

NOTICE

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2014 IL App (4th) 130812-U

NO. 4-13-0812

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 1, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
PATRICIA L. WINKELMAN,)	No. 13CM748
Defendant-Appellant.)	
)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in holding defendant failed to establish a *prima facie* case for rescission of the statutory suspension of her driver's license.

¶ 2 In August 2013, defendant, Patricia L. Winkelman, filed a petition to rescind the statutory summary suspension of her driver's license. In September 2013, the trial court heard evidence and denied the petition. Defendant appeals, arguing the arresting officer did not have probable cause to believe she was driving a vehicle under the influence of alcohol. The State argues defendant failed to establish a *prima facie* case for rescission. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 15, 2013, Officer Kyle Gregg arrested defendant for driving under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2012). Because defendant refused to submit to testing, the State notified her that her privilege to operate a motor vehicle would be

suspended from August 30, 2013, until August 30, 2014. On August 7, 2013, defendant filed a petition to rescind the summary suspension, alleging the arresting officer did not have reasonable grounds to believe she was in physical control of a motor vehicle while under the influence of alcohol.

¶ 5 A. Defendant's Case

¶ 6 At the September 2013 hearing on the petition to rescind, defendant testified, on July 15, 2013, at about 7:45 p.m., she was involved in a car accident on U.S. 45 in Rantoul, Illinois. In response to the question, was she was under the influence of alcohol that evening, defendant answered, "yes." Defendant explained she drank one margarita at noon with lunch and had one "Tequila Sunrise" at a bar with chicken wings at around 4:30 p.m. Defendant then went to a friend's house at about 5:30 or 6 p.m. and had one drink, a lemonade and tequila with about 1 1/2 shots of tequila. Defendant testified, after leaving her friend's house, she felt fine and did not feel intoxicated.

¶ 7 When asked how the accident occurred, defendant responded: "I thought I would make it through the light, it was turning yellow, but I slammed on my brakes instead. I lost control of my car and hit another car because the light was turning red." The accident was severe. Defendant "smashed [her] face on the steering wheel" and felt "very dizzy" and "incoherent."

¶ 8 Defendant also testified an emergency medical technician (EMT) was the first to arrive on the scene and spoke with her. The EMT asked defendant if she hit her head and she responded, "yes." The EMT did not mention defendant smelled like alcohol or slurred her speech. Defendant told the EMT she did not want to be transported to the hospital. Defendant admitted into evidence a form the EMT filled out at the scene, entitled "Presence Regional

[Emergency Medical Services] System Against Medical Advice/Refusal Form." Next to the question, "[d]oes the patient appear to be of sound judgment and free of the influence of drugs and alcohol," the EMT marked, "yes." The EMT also marked, "yes" next to the question "[i]s the patient alert and oriented to person, place and day." The EMT did not sign his or her name on the form. Defendant's name is printed on the form, indicating she elected "not to receive treatment and/or transport to a medical facility." Defendant's initials are on the form in the blank labeled "patient's signature."

¶ 9 Defendant also testified an officer, later identified as Officer Gregg, arrived, approached her car, and asked if defendant "had any drinks" and she responded, "yes." Gregg asked defendant to do a field sobriety test, but she refused. In her hearing testimony, defendant explained she did not do the field sobriety test because, "I was in shock and I just was scared that if I did it, it would cause me to fail anyway, so—." Gregg then placed defendant under arrest.

¶ 10 Defendant then called Officer Gregg, who testified he arrived at the scene of the accident at around 7:45 p.m., and defendant's vehicle was pinned against a traffic light with significant front-end damage. Gregg did not speak with the EMT about defendant's condition. After the EMT evaluated defendant, Gregg approached defendant and observed she smelled of alcohol, had watery eyes, and slurred her speech. Gregg did not ask defendant or the EMT if she had a potential concussion or impairment from the accident or if she had been crying. Gregg agreed it was possible defendant could have been crying and that a head injury could affect a person's speech or motor skills.

¶ 11 Officer Gregg agreed an EMT is trained to tell if someone is medically intoxicated, but did not agree an EMT was trained to tell if someone was legally intoxicated. Gregg stated he had specific training to determine if someone is legally intoxicated. When asked

if his evaluation would often differ from an EMT's, Gregg answered, "yes." Gregg explained at times his evaluation is different from the EMT's evaluation but he could not remember any specific incidences.

