

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

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NOS. 2008-475 & 2008-476

JUL 20 2009

JULY TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Orleans Circuit
	}	
Muriel Belway	}	DOCKET NOS. 452-9-08 Oscr & 31-9-08 Oscs

Trial Judge: Walter M. Morris, Jr.

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

Defendant appeals from a civil license suspension and a judgment of conviction of driving under the influence (DUI). On appeal, defendant argues that the court erred in denying her motion to suppress because there was no reasonable suspicion of wrongdoing to justify the initial investigatory detention of defendant. We affirm.

The basic facts are not disputed. On September 3, 2008, the local police department called defendant to inform her that her dog was at the pound and she needed to pay an impoundment fee to retrieve the dog. Defendant arrived at the police department and completed the paperwork. The dispatcher detected an odor of alcohol on defendant while she was paying. After defendant left, the dispatcher told a police officer of his observation. The dispatcher obtained defendant's vehicle information for the officer and told the officer where defendant would be picking up her dog. The officer drove to the dog kennel and observed defendant's car as she was leaving. The officer then followed defendant home. During the drive to defendant's house, the officer did not observe any erratic driving. Defendant parked in her driveway. The officer parked his car across the street. He then approached defendant and engaged her in conversation. During this initial encounter, the officer observed indicia of intoxication, including bloodshot, watery eyes, and an odor of alcohol. He then performed field sobriety tests and a preliminary breath test. Based on the results, defendant was arrested for DUI.

Defendant filed a motion to suppress, arguing that when the officer approached her in her driveway, he seized her, and this seizure was not supported by a reasonable suspicion of wrongdoing.

Following a hearing, the court denied defendant's motion to suppress. The court found that there was no stop of defendant's vehicle. The court explained that defendant drove to her home and brought her vehicle to a stop "without any inducement or conduct on the part of the police." The court further held:

The initial encounter was brief, there was no physical restraint, threat thereof, or such police dominance as to convert the interactions from a brief, reasonable and permissible investigatory encounter into full-

blown arrest. The officer's lawful interactions with Defendant in her driveway provided him with reasonable grounds to believe that she had just been operating her vehicle on a public highway while under the influence of intoxicating liquor.

Defendant entered a conditional plea of guilty, reserving her right to appeal the denial of her motion to suppress. Defendant now appeals.

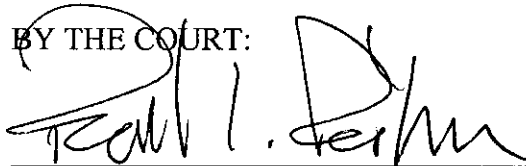
Our review of a denial of a motion to suppress involves a mixed question of fact and law. We apply a deferential standard of review to the trial court's factual findings and will affirm if supported by the evidence. State v. Lawrence, 2003 VT 68, ¶ 9, 175 Vt. 600 (mem.). If the factual findings are not clearly erroneous, we then review the court's legal conclusions de novo. Id.

We conclude that the officer's initial contact with defendant was a consensual encounter and once the officer observed indicia of intoxication, this provided reasonable suspicion to conduct an investigatory detention. First, we conclude that no seizure occurred when the police officer first approached defendant outside of her home. Mere police questioning does not amount to a seizure. State v. Hollister, 165 Vt. 553, 553 (1996) (mem.). "The question in determining whether an encounter between a citizen and police constitutes a seizure is whether, given all of the circumstances, the encounter is so intimidating that a reasonable person would not feel free to leave without responding to the officer's requests." State v. Justice, 2004 VT 65, ¶ 5, 177 Vt. 513 (mem.). The officer merely approached defendant as she got out of her car; he did not block her way or display any overt police dominance. Cf. id. ¶ 6 (concluding that there was a seizure where officer drove cruiser nose to nose with defendant's car, shone lights into defendant's car, and blocked exit). Under the circumstances, the officer's approach was not so intimidating that a reasonable person would not feel free to leave.

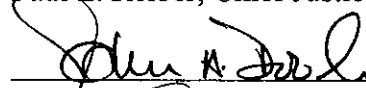
After this initial consensual encounter, the officer immediately observed defendant's bloodshot and watery eyes, and detected the odor of alcohol coming from defendant. These observations, combined with the officer's knowledge that defendant had been driving her car, were adequate to support a reasonable suspicion that defendant had committed DUI and justified the officer's actions to investigate further by performing dexterity tests and administering a preliminary breath test. See State v. Freeman, 2004 VT 56, ¶¶ 8-9, 177 Vt. 478 (mem.) (defendant's slurred speech, watery eyes, and odor of intoxicants supported reasonable suspicion of DUI); see also State v. McGuigan, 2008 VT 111, ¶ 8, ___ Vt. ___ (explaining that an investigatory detention "may begin with a consensual encounter between the police and a citizen"). Thus, the officer's actions were lawful, and there are no grounds to suppress the evidence.

Affirmed.

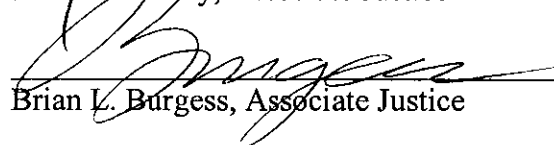
BY THE COURT:



Paul L. Reiber, Chief Justice



John A. Dooley, Associate Justice



Brian L. Burgess, Associate Justice