

*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. 2018-316

NOVEMBER TERM, 2019

State of Vermont v. Scott Smith*	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 1095-8-17 Frcr
		Trial Judge: Martin A. Maley

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

Having entered a conditional plea to a charge of driving under the influence of intoxicating liquor (DUI), defendant appeals from the criminal division’s decision denying his motion to suppress, in which he challenged the legality of the stop that led to the charge. We affirm.

During the evening of August 23, 2017, a Franklin County deputy sheriff stopped defendant’s vehicle after noticing that it had, as he testified, “a defective, loud exhaust.”\* The officer testified that the vehicle “particularly stood out” with a “loud, crackling, low rumbling” sound, which he knew from experience was “indicative of a defective exhaust.” The officer further testified that when he started to explain to defendant why he had stopped him, defendant stated that he had been stopped before for the same reason and that the exhaust was defective. On cross-examination, the officer testified that an exhaust like defendant’s could not pass inspection regardless of whether it was the result of defects or an aftermarket muffler.

Following the hearing, the criminal division denied defendant’s motion to suppress, in which defendant had argued that the officer’s determination to stop his vehicle based on a suspicion of defective equipment failed to “meet the standard of reasonable and articulable suspicion that there was defective equipment.” The court ruled that the officer’s observation of loud noises emanating from defendant’s vehicle was consistent with a malfunction of the vehicle’s exhaust system, thereby providing the officer with reasonable suspicion that defendant was in violation of 23 V.S.A. § 1221, which requires that motor vehicles operating on a highway “be in good mechanical condition” and “be properly equipped.”

On appeal, defendant argues that the officer did not have a reasonable basis to believe defendant had committed a traffic violation because § 1221 does not prohibit a loud or noisy exhaust system. He notes that excessive noise from a muffler is not a basis, standing alone, for rejecting a vehicle under the 2019 version of the Department of Motor Vehicles (DMV) inspection manual, thereby undercutting the court’s conclusion that the officer’s observations provided a

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\* In his affidavit in support of the DUI charge, the officer stated that he noticed defendant’s vehicle had a “loud, defective exhaust” in violation of 23 V.S.A. § 1221.

reasonable basis for the stop. He also argues for the first time on appeal that § 1221 is unconstitutionally vague. He acknowledges we rejected this argument in State v. Beaugard, 2003 VT 3, ¶ 8, 175 Vt. 472 (mem.), but he contends that in doing so we relied upon an erroneous standard of review.

“An investigatory stop is warranted when a police officer has a reasonable and articulable suspicion of illegal activity.” State v. Rutter, 2011 VT 13, ¶ 8, 189 Vt. 574 (mem.). “Reasonable and articulable suspicions of motor-vehicle violations are sufficient to justify traffic stops.” State v. Harris, 2009 VT 73, ¶ 3, 186 Vt. 225. “Our review of a denial of a motion to suppress involves a mixed question of fact and law.” Rutter, 2011 VT 13, ¶ 6. “We apply a deferential standard of review to the trial court’s factual findings and will affirm those findings if supported by the evidence.” Id. “The question of whether the facts as found met the proper standard to justify the stop is one of law.” State v. Simoneau, 2003 VT 83, ¶ 14, 176 Vt. 15.

In Beaugard, we confronted the exact same legal issue as that raised in this case: “whether a noisy exhaust system can provide a reasonable basis for a motor vehicle stop given that there is no specific statute regulating noise emissions.” 2003 VT 3, ¶ 4. Relying on § 1221 and 23 V.S.A. § 4(37), which requires “properly equipped” cars to include, among other things, a muffler, we stated that “to comply with the statute, cars driven in Vermont must have a muffler that is functioning ‘in good mechanical condition.’ ” Id. ¶ 5. While acknowledging “that the statute is silent as to the degree of noise that might establish that a muffler is not in compliance with the statute,” we noted that the state trooper stopped the defendant for “suspected defective equipment” and not a noise violation. Id. Thus, we concluded that “the only question before us [was] whether the trooper had the ability to detect a problem with the muffler on the basis of sounds he heard when the [defendant’s vehicle] passed by his patrol car.” Id. Noting the trooper’s experience with the way vehicles with defective mufflers sounded and the “loud, raspy” sound he heard coming from the defendant’s vehicle, we concluded “that the trooper’s aural observations provided a reasonable basis for believing that [the] defendant’s vehicle was not in good mechanical condition, and that this was an adequate basis for the stop.” Id. ¶ 6 (“When a sound emitted by a vehicle is entirely consistent with a prohibited defect, and a trooper has experience that enables him to make such a determination on the basis of sound, we find that a trooper has an adequate legal basis for stopping a vehicle.”).

In Beaugard, we also rejected the defendant’s argument that § 1221 is unconstitutionally vague. The defendant argued that enforcement based on noise would lead to arbitrary and discriminatory enforcement actions. We stated that § 1221 prohibits persons from driving “on a highway without a muffler that is in good mechanical condition” and that the statute neither prohibit[s] innocent conduct, nor . . . confer[s] ‘vast discretion’ on the police to determine what action constitutes a violation.” Id. ¶ 8 (quoting City of Chicago v. Morales, 527 U.S. 41, 61 (1999)).

Our decision in Beaugard controls this case. Here, as in Beaugard, the officer testified as to his aural observations and his experience in detecting defective exhaust equipment. Here, as in Beaugard, this testimony established a reasonable, articulable basis to stop defendant’s vehicle based on a suspected violation of § 1221. To the extent the most recent version of the DMV inspection manual and recent amendments to 23 V.S.A. § 1222 are relevant to this issue, defendant’s reliance on them is unavailing, given that they became effective long after the stop in this case.

As for defendant’s void-for-vagueness argument, we find no plain error, if any error at all, in the criminal division’s not declaring § 1221 unconstitutionally vague sua sponte. As noted, in

Beauregard, we explicitly rejected that argument. 2003 VT 3, ¶ 8. Defendant asserts that, in so ruling, we applied a standard later rejected by the United States Supreme Court. He states that the proper inquiry is whether ordinary people have fair notice of what the challenged statute prohibits. In Beauregard, we explained the void-for-vagueness doctrine as “establish[ing] that penal statutes must define a criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” Id. We discern no basis for reversing the criminal division’s determination that the stop in this case was lawful.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Karen R. Carroll, Associate Justice