

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-064

JUNE TERM, 2002

	}	APPEALED FROM:
	}	
State of Vermont	}	District Court of Vermont, Unit No. 1,
	}	Windham Circuit
v.	}	
	}	
John A. Richardson	}	DOCKET NO. 59-3-00 Wmcs
	}	
	}	Trial Judge: David Suntag
	}	

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

The State of Vermont appeals from a district court order dismissing a civil suspension proceeding for DUI on the ground that the arresting officer lacked a reasonable basis for the investigative detention. The State contends the court erred in concluding that: (1) the officer's actions constituted an investigatory stop; and (2) the officer lacked a reasonable basis for the stop. We agree with the State's second contention, and therefore reverse.

On March 12, 2000, at approximately 2:00 a.m., a state police officer was driving his marked cruiser north on Route 5 in the Village of Bellows Falls when he observed an individual, later identified as defendant, enter a vehicle in a parking area along the side of the road. The officer then observed the vehicle's tail lights illuminate and noted that the rear license plate was totally covered with snow. The officer pulled his cruiser alongside the vehicle, which remained parked with its engine running, and rolled down his passenger side window. Defendant rolled down his driver's side window. The officer then told defendant through the window that his license plate was covered with snow. Defendant, in response, got out of his car, walked to the rear, and started to clean off the plate. Having observed that defendant's eyes appeared to be watery and bloodshot, the officer backed up his cruiser, asked to see defendant's license and registration, and had defendant sit in the cruiser while he examined the documents. During this time, the officer noted an odor of alcohol, administered field sobriety tests, and ultimately arrested defendant for DUI.

The only witnesses to testify at the civil license suspension hearing were the officer and defendant. At the conclusion of the hearing, the trial court concluded that an investigatory detention had occurred when the officer backed up his vehicle, making it clear that defendant was not free to leave, and further concluded that at that point the officer lacked a reasonable suspicion of DUI. Accordingly, the court entered judgment for defendant. This appeal followed.

"[T]he law 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." State v. Lussier, 171 Vt. 19, 34 (2000). Not only the basis of the stop, but also the duration and scope of the stop, must be reasonable under the Fourth Amendment. Florida v. Royer, 460 U.S. 491, 500 (1983). The validity of a stop is not measured by the officer's subjective motivations, but rather by whether there was reasonable suspicion for the stop from the view of an objectively reasonable officer. Whren v. United States, 517 U.S. 806, 813 (1996) (Supreme Court decisions "foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved."). Similarly, the question of whether a stop has occurred in the first instance does not turn on the officer's subjective intentions or the suspect's subjective beliefs, but rather whether a reasonable person in the circumstances would have felt free to leave. See State v. Burgess, 163 Vt. 259, 261 (1995); see also State v. Sutphin, 159 Vt. 9, 14-15 (1992) (Dooley, J.,

concurring) (in addition to concluding that reasonable person was not free to leave, court must also find that there was submission to assertion of authority).

The trial court here concluded that a stop did not occur when the officer pulled alongside defendant's vehicle to inform him that his rear license was totally obscured, but only afterwards, when the officer backed up his cruiser. Based on the officer's testimony that he backed up to investigate further his observation that defendant's eyes were bloodshot and glossy, and to prevent defendant from leaving, the court found that moving the cruiser back "indicate[d] to the defendant by a show of authority that his ability to simply depart was now somewhat inhibited. . . . That's a stop." Furthermore, based on the officer's testimony that, at that point, his only basis for suspecting DUI was defendant's bloodshot and glossy eyes (the court found that the officer smelled alcohol only after questioning defendant), the court concluded that the officer lacked a reasonable basis to effectuate the stop.

Although the State takes issue with the court's analysis of when - or even whether - a stop occurred, we need not address that issue. For even accepting the court's analysis of that point, we disagree with its subsequent conclusion that the stop lacked a reasonable justification. It is undisputed that the officer in this case observed a motor vehicle violation; defendant's rear license plate was totally obscured by snow, in violation of 23 V.S.A. 511 (license plates "shall be kept entirely unobscured"). Therefore, the officer had a reasonable basis to effectuate a stop, not only when he parked alongside defendant's vehicle to inform him of the violation, but also when he backed up moments later to observe defendant attempting to expose the plate. See Whren, 517 U.S. at 810 ("the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred"). Although the court based its decision, in part, on the officer's testimony that his purpose in backing up was to investigate defendant for DUI, not to make sure that the motor vehicle violation was being addressed, the officer's subjective motivations are not the test of reasonableness. Id. at 813 ("[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis"). A reasonable officer, acting under the objective circumstances presented, would have been amply justified in briefly detaining defendant based on his observation of the obscured plate, and to ensure that the violation was corrected. Therefore, even if the stop occurred when the officer backed up the vehicle, the stop was reasonably justified by the officer's objective observations of the violation. Absent any claim that the investigation and detention subsequent to the stop were unduly prolonged or intrusive, we must conclude that the case was improperly dismissed based on a lack of reasonable suspicion for the detention.

Reversed and remanded.

BY THE COURT:

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Marilyn S. Skoglund, Associate Justice