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2012 IL App (3d) 110009-U

Order filed January 25, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
Plaintiff-Appellee,) Tazewell County, Illinois,
)
v.) Appeal No. 3-11-0009
) Circuit No. 10-DT-450
)
JOLENE CHRISTIE-GRANT,) Honorable
) Lisa Y. Wilson,
Defendant-Appellant.) Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's denial of defendant's petition to rescind the summary suspension of her driver's license was not against the manifest weight of the evidence, where the arresting officer testified that he read defendant the warning to motorists and gave her a written copy of the warning. The trial court did not abuse its discretion by denying defendant's request to introduce a video recording of the arresting officer reading the warning to motorists to another offender on an unrelated occasion.

¶ 2 On July 10, 2010, defendant, Jolene Christie-Grant, was arrested for driving under the influence (DUI) (625 ILCS 5/11-501 (West 2010)). On August 3, 2010, defendant filed a

petition to rescind the summary suspension of her driver's license (625 ILCS 5/2-118.1(b) (West 2010)) alleging the arresting officer did not provide the required warnings pursuant to section 11-501.1 of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501.1 (West 2010)). The trial court denied defendant's petition to rescind. Defendant appealed, arguing that: (1) the trial court's denial of her petition to rescind the suspension of her driver's license was against the manifest weight of the evidence; and (2) the trial court abused its discretion by sustaining the State's objection to the introduction of the booking video depicting the arresting officer reading the warning to motorist to another driver.

¶ 3

FACTS

¶ 4 According to defendant's citation for DUI, the officer alleged defendant was unlawfully operating her vehicle while driving under the influence of alcohol on July 10, 2010, at 12:14 a.m. The officer also completed paperwork documenting that the officer warned defendant at 1:02 a.m. on the same date that if she refused the officer's request to submit to chemical testing, her driving privileges would be suspended for a minimum of 12 months, and if she submitted to a chemical test which disclosed an alcohol concentration of 0.08 or more, her driving privileges would be suspended for a minimum of 6 months. The paperwork prepared by the officer indicated that defendant refused testing at 1:26 a.m., and received a notice of the summary suspension from the officer on the same day.

¶ 5 On November 2, 2010, the court conducted a hearing on defendant's petition to rescind the statutory summary suspension. The arresting officer, Ryan Billingsley, testified that he first read the "Warning to Motorists" to defendant and then provided a copy of the warning to defendant. The officer testified he typically uses his finger to follow the text when reading the

small print of the warning to motorists because "[t]here's a lot to read."

¶ 6 A police video recording from the date at issue was admitted into evidence. The video depicts Billingsley entering the booking room with the defendant and removing her handcuffs at approximately 01:02:00. Thereafter, Billingsley sat at a desk while defendant was seated on a bench. Billingsley opened the DUI kit at about 01:04:15 and began looking at the paperwork. The video does not contain footage from 01:04:41 to 1:05:35. According to Billingsley, it appeared from the video that he was reading the warning to motorist at 01:06:15. The video does not contain footage from 1:06:54 to 1:09:03 and 1:09:41 to 01:10:18.

¶ 7 At 01:24:00, the video depicts Billingsley and defendant leaving the booking room and then returning at 01:26:00. According to Billingsley, defendant refused to take a Breathalyzer at 1:26 a.m. The entire video recording was not clear, did not have any sound, and was offered by the defense to show the court that the officer did not read the warning to motorists to defendant.

¶ 8 Billingsley testified that from the video, he could not be certain of whether he used his finger to guide him when he read the warning. Billingsley testified that he knows he read the warning to motorists because he does that "every time."

¶ 9 Defendant's counsel sought to admit another booking video that recorded Billingsley using his finger to guide him while reading a warning to motorists to another person on another unrelated occasion. The trial court sustained the State's objection to the entry of the video.

¶ 10 Defendant testified that Billingsley did not read the warning to motorists and did not receive any paperwork until she was leaving the police station at 11:30 a.m. Defendant testified that she did not read the paperwork.

¶ 11 The trial court denied defendant's petition to rescind after finding "[d]efendant was

warned and refused to submit to a breath test." Defendant appeals.

¶ 12

ANALYSIS

¶ 13 First on appeal, defendant argues that the trial court's denial of her petition to rescind was against the manifest weight of the evidence. A trial court's denial of a petition to rescind a statutory summary suspension will not be reversed unless it is against the manifest weight of the evidence. *People v. Smith*, 172 Ill. 2d 289 (1996).

¶ 14 A hearing on a petition to rescind a statutory summary suspension is a civil proceeding in which the motorist bears the burden of proof. *People v. Wear*, 229 Ill. 2d 545 (2008). Here, the arresting officer testified that he read the warning to motorist to defendant and provided her with a copy. According to Billingsley, it appeared from the defense video that was admitted into evidence that he was reading the warning to motorist at 01:06:15. In contrast, defendant claims the officer did not read the warning and offered the videotape as evidence of this omission.

¶ 15 In this case, defendant does not deny refusing to take the test. Rather, defendant contends the officer did not provide the requisite warning to motorist before she refused the officer's request for testing. In contrast, the officer testified that he read the required warnings to defendant before defendant refused the test at 1:26 a.m.

¶ 16 The court viewed the video, received the testimony of both the officer and defendant, and concluded the officer read the warning to defendant in this case. Obviously, the court resolved any credibility issues in favor of the officer after viewing the admitted video. Thus, based on the officer's testimony, we conclude that the trial court's finding that defendant received the requisite warning from the officer before refusing to complete the breath test was not against the manifest weight of the evidence.

¶ 17 Defendant next contends that the trial court abused its discretion by refusing to allow the defense to introduce another video recording of Billingsley reading a warning to motorist. Evidentiary rulings are within the sound discretion of the trial judge and will not be disturbed absent a clear abuse of discretion. *People v. Robinson*, 217 Ill. 2d 43 (2005). In this case, Billingsley agreed that he typically uses his finger or some other object to follow along the text of the written warning to motorists while reading it out loud to the motorist. Presumably, the second video depicted him doing so while the admitted video recording does not document the officer using his admittedly, typical, technique. Since the officer testified that he typically uses his finger to follow along, the offered video recording would have merely been cumulative of his own testimony. For this reason, we agree the court did not abuse its discretion by omitting the second video recording of an unrelated booking procedure with another driver.

¶ 18. CONCLUSION

¶ 19 The judgment of the circuit court of Tazewell County is affirmed.

¶ 20 Affirmed.