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## **Supreme Court: No evidence for traffic stop**

By Kathleen Phalen Tomaselli

### STAFF WRITER

A three-justice panel of the Vermont Supreme Court has ruled that all evidence from a Rutland City police officer's stop of an off-duty officer should be suppressed, upholding a Rutland trial court decision.

"We conclude the court properly granted the motion to suppress because the state failed to establish that there was a reasonable suspicion that a traffic violation had occurred," said the decision issued earlier this month.

At 1 a.m. on March 7, 2015, off-duty Probationary Officer Justin Barrell was stopped on West Street near Ripley Road when Officer Ryan Ashe said he saw him make a wide turn onto West Street, briefly crossing into the opposite lane.

"I observed a gray SUV that turned wide into the inside lane, then swerved back," Ashe testified in November at a Rutland criminal court hearing to suppress all evidence. "I followed him all the way to Ripley Road and West Street. When I approached the vehicle and spoke with the owner I recognized him as a probationary police officer in the RCPD. I spoke with him and recognized that he had glassy, bloodshot eyes, and I recognized the odor of an intoxicating beverage."

Barrell was charged with driving under the influence of alcohol and was immediately placed on administrative leave.

Then-acting Police Chief David Covell said at the time of the incident, "Based on the facts and circumstances in this instance, it was my conclusion, that termination from employment was the appropriate consequence for his actions."

In November 2015, Barrell's attorney, Bradley D. Myerson, filed the motion to suppress all evidence.

Myerson said there were no grounds for the initial stop.

Assistant Attorney General David Tartter said the state did not have to establish a violation, only that it was enough to give the officer reasonable suspicion to stop him.

But Myerson said Ashe could not identify a tight turning radius and could not give a definition of "wide."

Tartter responded.

"Common sense tells us under the conditions, you can make a turn and you don't have to go into the next lane over," Tartter said. "What he saw gave him a reasonable and articulable suspicion. Is this reasonable? I submit that it is reasonable."

In his written decision, criminal court Judge Thomas A. Zonay disagreed.

"The officer's determination that defendant made the turn too wide is a conclusion without sufficient factual support," Zonay wrote in his decision.

The judge said that the turning area is not marked or designated as part of a left turning lane and that traveling into this area is not evidence of too wide a turn and that there was no reasonable suspicion to support a stop.

In granting the motion to suppress all evidence, Zonay said that barring an appeal, the DUI charge would be dismissed.

But the state filed an appeal of Zonay's decision with the Vermont Supreme Court.

At issue for the state in its appeal is whether the facts in the case showed that a wide right turn was made, and if so, whether that turn provided reasonable suspicion that a traffic violation occurred.

"In this case, the trial court incorrectly concluded that there were no objective facts in the record to suggest a violation had occurred," Tartter wrote in the appeal brief. "Further, it incorrectly concluded that the state was first required to prove that the observed violation was somehow avoidable by the defendant before a stop could occur."

But the justices did not agree in their ruling this month.

"Reasonable suspicion depends on an assessment of the totality of the circumstances," the decision said, noting there was no evidence about the wide turn or whether any circumstances might have caused it.

When the Supreme Court upheld the trial court decision to suppress evidence, Tartter filed to reargue the case. But the high court denied the request.

Tartter declined to comment on the case.

Myerson, the defense lawyer, said he will file a motion to dismiss the charge in light of the suppression.

"It's too bad that scarce taxpayer dollars had to be wasted on pursuing this appeal," he said.

Rutland City Police Chief Brian Kilcullen said that the decision offers a training opportunity. But it does not affect the situation to fire Barrell, he said.

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