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2011 IL App (3d) 100686-U

Order filed October 12, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois
Plaintiff-Appellee,)	
v.)	Appeal No. 3-10-0686
)	Circuit No. 10-DT-620
CALVIN HILL,)	Honorable
Defendant-Appellant.)	Raymond Bolden, Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* In a case in which the defendant challenged the statutory summary suspension of his driver's license for driving under the influence of alcohol, the appellate court held that the evidence presented at the hearing was sufficient to support the circuit court's finding that the arresting officer had reasonable grounds to believe the defendant was operating a vehicle while under the influence. Accordingly, the appellate court affirmed the court's denial of the defendant's petition to rescind the statutory summary suspension of his driver's license.

¶ 2 The defendant, Calvin Hill, was charged, *inter alia*, with driving under the influence (625 ILCS 5/11-501(a)(2) (West 2008)). He filed a petition to rescind the statutory summary suspension of his driver's license, which the circuit court denied after a hearing. On appeal, the

defendant argues that the circuit court erred when it denied his petition to rescind because: (1) the court's findings were against the manifest weight of the evidence; and (2) the State failed to prove that the arresting officer had reasonable grounds to believe the defendant was operating a vehicle while under the influence. We affirm.

¶ 3

FACTS

¶ 4 On April 11, 2010, the defendant received citations for driving under the influence (625 ILCS 5/11-501(a)(2) (West 2008)), obstructed rear license plate (625 ILCS 5/3-413(b) (West 2008)), failure to wear a seat belt (625 ILCS 5/12-603.1(a) (West 2008)); and failure to notify the Secretary of State of address change (625 ILCS 5/3-416(a) (West 2008)). The defendant also received notice that his driver's license was subject to a summary suspension for 12 months (625 ILCS 5/6-208.1(a)(1) (West 2008)) because he "refused to perform field sobriety tests." The summary suspension notice indicated that the defendant was arrested at 1:40 a.m. on April 11, 2010, and refused to submit to testing at 2:27 a.m. on that same date.

¶ 5 The defendant filed a petition to rescind the statutory summary suspension of his driver's license. At the hearing on the petition, the arresting officer testified that he followed the defendant's vehicle on April 11, 2010. The officer noticed that the defendant was not wearing a seat belt. In addition, his rear license plate was dirty and could not be fully read in the light from the officer's headlights. The officer activated his emergency lights, and the defendant continued for approximately ½ block before turning left into a driveway, which was later determined to be the defendant's residence. After the defendant stopped his vehicle, he "stumbled" out of the vehicle and told the officer that he was home and to leave him alone. The officer told the defendant twice to stay in his vehicle, but the defendant just stood on his driveway.

¶ 6 Once backup arrived, the officer approached the defendant and told him to place his hands on the vehicle. The defendant told the officer that he was at home and to “leave him the fuck alone.” The officer had to place the defendant’s hands on his vehicle. The officer did not perform a pat down at that time, however, as the defendant turned toward the officer in an aggressive manner and had to be placed in handcuffs and arrested. Up to that point, the officer had not asked the defendant to perform any field sobriety tests. Based on his experience, though, the officer determined that the defendant was under the influence because the defendant “stumbled” out of his vehicle and had to use the door to hold himself up, and his hair and clothing were disheveled. Further, the officer testified that, “[h]e had a strong odor of alcohol emitting from his breath when he spoke to me. His speech was thick tongued. His eyes were bloodshot and glassy.” The officer also stated that he did not request the defendant to perform field sobriety tests at the scene because he was uncooperative.¹

¶ 7 About one week later, the circuit court denied the petition. The court found that the officer had reasonable grounds to believe the defendant was driving while under the influence, given that the defendant “fell out” of his vehicle, disobeyed commands to stay in his vehicle, smelled strongly of alcohol, had slurred speech, appeared disheveled, was uncooperative, and used profanity. In so finding, the court stated that the defendant “refused testing of any kind.” The defendant appealed.

¶ 8

ANALYSIS

¹ In his petition, the defendant challenged whether he “refuse[d] to submit to and/or complete the required chemical test or tests.” However, at the outset of the hearing on the petition, the defendant abandoned that challenge.

¶ 9 On appeal, the defendant argues that the circuit court erred when it denied his petition to rescind because: (1) the court’s findings were against the manifest weight of the evidence; and (2) the State failed to prove that the arresting officer had reasonable grounds to believe the defendant was operating a vehicle while under the influence.

¶ 10 At a hearing on a petition to rescind a statutory summary suspension, the defendant has the burden of proof of establishing a *prima facie* case for rescission. *People v. Wear*, 229 Ill. 2d 545, 559-60 (2008); see also *People v. Fonner*, 385 Ill. App. 3d 531, 539 (2008) (noting that the defendant must prove his case for rescission by a preponderance of the evidence). One of the issues that a defendant may raise at the hearing is “[w]hether the officer had reasonable grounds to believe that the person was driving or in actual physical control of a motor vehicle upon a highway while under the influence of alcohol, other drug, or combination of both.” 625 ILCS 5/2-118.1(b)(2) (West 2008). The “reasonable grounds” standard under this section is the same as the “probable cause” standard. *Fonner*, 385 Ill. App. 3d at 540. “Probable cause to arrest exists when 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.” *Wear*, 229 Ill. 2d at 563. The determination of whether an officer had probable cause to arrest is relative to the specific facts of the case. *Wear*, 229 Ill. 2d at 564.

¶ 11 When reviewing whether reasonable grounds existed, we employ the two-part test applicable to suppression hearings. *Wear*, 229 Ill. 2d at 561. We grant great deference to the circuit court’s factual findings and will uphold those findings unless they are against the manifest weight of the evidence. *Wear*, 229 Ill. 2d at 561. Also, we review *de novo* the court’s ultimate legal ruling on whether the petition should have been granted. *Wear*, 229 Ill. 2d at 562.

¶ 12 The defendant's first argument on appeal is that the circuit court's findings were erroneous. Specifically, the defendant claims the court's decision was manifestly erroneous because, in part, it was predicated on the finding that the defendant refused to submit to field sobriety tests.

¶ 13 It is true that the officer's testimony at the hearing indicated that the defendant was not asked to perform field sobriety tests *at the scene*. However, besides the fact that the defendant abandoned at the hearing any challenge to his refusal to submit to testing, the notice of summary suspension indicated that the defendant was arrested at 1:40 a.m. and refused to submit to testing at 2:27 a.m. Moreover, it cannot be said that the court's ultimate ruling on the petition was erroneous. The question before the court was whether the officer had reasonable grounds to believe the defendant was driving under the influence. The officer's testimony provided strong evidence that the defendant was indeed under the influence of alcohol. The defendant "stumbled" out of his vehicle and used the door to support himself. He disobeyed commands and was uncooperative with the officer. He smelled strongly of alcohol, had slurred speech, and had bloodshot and glassy eyes. Under these circumstances, we hold that the officer had probable cause to arrest the defendant for driving under the influence. See *Fonner*, 385 Ill. App. 3d at 540-41.

¶ 14 For these same reasons, the defendant's second argument on appeal—that the State failed to prove that the arresting officer had reasonable grounds to believe the defendant was operating a vehicle while under the influence—also fails. Contrary to the defendant's claim, the basis for the arrest was not merely the lack of cooperation with the officer. Accordingly, we hold that the court did not err when it denied the defendant's petition to rescind.

¶ 15

CONCLUSION

¶ 16 The judgment of the circuit court of Will County is affirmed.

¶ 17 Affirmed.