

VERMONT SUPERIOR COURT

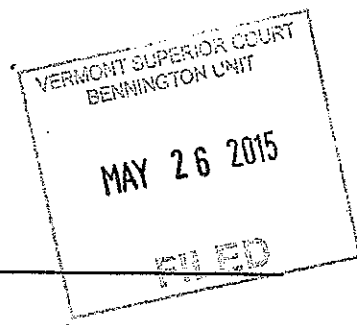
SUPERIOR COURT
Bennington Unit

CRIMINAL DIVISION
Docket No. Bncr& Bncs

State of Vermont

v.

Defendant



DECISION ON MOTION TO SUPPRESS
AND CIVIL SUSPENSION MERITS

This matter came on for hearing on April 28, 2015, on defendant's Motion to Suppress Evidence and for merits on the civil suspension case. Based on the evidence admitted, the court grants the motion suppressing the resulting evidence of the motor vehicle stop and enters judgment for the defendant in Bncs based on the resulting lack of evidence on the required elements.¹

Findings of Fact

Officer Watrous of the Winhall Police was on patrol on February 4, 2015. He was in his marked cruiser going down the Stratton Mountain Access Road. It was snowing out that evening. There was snow on the road, although they were not covered with snow. Numerous places showed blacktop. A snow plow was operating a ways ahead of him, so his lane was freshly plowed. The opposite lane was plowed, but showed tire tracks in places indicating any plowing had been some time before. The lane was not entirely snow covered, though and the amount of snow was very modest.

Watrous approached a set of vehicles driving in his direction. These consisted of a large snowplow in front and three cars or smaller vehicles following. Defendant was driving the last

¹The evidence includes the DVD of the officer's cruiser cam and the court has reviewed that in making the decision.

vehicle in the line, a Toyota truck. The officer had not actually caught up to this line, when he observed defendant's vehicle pull out and pass the other two cars and the snowplow.

Watrous immediately sped up and also passed the two cars and snowplow within seconds of defendant having done so. He put his blue lights on to stop defendant's vehicle for an unsafe pass. Defendant continued for a ways down the road and the officer eventually put on his siren and then used a spotlight on defendant's vehicle to try to get his attention. Defendant did eventually pull over. He explained to the officer that he had thought the lights behind him were the snowplow he had passed, which did have flashing lights as it operated.

Defendant agrees that after the stop observations made by the officer provided reasonable grounds to eventually process him for DUI. The court finds the processing was done correctly and defendant refused to take an evidentiary breath test.

The court factually finds defendant passed the vehicles entering a long straightaway. He had a safe view of the road ahead of him and his speed was appropriate for the conditions and maneuver. Officer Watrous' opinion that the passing was unsafe is not found to be factually correct or reasonable.

Analysis and Conclusions of Law

A law enforcement officer can make a legal motor vehicle stop for a motor vehicle violation. *State v. Lussier*, 171 Vt. 19, 34 (2000); *State v. Fletcher*, 2010 VT 27, ¶ 9 (violation of turn signal rule allows for vehicle stop); *State v. Marshall*, 2010 VT, ¶ 9, 188 Vt. 640 (driving to right of center, even briefly, provides grounds for vehicle stop).

While an unsafe pass or speed unsafe for conditions would support a stop, here the court simply finds the officer's observations and claims are not supported by the evidence. The court has found defendant was able to see the road in front of him as he entered a long straightaway. His speed was not unsafe.

Officer Watrous passed the same collection of vehicles within moments of defendant without difficulty. The video shows a road that may have had some snow on it, but was far from snow covered or under extreme conditions. Tire tracks could not even be consistently seen from the vehicles' travel, even after defendant passed the snowplow. One can see quite a ways ahead in the video. The opposite lane defendant went into to pass did not show signs of

significant snow. It had been plowed at some point, although apparently not as recent as the lane defendant and Watrous were traveling, and the one car that went by them in that opposite direction was operating at a decent rate of speed and showing no signs of difficult driving.

At best, the court can only find that defendant passed a line of vehicles. This is not illegal or a violation in and of itself. Officer Watrous may have personally felt it was not safe, but his suspicions have to be objectively reasonable and they are not found to be here. *State v. Hurley*, 2015 VT 46, ¶ 20, ___ Vt. ___ (reasonable suspicion sufficient to justify an investigatory stop may exist even when the suspicion is based on a mistake of law, but the mistake must be objectively reasonable). The pass simply was not in a corner or otherwise objectively improper or illegal.

ORDER

The Motion to Suppress is **granted**. Based on this decision, **judgment** is entered for defendant in the civil suspension matter as one element of proving a civil suspension is that the initial seizure was legal and resulting evidence from this stop is not available to the state to justify the eventual processing and test result. *State v. Webb*, 2010 VT 54, ¶ 8, 188 Vt. 137.

In *Bncr*, the court will enter dismissal of the charge based on the lack of admissible evidence as to the elements unless the state by May 29, 2015, files any reason or argument it has that the prosecution could still go forward or files a motion for an appeal.

Dated at Bennington, VT, this 21st day of May 2015.



Superior Judge David Howard