

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-293

MARCH TERM, 2006

State of Vermont

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APPEALED FROM:

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v.

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District Court of Vermont,

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Unit No.1, Windham Circuit

Justin Killeen

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DOCKET NO. 505-4-04 Wmcr

Trial Judge: John P. Wesley

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

Following a conditional plea of guilty, defendant appeals his conviction for possession of marijuana, arguing that the district court erred in denying his motion to suppress based on its determination that there was a legal basis for the stop of his motor vehicle. We affirm.

On the evening that defendant=s vehicle was stopped, he was the subject of surveillance by several police officers based on suspicion of drug activity. The operational plan was to arrest defendant for any traffic

violation, if possible, before he arrived at a location where he was to meet the confidential informant. Apparently, the goal was to avoid revealing the identity of the informant. Defendant was stopped for failure to use a turn signal while exiting a rotary intersection. Following the stop, the officers discovered indicia of drug use. Defendant was taken into custody and eventually charged with possession of marijuana. He filed a motion to suppress, in which he argued that the stop was illegal. Following an evidentiary hearing, the district court denied the motion. Defendant entered a conditional plea agreement that allowed him to appeal from the denial of his motion to suppress.

On appeal, defendant argues that the stop of his vehicle was pretextual and without legal justification. We find no basis to overturn the district court's decision. A[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). Further, A[i]n determining the legality of a stop, courts do not attempt to divine the arresting officer's actual subjective motivation for making the stop; rather, they consider from an objective standpoint whether, given all of the circumstances, the officer had a reasonable and articulable suspicion of wrongdoing.@ Id. at 23-24. Here, the officer who stopped defendant's vehicle stated that he did so because defendant failed to signal a change in direction as he exited a rotary intersection. The district court acknowledged the officer's operational plan to stop defendant, but nonetheless concluded that defendant's failure to signal his exit from a rotary intersection afforded the police legal justification for the stop. Because the officer's subjective motivation is immaterial, the issue is whether there was a legal justification for the stop.

We find unavailing defendant's argument that the law does not require motorists to signal an exit from a rotary intersection. The law requires signals before Achanging direction,@ Aturn[ing],@ or Achang[ing] lanes.@ 23 V.S.A. ' 1064(a), (e); see id.' 1065(b) (no turn may be made without first signaling). Nothing in the law suggests that an exception exists for rotary intersections.

We also find unavailing defendant's argument that credible evidence does not support the claimed motor vehicle infraction. After carefully considering the circumstances of the arrest, the district court concluded that

defendant failed to signal his exit from the intersection, and an officer took that opportunity to stop his vehicle. There is evidence in the record to support the court=s findings and conclusions on this point, and we will not disturb the court=s determination regarding the weight of evidence or credibility of the witnesses. See State v. Rheume, 2005 VT 106, & 6 (Court applies deferential standard in reviewing trial court=s findings of fact; under clearly erroneous standard, trial court=s findings are upheld unless, taking evidence most favorable to prevailing party and excluding effect of modifying evidence, there is no reasonable or credible evidence to support them).

Finally, we decline to disturb the district court=s ruling based on defendant=s assertion, made for the first time here on appeal, that the officers= warrant request omitted material information and thus did not support the search of his vehicle. Defendant has failed to even claim, let alone demonstrate, plain error. See State v. Kinney, 171 Vt. 239, 253 (2000) (A plain error exists only in exceptional circumstances where the failure to recognize it would result in a miscarriage of justice or where the error is so grave and serious that it strikes at the heart of defendant=s constitutional rights.@).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice