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IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER HAMPSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 32A04-0812-CR-705
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable Mark A. Smith, Judge
Cause No. 32D04-0709-CM-353

August 25, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Christopher Hampson challenges his conviction for operating a vehicle while intoxicated. We affirm.

Issues

I. Whether Hampson's constitutional rights against unreasonable searches and seizures were violated during the arresting officer's investigation; and

II. Whether the evidence is sufficient to sustain the trial court's finding of venue.

Facts and Procedural History

At around 12:30 a.m. on September 12, 2007, Detective Brian Fowler of the Plainfield Police Department was on road patrol on Ronald Reagan Parkway, just south of Interstate 70, when he noticed Hampson parked on the shoulder of the road with his blinkers activated. Detective Fowler activated his emergency lights and pulled behind Hampson's vehicle to determine if he needed assistance. Hampson then put his car into reverse and drove roughly twenty to twenty-five feet directly toward Detective Fowler. Detective Fowler honked his horn twice before Hampson stopped his vehicle. Detective Fowler noticed that as Hampson exited the car, he had to brace himself as he got out of the vehicle and that he was unsteady on his feet as he approached Detective Fowler. Detective Fowler then ordered Hampson back into his vehicle for safety purposes.

Detective Fowler approached Hampson's window and asked him why he was on the shoulder of the road. Hampson replied that he was trying to "figure out his GPS." Tr. at 13. During the encounter Detective Fowler detected several signs of intoxication, including the

odor of alcohol, slurred speech, and glassy, bloodshot eyes. Detective Fowler administered a portable breath test to Hampson after he admitted to having had two scotch and waters. Based on Hampson's suspicious behavior and the portable breath test results, Detective Fowler drove Hampson to the Plainfield Police Department to administer a chemical breath test. The results of the chemical breath test indicated that Hampson's blood alcohol content was .19%.

On September 12, 2007, the State charged Hampson with operating a vehicle while intoxicated and operating per se with a blood alcohol content of .15% or greater. On November 7, 2008, the trial court found Hampson guilty of both counts but vacated the latter conviction.

Discussion and Decision

I. Search and Seizure

On appeal, Hampson contends that he was improperly detained in violation of his federal and state constitutional rights to be free from unreasonable searches and seizures when Detective Fowler ordered him back into his vehicle and when Detective Fowler "continued investigating despite only detecting an odor of an alcoholic beverage in their initial conversation." Appellant's Br. at 5. Generally, grounds for objection must be specific and any grounds which are not raised in the trial court are not available on appeal. *Espinoza v. State*, 859 N.E.2d 375, 384 (Ind. Ct. App. 2006). At trial, Hampson challenged the initial action of Detective Fowler pulling behind his car, but he failed to challenge his detention.

By changing the argument made to our Court from the one proffered to the trial court, Hampson has waived any challenge to this issue on appeal. *Id*.

Waiver notwithstanding, Hampson fails to show error on this issue. The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches and seizures by the government, and its safeguards extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. *Moultry v. State*, 808 N.E.2d 168, 170 (Ind. Ct. App. 2004). A detention that lasts for more than a short period of time must be justified by probable cause. *Terry v. Ohio*, 392 U.S. 1, 31 (1968). However, a police officer may briefly detain a person for investigatory purposes without a warrant or probable cause if, based on specific and articulable facts together with rational inferences from those facts, the official intrusion is reasonably warranted and the officer has a reasonable suspicion that criminal activity may be afoot. *Moultry*, 808 N.E.2d at 170-71.

Exactly what constitutes reasonable suspicion is not capable of precise definition, but it "entails some minimum level of objective justification for making a stop–that that is, something more than an inchoate and unparticularized suspicion or 'hunch,' but considerably less than proof of wrongdoing by a preponderance of the evidence." *Luster v. State*, 578 N.E.2d 740, 743 (Ind. Ct. App. 1991). In evaluating the validity of an investigatory stop, the court must consider the totality of the circumstances. *Id.* The reasonable suspicion inquiry is highly fact-sensitive and is reviewed under a sufficiency of the evidence standard. *Finger v. State*, 799 N.E.2d 528, 533-34 (Ind. 2003). Like any sufficiency of the evidence matter, the record must disclose substantial evidence of probative value that supports the trial court's

decision. *Id*. at 533. We do not reweigh the evidence and we consider conflicting evidence most favorably to the trial court's ruling. *Id*. A set of individually innocent facts, when observed in conjunction, can be sufficient to create reasonable suspicion of criminal activity. *Id*. at 534.

Here, Detective Fowler reasonably detained Hampson on suspicion of intoxication due to Hampson's behavior. In addition to nearly backing his automobile into Detective Fowler's police cruiser, Hampson struggled to remove himself from his car, and his balance appeared unsteady. Detective Fowler testified that all these factors were signs of intoxication. At this point, Detective Fowler had reasonable suspicion to detain Hampson for a brief investigation. Upon questioning, Detective Fowler smelled alcohol on Hampson, noticed that his eyes were glassy and bloodshot, and that his speech was slurred. A reasonable suspicion was all that was necessary to justify Hampson's continued detention, and here, due to these additional factors, Detective Fowler had reasonable suspicion to believe that Hampson might be involved in criminal activity. Thus, Hampson's Fourth Amendment rights were not violated.[1]

Hampson also asserts a violation of Article 1, Section 11 of the Indiana Constitution. Under this section, the State is required to show that, in the totality of the circumstances, the intrusion was reasonable. *Id*. at 535. The State must show that the facts at the time of detention, along with the reasonable inferences arising from those facts, would justify a prudent person in believing that a crime has been or is about to be committed. *Id*. In this case, the factors leading to reasonable suspicion, discussed earlier, also satisfy the

[1] Hampton incorrectly contends that probable cause was necessary to justify his detention.

requirements of the Indiana Constitution because they could lead an ordinarily prudent person to believe that criminal activity was afoot.

II. Venue

The second issue is whether there is sufficient evidence to find that the offense occurred in Hendricks County. The sufficiency of evidence required to prove venue is judged in the same manner as any other sufficiency of the evidence question, bearing in mind that venue need only be proved by a preponderance of the evidence. *Alkhalidi v. State*, 753 N.E.2d 625, 628 (Ind. 2001). When reviewing a claim of insufficient evidence, we do not reweigh the evidence, nor do we reevaluate the credibility of witnesses. *Datzek*, 838 N.E.2d at 1161. This Court will consider only the evidence most favorable to the judgment and will draw all reasonable inferences therefrom. *Id*. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable factfinder could find the defendant guilty beyond a reasonable doubt. *Id*.

The State was required to try Hampson in the county where the offense was committed. Ind. Code § 35-32-2-1(a). Venue may be proved by direct or circumstantial evidence. *Weiss v. State*, 735 N.E.2d 1194, 1196 (Ind. Ct. App. 2000). Here, Detective Fowler, a police veteran with seven years of patrol experience, testified that the encounter took place in Hendricks County and that he knew the boundaries of his patrol area. These facts are sufficient to establish by a preponderance of the evidence that Hampson committed his offense within Hendricks County. Hampson's argument to the contrary is simply an

invitation to reweigh the evidence in his favor, which we must decline. Accordingly, we affirm Hampson's conviction.

Affirmed.

MAY, J., and BROWN, J., concur.