¶ 12 On cross-examination Officer Gregg testified he spoke with two other individuals at the scene of the accident, Linda Rosenbeck and Chuck Duckworth. According to Gregg's testimony, Rosenbeck told him she had been stopped at a red light and, when the light turned green, began making a right-hand turn onto U.S. 45. While turning, Rosenbeck observed a blue Pontiac (defendant's car) traveling southbound on U.S. 45 toward the intersection, realized the car was not going to stop, and "slammed on her brakes." She believed the driver of the Pontiac also applied the brakes before the accident occurred. Gregg further testified, Duckworth told Gregg he was traveling southbound on U.S. 45 when a blue Pontiac passed him, nearly hitting him. Duckworth estimated the Pontiac was driving over 90 miles per hour. As Duckworth slowed down, he observed the Pontiac travel through a red traffic light and strike another vehicle. Gregg testified defendant told him the accident occurred as she attempted to travel through the yellow light.

¶ 13 Defendant served Pro Ambulance, the attending EMT's company, a notice to appear but the company did not abide by the subpoena and no one from the company was present at the hearing. Rather than continuing the hearing, the parties agreed to stipulate, based on their extensive training and education in the medical field, EMTs are able to evaluate whether an individual is intoxicated. The parties also stipulated the EMT would have testified defendant appeared to be of sound mind and judgment and free of the influence of drugs or alcohol after the accident, as stated in the report. Defendant presented closing argument and rested her case.

¶ 14 B. The Trial Judge's Ruling

¶ 15 Following defendant's closing argument, the trial court asked defendant, "does that complete your argument?" Counsel for defendant responded, "yes, Your Honor."

Immediately after this exchange, the court stated its ruling on the petition to rescind. The State did not present any evidence or argument.

¶ 16 The trial court denied defendant's petition to rescind, holding defendant did not meet her burden to demonstrate that Officer Gregg lacked reasonable grounds to believe she was in physical control of a motor vehicle while under the influence of alcohol. The court explained:

"Of course, the standard of proof is not proof beyond a reasonable doubt and it measures the information available to the officer ***. And so what we have is an officer who knows these things. That the petitioner is in an automobile accident that in and of itself suggests a significant amount of impairment. The description[s] he is provided by other witnesses present at the scene of the accident are indicative of impaired driving. He knows that this person has an odor of alcoholic beverage. He knows that she's admitted drinking beforehand. He requests and she declines field tests. All of the information available to the officer at the time is sufficient that he had reasonable grounds to believe that the petitioner was in actual physical control while under the influence of alcohol. So considering all of the evidence, the petitioner has not met her burden and the petition to rescind is denied."

This appeal followed.

¶ 17

II. ANALYSIS

¶ 18 "A summary suspension is a civil action in which the motorist acts in the role of plaintiff." *People v. Wise*, 282 Ill. App. 3d 642, 645, 669 N.E.2d 128, 131 (1996). "After the defendant [motorist] establishes a *prima facie* case, the burden shifts to the State to come forward with evidence justifying the suspension." *People v. Hacker*, 388 Ill. App. 3d 346, 349, 902 N.E.2d 792, 795 (2009).

¶ 19 Four issues may be raised in a petition to rescind: "(1) whether the person was placed under arrest for an offense under section 11-501 (625 ILCS 5/11-501 (West 2006)); (2) whether the officer had reasonable grounds to believe that the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol, another drug, or both; (3) whether the person received the statutory motorist's warning and refused to complete the test or tests; and (4) whether the test or tests disclosed an alcohol concentration of 0.08 or more." *People v. Wear*, 229 Ill. 2d 545, 560, 893 N.E.2d 631, 640 (2008) (citing 625 ILCS 5/2-118.1(b)(1) to (b)(4) (West 2006)). Here, defendant's petition requested relief under subsection (b)(2), as she claimed the arresting officer lacked reasonable grounds to believe she operated a motor vehicle while under the influence of alcohol. 625 ILCS 5/2-118.1(b)(2) (West 2012).

¶ 20 To determine if an arresting officer lacked "reasonable grounds" under subsection (b)(2), Illinois courts utilize "the probable cause analysis deriving from the fourth amendment," as "reasonable grounds" is synonymous with probable cause. *Wear*, 229 Ill. 2d at 560, 893 N.E.2d at 640; *People v. Sanders*, 176 Ill. App. 3d 467, 470, 531 N.E.2d 61, 63 (1988). Probable cause is present when the all the facts and circumstances known to the arresting officer are sufficient to warrant a reasonable person to believe the accused has committed an offense. *Id.* at 470, 531 N.E.2d at 63. Probable cause "requires more than mere suspicion, but does not require the officer to have in hand evidence sufficient to convict." *Id.* at 470, 531 N.E.2d at 64. The

"circumstances observed after the act of driving can offer reasonable grounds upon which to conclude a defendant was driving while under the influence, as after an accident." *Id.*

Reviewing courts give deference to the trial court's factual findings and inferences drawn from those facts, but review *de novo* the court's ultimate legal ruling. *Wear*, 229 Ill. 2d at 561-62, 893 N.E.2d at 641.

