

2012 IL App (1st) 110041-U

FIFTH DIVISION
March 30, 2012

No. 1-11-0041

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
)	
v.	)	Nos. YM 486 735
	)	YM 486 736
	)	YM 486 737
	)	YM 486 738
)	
STEPHANIE SIUCIAK,	)	Honorable
	)	Joel L. Greenblatt,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBride delivered the judgment of the court.
Presiding Justice Epstein and Justice J. Gordon concurred in the judgment.

ORDER

- ¶ 1 *Held:* The court did not err in denying defendant's petition to rescind statutory summary suspension of her driving license when she failed to make a *prima facie* case on her claim that the roadblock or roadside safety check was invalid.
- ¶ 2 Defendant Stephanie Siuciak appeals from an order of the circuit court denying her petition to rescind the statutory summary suspension of her driving license. She contends on

appeal that the State failed to show that her traffic stop at a roadside safety check was proper after she made a *prima facie* case against the stop that shifted the burden of proof to the State.

¶ 3 On Saturday, August 14, 2010, at about 2 a.m., defendant was issued citations for driving without carrying her license, without valid insurance, under the influence of alcohol (DUI), and with a blood alcohol content [BAC] of 0.08 or greater. One citation stated that she was stopped in a roadside safety check. An officer issued a report that day to the Secretary of State indicating that defendant was tested to have a BAC of 0.08 and describing the circumstances of the stop: "This subject was stopped at roadside safety check. She had strong odor of alcoholic beverage on breath, bloodshot and watery dilated eyes, [and] slurred speech. She refused standard field sobriety tests." The officer affirmed that he gave defendant a warning before the test that her license could be summarily suspended under the Vehicle Code (Code) if, having been arrested for DUI, she failed or refused alcohol testing. *See* 625 ILCS 5/11-501.1 (West 2010).

¶ 4 In August 2010, the Secretary of State suspended defendant's license for six months from September 29, 2010, under Code section 11-501.1. Defendant timely filed a petition in the circuit court to rescind the summary suspension, alleging that: she was not properly arrested and cited for DUI, the arresting officer lacked reasonable grounds to believe she was committing DUI, she was not properly warned regarding summary suspension, she did not refuse testing, and she submitted to testing but it was not conducted properly.

¶ 5 On November 3, 2010, the court heard the petition. Defendant told the court that she was proceeding on the first two allegations: that the arrest and citation – including the roadblock leading to them – were improper, and that the officer lacked reasonable grounds to suspect DUI.

¶ 6 Defendant testified that, on the night of the stop, she had been at a friend's home, where she drank three 12-ounce beers. When she left there with her friend, she left her license behind in her car as she did not intend to drive. However, she did not "feel like" she was under the

influence of alcohol. She was returning in her friend's car to retrieve her license so she and her friend could go to a tavern when she encountered a roadblock where officers were directing cars into a police station parking lot. She followed the directions into the lot, though she was not committing any violations at the time. An officer asked for her identification, and she told him that she did not have it as she was traveling to get it. The officer directed her to another area of the parking lot, where Officer Pelarenos asked her to get out of the car for field sobriety tests. She could not recall with certainty whether he had asked for her identification, but he asked her to state her name. She exited the car but refused field testing, and she was arrested.

¶ 7 Defendant rested, and the State moved for a directed finding. In response, defendant argued that there was no evidence offered that she was under the influence of alcohol at the time she was arrested and that, in the absence of an apparent traffic violation justifying her stop, the burden shifted to the State to show that the roadblock was constitutionally proper. The court denied the motion, finding that defendant made a *prima facie* case and thus shifted the burden to the State to show that the summary suspension was proper.

¶ 8 Officer Pelarenos testified that he was working at a roadside safety check when defendant was "pulled into" the safety check by another officer. He asked her for her license, which she could not produce. He then noticed a strong odor of an alcoholic beverage and that her eyes were bloodshot, watery, and dilated. When she exited her car, she walked slowly and had a flushed face. He asked her if she had consumed any alcohol, and she replied that she had a beer about 15 minutes earlier. Her speech was slurred, and when he asked her to spell her name so he could check the license records computer, she was mis-spelling her own name. Based on his experience and training – two decades of police service with over 100 DUI arrests in one year alone – he believed defendant was under the influence of alcohol. He therefore arrested her and issued her a citation for DUI.

¶ 9 Following arguments of the parties, the court denied the petition, expressly finding that the State met its burden of showing that the summary suspension was proper.

¶ 10 Defendant timely filed a motion to reconsider the November 3 order, arguing that she made a *prima facie* case challenging the stop so that the burden was on the State to prove that the stop was reasonable. However, she argued, the State presented no evidence regarding the basis for stopping defendant; that is, it failed to show that the roadblock was constitutionally proper.

The court heard the motion to reconsider on December 3. Defendant argued that the State presented no evidence of how the roadblock was conducted beyond the undisputed evidence that it existed. The State argued that the propriety of the roadblock is not within the scope of a petition to rescind summary suspension and that defendant failed to state a *prima facie* case that the roadblock was improper. The court denied reconsideration, and this appeal timely followed.

¶ 11 On appeal, defendant contends that the court erred in denying her petition to rescind her summary suspension where the State failed to show that her traffic stop in a roadblock or roadside safety check was constitutionally proper after she made a *prima facie* case against the stop and thus shifted the burden of proof to the State. The State responds that defendant did not make a *prima facie* case regarding the propriety of the stop because she presented no evidence that the roadblock was improper. Defendant replies that the State has forfeited a challenge to the *prima facie* case by presenting evidence after its motion for a directed finding was denied.

¶ 12 Code section 11-501.1(a) provides that every person who drives "a motor vehicle upon the public highways of this State shall be deemed to have given consent" to a chemical test or tests to determine the person's BAC if arrested for DUI, so that if a police officer has probable cause to believe the person has committed DUI, the officer "shall request a chemical test or tests which shall be administered at the direction of the arresting officer." 625 ILCS 5/11-501.1(a) (West 2010). When an officer requests such testing and warns the person of the prospect of

summary suspension for refusing or failing the test, then either refusal to submit to the test or a test result of a BAC of 0.08 or greater results in summary suspension of the person's license. 625 ILCS 5/11-501.1(c)-(g) (West 2010).

¶ 13 A person whose license has been summarily suspended may petition the circuit court to rescind the summary suspension. 625 ILCS 5/2-118.1(b) (West 2010). The statutory grounds for rescission are generally limited to: (1) whether the person was arrested and issued a citation for DUI, (2) whether the arresting officer had reasonable grounds to believe that the person was in physical control of a vehicle on a highway while under the influence of alcohol, (3) whether the person refused to submit to chemical testing after being warned that refusal would result in suspension of driving privileges, and (4) whether the person submitted to testing which found a BAC of 0.08 or more. 625 ILCS 5/2-118.1(b) (West 2010). However, the propriety of the underlying traffic stop is a constitutional basis for rescission, additional to and separate from the statutory grounds. *People v. Dittmar*, 2011 IL App (2d) 091112, ¶ 42 (2011).

¶ 14 The party petitioning for rescission has the initial burden of proof to demonstrate by a preponderance of the evidence a *prima facie* case for rescission. *People v. Keithley*, 399 Ill. App. 3d 850, 852-53 (2010). If she does so, the burden then shifts to the State to present evidence justifying the summary suspension. *Id.* Generally, the court's decision on a petition to rescind summary suspension will not be reversed unless it is against the manifest weight of the evidence, except that *de novo* review applies where the facts and witness credibility are not questioned, as with an issue of statutory interpretation. *Id.*

¶ 15 Here, defendant presented no evidence to indicate that the roadblock was improper, and thus the burden did not shift to the State to show that the roadblock was proper. See *People v. Paige*, 385 Ill. App. 3d 486, 490 (2008) (reversing trial court's grant of the defendant's petition to rescind where the defendant failed to present any evidence that the roadblock was not

reasonable); *People v. Tibbets*, 351 Ill. App. 3d 921, 927-29 (2004) (affirming the trial court's dismissal of the defendant's petition to rescind for failure to establish a *prima facie* case).

¶ 16 Defendant contends that the State has forfeited any argument to that effect, citing *People v. Aleliunaite*, 379 Ill. App. 3d 975, 979 (2008), for the proposition that a party that elects to present evidence after its motion for a directed finding has been denied forfeits its right to a directed finding. The State presented evidence following the denial of its directed-finding motion on the issues of whether defendant was arrested and cited for DUI and whether there were reasonable grounds to suspect DUI. However, the State indisputably did not present evidence regarding the propriety of the roadblock – indeed, that is the very crux of defendant's contention of error – nor is the State contending on appeal that its directed-finding motion was erroneously denied. We note that while *Aleliunaite* was, as here, an appeal from a denial of rescission of summary suspension, the State in *Aleliunaite* failed to seek a directed finding and then presented evidence on the issue in dispute. *Aleliunaite*, 379 Ill. App. 3d at 979, 981-82. We shall not interpret the rule stated in *Aleliunaite* to mandate forfeiture of an appellee's defensive or responsive argument that the appellant did not state a *prima facie* case where evidence was presented following denial of a directed-finding motion but no evidence was presented on the particular claim or issue at contention on appeal. We would be effectively negating or eliminating the statutorily-based (*People v. Orth*, 124 Ill. 2d 326, 337-38 (1988)) initial burden of a rescission petitioner if we were to reverse and order rescission when defendant presented absolutely no evidence on one of her grounds for rescission (the propriety of the roadblock) on the basis that the State did not present evidence on the point either.

¶ 17 We conclude that the court did not err in denying rescission of the summary suspension or in denying reconsideration thereof. Accordingly, the judgment of the circuit court is affirmed.

¶ 18 Affirmed.

1-11-0041