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VERMONT SUPREME COURT
UNPUBLISHED ENTRY ORDER.

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

STATE of Vermont
v.
Patrick **WALSH**.

No. **2010**–046. | Oct. Term, **2010**. | Oct. 21, **2010**.

Synopsis

Background: **State** sought civil suspension of driver's license based upon refusal of reasonable request to provide an evidentiary breath test for suspicion that he was driving under the influence of intoxicating liquor (DUI). The District Court, Lamoille Circuit, Dennis R. Pearson, J., granted suspension, and driver appealed.

Holding: The Supreme Court held that arresting officer was not required to testify or specify in his affidavit that his belief of defendant's intoxication was based on his training and experience.

Affirmed.

West Headnotes (1)

[1] **Automobiles**
Administrative Procedure in General
Automobiles
Admissibility
Automobiles
Refusal of Test

Arresting officer was not required to testify or specify in his affidavit that his belief of defendant's intoxication was based on his training and experience, to support civil suspension of driver's license based upon refusal of reasonable request to provide evidentiary breath test for suspicion that driver was driving under the influence of intoxicating liquor (DUI), where facts supporting officer's reasonable belief of defendant's intoxication were evident even to lay person and did not require any special training or experience; officer watched defendant tailgating and speeding, observed defendant's bloodshot, watery eyes, smelled strong odor of intoxicants, and heard defendant's slurred speech.

Cases that cite this headnote

Appealed from District Court of Vermont, Unit No. 3, Lamoille Circuit, Docket No. 131–11–09 Lecs, ennis R. Pearson, Trial Judge.

Present: DOOLEY, JOHNSON and BURGESS, JJ.

ENTRY ORDER

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

Defendant appeals the civil suspension of his driver's license for refusing a reasonable request to provide an evidentiary breath test for suspicion that he was driving under the influence of intoxicating liquor (DUI). Defendant argues that the court erred in granting judgment to the **State** without testimony from the arresting officer that he suspected DUI based on his training and experience. We affirm.

The parties have stipulated to the facts as presented in the officer's affidavit. The officer observed defendant's vehicle tailgating the vehicle in front of him and traveling above the posted speed limit. The officer stopped defendant's car and smelled an odor of intoxicants. In addition, the officer observed that defendant had a fresh cut under his eye, had slurred and confused speech, and had bloodshot, watery eyes. Defendant admitted to having two beers at a local bar. Following field sobriety tests, the officer's DUI affidavit indicates that his opinion of defendant's impairment level was "extreme." Defendant refused to take a preliminary breath test and was charged with refusal. 23 V.S .A. § 1201(b). At the civil suspension hearing, the officer did not testify and the **State** relied on the officer's affidavit to meet its burden of

proof. Defendant did not challenge the facts in the affidavit, but argued that there was insufficient proof that the officer had a reasonable belief that defendant was intoxicated because the officer did not aver that his belief was based on his training and experience. The trial court granted judgment to the **State**, concluding that the officer's affidavit provided an ample basis for the stop and the ensuing request for an evidentiary breath test.

On appeal, defendant argues that the **State** failed to prove that the officer had a reasonable basis to request an evidentiary breath test because the officer did not testify or specify in his affidavit that his belief of defendant's intoxication was based on his training and experience. Defendant's argument relies wholly on ***State*** *v. Davis*, 182 Vt. 573, 933 A.2d 224, 2007 VT 71 (mem.). In that case, we held that the officer's testimony that the defendant had drifted within her lane of traffic was insufficient to establish a reasonable and articulable suspicion of wrongdoing to conduct a motor vehicle stop. *Id.* ¶ 9, 933 A.2d 224. We explained that in some cases intra-lane weaving may support a stop if the officer is able to testify that " 'based on [his] training and experience,' the totality of the circumstances led him to conclude that the defendant was likely driving while intoxicated." *Id.* ¶ 8, 933 A.2d 224 (quoting ***State*** *v. Pratt*, 182 Vt. 165, 932 A.2d 1039, 2007 VT 68, ¶ 3).

No such finding was required in this case, however, because the facts supporting the officer's reasonable belief of defendant's intoxication were evident even to a lay person and did not require any special training or experience. The officer watched defendant tailgating and speeding. After stopping defendant's car, the officer observed defendant's bloodshot, watery eyes, smelled a strong odor of intoxicants, and heard defendant's slurred speech. Defendant also admitted to being at a bar and consuming two beers. These facts provided an objective, reasonable basis to believe that defendant was intoxicated. See ***State*** *v. Freeman*, 177 Vt. 478, 857 A.2d 295, 2004 VT 56, ¶¶ 8–9 (mem.) (concluding that smell of intoxicants coming from defendant's car, and defendant's slurred speech and bloodshot, watery eyes were sufficient facts to provide a reasonable suspicion of DUI).

***2** *Affirmed.*

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