2015 IL App (2d) 140631-U
No. 2-14-0631
Order filed April 24, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. DONALD M. BOWMAN, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of De Kalb County. No. 14-DT-12 Honorable Thomas L. Doherty, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court erred in granting defendant's motion to quash his arrest and petition to rescind his summary suspension; the arresting officer had probable cause to arrest defendant for DUI, as defendant's portable breath test showed a result more than twice the legal limit and he showed several other indicia of intoxication.

¶ 2 Defendant, Donald M. Bowman, was arrested for driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)), and his driving privileges were summarily suspended. He moved to quash his arrest and petitioned to rescind his suspension, arguing, among other things, that the officer lacked probable cause to arrest him for DUI.

Following a hearing, the trial court granted the motion and the petition. The State filed a certificate of impairment and timely appeals, claiming that the officer had probable cause to arrest defendant for DUI. We agree. Thus, we reverse and remand.

¶ 3 The facts relevant to resolving the issue raised are as follows. On January 12, 2014, at 12:50 a.m., defendant was driving his truck east on Chicago Road between East and West Sandwich Roads.[1] At that time, Officer Jason Johnson, who worked for the De Kalb County sheriff's office, was assisting a motorist who was stuck in a ditch on Chicago Road. Johnson proceeded to his squad car and ran a registration check of the license plate on defendant's truck. That check revealed that there was an outstanding warrant for defendant, the registered owner.[2] Because of the outstanding warrant, Johnson activated his emergency lights and stopped defendant.

¶ 4 When Johnson approached defendant's truck, he detected a strong smell of alcohol emanating from defendant. Johnson asked defendant if he had been drinking, and defendant stated that he had been at a birthday party and had had three or four beers. Johnson then asked defendant for his driver's license and proof of insurance and instructed defendant to turn off his truck. Johnson indicated that defendant had a difficult time accomplishing these tasks, a contention that defendant denied.

[1] East and West Sandwich Roads run north and south.

[2] The outstanding warrant was related to defendant's failure to pay child support. The record reflects that defendant paid the outstanding child support on January 10, 2014, two days beforehand.

¶ 5 Johnson also saw that defendant's eyes were bloodshot and glassy. Johnson testified that, even though bloodshot and glassy eyes could be caused by things other than drinking, he believed, based on these observations, that defendant was intoxicated.

¶ 6 After receiving confirmation of the outstanding warrant, Johnson arrested defendant on the warrant, handcuffed defendant, and placed defendant in the back of his squad car. Johnson then conducted an inventory search of defendant's truck and discovered an unopened Budweiser beer can behind the driver's seat and six or seven opened beer cans in the truck bed. Johnson then returned to his squad, and, while waiting for a tow truck, he detected a strong smell of alcohol coming from the back of the squad.

¶ 7 Johnson transported defendant to the Sandwich police department, where he had defendant complete three field sobriety tests: the horizontal gaze nystagmus (HGN) test, the walk-and-turn-test, and the one-leg-stand test. Johnson testified that defendant failed all three tests. Regarding the walk-and-turn test, defendant lost his balance while Johnson was explaining the test, started that test before the instructions were completed, and improperly turned and stopped during the test. Concerning the one-leg-stand test, defendant hopped, put his arm out to the side, and swayed. Defendant denied Johnson's testimony and contended that he completed all of the tests as instructed.[3]

[3] A video of these tests was admitted at the hearing. During the HGN test, Johnson stood in front of defendant, so one cannot see how defendant performed on that test. With regard to the walk-and-turn test and the one-leg-stand test, one cannot see anything below a few inches above defendant's knees. One can see that defendant starts the walk-and-turn test before the officer completed the instructions, but he walked outside the scope of the squad car's camera so that one cannot see how defendant turned. When defendant was outside the scope of the camera,

¶ 8 In addition to these field sobriety tests, Johnson had defendant complete a preliminary breath test (PBT). That test revealed that defendant's blood-alcohol concentration was 0.183.[4] At that point, Johnson arrested defendant for DUI.

¶ 9 The trial court granted defendant's motion to quash and petition to rescind on the basis that there was no probable cause to arrest him for DUI. In doing so, the court found that defendant did not sway or wobble while Johnson was explaining the tests to him. The court acknowledged that, even though one cannot see defendant's performance of the HGN test, that test verified that defendant had been drinking. Because the squad car's hood obstructed the view of defendant's legs in the walk-and-turn test, the court found that the results of that test would be construed in defendant's favor. Concerning the one-leg-stand test, although the court did not indicate whether defendant failed that test, the court found that defendant held his hand out a little bit and hopped once. The court noted that defendant's PBT result measured 0.183, which the court determined was strong evidence, and that defendant smelled of alcohol and had bloodshot eyes. However, the court noted, based on Johnson's testimony, bloodshot eyes could be caused by things other than the consumption of alcohol. Thereafter, the State filed a motion to reconsider, which the court denied.

¶ 10 At issue in this appeal is whether the evidence established that there was probable cause to arrest defendant for DUI.

Johnson stated that defendant almost fell backward. Defendant denied that he almost fell. Concerning the one-leg-stand test, defendant did hop and sway while trying to stand on one foot.

[4] During his testimony, Johnson indicated that he knew that the PBT registered defendant's blood-alcohol concentration as 0.18, but he could not remember what the third number was.

