

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-406

AUGUST TERM, 2002

State of Vermont

v.

Jon Boudreau

}	APPEALED FROM:
}	
}	District Court of Vermont, Unit No. 3,
}	Washington Circuit
}	
}	
}	DOCKET NO. 157-10-00 Wncs
}	
}	Trial Judge: M. Patricia Zimmerman
}	

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

Defendant appeals his conviction of driving while intoxicated (DWI), arguing that the stop of his vehicle was unjustified, and thus the trial court erred in denying his motions to suppress and dismiss. We affirm.

During the evening of October 14, 2000, an officer operating a stationary radar unit stopped defendant and informed him that his left rear "running light" was out. During the ensuing conversation, the officer smelled alcohol on defendant's breath and asked him to perform dexterity tests. Eventually, defendant was arrested and processed for DWI.

At trial, when asked what he meant by a "running light," the officer explained that he was referring to the taillight, as opposed to the brake light. Defendant testified that only the upper bulb within the three-tier left taillight assembly of his vehicle was not functioning at the time of the stop, so that there was red light emitting from part of the taillight. On redirect, the officer unequivocally stated that there was no light emitting from the left taillight assembly when he stopped defendant's vehicle. The trial court denied defendant's motions to suppress and dismiss, finding that defendant's vehicle did not have a lighted left taillight.

On appeal, defendant argues that he had three functioning taillights - two on the right side and one on the left side of his vehicle - and thus there was no traffic violation justifying the officer's stop. The problem with this argument is that, notwithstanding defendant's testimony that his vehicle had a partially functioning left taillight, the trial court found that the left taillight was not illuminated, and the officer's testimony supported this finding. The trier of fact is free to weigh the credibility of the testimony and to disbelieve any witness. See State v. Grace, 160 Vt. 623, 624 (1993) (mem.). Thus, even assuming that an officer would not be justified in stopping a vehicle with a taillight assembly that was only partially functional - a questionable proposition - we would affirm the trial court's decision in this instance.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

James L. Morse, Associate Justice

Marilyn S. Skoglund, Associate Justice