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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-496

APRIL TERM, 2005

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont, Unit No. 2, Chittenden Circuit
	}	
David Dubrul	}	
	}	DOCKET NO. 3576-7-04 CnCr
		Trial Judge: Linda Levitt

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

Defendant David Dubrul appeals from his conditional plea of nolo contendere to driving while intoxicated, second offense. He argues that the trial court erred by: (1) denying his motion to suppress and dismiss; and (2) denying his motion to reconsider after exculpatory evidence was discovered. We affirm.

In July 2004, defendant was charged with DWI, second offense. He filed a motion to suppress and dismiss, asserting that the officer lacked probable cause to stop him. At a hearing on defendant's motion, the arresting officer testified that he had observed defendant driving without his headlights on, and followed the vehicle. He stated that it was dark enough that the vehicle was not clearly visible before him, and he lost sight of defendant's car at one point. The officer was able to see defendant's vehicle again when defendant applied his brakes and pulled into a parking lot. The officer approached the vehicle, and ultimately processed defendant for suspicion of driving while intoxicated.

At the hearing, defendant argued that the officer lacked a reasonable suspicion to stop him because he was not required to turn on his headlights under 23 V.S.A. § 1243(b) until thirty minutes after sunset, and the stop occurred within the thirty-minute window. The court rejected this argument, explaining that 23 V.S.A. § 1243(b) was not limited to temporal conditions, but also required that headlights be illuminated whenever insufficient light or unfavorable atmospheric conditions so required. The court explained that the officer had observed defendant driving, it was dark, and he had a hard time seeing defendant's car as he drove down the road. The officer testified that he had actually lost sight of defendant's vehicle when he was about a thousand feet away, and as he followed defendant's car down the road, he was unable to regain full visual contact with the car. The officer stated that he saw shadows, and as a result proceeded cautiously. Based on these facts, the court concluded that the officer had a reasonable suspicion that defendant was violating 23 V.S.A. § 1243(b). It therefore denied defendant's motion to suppress and dismiss.

Defendant filed a motion to reconsider after discovering that a videotape of the stop existed. He asserted that the tape showed that the stop had occurred within thirty minutes of sunset, and the conditions were reasonably light; thus the officer had no reason to stop him. The court denied the motion. Defendant entered a conditional plea, and this appeal followed.

On appeal, defendant reiterates his position that the officer lacked reasonable suspicion to stop him because it was only twenty minutes after sunset, and he therefore was not obligated to have his headlights illuminated. We find this argument without merit. In addition to the thirty-minutes-after-sunset requirement, 23 V.S.A. § 1243(b) requires that headlights be illuminated when "due to insufficient light or unfavorable atmospheric conditions, persons or vehicles on the highway are not clearly discernable at a distance of five hundred feet ahead." The trial court found that the officer had difficulty seeing defendant's vehicle due to insufficient light, and this finding is supported by the evidence. See State v. Simoneau, 2003 VT 83, ¶ 14, 176 Vt. 15, 833 A.2d 1280 (when reviewing trial court's ruling on motion to suppress, Court accepts trial court's findings of fact unless clearly erroneous, and reviews de novo whether the facts as found meet proper legal standard). The court's finding supports a conclusion that the officer had a reasonable and articulable suspicion that defendant was in violation of 23 V.S.A. § 1243(b). The officer was therefore justified in making the stop. See State v. Lussier, 171 Vt. 19, 34 (2000) ("[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."). We find no error in the trial court's denial of defendant's motion to suppress and dismiss.

Defendant next argues that the court committed reversible error in denying his motion to reconsider. He asserts that the newly-discovered videotape contained both exculpatory and impeachment evidence. According to defendant,

the tape showed that the stop occurred within thirty minutes of sunset, and it showed that there was sufficient light by which to see his vehicle.

We find no error. "The trial court has broad discretion in deciding whether to reopen the evidence in connection with a criminal pretrial motion and to reconsider its pretrial order. The court is not required to reconsider its ruling whenever new facts are presented; instead, it is better practice for the court to reconsider a pretrial ruling where serious grounds arise as to the correctness of the ruling." Simoneau, 2003 VT 83, ¶ 37 (internal quotation marks, ellipses, and citations omitted). We have stated that the trial court's reconsideration of pretrial suppression rulings "should be the exception, not the rule." Id. (citations and internal quotation marks omitted). In this case, as discussed above, the court based its decision on the officer's testimony that he had difficulty seeing defendant's vehicle. Thus, defendant's assertion regarding the exact time that the stop occurred is immaterial. Additionally, although defendant asserted in his motion that the videotape showed that the conditions were "reasonably light," he did not provide sufficient information to support this assertion. He did not produce the tape, nor did he describe in detail what the tape would show. The court's earlier ruling was based on the arresting officer's sworn testimony, and defendant failed to present serious grounds for drawing that ruling into question. We therefore find no abuse of discretion in the trial court's denial of defendant's motion to reconsider.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned