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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 Kane County.
)	
Plaintiff-Appellant,)	
)	
v.	)	No. 19-DT-300
)	
VICTORIA D. LEIFHEIT,	)	Honorable
	)	Robert K. Villa,
Defendant-Appellee.	)	Judge, Presiding.

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
)	
Plaintiff-Appellant,)	
)	
v.	)	No. 19-TR-8065
)	
VICTORIA D. LEIFHEIT,	)	Honorable
	)	Robert K. Villa,
Defendant-Appellee.	)	Judge, Presiding.

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
)	
Plaintiff-Appellant,)	
)	
v.	)	No. 19-TR-8067
)	

VICTORIA D. LEIFHEIT,) Honorable
) Robert K. Villa,
Defendant-Appellee.) Judge, Presiding.

PRESIDING JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting defendant’s motion to quash and suppress and petition to rescind, as defendant exhibited sufficient indicia of intoxication to support probable cause to arrest her for DUI.

¶ 2 Defendant, Victoria D. Leifheit, was separately charged with driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2018)) (case No. 19-DT-300), speeding (*id.* § 11-601) (case No. 18-TR-8065), and improper lane usage (*id.* § 11-709) (case No. 18-TR-8067). Pursuant to section 11-501.1(d) of the Illinois Vehicle Code (Code) (*id.* § 11-501.1(d)), the arresting officer submitted a sworn report to the trial court and the Secretary of State indicating that defendant refused to submit to chemical tests of her blood alcohol level. As a result, the Secretary of State entered the statutory summary suspension of her driver’s license. *Id.* § 11-501.1(e). Defendant moved to quash her arrest and suppress evidence. She also filed a petition to rescind the statutory summary suspension. The trial court conducted a joint hearing on the motion and the petition. Concluding that there was no probable cause to arrest defendant for DUI, the trial court granted both the motion and the petition. The State filed a separate notice of appeal under each of the three case numbers, and we consolidated the appeals. The sole question raised is whether there was probable cause to arrest defendant for DUI. Because we conclude that there was, we reverse and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 At the joint hearing on defendant's rescission petition and motion to suppress, Hampshire police officer Bryce Renninger testified that, on February 27, 2019, he was on patrol accompanied by his field training officer, Officer Reece. Renninger had been on the force for about five months. He had received training in recognizing signs of intoxication. At about 11:30 p.m., Renninger observed a vehicle driven by defendant traveling north on Harmony Road. The radar in Renninger's squad car indicated that the vehicle was traveling at 68 miles per hour. The speed limit was 55 miles per hour. Renninger followed defendant's vehicle for approximately half a mile, which took about 30 seconds. During that period, defendant's vehicle briefly crossed the center line on one occasion and then returned to its lane. Renninger activated his squad car's emergency lights and defendant immediately pulled her vehicle over. Another Hampshire police officer, Sergeant Ryan Edwardson, joined them at the scene.

¶ 5 Renninger approached defendant's vehicle and asked her for her driver's license. Defendant already had her license at hand. Renninger spoke to defendant for three or four minutes. Renninger testified that he did not smell alcohol on her breath, but he explained that he had a cold and was experiencing nasal congestion.

¶ 6 Renninger testified that defendant was angry during their encounter. She explained to him that she was upset with the Hampshire Police Department about the way it was handling an investigation of a crime against her son. Upon seeing that Renninger was a Hampshire police officer, defendant wanted to discuss her son's situation. Renninger was not familiar with the investigation, but Reece was. Early in their conversation, defendant indicated that she would not participate in any tests, including a Breathalyzer test. Renninger had no trouble understanding her. Renninger asked defendant to produce proof of insurance. Defendant told him that her insurance information was on her phone and she fumbled with the phone while trying to retrieve the

information. While defendant was looking for the information, Renninger asked her where she had been or what she had been drinking. She put the phone down and did not return to the task of producing proof of insurance. At some point during their conversation, defendant started shouting profanities at Renninger.