¶ 11 Probable cause depends upon the totality of the circumstances and "exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *People v. Wear*, 229 Ill. 2d 545, 563-64 (2008). "[W]hether probable cause exists is governed by common-sense considerations [citations], and the calculation concerns '[t]he probability of criminal activity, rather than proof beyond a reasonable doubt.' [Citation.]" *People v. Montgomery*, 112 Ill. 2d 517, 525 (1986). "Indeed, probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false." *Wear*, 229 Ill. 2d at 564.

¶ 12 In determining whether the trial court was correct in finding no probable cause, we employ a two-part standard of review. *City of Highland Park v. Kane*, 2013 IL App (2d) 120788, ¶ 11. First, we review the trial court's factual findings and credibility determinations. *Id.* We give great deference to the trial court's factual findings and credibility assessments, and we will reverse those findings only if they are against the manifest weight of the evidence. *Id.* A factual finding or credibility determination is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *Id.* Second, we review the trial court's ultimate legal ruling. *Id.* In doing so, we may make our own assessment of the facts in relation to the issues, and we may draw our own conclusions when deciding what relief should be granted. *Id.* Accordingly, the trial court's ultimate determination regarding the petition to rescind is reviewed *de novo*. *Id.*

¶ 13 Here, we agree with the State that Johnson had probable cause to arrest defendant for DUI. DUI requires two elements: (1) "driv[ing] or be[ing] in actual physical control of any vehicle" and (2) being "under the influence of alcohol." 625 ILCS 5/11-501(a)(2) (West 2012).[5]

[5] The parties do not dispute that defendant was driving the truck.

Under the totality of the circumstances, we find it reasonable for Johnson to have concluded that defendant committed the offense of DUI.

¶ 14 Specifically, the trial court found that defendant smelled of alcohol, had bloodshot eyes, failed the HGN test, hopped while attempting to complete the one-leg-stand test, and had a blood-alcohol concentration of 0.183. These findings are not against the manifest weight of the evidence. In addition, it was unrefuted that defendant admitted drinking and had an unopened can of beer behind the driver's seat of his truck and open cans of beer in the bed of his truck. *People v. Rush*, 319 Ill. App. 3d 34, 40-41 (2001) (this court considered unrefuted facts, in addition to the finding of fact the trial court made, in determining whether there was probable cause to arrest the defendant for DUI). We determine that all of these facts gave Johnson probable cause to arrest defendant for DUI.

¶ 15 First, courts have found that the results of a PBT are admissible at a hearing on whether the arresting officer had probable cause to arrest a defendant for DUI. See, *e.g.*, *People v. Davis*, 296 Ill. App. 3d 923, 928-29 (1998) ("[W]hen the issue is the correctness of the officer's probable cause determination, he must be allowed to demonstrate the bases for his belief, including the PBT results."). Pursuant to section 11-501(a)(1) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(a)(1) (West 2012)), a defendant is driving under the influence if his blood-alcohol concentration is 0.08 or higher. Here, according to the PBT, defendant's blood-alcohol concentration was more than double the legal limit.

¶ 16 Second, added to the results of the PBT were several other factors giving Johnson probable cause to arrest defendant for DUI. Specifically, defendant admitted drinking that night, he failed the HGN test, he hopped while attempting the one-leg-stand test, his eyes were bloodshot and glassy, he smelled of alcohol, and he had opened and unopened cans of beer in his

truck. We have found that similar facts "leave no doubt that [the arresting officer] had probable cause to arrest [the] defendant for DUI." *Rush*, 319 Ill. App. 3d at 41 (this court found that officer had probable cause to arrest the defendant for DUI when the defendant's speech, though slurred, was understandable; the defendant smelled strongly of alcohol; the defendant admitted to drinking several beers the night before; the defendant had open alcohol in his car; the defendant failed one of the field sobriety tests; and a PBT revealed an alcohol concentration of 0.07, which was under the legal limit). Although the court here noted, based on Johnson's testimony, that bloodshot eyes could be caused by things other than intoxication, the other indicia of intoxication presented here supported the belief that defendant's bloodshot eyes were caused by the consumption of alcohol. As noted, courts consider the totality of the circumstances, and not facts in isolation, in assessing whether an officer had probable cause to arrest a defendant for DUI. See *Wear*, 229 Ill. 2d at 563-64 (whether probable cause exists depends upon the totality of the circumstances). When we consider all of these facts in addition to the fact that the PBT revealed that defendant's blood-alcohol concentration was 0.183, we must conclude that there was probable cause to arrest defendant for DUI. See *Rush*, 319 Ill. App. 3d at 40-41.

¶ 17 Citing *People v. Boomer*, 325 Ill. App. 3d 206, 209 (2001), defendant argues that Johnson lacked probable cause to arrest him for DUI, because the mere fact that a defendant smells of alcohol does not give rise to probable cause. Although *Boomer* does so indicate, here, unlike in *Boomer*, there were several other facts, as noted above, *in addition* to the smell of alcohol, that gave Johnson probable cause to arrest defendant for DUI. Thus, we find *Boomer* unpersuasive here.

¶ 18 For these reasons, the judgment of the circuit court of De Kalb County is reversed, and this cause is remanded for further proceedings.

¶ 19 Reversed and remanded.