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

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2006-407 & 2006-536

OCTOBER TERM, 2007

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 1, Windham Circuit
	}	
Sean F. McTigue	}	DOCKET NOS. 69-4-06 Wmcs & 518-4-06 WmCr

Trial Judge: Katherine A. Hayes

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

Defendant appeals the civil suspension of his driver's license and his conviction for driving under the influence (DUI), arguing that the district court erred by denying his motion to suppress. We affirm.

Defendant was stopped shortly after midnight on March 26, 2006 after his car drifted over the fog line on Route 100 and abruptly turned back onto the road. Following the stop, the officer observed indicia of intoxication. Defendant submitted to a roadside breath test, which indicated his blood-alcohol concentration (BAC) to be .228. Later, when he was processed for DUI, he provided a breath test that revealed a BAC of .188.

Prior to trial, defendant filed a motion to suppress, in which he argued that the officer did not have a reasonable basis to stop him because he did not violate 23 V.S.A. § 1038(1) ("A vehicle shall only be driven, as nearly as practicable, entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety."). Following a hearing held on August 14, 2006, the district court denied the motion. Defendant entered a conditional plea and appealed his DUI conviction and the civil suspension of his license.

On appeal, defendant argues that (1) the plain language of § 1038(1) does not prohibit crossing the fog line, but rather excuses momentary breaches of a lane that do not jeopardize safety; and (2) the State did not establish that the officer reasonably believed that defendant violated § 1038(1). We do not agree with defendant that this case turns on whether he violated § 1038(1) or whether the officer thought that he violated § 1038(1). A motion to suppress involves a mixed question of law and fact in which we defer to the trial court's findings of fact

that are not clearly erroneous, but independently consider whether the facts meet the proper standard to justify a stop. State v. Pratt, 2007 VT 68, ¶ 4. "A legal investigatory stop is justified if a police officer has a reasonable and articulable suspicion of criminal activity." Id. ¶ 5. "The officer must have more than an unparticularized suspicion or hunch of criminal activity, but needs considerably less than proof of wrongdoing by a preponderance of the evidence." State v. Simoneau, 2003 VT 83, ¶ 14, 176 Vt. 15. "Reasonable suspicion is assessed by examining the totality of the circumstances." Pratt, ¶ 5. Rather than attempting to divine the subjective motivation of the officer, which is irrelevant, courts must " 'consider from an objective standpoint whether, given all of the circumstances, the officer had a reasonable and articulable suspicion of wrongdoing.' " State v. Davis, 2007 VT 71, ¶ 7 (mem.) (quoting State v. Lussier, 171 Vt. 19, 23-24 (2000)). An objective examination of the totality of the circumstances may take into account the reasonable inferences and deductions of officers drawn from their experiences and training. Id. Finally, "[t]he reasonableness of the stop is assessed by 'balancing the public's interest in safety against the relatively minimal intrusion posed by a brief investigative detention.' " Pratt, 2007 VT 68, ¶ 5 (quoting State v. Boyea, 171 Vt. 401, 410 (2000)).

In this case, the officer provided unchallenged testimony that, while negotiating a turn, defendant drifted over the fog line and almost left the asphalt portion of the highway before abruptly swerving back onto the traveled portion of the highway. The officer testified that defendant's return to the highway was sudden and sharp and occurred near a culvert ditch and intersection with a dirt road. The officer further testified that he observed nothing in the road that would have caused such actions on defendant's part. Finally, he testified that his training and experience had taught him that erratic driving of this type is indicative of impaired drivers. Under these circumstances, considering the standard articulated above, the officer was justified in stopping defendant's vehicle. Cf. Pratt, ¶ 9 (holding that intra-lane weaving may create a reasonable and articulable suspicion justifying a stop based on the officer's training and experience). Although it appears that the district court relied primarily on § 1038(1) in ruling on the validity of the stop, we may affirm its determination on any grounds supported by the record. See State v. Wesco, Inc., 2006 VT 93, 911 A.2d 281 ("We may of course affirm a trial court's decision on a different legal theory if the record evidence supports that theory . . . .").

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice