

VERMONT SUPERIOR COURT

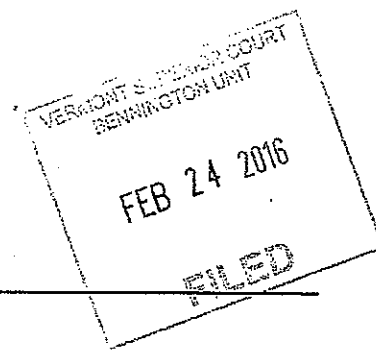
SUPERIOR COURT  
Bennington Unit

CRIMINAL DIVISION  
Docket No. 1215-12-15Bncr & 85-12-15Bncs

State of Vermont

v.

**J. M.**  
Defendant



DECISION ON MOTION TO SUPPRESS AND  
CIVIL MERITS

These matters came on for hearing on January 28, 2016, on Defendant's Motion to Suppress and for merits hearing in 85-12-15Bncs. Based on the evidence admitted, the court makes the following findings, analysis and conclusions of law and decision and grants the motion and enters judgment for Defendant in the civil merits matter.<sup>1</sup>

Findings of fact

In the very early hours of December 14, 2015, in Winhall, Officer Watrous of the Winhall police in a marked cruiser estimated the speed of an approaching vehicle on route 11/30 being in excess of the 50 mph speed limit. A radar clocking of the vehicle showed it was traveling at 68 mph. Watrous pulled out and followed the vehicle, catching up to it in an area where the road was three lanes wide. He observed it cross partially over the double yellow line. It then moved over to the "slow" lane of the incline and partially crossed the fog line.

Watrous turned on his blue lights. The vehicle did not immediately pull over. Its brake lights came on, but in that area the guard rails are close to the travel lane with a limited breakdown space. The vehicle appeared to slow as though determining a place to stop. It then actually moved towards the guardrail and a portion of the vehicle ran against the guardrail for a few seconds, sending some sparks into the air.

<sup>1</sup> The evidence includes a CD of the camera view of the pursuit and stop along with audio. The court has viewed it and relies on it in making these findings and decision. For purposes of the civil merits hearing, it also has the affidavits admitted at the hearing.

The operator then pulled over and stopped after the guardrails have run out. The operator parked fully off the travel lane. The officer parked behind the vehicle and approached on foot. He immediately asked what the operator "is doing" in a somewhat strong tone. He then almost immediately asks if the operator had a "drink or smoke" and mentions marijuana use. He tells the operator about seeing him strike the guardrail. He observed a faint odor of alcohol and believed Defendant's eyes were watery.

The operator, Defendant, admitted to using his cell phone and not having kept control of his car. Watrous asked where Defendant was going and Defendant answered he was heading to a 7/11 store, but then says he was going home when challenged about where that store would be. Watrous then questioned him about whether he was going home or to the store and why Defendant was giving apparent contradictory answers. Defendant explains he was going to the store but then on his way home. The explanation was reasonable. Watrous brought up some issues about whether Defendant's route of travel made sense with these claimed intentions and locations, but there is no actual evidence that it did not.

The officer asked for license and registration. Defendant had some difficulty finding the registration, but Watrous does get the license. Watrous asked Defendant if he had some to drink and Defendant said "Not a lot." This is about 4 minutes after the stop. Defendant's voice was appropriate and did not appear slurred or impaired.

Watrous asked about why Defendant's license is for Florida and Defendant explained he lived there recently. Watrous challenged Defendant about where is "home" if the license is for Florida and claimed Defendant is changing his story about his residence. By the 6 minute mark of the stop, Defendant has not found his registration. Watrous asked about "stuff" and "marijuana" use or possession when Defendant said he was going to get "stuff" at the 7-11. Defendant does not make any admissions to such. Watrous then asked again about just where Defendant's residence is and that he is not aware of a road Defendant gives as a location. Defendant said it is "not on the map".

