VERMONT SUPREME COURT
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Case No. 2021-175

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

JULY TERM, 2022

State of Vermont v. Ashley Goodrich*	}	APPEALED FROM:
	}	Superior Court, Rutland Unit,
	}	Criminal Division
	}	CASE NOS. 20-CS-00135 & 20-CR-01705
		Trial Judge: David R. Fenster

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

Defendant appeals from the civil suspension of her driver's license and her conviction, based on a conditional guilty plea, for driving under the influence (DUI). She challenges the trial court's denial of her motion to suppress evidence obtained from an exit order. We affirm.

The State charged defendant with DUI #1 and initiated a civil-suspension proceeding following a September 2020 traffic stop. She filed a motion to suppress and dismiss in both dockets, arguing that the state trooper lacked reasonable suspicion of criminal wrongdoing to order her to exit her vehicle. The court denied the motion on the record following a hearing.

The court found as follows, relying on the trooper's testimony. The trooper received a call from the Rutland City Police Department dispatch to be on the lookout for a red Subaru Impreza with temporary registration because an anonymous tipster had observed the female operator of this vehicle to be acting impaired at the Midway Smart Shop. Dispatch indicated that this vehicle would be in the area of the Dollar General on North Main Street in Rutland City. The court noted that it was not clear where the Midway was located in relation to the Dollar General. The trooper observed a matching vehicle with temporary registration exit the parking lot of this Dollar General, and he initiated a traffic stop. The trooper identified defendant as the operator of the car and the sole person in the vehicle. He observed her to have an odor of intoxicants. When the trooper asked defendant if she had consumed any alcohol that night, she admitted to having had one seltzer drink. Defendant did not have any indicators of intoxication, such as watery or bloodshot eyes or slurred speech, other than the odor of intoxicants and the admission of having consumed alcohol. The trooper ordered defendant to exit the vehicle to perform field sobriety exercises, ultimately resulting in the DUI charge now at issue.

The court concluded that these facts demonstrated reasonable suspicion supporting the exit order. It considered the totality of circumstances known to the trooper, including discovering a vehicle matching the description from an anonymous tip at the specified location, the report that the operator of this vehicle was observed to be impaired, the odor of intoxicants,

and defendant's admission to having consumed alcohol. The court reasoned that, collectively, these pieces of information created reasonable suspicion to justify ordering defendant to exit her vehicle.

Defendant subsequently entered into a conditional plea agreement allowing her to appeal from the court's ruling on the suppression motion. The court entered judgment for the State in the civil-suspension matter. This appeal followed.

Defendant concedes that the initial traffic stop was legal; she challenges only the exit order. In reviewing motions to suppress, "[w]e apply a clear-error standard to the trial court's factual findings and review the legal conclusion de novo." State v. Huston, 2020 VT 46, ¶ 9, 212 Vt. 363. "[T]he test to determine whether an exit order was justified under Article 11 is whether the objective facts and circumstances would support a reasonable suspicion that the safety of the officer, or of others, was at risk or that a crime has been committed." State v. Dubaniewicz, 2019 VT 13, ¶ 15, 209 Vt. 490 (quotation omitted). In conducting this analysis, we examine the "totality of the circumstances." Id. While any given factor could "in isolation . . . be consistent with innocent behavior, the factors taken together can form the basis for reasonable suspicion." State v. Manning, 2015 VT 124, ¶ 14, 200 Vt. 423. "In the context of DUI . . . when an officer can point to specific, articulable facts that a suspect is driving under the influence, he may order the suspect to exit his vehicle for the purpose of conducting further investigation." State v. McGuigan, 2008 VT 111, ¶ 13, 184 Vt. 441.

Defendant first argues that the anonymous tip in this case was too vague and unreliable to provide reasonable suspicion. She contends that the tip did not provide information about when the vehicle was last seen at the Dollar General, or when the operator was observed to be impaired, so it could have been stale. Defendant essentially argues that the tip only established that the vehicle may have been innocently driven by the same person twice in the same area. While such a coincidence was technically possible, it was not reasonable. Cf. State v. Derouchie, 140 Vt. 437, 441 (1981) (rejecting as unreasonable defendant's suggestion that by "incredible coincidence" he may have innocently been present both when van was stolen and two hours later when it was recovered). That the trooper received the tip from dispatch and then found a car of matching color, make, and model, having temporary registration, with an operator of matching gender, in the matching location, validated the tip's reliability. See State v. Boyea, 171 Vt. 401, 410 (2000) (affirming reasonable suspicion for traffic stop based solely on anonymous tip that "reported a vehicle operating erratically; provided a description of the make, model and color of the subject vehicle, as well as the additional specific information that it had New York plates; identified the vehicle's current location; and reported the direction in which it was traveling," which police officer verified within minutes by finding matching vehicle at matching location).

Defendant points out that, unlike Boyea, the tip here did not suggest erratic driving or any other traffic violation. She argues further that the tip did not specify that the operator of the vehicle had been driving impaired, only that she appeared impaired, so there was no indication that the operator was or was about to be engaged in criminal activity. But the fact that the tipster identified the impaired person as being the operator of a vehicle supported an inference that the caller had observed the person driving. Indeed, the trooper testified that dispatch notified him to be on the lookout for a vehicle whose "operator was potentially driving impaired." To be sure, this anonymous tip may not have been sufficient on its own to justify an exit order as in Boyea, but it was reasonable evidence for the court to consider in its totality-of-the-circumstances analysis.

Defendant next contends that defendant's admission to having had "one seltzer drink" was not necessarily an admission to having consumed alcohol because the seltzer could have been nonalcoholic. This argument ignores context. As the trooper testified, defendant admitted to having consumed a seltzer drink in direct response to the trooper asking "if she had consumed any alcohol that night." It was reasonable for the trooper and the court to infer that defendant's answer was referring to an alcoholic seltzer drink. See Dubaniewicz, 2019 VT 13, ¶ 14 ("[T]he court's finding[s] must be upheld unless there is no reasonable or credible evidence to support [them]." (quotation omitted)).

Finally, defendant argues that the trooper's description of an "odor of intoxicants" did not specify the strength or direction of the odor, and therefore was too vague to support reasonable suspicion. We disagree. Given that defendant was the only person in the vehicle, it was reasonable to give this finding more weight. Moreover, while odor alone may not have justified an exit order, this factor related to and corroborated the other evidence. See, e.g., State v. Mara, 2009 VT 96A, ¶ 12, 186 Vt. 389 (holding that "the odor of alcohol, admission to drinking, and watery and bloodshot eyes" were enough to create reasonable suspicion of DUI to allow the trooper to administer PBT).

Instead of analyzing the sufficiency of any one factor in isolation, the court here correctly examined the totality of circumstances. We see no error in its findings of fact or conclusions of law. "[L]ooking at the circumstances as a whole, particularly through the lens of the [trooper]'s experience in law enforcement," Manning, 2015 VT 124, ¶ 16, the trooper had reasonable suspicion to believe that defendant was under the influence while driving and thus the exit order was lawful.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice