

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

SUPREME COURT DOCKET NO. 2018-098

OCTOBER TERM, 2018

State of Vermont v. Eric McGuire*	}	APPEALED FROM:
	}	
	}	Superior Court, Bennington Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 77-10-16 Bncs
		Trial Judge: David A. Howard

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

Defendant appeals the civil suspension of his driver's license for driving under the influence (DUI), arguing that the trial court erred in denying his motion to suppress evidence that he contends was gathered as the result of an illegal traffic stop. We affirm.

The trial court found the following facts, which defendant does not dispute. In the early morning of October 21, 2016, a Bennington police officer was parked in a driveway on Morgan Street in Bennington, monitoring traffic with stationary radar. At approximately 2:40 a.m., he saw a vehicle approach in a southbound direction. The vehicle was traveling under the speed limit. It began to slow as it came nearer and then came to a stop almost in front of him. The vehicle's headlights were on, and its engine remained running. Its hazard lights were not flashing, and it did not appear to be otherwise disabled.

The vehicle stopped on the traveled portion of the pavement with its passenger-side tires touching the dirt and grass to the side of the paved area. Due to recent paving, there were no lane markings on the road. At the location where the vehicle stopped, the ground rises quickly from the edge of the pavement, preventing the vehicle from pulling farther off the road.

After waiting for a few moments, the officer moved out of the driveway and pulled up alongside the vehicle so that the driver's side of the police cruiser was aligned with the driver's side of the other vehicle. He did not activate his blue lights or other emergency lights. He exited his cruiser, approached the vehicle, and knocked on the driver's side window. The operator, eventually identified as defendant, rolled his window down.

The officer asked defendant why he was parked or if he was “okay.” Defendant said he was fine. Based on his observations after this point, the officer took defendant into custody for suspected DUI. Defendant was eventually charged with DUI, and a civil suspension proceeding was initiated against him pursuant to 23 V.S.A. § 1205. The criminal DUI proceeding has not yet concluded and is not addressed in this appeal.

Defendant moved to suppress the evidence gathered by the police officer, arguing that the officer’s actions in parking next to him and knocking on his window constituted a seizure that was not justified by reasonable suspicion of wrongdoing, in violation of the Fourth Amendment of the U.S. Constitution and Article Eleven of the Vermont Constitution. Following an evidentiary hearing, the trial court denied defendant’s motion. It concluded that no seizure had occurred because defendant’s vehicle was already stopped and the officer did not block defendant’s vehicle or activate his blue lights. It further found that even if a seizure did take place, it was justified by defendant’s violation of 23 V.S.A. § 1101, which prohibits stopping or parking upon the paved or main-traveled part of a highway. Defendant appealed.

In an appeal challenging a decision on a motion to suppress, we review the trial court’s factual findings for clear error and its legal conclusions de novo. State v. Lawrence, 2003 VT 68, ¶ 9, 175 Vt. 600 (mem.). Here, defendant only challenges the trial court’s legal conclusions.

It is well-settled under federal and Vermont constitutional law that a police officer may approach an individual and ask questions without effectuating a seizure. State v. Pitts, 2009 VT 51, ¶ 7, 186 Vt. 71. Similarly, officers may approach a person seated in a parked car and ask questions without conducting a seizure. State v. Jestice, 2004 VT 65, ¶ 5, 177 Vt. 513 (mem.). “The question in determining whether an encounter between a citizen and police constitutes a seizure is whether, given all of the circumstances, the encounter is so intimidating that a reasonable person would not feel free to leave without responding to the officer’s requests.” Id. In State v. Burgess, we held that a seizure occurred when an officer pulled up behind a parked vehicle and activated his flashing blue lights. 163 Vt. 259, 261-62 (1995). Similarly, in State v. Jestice we held that an officer seized the defendants when he completely blocked their car from leaving the area where it was parked. 2004 VT 65, ¶¶ 6-7. By contrast, in State v. Nault, we concluded that an officer did not conduct a seizure when he parked his cruiser near to a defendant’s car without blocking the defendant’s egress or activating his blue lights, approached the defendant’s vehicle, knocked on the window, and told him to open the door. 2006 VT 42, ¶ 18, 180 Vt. 567 (mem.).

This case is more like Nault than Burgess or Jestic. Here, the Bennington police officer pulled his car up next to defendant’s in the opposite direction, approached defendant’s vehicle, and knocked on his window. The officer did not activate his cruiser’s blue lights or park his cruiser in a manner that would prevent defendant’s car from exiting the area. There is no evidence that the officer was carrying a weapon or that he displayed one to defendant. There is also no evidence that he applied force to, threatened, or commanded defendant. See Nault, 2006 VT 42, ¶ 18 (listing factors relevant to whether seizure occurred). Under these circumstances, a reasonable person would not have felt

compelled to comply or to conclude he was not free to leave. See State v. Bottigilonge, 2007 VT 12, ¶ 1, 181 Vt. 577 (mem.) (holding that no seizure occurred when officer pulled his cruiser beside defendant's vehicle and tapped on her window).

For the above reasons, we agree with the trial court's conclusion that no illegal seizure occurred. We therefore need not address defendant's arguments regarding whether the alleged seizure was justified.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice