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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-173

FEBRUARY TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windham Circuit
	}	
Erika Katz	}	DOCKET NO. 26-2-07 Wmcs
		Trial Judge: Katherine A. Hayes

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

Defendant appeals from a judgment in favor of the State in a civil-suspension proceeding. She contends the evidence was insufficient to establish a reasonable basis for the motor vehicle stop. We agree, and therefore reverse.

The record discloses the following material facts. At approximately 1:00 a.m. on the morning of February 4, 2007, a police officer with the Dover Police Department was sitting in his cruiser in the parking lot of the police station waiting to turn onto Route 100 when he observed a vehicle traveling north on Route 100 pass by. The officer testified that the rear license plate of the vehicle was not illuminated. The officer turned on behind the vehicle, followed it a short distance, and then effectuated a stop based on his earlier observation that the rear plate was not visible. The officer acknowledged that the he could not confirm his initial observation while following the vehicle because the rear plate was illuminated by his cruiser's headlights. Nor did the officer check the rear plate lights after the stop to determine whether they were operating. While speaking with the driver, later identified as defendant, the officer noticed that defendant's eyes were bloodshot and watery and that a moderate odor of intoxicants was emanating from the vehicle. After administering a number of field sobriety tests and an alcosensor test, the officer arrested defendant for DUI and transported her to the station for processing. Defendant refused to submit to a blood alcohol test, and was subsequently charged with a violation of 23 V.S.A. § 1201.

Defendant testified at the suspension hearing on her own behalf. She stated that she had repeatedly asked the officer why he had stopped her and that he declined to say until they were at the station. She testified that her mechanic checked the two rear plate lights the next day and that they were both working.

At the conclusion of the suspension hearing, the trial court found that the officer had a reasonable basis to stop the vehicle based upon a violation of 23 V.S.A. § 1248(b), which provides: "Either a taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light all parts of the rear registration number plate on the vehicle so that all the numbers, letters and marks on the plate are clearly visible and legible for at least 50 feet from the

rear of the vehicle." Although the court acknowledged that the officer may have been mistaken in his initial observation, it found that the officer nevertheless had a reasonable belief at the time that the lights were not functioning, noting that there was no evidence that the stop was pretextual. Accordingly, the court entered judgment for the State. This appeal followed.

Although minimally briefed and argued, defendant's claim is that the evidence was insufficient to establish a reasonable basis for the stop for two reasons: first, that the officer lacked "objective evidence" of a motor vehicle violation, and second that the state "presented no evidence about the distance between the police cruiser and [defendant's] vehicle at the time [the officer] claimed that he noticed that the rear license plate was not illuminated to the degree required by the statute." It is well settled that the police may initiate a motor vehicle stop based upon a reasonable, articulable suspicion of wrongdoing, which may consist of a reasonable belief that a motor vehicle violation is occurring. State v. Beauregard, 2003 VT 3, ¶ 6, 175 Vt. 472 (mem.); State v. Lussier, 171 Vt. 19, 34 (2000). The police officer here stated that his sole basis for the stop was a perceived violation of 23 V.S.A. § 1248(b). Yet the officer presented no testimony, and the State adduced no other evidence, showing that he was within fifty feet from the rear of the vehicle when he allegedly observed that the rear plate was not illuminated. The officer stated only that he was getting ready to leave the lot and was "pulled right up to Route 100" when defendant's vehicle passed by. The record is silent, however, as to whether this placed him within fifty feet of defendant's vehicle, as required by the statute. Furthermore, as noted, the officer acknowledged that he could not confirm his initial observation while following the vehicle because his own headlights illuminated the rear plate, and he never checked the rear plate lights of the vehicle to determine whether they were actually operating after the stop.

Accordingly, we are compelled to conclude that the evidence here is insufficient to establish that the officer observed a violation of the statute. See State v. Nieves-Rivera, 2006 WL 2690221, at *2 (Iowa Ct. App. 2006) (holding that there was no reasonable basis for stop based on illegible rear plate where "there was no evidence [the officer] observed the license plate from fifty feet away prior to the stop-a necessity in making a reasonable determination of a statutory violation"); Dodson v. State, 646 S.W.2d 177, 182 (Tex. Crim. App. 1980), reversed on other grounds in Black v. State, 739 S.W.2d 240 (Tex. Crim. App. 1987) (holding that stop was not justified by illegible rear plate where officer "did not testify that he was as close as the required legibility distance of fifty feet"). Absent any other reasonable basis for the stop, the judgment must be reversed.

Reversed.

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