¶ 21 Defendant argues Officer Gregg did not have probable cause to believe she was under the influence of alcohol because, at the scene, an EMT evaluated defendant and came to a different conclusion. This argument is unconvincing. Although the parties stipulated the EMT would have testified defendant did not appear intoxicated, the trial court did not know what the EMT actually observed or extent of the evaluation because the EMT did not testify. The form also does not indicate the extent of intoxication the EMT considered constituted being under the influence of drugs and alcohol. Gregg, however, testified he was trained to assess the legal standard of intoxication. Gregg also testified this standard could be different from the standard the EMT applied.

¶ 22 Moreover, because Gregg did not speak with the EMT about defendant's condition, the EMT's evaluation was not information Gregg had at the time of the arrest. The EMT's evaluation simply demonstrates the EMT came to a different conclusion than did Gregg. While this evidence might render Gregg's testimony slightly less persuasive to the trial judge, Gregg's testimony was substantiated by other evidence. Specifically, the circumstances of the accident, as described to Gregg by witnesses at the scene and defendant's testimony at the hearing, suggested she was impaired. At the hearing, *defendant admitted she was under the influence of alcohol on the night of the accident* and admitted drinking at three different locations over the course of the day.

¶ 23 Defendant also argues Officer Gregg did not have probable cause because reasonable alternatives rebutted his conclusion she was under the influence of alcohol, citing *People v. Allcorn*, 183 Ill. App. 3d 431, 539 N.E.2d 813 (1989). In *Allcorn*, the trial court found field sobriety tests were " 'tainted' " because the defendant was attending to the passenger's medical emergency and concluded the defendant offered a reasonable alternative to many of the officer's observations. *Id.* at 435-36, 539 N.E.2d at 816. We conclude *Allcorn* is distinguishable. Unlike the motorist in *Allcorn*, defendant's explanations provide little evidence of Gregg's knowledge at the time of the arrest because she did not explain them to Gregg before the arrest. Further, defendant's alternative explanations only explain some of Gregg's observations. Hitting her head in the accident could have caused defendant to have watery eyes and arguably could have affected her speech had she suffered a concussion, but it cannot explain the accident itself, the observations of the other drivers, or why she smelled of alcohol. The persuasiveness of defendant's alternative explanations is also significantly diminished by her admission as to how much she had been drinking before the accident. We conclude the trial court did not err in finding these explanations unpersuasive.

¶ 24 Defendant also argues, "[a]fter the presentation of [her] evidence, a motion for directed verdict was never raised by the State, nor granted by the Court, which is indicia of the fact [defendant] satisfied her burden of proof" to present evidence Officer Gregg lacked probable cause to believe she was under the influence of alcohol at the time of the accident. According to defendant, as a consequence, the burden of proof shifted to the State and it failed to meet its burden. Defendant does not explain how the lack of a motion for a directed verdict demonstrates Officer Gregg lacked probable cause and provides no authority for such a proposition. The State

responds defendant had the burden of proof at the rescission hearing and failed to meet it. We agree with the State.

¶ 25 Our review of the trial court transcripts indicates, at the close of defendant's case, the court issued its ruling, finding defendant had not met her burden of proof and denying her petition. The State did not move for a directed verdict because the trial court acted on its inherent power to enter its order before the State presented any evidence. See *Freeman v. Chicago Transit Authority*, 50 Ill. App. 2d 125, 138, 200 N.E.2d 128, 135 (1964) (the trial court has inherent power to direct a verdict on its own motion); see also *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 511, 229 N.E.2d 504, 514 (1967) (a *sua sponte* directed verdict does not violate the constitutional rights of either party). The burden of proof did not shift to the State simply because it did not motion for a directed verdict.

¶ 26 Defendant, the petitioner, had the burden to demonstrate Officer Gregg lacked probable cause to believe she was intoxicated at the time of the accident. The trial court did not err in concluding defendant failed meet her burden and denying her petition to rescind.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. See 55 ILCS 5/4-2002(a) (West 2012).

¶ 29 Affirmed.