

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2008-010

AUGUST TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Caledonia Circuit
	}	
Adam B. Florentine	}	DOCKET NO. 203-3-07 Cacr

Trial Judge: M. Kathleen Manley

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

Defendant appeals the district court’s order denying his motion to suppress. On appeal, defendant argues that the officer did not have a reasonable suspicion of wrongdoing to stop his motor vehicle. We affirm.

The court found the following facts. Early in the morning on March 10, 2007, a Vermont State Trooper observed defendant’s truck make a right-hand turn from one street to another. During the turn, the trooper heard defendant’s vehicle rapidly accelerate and observed defendant’s wheels spinning until they caught pavement. The trooper stopped defendant’s vehicle. The officer then made observations which eventually led to processing defendant for driving under the influence of intoxicants in violation of 23 V.S.A. § 1201.

Defendant filed a motion to suppress, arguing that the trooper did not have reasonable suspicion to stop his vehicle. The trooper testified at the hearing. He explained that he stopped defendant because defendant had spun his tires during the turn. In his affidavit, the trooper further explained that the spinning tires violated 23 V.S.A. § 1063, which states: “No person shall move a vehicle which is stopped, standing or parked unless the movement can be made with reasonable safety.” Defendant argued that the section did not apply to him because his vehicle was always in motion and never stopped. The court denied defendant’s motion, concluding that the statute did not require a complete stop. Defendant entered a conditional guilty plea and now appeals the court’s decision on his motion to suppress.

In reviewing a motion to suppress, we apply a two-step analysis. We will affirm the court’s findings of fact unless clearly erroneous, but will independently consider whether these facts meet the legal standard to justify a stop. State v. Simoneau, 2003 VT 83, ¶ 14, 176 Vt. 15. In this case, the parties do not dispute the relevant facts, therefore the sole question is whether

the stop was lawful. “A police officer is authorized to make an investigatory stop based on a reasonable and articulable suspicion of criminal activity.” *Id.* “The level of suspicion required for a lawful investigatory stop is considerably less than a preponderance of the evidence, but it must be more than an inchoate and unparticularized suspicion or hunch.” *State v. Thompson*, 175 Vt. 470, 471 (2002) (mem.) (quotations omitted).

On appeal, defendant argues that there was no reasonable suspicion of wrongdoing in this case because under the plain meaning of the statute, the statute applies only to vehicles that are “stopped, standing or parked,” 23 V.S.A. § 1063, and his vehicle was always in motion. We disagree with defendant’s interpretation of the statute. Although the statute references vehicles that are not in motion, we have previously rejected the argument that § 1063 is limited to those circumstances where a vehicle is moved from a complete stop. In *State v. Thibault*, the defendant was convicted of violating § 1063 after a police officer observed the defendant’s vehicle “stop at an intersection, back up, and then go forward again, spinning its tires as it proceeded.” 152 Vt. 91, 92 (1989). The defendant appealed arguing that the statute “addresses the time when a vehicle is to be moved, not the manner in which it is moved.” *Id.* We rejected this argument, explaining that § 1063 does not “govern[] only the time when a vehicle is set into motion from a dead stop.” *Id.* We explained that spinning tires made it unsafe to proceed and therefore the defendant’s actions fell within the language of the statute. *Id.*

Similarly, we conclude that defendant’s action of accelerating while turning the corner and causing his tires to spin off the road made it unsafe to proceed. Given the trooper’s observation of defendant’s actions, we conclude that the trooper had a reasonable and articulable suspicion that a traffic offense was being committed, and therefore that the stop was justified.

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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Denise R. Johnson, Associate Justice