

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-357

NOVEMBER TERM, 2019

State of Vermont v. Joshua J. Lowe*	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 144-2-18 Frcr
		Trial Judge: Martin A. Maley

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

Defendant, who entered a conditional no-contest plea to a charge of driving under the influence of intoxicating liquor, appeals the criminal division’s denial of his motion to suppress and dismiss, arguing that there was no lawful basis for the stop of his vehicle. We affirm.

A St. Albans police officer stopped defendant at two-thirty in the morning on January 21, 2018, based on the officer’s determination that defendant had failed to engage his turn signal at an intersection and that he exceeded the posted speed limit after making the turn. Defendant moved to suppress and dismiss, arguing that he was not required to engage his turn signal at the intersection because he was in a right-hand-turn-only lane and that the police officer was not in a position to reasonably estimate the speed at which he was traveling after the turn. Following a motion hearing at which the officer and defendant testified, the criminal division denied defendant’s motion, concluding that the stop was lawful based on the officer’s objectively reasonable determination that defendant had violated the turn-signal statute by failing to signal at the intersection in question.¹

On appeal, defendant challenges as clearly erroneous the criminal division’s finding that the officer testified that defendant “did not use a turn signal before turning right.”² The officer testified that when he reached a certain intersection in St. Albans he “looked up” at the next intersection to the east “and saw a vehicle turn” right and “not have a turn signal on.” Defendant argues that the officer’s actual testimony, in contrast to the court’s challenged finding, did not

¹ The court stated that because defendant’s failure to signal provided a lawful basis for the stop, it did not need to decide whether the officer had a reasonable basis for concluding that defendant had exceeded the posted speed limit. The court noted its belief, however, that the officer’s suspicion regarding defendant’s estimated speed was not sufficiently articulable to justify the stop.

² Defendant also cites the court’s other statements in its decision that he was stopped after the officer observed him “failing to signal before a turn” and that the officer testified that defendant “failed to signal before a turn.”

indicate that he failed to signal before the turn and thus does not support the court’s conclusion that the stop was lawful based on a violation of the turn-signal statute. See 23 V.S.A. § 1064(d) (“A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.” (emphasis added)); id. § 1064(a) (providing that “[b]efore changing direction . . . a driver shall give warning of his or her intention” to do so (emphasis added)); id. § 1065(a) (“A right or left turn shall not be made without first giving a signal of intention either by hand or by signal in accordance with section 1064 of this title.” (emphasis added)).

We find this argument unavailing. Under both federal and Vermont constitutional law, a police officer “may conduct a warrantless investigatory stop when specific and articulable facts, taken together with rational inferences from those facts, warrant a reasonable belief that a suspect is engaging in criminal activity.” State v. Edmunds, 2012 VT 81, ¶ 7, 192 Vt. 400 (quotation omitted). “Certainty of wrongdoing is not required.” Id. Although reasonable suspicion may rest on an “officer’s mere hunch of criminal activity,” a lawful stop may be based on an officer’s reasonable belief of criminal activity, in light of all the circumstances. Id.

Although the officer did not explicitly testify in court that he observed defendant’s failure to use a turn signal before the turn, as the court found, the evidence as a whole supports the trial court’s conclusion that the officer made sufficient observations to conclude that the vehicle did not signal before turning. The record before the criminal division included not only the officer’s testimony but also his affidavit, in which he stated that he observed defendant’s vehicle at the intersection and “then observed the vehicle turn” right “and not use a turn signal.” This averred statement indicates that the officer first observed defendant’s vehicle and then observed it turn right without signaling. Thus, the record supports the criminal division’s conclusion that the officer stopped defendant’s vehicle based on the officer’s objectively reasonable determination that defendant had violated the turn-signal statute.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice