

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
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-DT-1186
)	
JAYDEN J. HOPPE,)	Honorable
)	Patrick L. Heaslip,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's petition to rescind his summary suspension, as the police had reasonable grounds to arrest defendant for DUI: although defendant was previously seized (when he was placed in a squad car), that seizure was valid, as the police had reasonable suspicion for a stop (and arguably had probable cause for an arrest) in light of the facts that defendant was the driver of a car in an accident and smelled of alcohol.

¶ 2 Defendant, Jayden J. Hoppe, was arrested for driving while under the influence of alcohol (DUI) (see 625 ILCS 5/11-501(a)(1), (a)(2) (West 2012)), and his driving privileges were subsequently summarily suspended. He petitioned to rescind that suspension, contending, among

other things, that the arresting officers lacked reasonable grounds to believe that he was driving or in actual physical control of his car while he was under the influence of alcohol. The trial court denied the petition, defendant moved the court to reconsider, the court denied that motion, and this timely appeal followed. On appeal, defendant argues that the arresting officers lacked reasonable grounds to believe that he committed DUI. For the reasons that follow, we affirm.

¶ 3 The following facts are relevant to resolving the issues raised. Defendant testified that he was driving back to Wisconsin in the middle of September 2012 when he ran out of gas. Defendant stated on cross-examination that he fell asleep while driving and hit a guardrail or else he was not sure what happened.

¶ 4 In any event, he stated that he went to a nearby gas station, called his girlfriend, and asked her to come pick him up because he did not have enough money to buy gas. After defendant made his call, two officers approached him. The officers asked defendant for his name and whether he owned the car they had found down the street. Defendant told the officers that that was his car, and the officers told defendant that they would take him to his car even though defendant told them that his girlfriend was coming to get him.

¶ 5 The officers told defendant to get in the back of the marked squad car, and defendant complied. Defendant could not remember whether he was handcuffed at this time. While in the back seat, defendant observed that he was unable to open the car doors from the inside and that there was a thick piece of plastic separating the front and back seats. Given the circumstances, defendant believed that he was not free to leave after he was put in the squad car.

¶ 6 Once defendant and the officers arrived at defendant's car, which was parked on the side of the road and was damaged on the outside, the officers, who did not bring any gas for defendant's car,

had defendant perform a number of field sobriety tests. Defendant failed these tests, the officers handcuffed defendant, and they put defendant in the back of the squad car again. Defendant was taken to the police station, the officers read the Warning to Motorists to him, defendant submitted to testing, and he failed. As a result, the officers gave defendant immediate notice of the summary suspension of his driving privileges. Defendant denied ever telling the officers that he had been drinking that day.

¶ 7 Admitted into evidence was the arresting officers' arrest report (see 625 ILCS 5/2-118.1(b) (West 2012)). The arrest report provided that, on September 13, 2012, at 8:09 a.m., Officer Tetzlaff was dispatched to a possible hit-and-run accident. When the officer arrived at the scene, he saw defendant's car parked on the side of the road. There was damage to the car's driver's-side door, front bumper, and mirror. Looking inside of the car, the officer saw defendant's Wisconsin driver's license. Officer Tetzlaff contacted Officer Bystrom and asked him to look for defendant in the area.

¶ 8 Officer Bystrom found defendant at a nearby gas station. Officer Bystrom "said he could smell a strong odor of an alcoholic beverage coming from [defendant]." Officer Bystrom placed defendant in his squad car, and, when he did, "the squad began to smell of an odor of an alcoholic beverage." During Officer Bystrom's encounter with defendant, "[defendant] admitted to drinking alcoholic beverages."¹

¶ 9 Officer Tetzlaff approached the squad car, opened the door, and asked defendant what had happened.² Defendant said that he was driving home, he ran out of gas, and someone hit him.

¹It is unknown when that statement was made in relation to when defendant was put in the squad car.

²The record does not indicate whether Officer Tetzlaff talked with defendant at the gas station

During his conversation with defendant, Officer Tetzlaff told defendant that “[he] could smell an odor of an alcoholic beverage coming from [defendant’s] mouth.” Defendant told the officer that “he had been drinking.” Officer Tetzlaff also observed that defendant had “red and glassy eyes” and “slurred speech.” Officer Tetzlaff asked defendant to submit to field sobriety tests, and defendant agreed. After defendant failed three such tests, the officers arrested defendant for DUI (which arrest happened at 8:50 a.m.), transported defendant to the Criminal Justice Center jail, and read to him the Warning to Motorists. Defendant submitted to a breath test and failed that test. Officer Tetzlaff then immediately served defendant with notice of the summary suspension of his driving privileges.

¶ 10 The trial court denied defendant’s petition to rescind. In doing so, the court found that the arresting officers had reasonable grounds to believe that defendant was driving or in actual physical control of a motor vehicle while under the influence of alcohol. In reaching this conclusion, the court did not elaborate as to what evidence it found credible or what facts it relied on.

¶ 11 At issue in this appeal is whether the officers had reasonable grounds to believe that defendant had committed DUI. A defendant bears the burden of presenting *prima facie* evidence that the officer lacked reasonable grounds. *People v. Davis*, 2012 IL App (2d) 110581, ¶ 47. When courts assess whether reasonable grounds exist for an arrest, they employ the probable cause analysis derived from the fourth amendment. *Id.* ¶ 48. Under that analysis, we apply a two-part standard of

or at defendant’s car. However, because Officer Bystrom told Officer Tetzlaff that the squad began to smell of alcohol when defendant was in it, we presume that Officer Bystrom was in the squad with defendant for some time, meaning that Officer Bystrom drove defendant in the squad to the scene of the accident and that Officer Tetzlaff spoke with defendant there. This is consistent with defendant’s testimony.

review. *Id.* In doing so, we will uphold findings of historical fact the trial court made unless those findings demonstrate clear error, and we will give due weight to any inferences drawn from the factual findings. *Id.* However, we review *de novo* the trial court's ultimate legal ruling on the petition to rescind. *Id.*

¶ 12 Here, the trial court did not express any factual findings. Rather, the court merely found, based on the evidence presented, that the officers had reasonable grounds to believe that defendant was DUI. When a court does not express any factual findings, we, as a reviewing court, must presume that the trial court resolved all issues and controverted facts in favor of the prevailing party, which, here, is the State. See *People v. Lagle*, 200 Ill. App. 3d 948, 954 (1990). "Thus, we must take questions of testimonial credibility as resolved in favor of the [State], and must draw from the evidence all reasonable inferences in support of the judgment." *Id.* In doing so, "[we] will neither presume that error occurred in the trial court nor assume that the trial court misunderstood the applicable law." *Id.* at 955.

¶ 13 Here, viewed in favor of the State, the evidence established that Officer Tetzlaff saw defendant's car with damage consistent with an automobile accident. In surveying the scene, Officer Tetzlaff also saw defendant's driver's license. Officer Tetzlaff then contacted Officer Bystrom and told him to look for defendant in the area.

¶ 14 Officer Bystrom found defendant at a nearby gas station. Defendant told the officer that he had been driving home when he ran out of gas, and Officer Bystrom observed that there was a strong odor of alcohol coming from defendant. Defendant was placed in a squad car; Officer Bystrom indicated that the squad car then began to smell of alcohol; and defendant admitted to Officer Bystrom that he had been drinking.

¶ 15 Soon thereafter, Officer Tetzlaff talked with defendant. Presumably, Officer Tetzlaff talked with defendant at the scene of the accident. During his conversation with defendant, Officer Tetzlaff, like Officer Bystrom, could smell alcohol emanating from defendant, and defendant admitted to Officer Tetzlaff that he had been drinking. In addition, Officer Tetzlaff observed that defendant's eyes were bloodshot and glassy and that he slurred his words. Because of this, Officer Tetzlaff asked defendant to complete three field sobriety tests. Defendant consented and failed all three of them. Given these indicia of intoxication, we conclude that the officers had reasonable grounds to believe that defendant was DUI.

¶ 16 Citing *People v. Burson*, 90 Ill. App. 3d 206, 209 (1980), defendant argues that he was seized once he was put in the squad car. Defendant argues that, because the officers knew at that point only that defendant smelled of alcohol, and because smelling of alcohol is not against the law, the officers were not justified in seizing defendant by putting him in the squad car.

¶ 17 We agree that defendant was seized once he was placed in the squad car. See *id.* However, we find that the seizure was proper. Before defendant was placed in the squad car, Officer Tetzlaff found defendant's driver's license in a car that had sustained extensive damage. Pursuant to Officer Tetzlaff's request, Officer Bystrom looked for defendant and found him at a nearby gas station. Defendant admitted to Officer Bystrom that he had driven the car Officer Tetzlaff found, and Officer Bystrom observed that defendant smelled strongly of alcohol. Based on these facts, the officers arguably had probable cause to arrest defendant for DUI. See *People v. Bulman*, 212 Ill. App. 3d 795, 805 (1991) (“[P]robable cause existed to arrest [the defendant] for driving under the influence when [the officer's] investigation established that [the defendant] was driving his car when he had an accident and that [the defendant] smelled strongly of alcohol.”); *People v. Preston*, 205 Ill. App.

3d 35, 40-41 (1990) (“Probable cause for the arrest existed in this case because the officer came upon a serious traffic accident in the early morning hours, was told by [the] defendant that the other vehicle crossed the center line and hit his vehicle when the object evidence appeared otherwise, and there was an odor of alcohol on [the] defendant’s breath which was noticed by the officer as well as other emergency personnel.”). In any event, even if probable cause was lacking, the officers certainly had reasonable suspicion. See *People v. Walter*, 374 Ill. App. 3d 763, 766 (2007). Thus, the officers had the authority to conduct at least a stop of defendant, and “the status or nature of [that] investigatory stop [was] not affected by *** placing [defendant] in a squad car.” *People v. Ross*, 317 Ill. App. 3d 26, 32 (2000). Given the above, we conclude that the initial seizure was valid, and thus so was the eventual arrest.

¶ 18 For these reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 19 Affirmed.