



of drugs, intoxicating compound, or any combination thereof in violation of section 11-501(a)(6) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(a)(6) (West 2008)). Defendant filed a petition to rescind the statutory summary suspension, which was denied after a hearing. Defendant filed a timely notice of appeal. In this appeal, defendant contends the trial court erred in denying his petition to rescind the statutory summary suspension for the following reasons: (1) the notice of statutory summary suspension was not immediate, (2) no probable cause existed for the stop of defendant's vehicle, and (3) the State did not lay the proper foundation for admission of the urinalysis prior to its admission. We affirm.

¶4 First, contrary to defendant's assertions, we find that immediate notice of the statutory summary suspension was not required. While the first sentence of section 11-501.1(f) of the Code (625 ILCS 5/11-501.1(f) (West 2008)) requires a law enforcement officer to give "immediate notice" of a statutory summary suspension, the next sentence creates an exception. Section 11-501.1(f) specifically states:

"In cases where the blood alcohol concentration of 0.08 or greater or any amount of a drug, substance, or compound resulting from the unlawful use or consumption of cannabis \*\*\*, a controlled substance listed in the Illinois Controlled Substances Act, [or] an intoxicating compound listed in the Use of Intoxicating Compounds Act \*\*\* is established by a subsequent analysis of blood or urine collected at the time of arrest, the arresting officer or arresting agency shall give notice as provided in this Section or *by deposit in the United States mail* of the notice in an envelope with postage prepaid and addressed to the person at his address as shown on the Uniform Traffic Ticket and the statutory summary suspension and disqualification shall begin as provided in paragraph (g)." (Emphasis added.) 625 ILCS 5/11-501.1(f) (West 2008).

In *People v. Jordan*, 336 Ill. App. 3d 288, 783 N.E.2d 208 (2003), our colleagues in the Second District determined that use of the disjunctive word "or" by our General Assembly

in the above statute meant that immediate notice was not required in certain instances:

"Here the disjunctive word 'or' separates notice 'by deposit in the United States mail' from notice 'as provided in this Section'; thus, the two methods of notice plainly stand in contradistinction to one another. Notice by United States mail is distinct from notice as otherwise provided in section 11-501.1(f). Therefore, when a law enforcement officer is authorized to give notice by mail, the general requirements of section 11-501.1(f), including the requirement of 'immediate notice,' do not apply. It is significant that a statutory summary suspension only takes effect on the forty-sixth day after notice is given. 625 ILCS 5/11-501.1(g) (West 2000). Delay in giving notice of a statutory summary suspension defers the effective date of the suspension by an equal interval. We fail to see how such delay visits any hardship on affected motorists: they are simply allowed to stay on the roads longer before the suspension takes effect." *Jordan*, 336 Ill. App. 3d at 291, 783 N.E.2d at 210.

We agree with the analysis in *Jordan*.

¶ 5 Furthermore, we find that the fact that the instant case involves the presence of cocaine metabolite rather than alcohol, as was the case in *Jordan*, is a distinction without a difference. In both instances, it is necessary that there be an alternative to "immediate notice" of statutory summary suspension because results are not immediately known when a sample is submitted for laboratory analysis. We see no need to belabor the point. Relying on the analysis of *Jordan*, we find that immediate notice of statutory summary suspension was not required in the instant case.

¶ 6 Second, we find there was both probable cause for the stop and reasonable grounds for the arrest. A statutory summary suspension hearing is a civil proceeding rather than a criminal proceeding. *People v. Gerke*, 123 Ill. 2d 85, 525 N.E.2d 68 (1988). In such a proceeding, the motorist requesting judicial rescission of the suspension bears the burden of

proof. *People v. Orth*, 124 Ill. 2d 326, 338, 530 N.E.2d 210, 215 (1988). Thus, defendant's arguments regarding the hearsay testimony of Officer Uraski are without merit because of the civil nature of the proceeding.

¶ 7 Because the statutory summary suspension hearing was not a criminal proceeding, it was not necessary that defendant be able to face his accuser, and the hearsay testimony was acceptable. The record reveals that the basis for the stop was defendant's failure to use his turn signal prior to making a turn. While defendant and his wife testified that defendant signaled before turning, Officer Barrett's sworn report indicates that defendant failed to use his turn signal, and Officer Uraski testified at the statutory summary suspension hearing that Officer Barrett told him he stopped defendant for failing to signal prior to making a turn. The trial court simply found Officer Uraski more credible than defendant and his wife.

¶ 8 Officer Uraski further testified that he and Officer Barrett smelled a faint odor of alcohol on defendant's breath and that defendant had slurred speech and glassy, red eyes. At the hearing, defendant admitted that he consumed alcohol prior to the stop. Furthermore, Officer Uraski testified that defendant failed to successfully complete field sobriety tests. Defendant asserts that the reason he failed to complete such tests was because of a physical disability. He has degenerative bone disease in his hips and lower back and receives disability. Even assuming *arguendo* defendant was not able to complete the tests or failed the field sobriety tests due to his disability, evidence of intoxication remains.

¶ 9 Both police officers smelled alcohol on defendant's breath. Defendant admitted that he drank beer prior to the stop. Officer Uraski testified that defendant's eyes were glassy and red and his speech was slurred at the time of the stop. Defendant also asserts that he was originally arrested for driving under the influence of alcohol only, but later was charged with driving under the influence of drugs and that this fact alone is enough to show that no probable cause existed for the stop and no reasonable grounds existed for his arrest. We

disagree.

¶ 10 The record here does not support defendant's assertion. The original citation issued to defendant on November 7, 2008, by Officer Barrett lists the nature of the offense as "Driving Under the Influence of Combination Alcohol & *Drugs*." (Emphasis added.) Furthermore, even if defendant was originally charged with driving under the influence of alcohol only, and the charge was later amended to driving under the influence of drugs, we do not find that compelling enough to find that there was no probable cause. Under the circumstance presented here, we cannot say the trial court erred in concluding that the evidence was sufficient to establish probable cause for the traffic stop and reasonable grounds for the resulting arrest for driving under the influence.

¶ 11 Third, we find the trial court properly admitted the results of defendant's urine test, which showed the presence of cocaine metabolite in defendant's system. As previously stated, the burden of proof initially rests with defendant to show the invalidity of his or her driver's license suspension. Until the motorist makes a *prima facie* case for rescission, the State is not required to demonstrate the accuracy of tests. *Orth*, 124 Ill. 2d at 332, 530 N.E.2d at 212. While our supreme court stated that a *prima facie* showing can be made from credible testimony from a motorist that he was not in fact under the influence, it also pointed out that such a finding should not be considered an "invitation to commit perjury" and "[o]nly if the trial judge finds such testimony credible will the burden shift to the State to lay a proper foundation for the admission of test results." *Orth*, 124 Ill. 2d at 341, 530 N.E.2d at 217. A trial court's finding about the *prima facie* case will not be overturned unless it is against the manifest weight of the evidence. *Orth*, 124 Ill. 2d at 341, 530 N.E.2d at 217.

¶ 12 Here, defendant denied ingesting cocaine; however, the trial court overruled defendant's objection to the admission of the urinalysis report into evidence. The trial court did not find defendant's denial about the ingestion of cocaine credible, and the burden never

shifted to the State to lay a proper foundation for the lab report.

¶ 13 For the foregoing reasons, the order of the circuit court of Franklin County denying defendant's petition to rescind his statutory summary suspension is hereby affirmed.

¶ 14 Affirmed.