At about the 7 minute mark, Defendant does find his registration. The officer asked more questions about the road Defendant had said he lived on and there was short discussion of its location and not being on a map. Watrous returns to his cruiser after about 8 minutes of

having been questioning Defendant and obtaining his paperwork. He requested the dispatcher run the license and registration. He is told the registration is expired but there is nothing else on Defendant. Watrous tells the dispatcher he will be issuing two or three tickets to Defendant. This is about 12 minutes into the stop and he returned to Defendant's car.

At the car, Watrous told Defendant he had "good news". He first tells Defendant the damage to the car by hitting the guardrails does not appear too bad. He tells Defendant that Defendant has had tickets in Vermont before, but has nothing against him now. Defendant said he did not recall any tickets and that he hadn't been in Vermont for some time. The officer then told Defendant he was issuing him three tickets, for speeding, use of the cell phone and no registration. He told Defendant that while he could have the car towed, he is not going to do that and will allow Defendant to drive straight home and he cannot go to the 7/11.

Defendant and Watrous talked about getting the vehicle registered either in Vermont or Florida, but Defendant has to get it done in one state or the other as it is not legally registered. Watrous told Defendant he cannot drive it otherwise and will not get the same break again. This discussion went on for a few minutes as Defendant had questions about how to register the car in Vermont or Florida. The officer told him he could probably do it online for Florida or could get it registered in Vermont. At about the 16 to 17 minute mark, the officer goes back to write up the tickets, which he had not done yet.

Some 20 minutes goes by with the officer apparently working on the tickets and Defendant waiting in his car. The officer eventually exits his cruiser and goes back to Defendant's car. He hands the license and registration back to Defendant. There was brief talk about the registration issue again. Watrous told Defendant the speeding ticket was reduced to a lower speed as he was giving Defendant a break on that. About a minute after Watrous had returned to Defendant's car, another cruiser goes by and apparently stops out of sight as Officer Rogers then walks up to Defendant's car a few moments later. About 37 minutes has now passed for the stop. Watrous explained the other two tickets. Rogers is on the passenger side of the vehicle closely examining the interior and shining a flashlight into the car.

After another minute plus, Watrous is again asking Defendant about his "story". His questioning and tone are forceful and he told Defendant the story "doesn't make sense".

Rogers continued his clearly aggressive examination of the interior of the vehicle from the other side.

At about the 39<sup>th</sup> minute, after a minute of the above questioning, Watrous asked if there is anything in the car. Then he asked if Defendant would mind if he searched the car. Defendant is speaking at times, but the court cannot determine all that is being said by him. Some of it appears to be directed at Rogers, who is apparently asking questions too.

Between 40 to 41 minutes into the stop, Defendant said he had “three shots” of liquor about an hour before. This was in response to a question by either Watrous or Rogers directly asking this. Rogers then repeated the comment. Both officers then go back to the cruiser after a minute or so more. Between the 41<sup>st</sup> and 42<sup>nd</sup> minute of the stop Watrous said he was going out to screen Defendant. He told Defendant to step out of the car and started a DUI process that eventually lead to Defendant’s arrest and charge.<sup>2</sup>

#### Analysis and Conclusions of Law

There is no doubt the officer had reasonable grounds for the initial stop from his observations of speeding and erratic driving. A law enforcement officer can make a legal motor vehicle stop for a motor vehicle violation. *State v. Lussier*, 171 Vt. 19, 34 (2000). The issue is whether the officer’s actions in issuing the tickets and the length of detention to do so and then the continued questioning after that had been accomplished were a violation of Defendant’s rights.

To judge whether the extension of a detention is legal, the court must look at the totality of the circumstances. *State v. Dunham*, 2013 VT 15, ¶ 8, 193 Vt. 378. But there are limits to how long a detention can be extended depending on the reason for the initial stop. *State v. Alcide*, 2016 VT 4, \_\_\_ Vt. \_\_\_ (delay after the time needed to complete a routine traffic stop to allow dog sniff search of car violated suspect’s rights); *Rodriguez v. U.S.*, \_\_\_ U.S. \_\_\_, 135 S.Ct. 1609 (2015).

An officer can proceed with an investigation of suspected DUI depending on the observation they make as they progress from initial contact. The observations justifying further action upon a state do not have to be extreme or conclusive as to alcohol use or intoxication.

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<sup>2</sup> The court did not watch the CD past this point as the issue is whether the detention was legal at that point to do more DUI processing.

*State v. Santimoro*, 2009 VT 104, ¶ 11, 186 Vt. 638 (observation of speeding, odor of alcohol and bloodshot and watery eyes sufficient for asking subject to submit to further testing); *State v. Mara*, 2009 VT 96A, ¶ 2, 186 Vt. 389 (observation of possible inspection sticker violation and odor of alcohol and bloodshot and watery eyes sufficient for further testing); *State v. Orvis*, 143 Vt. 388, 389 (1983) (administration of preliminary breath test supported where officer detected “faint” odor of alcohol and suspect admitted to consumption of six beers, even though no external signs of impairment and no dexterity tests given).

The concern here is that Officer Watrous appears not to be investigating a possible DUI during the entirety of his dealings with Defendant for some 36 or 37 minutes after a brief comment at the start about whether he had consumed anything. Then an inordinate amount of time to issue several routine traffic tickets goes by. Even accounting for getting information about an out-of-state license and registration, there is little to explain the length of this detention to the point of issuing the tickets. This is especially so for the 20 minutes or so he is in his cruiser after talking to Defendant. It is questionable whether it is mere happenstance that Officer Rogers arrives just as Watrous exits to give the tickets and takes such an aggressive approach to looking in Defendant’s car and questioning him.

Even if the court does not question such coincidence, Watrous himself tells Defendant when he re-approaches that he is going to issue 3 tickets. He tells him he is allowing Defendant to drive home even though his license is expired. How this can support that they then had the right to detain Defendant further to ask about DUI issues is not at all apparent to the court.

The tickets were issued and the reason for the initial detention was accomplished when Watrous informed Defendant of the tickets and said he could drive home. Roger’s then extension of the detention with his aggressive questions and actions from the other side of the vehicle was an unconstitutional extension of the stop. *State v. Winters*, 2015 VT 116, ¶ 11, \_\_\_ Vt. \_\_\_ (initial traffic violation investigation had concluded and further detention was illegal).

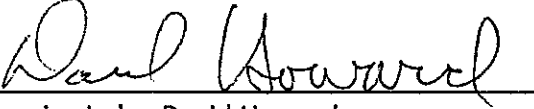
The State’s argument that the officers had sufficient grounds to pursue the additional investigation because of the initial speeding and erratic operation and observation of Defendant’s eyes and the faint odor of alcohol might have been sufficient if it were not for Officer Watrous having obviously decided he did not have grounds to do so when he informed

Defendant he was free to drive home upon issuing the tickets.<sup>3</sup> Any suspicion of operating under the influence had dissipated at that point. It was Defendant's apparent admission to consuming "three shots" obtained by Rogers after the conclusion of the initial detention that lead to further processing. That admission, though, came about only after the illegal detention had commenced.<sup>4</sup>

ORDER

The Motion to Suppress in both matters is **granted**. Based on that decision, judgment in the civil suspension case is **entered for Defendant**. Unless the State files reasons why dismissal of the criminal case would not be appropriate based on the suppression decision, or appeals such decision, the court will dismiss the criminal charge as of March 10, 2016.

Dated at Bennington, VT, this 24<sup>th</sup> day of February 2016.

  
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Superior Judge David Howard

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<sup>3</sup> The court does not agree with the officer's belief Defendant was confused. His responses were only labelled so by the officer even though they did respond to the questions asked. The court does not find it unusual a person would be going to a store on the way to also going home.

<sup>4</sup> This also applies to observations by the officer that Defendant's balance was unsteady and he swayed. These occurred after Defendant was out of the vehicle, a point after the court has found the detention became illegal. The same applies to the results of field sobriety tests.