accordingly, the court concluded the turn-signal statute applied in the parking lot, and the officer acted properly in stopping defendant for failing to signal. The court found defendant's remaining arguments equally without merit. It concluded that the trooper had reasonable grounds to believe that defendant was operating a motor vehicle while under the influence of intoxicating liquor, that defendant submitted to a breath test and that the test results indicated a blood alcohol content of .08% or more at the time of the operation of the motor vehicle, and that the testing methods were valid and reliable and the test results were accurate and accurately evaluated. The court indicated in a footnote that although the case came before it only on the civil suspension proceeding, it considered its resolution of the issues dispositive in the criminal prosecution. This appeal followed.

On appeal, defendant reiterates his argument that the officer lacked a reasonable basis for the stop. According to defendant, the definition of "highway" for purposes of the DUI statute is very broad, while the definition of "public highway" as applicable to traffic violations is much narrower. He appears to argue that the turn-signal requirement did not apply to him, and that the definition of "public highway" provided in 23 V.S.A. § 4(13) is inapplicable to the motor vehicle laws. Defendant also argues that the turn-signal statute should be declared void for vagueness. Finally, defendant asserts that the court erred by stating that it considered its findings in the civil case dispositive of the issues in the criminal case.

We begin with defendant's challenge to the turn-signal statute. Defendant attempts to create confusion and ambiguity where none exists. Section 1064(a) states that "[b]efore changing direction or materially slackening speed, a driver shall give warning of his intention . . . with a mechanical or lighting device approved by the commissioner of motor vehicles." This statute, like the other motor vehicle laws, applies to operation "upon public highways only." 23 V.S.A. § 1011(a). The definition of the term "public highway," like the definition of the term "highway," includes places open to public or general circulation of vehicles. Id. § 4(13). This includes public parking lots, such as the parking lot at issue here. Because the language of the relevant statutes is plain and unambiguous, the statutes must be enforced according to their terms. See State v. Stell, 2007 VT 106, ¶ 12 (in interpreting a statute, Court's goal is to implement legislative intent, and "[t]he definitive source of legislative intent is the statutory

language, by which we are bound unless it is uncertain or unclear"). Thus, defendant was obligated to use a turn signal when exiting the parking lot and turning onto the road.

None of the arguments raised by defendant undermine this conclusion. The meaning of the term "highway" for purposes of the DUI statute is not at issue in this case, and defendant's reliance on State v. Eckhardt, 165 Vt. 606 (1996) (mem.), which addressed this issue, is misplaced. We note, however, that the term "highway" as used in the DUI statute has the same meaning as the term "public highway" used for the motor vehicle statutes, with a specific exception made for residential driveways. See 23 V.S.A. § 1200(7). In any event, we are not asked to decide if defendant, or some other driver, must use a turn signal when exiting his own driveway, and defendant's arguments in this regard are unpersuasive. We wholly reject defendant's assertion that relying on the plain meaning of the motor vehicle statutes somehow leads to absurd results. Indeed, it would defy logic to conclude, as defendant suggests, that the motor vehicle laws do not apply on "public highways," as specifically required and defined by statute. We find no error in the trial court's conclusion that the officer had a reasonable basis for the stop. See State v. Lussier, 171 Vt. 19, 34 (2000) (It is "well-settled that police may stop a vehicle and briefly detain its occupants to investigate a reasonable and articulable suspicion that a motor vehicle violation is taking place.").

Defendant's remaining arguments are equally without merit. As discussed above, the turn-signal statute is not ambiguous, and thus, even assuming that it is somehow a "penal statute," as defendant suggests, there is no support for his assertion that it must be declared void for vagueness. The statute plainly provides that turn signals must be used on "public highways," and "public highways" are defined by statute to include the parking lot at issue here.

Finally, defendant challenges the trial court's statement in a footnote that "[a]lthough this matter came before the court only on the civil suspension proceedings the court considers the issues dispositive in the criminal proceeding." He asserts that even if the court could treat his motion to suppress and dismiss as filed in both the criminal and civil cases, it incorrectly found that its opinion regarding the operation of the DataMaster applied in the criminal case. According to defendant, the court's ruling will foreclose his right to raise the issue in the criminal matter and prevent him from possibly presenting expert testimony.

It does not appear that the trial court gave any indication to the parties that it would consider its findings in the civil case binding in any subsequent criminal proceeding. We conclude that its statement to this effect is harmless error, however, because it is for the district court in the criminal case to decide the preclusive effect, if any, of the court's findings in the civil case, applying the factors described in Trepanier v. Getting Organized, Inc., 155 Vt. 259, 265 (1990). Defendant's criminal case is not before us. But in that proceeding, the district court must decide, for example, if defendant had a "full and fair opportunity" to litigate the issue of the accuracy and reliability of the DataMaster, mindful of the summary nature of civil suspension proceedings and the ability of the State to proceed with affidavits rather than live witnesses. It may also be relevant that defendant raised the DataMaster issue in a motion to suppress and dismiss and had an opportunity to cross-examine both the state chemist and the arresting officer at the civil suspension hearing. See generally State v. Stearns, 159 Vt. 266 (1992) (addressing doctrine of issue preclusion under similar circumstances and identifying relevant factors). In any

event, as we noted in Stearns, the question of whether issue preclusion applies is a highly fact-specific determination that must be decided on a case-by-case basis. See 159 Vt. at 272 n.3.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice