

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

**ENTRY ORDER**

SUPREME COURT DOCKET NOS. 2007-148 & 2007-347

APRIL TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
	}	
Timmothy D. Hilliker	}	DOCKET NOS. 2-1-07 Frcs & 37-1-07 FrCr

Trial Judge: Ben W. Joseph

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

Defendant appeals from his conviction of driving under the influence (DUI), second offense, and from the civil suspension of his driver's license. He argues that his motion to suppress should have been granted because police lacked reasonable grounds for stopping him, and he was detained for an unreasonable amount of time before being processed for DUI. We affirm.

The record indicates the following. On December 27, 2006, at approximately 1:10 a.m., a United States Border Patrol agent heard a report on his police scanner regarding a burglary at a nearby construction site. The report indicated that the suspect left the scene in a pickup truck heading south. The agent testified that he proceeded on Route 78 toward the construction site, which was approximately ten miles away. When he arrived at the intersection of Route 78 and Route 105 (which led toward the construction site), he observed a pickup truck leaving southbound Route 105, and heading west on Route 78. The agent turned around to follow the truck, realizing that he had not seen any other vehicles since hearing the police report, and that the driver would have had just enough time to reach that point on Route 78 after leaving the crime scene. When the agent began following defendant, defendant sped up and then turned off Route 78 onto a long private driveway. Defendant drove halfway up the driveway and stopped. The agent thought this was odd, and so he pulled in the driveway, stopped behind defendant, and turned on his blue flashing lights. Defendant then drove up the remainder of the driveway and stopped his truck next to the house.

When the agent approached defendant's truck, he smelled a strong odor of alcohol emanating from defendant; he also observed a large number of beer cans in the cab of the truck and an orange generator lying in the truck's flatbed. Defendant gave varied responses as to where he had been, and he stated that the generator belonged to someone whose name the agent could not decipher. Defendant told the agent he did not live at the residence where he stopped,

but he had pulled off the highway because he did not like being followed. The agent called for backup, and he notified the Vermont State Police that he might have located their burglary suspect. Shortly thereafter, several border patrol agents and state police officers arrived. Vermont State Trooper Jay Riggins testified that he traveled immediately to the scene after receiving word from the border patrol. The trooper stated that he was particularly interested in defendant's vehicle because it matched a vehicle description for another burglary that had occurred several hours earlier. In speaking with defendant, the trooper observed that defendant's eyes were bloodshot and watery, his speech was extremely mumbled and slurred, and he was very unsteady on his feet. Defendant was processed for DUI, and his blood alcohol content at 3:09 a.m. was .177%.

Defendant filed a motion to suppress, arguing that the agent lacked reasonable grounds to stop him and that he was detained for too long a period before being processed for DUI. The court denied the motion, concluding that based on the totality of the circumstances, the agent had reasonable grounds for the stop. The court explained that not only was defendant coming from the direction of the crime scene, but his pickup truck fit the general description of the suspect vehicle. It was late at night, and there were no other vehicles in the area. Additionally, when defendant saw the agent's car, he sped up, turned up the highway, and drove halfway up a private driveway and stopped his truck without getting out. The court concluded that, given all of these facts, the agent's decision to stop defendant was based on more than a mere hunch. The court also found the length of the detention reasonable under the circumstances. It noted that the incident occurred late at night on rural roads near towns that did not have their own police departments. Additionally, because the police had to investigate the possibility that the generator found in defendant's truck was stolen, it was not unreasonable that the DUI processing did not begin immediately. The court thus denied defendant's motion to suppress and entered judgment for the State on the civil suspension. A jury trial was held on the criminal charge, and defendant was found guilty of DUI, second offense. These consolidated appeals followed.

Defendant argues that his motion to suppress should have been granted because the agent lacked sufficient grounds to stop him. According to defendant, the agent possessed only "unparticularized suspicion" that a crime had been committed, and he had no reasonable grounds to believe that defendant was involved in any wrongdoing.

We find no error in the court's decision. See State v. Simoneau, 2003 VT 83, ¶ 14, 176 Vt. 15 (on review of motion to suppress, Supreme Court accepts trial court's findings of fact unless clearly erroneous and reviews de novo whether the facts as found meet proper legal standard). As we have often explained, a warrantless traffic stop is justified when a police officer possesses "a reasonable and articulable suspicion that the individual to be stopped is engaged in criminal activity." State v. Warner, 172 Vt. 552, 554 (2001) (mem.). The necessary level of suspicion is "more than an inchoate and unparticularized suspicion or hunch," but "considerably less than proof of wrongdoing by a preponderance of the evidence." State v. Welch, 162 Vt. 635, 636 (1994) (mem.) (citations and quotations omitted). "In determining whether a stop is justified, the totality of the circumstances—the whole picture—must be taken into account." Warner, 172 Vt. at 554 (quotation omitted).

In this case, the trial court's unchallenged factual findings support its conclusion that the agent had reasonable grounds for the stop. As recounted above, the agent responded to a report

of a crime in progress, he observed a vehicle coming from the crime scene that matched the general description of the suspect’s vehicle, and once the agent began following defendant, defendant acted in away that further aroused the agent’s suspicions. On appeal, defendant attempts to isolate each of the factors cited by the trial court, arguing that, alone, they were insufficient to support a stop. But as the trial court concluded, and the law instructs, we must consider the totality of the circumstances in determining the legality of a stop. This case is not like Warner, where the arresting officer was “simply . . . suspicious for reasons unconnected to any suspected wrongdoing.” 172 Vt. at 555. Nor is it like Welch, where police stopped an individual based on a report that the driver was acting suspiciously by pulling in and out of driveways, and police had no indication of criminal activity to justify the stop. 162 Vt. at 636. In this case, all of the circumstances, taken together, gave rise to a reasonable, articulable suspicion that defendant was driving the pickup truck sought for leaving the scene of a burglary rorted in the area ten minutes earlier, and the agent plainly had more than an “unsupported hunch.”

Finally, we reject defendant’s assertion that he was detained for too long before being processed for DUI. See State v. Ryea, 153 Vt. 451, 455 (1990) (“An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” (quotation omitted)). As reflected above, defendant was stopped based on a suspicion that he was involved in a burglary, and therefore, it was not unreasonable for police to investigate this crime—including determining the owner of the generator in defendant’s truck—before processing defendant for DUI. Moreover, the record indicates that shortly after Trooper Riggins arrived on the scene, he spoke to defendant, observed obvious signs that defendant was intoxicated, and processed defendant for DUI. We find no error.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice