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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-DT-2109
)	
ESTEBAN A. CAMPOS,)	Honorable
)	Liam C. Brennan,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Burke and Justice Jorgensen concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly denied defendant's motion to quash and suppress: given defendant's erratic driving (in addition to his bloodshot, glassy eyes), the officer had a reasonable suspicion to justify conducting a field sobriety test and investigating whether defendant was under the influence of drugs.
- ¶ 2 Following a stipulated bench trial in the circuit court of Du Page County, defendant, Esteban A. Campos, was found guilty of driving under the influence of drugs (625 ILCS 5/11-501(a)(6) (West 2010)). Defendant contends on appeal that the trial court erred when it denied his motion to quash his arrest and to suppress evidence. Defendant was arrested based on evidence gathered while

he was being detained for investigatory purposes. According to defendant, the police officer who detained him was able to gather the evidence because the officer prolonged the detention beyond the point when there was any reasonable suspicion that defendant had committed a crime. We affirm.

¶ 3 At the hearing on the motion, Downers Grove police officer Scott Von Almen testified that, on June 3, 2011, he received a dispatch indicating that a motorist had called 911 to report that a possibly impaired driver was operating a silver Dodge Neon on Main Street. Von Almen learned that the caller had identified himself, had conveyed the Neon's license plate number, and was following that vehicle. The caller had reported that the Dodge was "all over the road" or that it was "drifting within the lanes" and was traveling 15 miles per hour below the speed limit. The caller also provided a description of his own vehicle.

¶ 4 A few minutes after receiving the dispatch, Von Almen observed the Dodge and the caller's vehicle near the intersection of Main Street and Ogden Avenue. The Dodge pulled into a gas station. Von Almen activated his vehicle's emergency lights and pulled in behind the Dodge. Von Almen approached the Dodge. Defendant was operating the vehicle. At Von Almen's request, defendant provided his driver's license and proof of insurance. Von Almen asked defendant if he had been drinking. Defendant responded that he had not. Defendant stated that he was coming home from work. Von Almen testified that it was apparent that defendant had recently come from work. Defendant was wearing his "work shirt" and had "sales material or something from a meeting." Defendant's eyes were bloodshot and glassy, but his speech was not slurred and Von Almen did not smell the odor of any alcohol.

¶ 5 Von Almen asked defendant to step out of the vehicle so that Von Almen could conduct field sobriety tests. Von Almen administered the horizontal gaze nystagmus (HGN) test and determined

that defendant had not consumed any alcohol. Immediately after administering the HGN test, Von Almen asked defendant whether he had smoked cannabis. Defendant admitted that he had done so about an hour earlier. Defendant also admitted that there was a small amount of cannabis in his vehicle. Von Almen then placed defendant under arrest.

¶ 6 The defendant bears the burden of proof at a hearing on a motion to quash his arrest and suppress evidence. *People v. Haywood*, 407 Ill. App. 3d 540, 542 (2011). “If the defendant makes a *prima facie* case that the evidence was obtained through an illegal search, the State can counter with its own evidence.” *Id.* On appeal from a trial court’s ruling on a motion to quash and suppress, the reviewing court “will accord great deference to the trial court’s factual findings and will reverse those findings only if they are against the manifest weight of the evidence.” *People v. Close*, 238 Ill. 2d 497, 504 (2010). However, the trial court’s ultimate decision to grant or deny the motion is subject to *de novo* review. *Id.*

¶ 7 The fourth amendment to the United States Constitution (U.S. Const., amend. IV) prohibits unreasonable searches and seizures. A person is seized during an encounter with a police officer when “ ‘the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter.’ ” *People v. Bartelt*, 241 Ill. 2d 217, 226 (2011) (quoting *Florida v. Bostick*, 501 U.S. 429, 439 (1991)). Seizures of the person include arrests, which must be supported by probable cause to pass muster under the fourth amendment, and brief investigative detentions, which must be supported by a reasonable, articulable suspicion of criminal activity. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006). An informant’s tip may supply the requisite level of suspicion if the tip bears indicia of reliability. *Village of Mundelein v. Thompson*, 341 Ill. App. 3d 842, 850 (2003).

¶ 8 There is no dispute that a seizure occurred when Van Almen activated his vehicle's emergency lights and pulled up behind defendant's vehicle in the gas station. See generally *People v. Smulik*, 2012 IL App (2d) 110110, ¶ 6. Nor is there any dispute that, at the outset, the seizure was valid based on the tip—which came from a motorist who gave his name to police and who was in the vicinity where the seizure occurred—about defendant's erratic driving. See *Thompson*, 341 Ill. App. 3d at 844-45, 850-52 (upholding investigative detention of defendant based on a tip from fellow motorist—who identified himself to police and was apparently in a position to observe defendant's driving firsthand—that defendant's vehicle was “ ‘all over the road’ ”). “However, an investigative stop that is originally lawful must cease once reasonable suspicion dissipates.” *People v. Hernandez*, 2012 IL App (2d) 110266, ¶ 5 (Hudson, J., delivering the judgment of the court) (citing *United States v. Watts*, 7 F.3d 122, 126 (8th Cir.1993)). Defendant argues that the detention became unlawful when Von Almen encountered defendant face-to-face and did not notice the smell of alcohol or cannabis or observe anything about defendant's demeanor to indicate that defendant was driving under the influence of drugs or alcohol. Defendant maintains that, at that point, there was no basis to ask him to step out of the car for field sobriety testing. Although Von Almen observed that defendant's eyes were bloodshot and glassy, defendant argues that that observation, *by itself*, did not justify continued detention for field sobriety testing.

¶ 9 In support of his argument, defendant cites four decisions from other jurisdictions: *Stancavage v. Department of Transportation, Bureau of Licensing*, 986 A.2d 895 (Pa. Commw. Ct. 2009), *State v. Swartz*, No. 2008 CA 31, 2009 WL 498971, (Ohio App. 2 Dist. Feb. 27, 2009), *State v. Thirty Thousand Six Hundred Sixty Dollars and no/100*, 136 S.W.3d 392 (Tex. App. 2004), and *City of Hutchinson v. Davenport*, 54 P.3d 532 (Kan. App. 2d 2002). Here, however, Von Almen did

not act merely on the observation that defendant's eyes were bloodshot and glassy. Von Almen was also aware of a reliable tip from another motorist that defendant had been driving erratically. Defendant cites no authority holding that detention for field sobriety testing runs afoul of the fourth amendment under such circumstances.

¶ 10 At issue in *Stancavage* was whether a police officer had “reasonable grounds” to believe that the defendant was driving under the influence of alcohol, such that the defendant's driving privileges could be suspended under Pennsylvania's implied consent law because of his refusal to submit to chemical testing to determine his blood alcohol level. In that setting, “reasonable grounds” means probable cause to arrest. *Commonwealth v. Thur*, 906 A.2d 552, 569 (PA Super. 2006). The court did not consider whether the arresting officer had a *reasonable suspicion* that the defendant—who had been pulled over for speeding and following the vehicle in front of his vehicle too closely—was driving under the influence of alcohol.

¶ 11 In *Davenport*, the defendant traveled to a police station to check on his daughter. A police officer detected the odor of alcohol on the defendant's breath and observed that the defendant's eyes were bloodshot. The officer relayed the information to another officer, who pulled the defendant over. The *Davenport* court held that the officers lacked a reasonable suspicion that the defendant was driving under the influence of alcohol or was committing any other crime. *Davenport*, 54 P.3d at 1101. In *Swartz*, where a motorist was pulled over for failing to signal a left turn, it was held that the motorist's glassy and bloodshot eyes did not give rise to a reasonable suspicion that he was under the influence of alcohol. Because these cases did not involve erratic driving, they are inapposite.

¶ 12 Defendant's reliance on *Thirty Thousand Six Hundred Sixty Dollars and no/100* is similarly misplaced. Although the court did state that “without any other indications, bloodshot eyes are not

enough to create an objective, reasonable suspicion that intoxicants have been used,” the court prefaced that statement with the observation that “[t]he smell of alcohol on a driver’s breath *or erratic driving* might on its own warrant a rational inference of intoxication.” (Emphasis added.) *Thirty Thousand Six Hundred Sixty Dollars and no/100*, 136 S.W.3d at 400.

¶ 13 In sum, defendant has cited no authority to support the proposition that the reasonable suspicion arising from the tip that he had been driving erratically dissipated when Von Almen encountered defendant face-to-face. Von Almen did not violate defendant’s fourth amendment rights by continuing to detain him to perform a field sobriety test and further investigate whether defendant was under the influence of drugs.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 15 Affirmed.