

Robert E. Hawkins (“Hawkins”) was convicted in Shelby Superior Court of Class C misdemeanor operating a vehicle with a blood alcohol concentration of .08 or more. Hawkins appeals and presents two issues, which we consolidate and restate as whether the encounter between Hawkins and the police was an unconstitutional police stop. Concluding that Hawkins failed to properly preserve his challenge to the admissibility of the evidence at issue, we affirm.

Facts and Procedural History

Early in the morning of February 5, 2008, the Shelbyville Police Department received a call from a woman stating that a man was knocking at her door. The woman told the police that she did not recognize the man or the car he was driving. She described the man as a white male with a balding spot and said that he was driving a white Camaro-type car. Shelbyville Police Officer Robert Heath (“Officer Heath”) responded to the call and drove in the direction of the caller’s home. Before he arrived at the scene, however, he saw a white Camaro driving on a nearby street and decided to follow it. The driver of the Camaro, later determined to be Hawkins, turned into a gas station shortly thereafter. Hawkins got out of his car and went into the convenience store on the gas station lot. Officer Heath pulled his car into the gas station and saw Hawkins walk into the store. When Hawkins came out of the store and walked back towards his car, Officer Heath noticed Hawkins stagger. Officer Heath then approached Hawkins and “began a conversation,” to see if Hawkins had been in the area of the original call. Tr. p. 57.

As he spoke to Hawkins, Officer Heath noticed that Hawkins' eyes were red and watery and that he smelled of alcohol. Officer Heath therefore asked Hawkins to perform field sobriety tests. Although Hawkins passed the walk-and-turn test and the one-leg stand test, he failed the horizontal-gaze nystagmus test. Officer Heath then informed Hawkins of the Indiana implied consent law and asked Heath to take a chemical test, which Hawkins refused. Officer Heath obtained a search warrant authorizing a blood draw, and testing of Hawkins's blood revealed that his blood alcohol concentration was .14 percent.

The State subsequently charged Hawkins with Class A misdemeanor operating a vehicle while intoxicated endangering a person and Class B misdemeanor public intoxication. On April 24, 2008, the State added an additional charge of Class C misdemeanor operating a vehicle with a blood alcohol concentration of .08 percent or more. On May 13, 2008, Hawkins filed a motion to suppress, arguing that he had been stopped without reasonable suspicion and that any evidence obtained as a result should be suppressed. The trial court held a suppression hearing on June 30, 2009 and issued an order denying Hawkins' motion to suppress on July 24, 2009. Hawkins then filed a motion requesting that the trial court certify its order for interlocutory appeal, but the trial court denied the motion on August 15, 2008. A bench trial was held on November 7, 2008. The trial court entered an order on January 26, 2009, finding Hawkins not guilty of the Class A and Class B misdemeanor charges but finding him guilty of the Class C misdemeanor charge. Hawkins now appeals.

Discussion and Decision

Hawkins claims that Officer Heath did not have reasonable suspicion to justify stopping him as he walked back to his car and that the evidence of his intoxication which was obtained as a result of this stop was improperly admitted at trial. We agree with the State that Hawkins failed to preserve this issue for appellate review.

Indiana courts have long held that a motion to suppress is insufficient to preserve error for appeal. Wise v. State, 719 N.E.2d 1192, 1197 (Ind. 1999); Jackson v. State, 890 N.E.2d 11, 15 (Ind. Ct. App. 2008). Instead, a defendant must reassert his objection at trial contemporaneously with the introduction of the evidence in order to preserve the error for purposes of appeal. Id. “A contemporaneous objection allows the trial court an opportunity to make a final ruling on the matter in the context in which the evidence is introduced.” Wise, 719 N.E.2d at 1197.

Although Hawkins did file a motion to suppress, he did not object at trial to the admission of any of the evidence obtained as a result of what he claims was an unconstitutional stop. Specifically, Hawkins did not object to Officer Heath’s testimony about his encounter with Hawkins and his observations of Hawkins’ intoxication. Hawkins did not object when Officer Heath was questioned about the blood draw taken from Hawkins and the alcohol concentration of his blood. And when the State offered into evidence the toxicology report showing that Hawkins’s blood alcohol concentration

was .14, Hawkins' counsel specifically told the trial court, "We don't have an objection, Judge."¹ Tr. p. 60.

Under these facts and circumstances, we conclude that Hawkins's challenge to the admissibility of the evidence obtained as a result of his encounter with the police was not preserved for appeal.

Affirmed.

BARNES, J., and BROWN, J., concur.

¹ We also note that the trial court's order denying Hawkins' motion to suppress contained no language that would suggest that the issue had been preserved for appeal. See Green v. State, 753 N.E.2d 52, 59 (Ind. Ct. App. 2001); cf. Swanson v. State, 730 N.E.2d 205, 208 (Ind. Ct. App. 2000) (considering merits of defendant's challenge to admission of evidence where defendant did not make a contemporaneous objection but trial court's order denying motion to suppress made clear that defendant's challenge to evidence would be preserved without further objection).