

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2009-478

JUNE TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
	}	
Rene G. Verge	}	DOCKET NO. 919-8-09 Frcr

Trial Judge: A. Gregory Rainville

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

The State appeals the district court’s determination that there was not a sufficient basis for the stop that resulted in defendant’s arrest for driving while under the influence of intoxicating liquor (DUI). We reverse and remand.

On July 23, 2009, Deputy Underwood of the Franklin County Sheriff’s Office was travelling behind defendant’s vehicle and observed defendant cross the center line three times in a two-mile stretch. The Deputy initiated an investigatory motor vehicle stop, which led to defendant’s arrest for DUI, third offense.

Defendant moved to dismiss the charge. The court indicated that it would construe defendant’s filing as a motion to suppress and held a hearing. At the hearing, defendant argued that there was insufficient evidence to demonstrate that the Deputy had a reasonable suspicion of wrongdoing. The State argued that the Deputy’s observation of defendant’s vehicle crossing the center line was sufficient because it established that defendant committed a motor vehicle violation. See 23 V.S.A. § 1031 (requiring vehicle to be operated in right half of roadway). The Deputy testified. He explained that three times on a flat stretch of road he observed defendant’s vehicle cross clearly marked center lines so that defendant’s vehicle was three or four inches into the oncoming lane of traffic.

The court found the Deputy’s testimony credible and made findings based on the observations. The court concluded, however, that there was an insufficient basis to stop defendant’s car because the Deputy did not testify that he believed defendant’s actions were a violation of the motor vehicle code. The State appeals.

In reviewing a motion to suppress, we employ a two-step analysis: “underlying findings of ‘historical’ fact are reviewed under the clearly erroneous standard, while the court’s ultimate legal conclusion is reviewed de novo.” State v. Lawrence, 2003 VT 68, ¶ 8, 175 Vt. 600 (mem.). The facts here are not contested and the sole question is whether there was a sufficient basis to conduct an investigatory stop: that is, “whether the officer had reasonable grounds to suspect that defendant was engaged in any wrongdoing.” State v. Theetge, 171 Vt. 167, 170 (2000) (quotation omitted).

On appeal, the State argues that defendant’s action of crossing the center line was a motor vehicle violation and supported the Deputy’s action of conducting an investigatory motor vehicle stop. We agree. “[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.” *Id.* The trial court found that defendant’s vehicle crossed the center line three times. This was sufficient to establish a violation of § 1031, which is proven by demonstrating “that defendant operated his vehicle on the left side of the road.” *State v. Kirby*, 143 Vt. 369, 371 (1983). Because the undisputed facts show that defendant crossed the center line, he committed a motor vehicle violation, and the stop was justified. See *State v. Doyon*, 171 Vt. 546, 546 (2000) (mem.) (holding that where defendant failed to stay to right side of road, “the officer was justified in stopping him”).

The trial court’s requirement that the State present additional testimony demonstrating that the Deputy stopped defendant because he believed defendant had violated § 1031 was not necessary. The State need not establish the Deputy’s subjective motivation for stopping defendant’s vehicle. “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). The objective, unchallenged facts establish that defendant committed a motor vehicle violation. This case is different from those in which the stop is based solely on the arresting officer’s suspicion of DUI; there the State is required to demonstrate that under the totality of the circumstances the officer’s suspicion of DUI is reasonable. See *State v. Pratt*, 2007 VT 68, ¶ 6, 182 Vt. 165. Here, the State was not required to support the reasonableness of the Deputy’s suspicion of wrongdoing with factors such as the Deputy’s specialized training or experience because the basis for the stop was not established through inferences but based on undisputed evidence of a traffic violation. See *State v. Davis*, 2007 VT 71, ¶ 7, 182 Vt. 573 (mem.) (requiring that State demonstrate reasonableness of stop where it was based on suspicion of wrongdoing).

Reversed and remanded.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice