

FEB 25 2010

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2009-313 & 2009-392

FEBRUARY TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
	}	
Christopher Corley	}	DOCKET NOS. 247-6-09 Cncs & 2449-6-09 Cncr

Trial Judge: Linda Levitt

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

The above consolidated appeals follow the civil suspension of defendant's driver's license and his conditional plea of guilty to driving while intoxicated (DWI). Defendant argues on appeal that the district court erred by denying his motion to suppress based on its conclusion that there was a sufficient basis for the arresting officer to have him exit his vehicle and submit to a preliminary breath test. We affirm.

At approximately 10 p.m. on June 14, 2009, an individual who identified himself called police to report that a possibly intoxicated man was having difficulty at a gas pump and was swearing and staggering around. The individual provided police with a description of the man's vehicle and its license plate. Minutes later, the responding officer observed the identified vehicle run a red light. The officer pulled the vehicle over, observing defendant in the driver's seat and an obviously intoxicated passenger next to him. The officer smelled an odor of alcohol emanating from the vehicle. Defendant told the officer that he had consumed two drinks earlier. He also admitted being at the gas station from which the police had received the report of an intoxicated individual. The officer had defendant exit the vehicle to perform dexterity tests. Defendant complied, at which point the officer continued to smell a faint odor of intoxicants. Defendant's performance of the dexterity tests revealed five clues of intoxication. The officer then asked defendant to submit to a preliminary breath test, which indicated a blood-alcohol content of 0.141, which is above the legal limit. At that point, the officer arrested defendant and transported him to the police barracks, where he refused to provide a breath sample for the DataMaster Test.


Defendant entered a denial in the civil suspension matter and a not-guilty plea to the criminal DWI charge before filing a motion to suppress, in which he argued that the officer did not have a reasonable basis to stop him and order him to exit his vehicle. The court denied the motion and found in favor of the State as to the civil suspension. Defendant appealed the civil suspension and then later appealed the DWI conviction after entering a conditional guilty plea. The two appeals are consolidated here.

On appeal, defendant argues that the trial court erred by not granting his motion to suppress because there was an insufficient basis to support the exit order and preliminary breath test. We find no merit to this argument. “The facts sufficient to justify an exit order need be no more than an objective circumstance that would cause a reasonable officer to believe it was necessary to protect the officer’s, or another’s, safety or to investigate a suspected crime.” State v. Sprague, 2003 VT 20, ¶ 20, 175 Vt. 123. Here, the officer ordered defendant to exit the vehicle to perform dexterity tests after (1) receiving a report of a possibly intoxicated man having trouble using a gas pump; (2) identifying the reported vehicle and observing the driver run a red light; (3) smelling an odor of intoxicants emanating from the vehicle; and (4) obtaining defendant’s admission that he had consumed alcoholic beverages earlier. These facts were more than sufficient for the officer to have a reasonable and articulable suspicion that defendant was driving while intoxicated. Cf. State v. Santimore, 2009 VT 104, ¶ 8 (mem.) (“Indicia of intoxication, such as officer’s detection of the odor of alcohol emanating from a driver as well as observation of a driver’s watery and bloodshot eyes, are sufficient to establish reasonable suspicion of DUI.”); State v. Freeman, 2004 VT 56, ¶¶ 8-9, 177 Vt. 478 (mem.) (concluding that exit order was reasonable in light of officer’s observations of erratic driving, faint odor of alcohol emanating from car, slurred speech, and watery and bloodshot eyes).


Defendant does not appear to have preserved his companion argument that the officer did not have a sufficient basis to administer the preliminary breath test, but, in any event, this argument is also without merit. In addition to the observations that justified the officer’s exit order, the officer also observed five cues of intoxication during defendant’s performance of the dexterity tests. Again, this information, taken together, was more than enough for the officer to ask defendant to submit to a preliminary breath test. See State v. Mara, 2009 VT 96A, ¶ 12 (concluding that odor of alcohol, admission to drinking, and watery and bloodshot eyes provided sufficient basis for trooper to administer preliminary breath test); State v. McGuigan, 2008 VT 111, ¶ 14, 184 Vt. 441 (explaining that officer who can identify specific, articulable facts indicating that suspect is driving under the influence may administer preliminary breath test).

Affirmed.

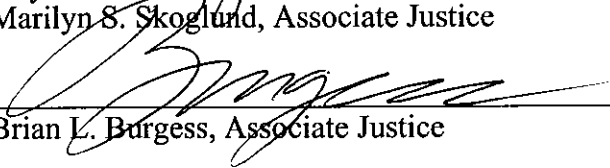
BY THE COURT:



Paul L. Reiber, Chief Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice