ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-268

JANUARY TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont, Unit No. 2, Chittenden Circuit
	}	
Dorothy Szwaja	}	DOCKET NO. 233-6-09 CnCs
		Trial Judge: Matthew I. Katz

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

Defendant appeals from the civil suspension of her driver's license, arguing that the district court erred by not suppressing evidence and dismissing the case because of an unlawful exit order and preliminary breath test (PBT). We affirm.

The facts are not in dispute. During the wee hours of the morning of May 31, 2009, a South Burlington police officer observed defendant's vehicle exceeding the speed limit. Following the vehicle, the officer further observed the vehicle drift to the left over a double yellow line, stop at traffic light beyond the stop line into the crosswalk, accelerate quickly when the light turned green, and then drift back and forth within the travel lane. Upon stopping the vehicle and approaching it, the officer noticed that defendant initially avoided eye contact and that, when she did make eye contact, her eyes were bloodshot and watery. He also noticed a faint odor of intoxicants emanating from the vehicle. Upon the officer's inquiry, defendant stated that she had drunk two glasses of wine earlier in the evening. Based on his observations, the officer asked defendant to exit the vehicle and perform field dexterity exercises. The officer observed several clues of intoxication with respect to three of the exercises. The officer then asked, and defendant agreed, to submit to a PBT, which registered a blood alcohol content of 0.211. As a result of his observations and the PBT, the officer arrested defendant for DUI. During processing, defendant refused to provide a breath sample. At the civil suspension hearing, defendant argued, among other things, that the arresting officer did not have sufficient justification to order her from her vehicle and administer the PBT. The trial court disagreed, denied her motion to suppress and dismiss, and found in favor of the State on the civil suspension.

On appeal, defendant first argues that the arresting officer did not have the requisite reasonable and articulable suspicion of DUI to order her to exit her vehicle. We disagree. In State v. Sprague, 2003 VT 20, 175 Vt. 123, upon which defendant relies, we explained that "[t]he 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." Id. ¶ 20. In this case, as in other recent cases involving similar facts, there was a reasonable and articulable basis—defendant's erratic driving, her bloodshot and watery eyes, an odor of alcohol emanating from the vehicle, and her admission

to having consumed alcohol—for the officer to suspect that defendant may have been violating the law by driving while intoxicated. See State v. Santimore, 2009 VT 104, ¶ 8, ___ Vt. ___ (mem.) ("Indicia of intoxication, such as an 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, ¶¶ 2, 4, 9, 177 Vt. 478 (mem.) (concluding that exit order was reasonable in light of officer's observations of erratic driving, faint odor of alcohol, slurred speech, and acknowledgment of drinking). Defendant contends that the faint odor of alcohol and her lack of slurred speech were consistent with her admission to having had two drinks, but "a driver's mere assertion that he has not drunk to excess need not be accepted at face value by an officer who observes other indicia of impairment." State v. Mara, 2009 VT 96A, ¶ 9, ___ Vt. ___; see also State v. Orvis, 143 Vt. 388, 391 (1983) (concluding that external manifestations of drunkenness are not required for officer to have reasonable suspicion of DUI and to administer PBT).

For similar reasons, defendant fares no better with respect to her argument that the officer did not have "reason to believe" she was intoxicated, as required by 23 V.S.A. § 1203(f) for an officer to administer a PBT. See State v. McGuigan, 2008 VT 111, ¶ 14, 184 Vt. 441 (holding that officer may "administer a PBT to a suspect if she can point to specific, articulable facts indicating that an individual has been driving under the influence of alcohol"). In addition to the indicia of intoxication observed before his exit order, the officer noted several clues of intoxication during the field dexterity tests. In short, there was sufficient indication of intoxication for the officer to administer the PBT. See Mara, 2009 VT 96A, ¶¶ 10, 12 (noting that officer need not evaluate field dexterity tests in a binary fashion, and concluding that "odor of alcohol, admission to drinking, and watery and bloodshot eyes provided a sufficient basis for the trooper to proceed with the PBT").

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice