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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNY HOWARD LAUGHLIN,

Defendant and Appellant.

F062336

(Super. Ct. No. BF128800A, BF132704A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John S. Somers, Judge.

Michele A. Douglass, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Alice Su, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Poochigian, J., and Detjen, J.

After the court denied his motion to suppress evidence in case number BF128800A, Johnny Howard Laughlin pled no contest to transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)) and admitted a prior prison term enhancement (Pen. Code, § 667.5, subd. (b)). Additional charges and enhancements were dismissed. The court imposed the midterm of three years plus one year for the enhancement for a total term of four years. In case number BF132704A, Laughlin pled no contest to obstructing an officer (Pen. Code, § 69) and the court imposed a consecutive eight-month term (one-third the midterm). On appeal, Laughlin contends the court erred in denying his suppression motion because he was detained without reasonable suspicion. We affirm.

FACTS

The facts are limited to the search and seizure at issue. On July 27, 2009, about 2:00 a.m., Benjamin Craun noticed a Toyota SUV stopped at a stop light. The driver, a white male possibly with gray hair, was slumped over against the driver's side window of the SUV. Although the car had a green arrow, it did not move, leading Craun to believe the driver had his foot on the brake. Craun thought the person may be asleep or may have passed out or needed medical attention so he called 911. He described the car and gave the license plate information to the dispatcher. Another car approached and made a loud noise. The slumped-over driver suddenly sat up and drove off. Craun followed the vehicle for three or four miles until police arrived.

Bakersfield Police Officer Marcela Garcia received a dispatch at 1:59 a.m. regarding a possible DUI driver who was slumped over the wheel inside a vehicle with his foot on the brake. She saw the SUV on Stockdale Highway driving "very slow" for the location. She activated her lights and siren but the SUV did not pull over immediately. It made a northbound turn onto Jewetta and a right-hand turn into a

baseball park where it stopped. “Numerous” other patrol cars responded to the scene. Laughlin was the driver of the SUV.

Bakersfield Police Officer Anthony Hernandez was dispatched to perform the DUI evaluation. Hernandez arrived at 2:10 a.m. and saw Laughlin handcuffed in the back of a patrol car. Hernandez was told that Laughlin was possibly under the influence of alcohol or drugs. Hernandez saw that Laughlin had jerking, fidgety extremities and was grinding his teeth. His breath had a faint chemical odor. These signs, coupled with Laughlin’s responses to field sobriety tests, led Hernandez to believe Laughlin was under the influence of a central nervous system stimulant. Hernandez arrested Laughlin. A subsequent search of the SUV revealed a bundle of methamphetamine in the handle of the driver’s side door.

The court denied the suppression motion without stating reasons.

DISCUSSION

Laughlin contends he was unlawfully detained because the officers lacked specific, articulable facts that he was engaged in criminal activity when they stopped his SUV. The People respond that officers had reasonable suspicion to detain Laughlin to investigate whether he was driving under the influence of drugs or alcohol.

Standard of Review

On review of the denial of a motion to suppress, we defer to the trial court’s factual findings, where supported by substantial evidence, but exercise our independent judgment to determine whether, on the facts found, the search and seizure were reasonable under the Fourth Amendment. (*People v. Camacho* (2000) 23 Cal.4th 824, 830.)

Was the Detention Supported by Reasonable Suspicion?

A police officer may lawfully detain a motorist on reasonable suspicion that the driver has violated the law. (*People v. Wells* (2006) 38 Cal.4th 1078, 1082.) The guiding principle is the reasonableness of the particular governmental intrusion. In making our determination, we examine the totality of the circumstances. (*Id.* at p. 1083.) Where a reasonable suspicion of criminal activity exists, the public rightfully expects a police officer to inquire into such circumstances. (*Ibid.*)

In this case, Laughlin was detained pursuant to a vehicle stop based on private citizen and eyewitness Craun's report that Laughlin had passed out or fallen asleep at the wheel of an SUV at a stop light. And, while Laughlin was roused by a loud noise and drove off, Officer Garcia saw that he was driving at a very slow speed on a highway with a 45-mile-per-hour speed limit. In addition, he did not respond promptly to her siren and lights. These facts fall squarely within a lawful *Tony C.*¹ detention. Officer Garcia had reasonable suspicion to detain Laughlin to investigate whether he was driving under the influence of drugs or alcohol.