¶ 7 Edwardson asked defendant to step out of her vehicle. Renninger and Reece took defendant to their squad car. Renninger did not recall whether defendant had any trouble walking. He acknowledged, however, that his report of the incident did not mention her having any difficulty. Renninger asked defendant whether she had been drinking. She said she had not. However, when Edwardson asked her the same question, she told him that she had three beers that evening. Neither Renninger nor Edwardson recalled whether they asked defendant when she had the beers. Renninger acknowledged that his report did not reflect that they had asked that question.

¶ 8 Edwardson testified that he spoke with defendant while she was seated in her car. When he first approached the vehicle, the window was rolled up. When defendant rolled down the window, Edwardson noticed “a very strong odor of alcohol” from the vehicle, but not from defendant’s breath. Like Renninger, Edwardson testified that defendant was angry, that her eyes were bloodshot and glassy, and that her speech was slurred.

¶ 9 Renninger’s squad car was equipped with a video camera, which recorded his encounter with defendant. The video recording begins while Renninger is following defendant’s vehicle. The recording was played during the hearing and admitted into evidence. While the video was being played, Renninger identified the point at which he believed defendant’s vehicle crossed the center line.

¶ 10 Defendant testified that, prior to the stop, she spent about 3½ hours at an establishment called the Copper Barrel, where she purchased three beers. Defendant admitted that she was angry

while speaking with Renninger and Edwardson. She denied that her speech was slurred. Neither officer indicated that he could not understand what she was saying or asked her to speak more clearly. She tried to get proof of insurance from her phone, but she put the phone down because Renninger wanted her to pay attention to him. Defendant refused to perform field sobriety tests or submit to Breathalyzer testing, because she was not impaired.

¶ 11 After defendant rested, the State moved for a “directed finding.” The trial court denied the motion, concluding that defendant presented a *prima facie* case of a constitutional violation. In its ruling, the trial court found, *inter alia*, that Renninger was entitled to stop defendant for speeding. However, the court noted that it did not see defendant’s vehicle leave its lane on the video. The court added, “Perhaps it’s somewhere on the video, and I could look at it much closer observation [*sic*], but that in and of itself is a problem for the Court.” The State did not put on any evidence, and the court granted the rescission petition and the motion to quash and suppress. The court found that, although defendant had been speeding, that did not indicate that she was impaired. Although the court concluded that the traffic stop was permissible because defendant was speeding, the court concluded that there was no probable cause to arrest defendant for DUI. In particular, the court noted that the first officer to have contact with defendant, Renninger, had little experience as a police officer. The court also reasoned that defendant’s grievance with the Hampshire Police Department explained her combativeness during the stop.

¶ 12

II. ANALYSIS

¶ 13 Section 11-501.1 Code, which is commonly known as the “implied consent law,” provides that a motorist operating a vehicle on a public highway in Illinois is deemed to have consented that, if arrested for DUI, he or she will submit to chemical testing to determine his or her blood alcohol level. If testing reveals a blood alcohol level of 0.08 or more, or if the motorist refuses to

undergo testing, his or her driving privileges will be summarily suspended. However, the motorist is entitled to rescission of the suspension if it resulted from an unconstitutional seizure of the motorist. See *People v. Crocker*, 267 Ill. App. 3d 343, 345 (1994).

¶ 14 We apply a bifurcated standard of review to a trial court’s ruling on a motion to quash and suppress. We defer to the trial court’s findings of fact, reversing them only if they are against the manifest weight of the evidence. *People v. Heritsch*, 2017 IL App (2d) 151157, ¶ 8. However, we review *de novo* the trial court’s legal conclusion whether a search or seizure was unconstitutional. *Id.* This bifurcated standard also governs review of a trial court’s decision whether to rescind the statutory summary suspension of a motorist’s driver’s license. *People v. Cielak*, 2016 IL App (2d) 150944, ¶ 6.

¶ 15 Mindful of these principles, we consider whether the trial court properly concluded that defendant was arrested without probable cause. “Probable cause to arrest exists when the totality of the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime.” *People v. Meo*, 2018 IL App (2d) 170135, ¶ 25. “Probable cause does not demand a showing that the belief that the suspect has committed a crime be more likely true than false.” *People v. Geier*, 407 Ill. App. 3d 553, 557 (2011). We have therefore observed that “the existence of possible innocent explanations for the individual circumstances or even for the totality of the circumstances does not necessarily negate probable cause.” *Id.*

¶ 16 At issue here is whether there was probable cause to believe that defendant drove or was in actual physical control of a vehicle while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2018). A person is under the influence of alcohol when he or she is “ ‘less able, either mentally or physically, or both, to exercise clear judgment, and with steady hands and nerves

operate an automobile with safety to himself and to the public.’ ” *People v. Bostelman*, 325 Ill. App. 3d 22, 34 (2001) (quoting *People v. Seefeldt*, 112 Ill. App. 3d 106, 108 (1983)). A motorist can be under the influence of alcohol without being completely incapacitated. *People v. Tatera*, 2018 IL App (2d) 160207, ¶ 29. A motorist can be able to maintain his or her balance and walk steadily, and yet be too impaired to safely operate a motor vehicle. *Id.*

¶ 17 Common indicia of impairment supplying probable cause include the odor of alcohol, slurred speech, and red and glassy eyes. *People v. Williams*, 2018 IL App (2d) 160683, ¶ 14. Generally, “ ‘these observations are supplemented by other observations apparent to the officer or inferred from his observations such as speeding, weaving, erratic driving, driving on the wrong side of the road, being stuck in a ditch [citation] or *** being in a vehicle which is stuck in the mud.’ ” *Id.* (quoting *People v. Wingren*, 167 Ill. App. 3d 313, 321 (1988)).

¶ 18 There was conflicting evidence with respect to two of these factors: whether defendant was driving erratically and whether her speech was slurred. Renninger testified that he observed defendant’s vehicle cross the center line. However, the trial court was unable to see any such deviation on the video recording from the camera in Renninger’s squad car. Having reviewed the recording ourselves, we conclude that the trial court’s finding was not against the manifest weight of the evidence. Renninger and Edwardson testified that defendant’s speech was slurred. Defendant testified that it was not. The trial court made no express finding, so we must presume that the trial court resolved the conflicting testimony in defendant’s favor. *People v. Rockey*, 322 Ill. App. 3d 832, 841 (2001).

¶ 19 On the other hand, defendant did not contradict the testimony of Renninger and Edwardson that her eyes were bloodshot and glassy. Furthermore, after first denying that she had been drinking, she admitted to the officers at the scene that she had three beers that evening. A false

exculpatory statement is evidence of consciousness of guilt (*People v. Day*, 2019 IL App (4th) 160217-B, ¶ 49) and is thus a circumstance contributing to probable cause. In addition, defendant's refusal to perform field sobriety tests is probative of impairment. *Williams*, 2018 IL App (2d) 160683, ¶ 17. The evidence that defendant fumbled with her phone could suggest that her coordination was impaired, and she was easily distracted from the task of producing proof of insurance.

¶ 20 Although there was no testimony that defendant's breath smelled of alcohol, Edwardson testified that he smelled alcohol coming from her vehicle. The smell of alcohol coming from a vehicle is germane to the determination of probable cause. See *People v. Nicolosi*, 2019 IL App (3d) 180642, ¶ 17; *People v. Lindmark*, 381 Ill. App. 3d 638, 658 (2008). Furthermore, although defendant stresses that the officers did not ask her when she had been drinking, the smell of alcohol coming from her vehicle suggests that she had been drinking recently.

¶ 21 Defendant's hostility toward the officers is another factor contributing to probable cause. See *People v. Rathnau*, 140 Ill. App. 3d 88, 91 (1986) (citing the defendant's "combative nature" as a factor in the probable cause determination). Defendant's anger might have been justified, but it did not relate directly to the incident for which she was arrested. It is reasonable to believe that, during an encounter with police, an unimpaired motorist would be less likely to air a grievance unrelated to the encounter than would a motorist whose inhibitions and/or mood have been affected by alcohol.

¶ 22 Based on the totality of the circumstances, there was probable cause to arrest defendant for DUI. Accordingly, the trial court erred in granting defendant's motion to quash and suppress and her petition to rescind.

¶ 23

III. CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Kane County is reversed and the case is remanded for further proceedings.

¶ 25 Reversed and remanded.

¶ 26