People v. Wells, supra, 38 Cal.4th 1078 is instructive. There, the officer received a dispatch report of a possibly intoxicated driver "weaving all over the roadway." The record did not identify the caller or circumstances of the report, but the court inferred the report was based on an anonymous phoned-in tip. The vehicle was described as a 1980's model blue van traveling northbound on Highway 99 at Airport Drive. The officer positioned himself on the shoulder of the highway and watched for the vehicle. Two or three minutes later, he saw a blue van traveling approximately 50 miles per hour. He activated his patrol car lights and stopped the van to investigate whether the driver was impaired. He did not observe the van weaving, speeding, or otherwise violating any

¹ *In re Tony C.* (1978) 21 Cal.3d 888.

traffic laws. (*Id.* at p. 1081.) The officer spoke to the driver and noticed she appeared to be under the influence of illegal drugs. At the conclusion of field sobriety tests, he arrested her for driving under the influence. A urine test revealed she had ingested illegal drugs and police found heroin and syringes in her van. (*Ibid.*)

The Supreme Court upheld the traffic stop finding it justified by reasonable suspicion of criminal activity. The tipster's information regarding the van and its location was sufficiently precise, and its report of a motorist "weaving all over the roadway" demanded an immediate stop to protect both the driver and other motorists. The tip reported contemporaneous activity and its "innocent" details were fully corroborated within minutes of the report. (*People v. Wells, supra*, 38 Cal.4th at p. 1088.)

This case presents an even stronger case of reasonable suspicion. Officer Garcia had reasonable suspicion to detain Laughlin based on the identified eyewitness report that Laughlin had apparently passed out or fallen asleep at the wheel of his car while driving on a city street. Further, when the officer caught up with his car a short time later, Laughlin was driving very slowly and responded sluggishly to her patrol car lights and siren. Those facts gave rise to a suspicion that Laughlin was driving under the influence of drugs or alcohol and demanded an immediate stop to protect both the driver and other motorists.

Laughlin proposes a number of innocent explanations for the suspicious circumstances. However, the possibility of an innocent explanation does not negate a reasonable suspicion of criminal conduct. The principal function of the officer's investigation is to resolve that ambiguity and establish whether the activity is in fact legal or illegal. (*In re Tony C., supra*, 21 Cal.3d 888, 894.) On these facts, the officers had reasonable suspicion to detain Laughlin to investigate whether he was driving under the influence of an illegal substance.

Was the Detention “Excessive in Scope”?

Laughlin next contends he was not subjected to an investigative detention. Rather, this was “a multi-officer, high-risk, guns-drawn felony vehicle stop [in which he] was taken from his vehicle at gunpoint, handcuffed and placed in a police car.” The People respond that the claim is forfeited because it was not raised in the trial court. We agree the issue is forfeited.

First, the record is unclear as to the nature of the traffic stop: whether it was the usual enforcement stop or a high-risk vehicle stop in which the suspect is ordered out of the car at gunpoint. Officer Garcia did not remember the nature of the stop, which had taken place almost a year and a half before the hearing. She reviewed the reports of the two officers who had memorialized the incident. One officer reported it was a high-risk vehicle stop; the other reported it was an enforcement stop.²

Second, the record is ambiguous precisely because Laughlin did not raise the issue in the trial court. The defendant’s suppression motion must state the grounds for the motion with sufficient particularity to give notice to the prosecution of the sort of evidence it will need to present in response. (*People v. Williams* (1999) 20 Cal.4th 119, 130.) Defendants who do not give the prosecution sufficient notice of a challenged inadequacy cannot raise the issue on appeal. (*Id.* at p. 136; *People v. Rios* (2011) 193 Cal.App.4th 584, 591 [appellant could not challenge the lawfulness of the police entry because he made no objection to it in the trial court].)

Here, the record is inadequate to review the nature of the traffic stop because Laughlin did not challenge the stop on this ground in the trial court. Had the issue been raised, additional testimony may have been presented as to the circumstances of the

² Officer Robles’s report states that a high-risk vehicle stop was conducted based on the nature of the call and Laughlin’s driving actions. Officer Flores’s report states that officers initiated an enforcement stop.

traffic stop and the reasons justifying the method employed. Because the issue was not raised, we do not review it on appeal.

DISPOSITION

The judgment is affirmed.