

2016 IL App (2d) 150587-U
No. 2-15-0587
Order filed June 2, 2016

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of De Kalb County.
)	
Plaintiff-Appellant,)	
)	
v.)	Nos. 14-DT-535
)	14-TR-16114
)	
JEFFERY W. BARNES,)	Honorable
)	Robert P. Pilmer,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting defendant's motion to suppress evidence and petition to rescind his summary suspension: the arresting officer had probable cause to arrest defendant for DUI, as defendant smelled of alcohol, was carrying two partially filled containers of alcohol, had red, watery eyes, and was in a significant traffic accident.

¶ 2 The State appeals from the judgment of the circuit court of De Kalb County granting defendant Jeffery W. Barnes's motion to suppress evidence and petition to rescind his statutory summary suspension, contending, among other things, that the trial court erred in ruling that there was no probable cause to arrest defendant for driving under the influence (DUI) (625 ILCS

5/11-501(a)(2) (West 2014)). Because there was probable cause to arrest defendant for DUI, we reverse and remand.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged by traffic citation and complaint in the circuit court of De Kalb County with DUI and improper lane usage (625 ILCS 5/11-709 (West 2014)). Defendant filed a motion to suppress evidence (motion) and a petition to rescind his statutory summary suspension (petition).

¶ 5 The following facts are taken from the combined hearing on the motion and petition. On November 15, 2014, defendant drove several friends to a bar. At around 7 p.m., he had dinner and one 12-ounce beer. According to defendant, he had only one beer, because he was the designated driver for the outing. He remained at the bar until about 2:30 a.m. on November 16, 2014. He then dropped his friends off and drove toward home on Route 64.

¶ 6 Defendant described the conditions as breezy, with snow and slick roads. Because it “wasn’t the best road conditions,” he decided to drive past Schafer Road and turn onto the next road.

¶ 7 After driving approximately four miles past Schafer Road, but before turning off of Route 64, defendant dozed off. He then felt that his tires were off the roadway. When he tried to steer his pickup truck back onto the roadway, the truck left the roadway, struck a field entrance, and flipped onto its side. Defendant admitted that there was a bottle of whiskey or vodka in the truck, but denied having drunk any.

¶ 8 After exiting the truck, defendant walked to a nearby house. The residents called for an ambulance.

¶ 9 At approximately 3:07 a.m. on November 16, 2014, Deputy Ryan Loyd of the De Kalb County sheriff's department was dispatched to the residence. Upon arriving, he met with defendant in the entryway of the home.

¶ 10 Deputy Loyd smelled a "slight odor of an alcoholic beverage" on defendant's breath. When Deputy Loyd asked defendant if he had been drinking, defendant answered that he had. Defendant told Deputy Loyd that his truck had left the roadway, struck something in the ditch, and rolled over. Defendant described his truck to Deputy Loyd as having "sloppy steering." Deputy Loyd described defendant as polite and cooperative.

¶ 11 Sergeant Joseph Grum of the De Kalb County sheriff's department responded to the accident scene. He described the road conditions as clear, although the shoulders were snow-covered. The truck was approximately 25 feet off the roadway. He found "two partially filled containers of alcohol" near the truck. Although he did not test the contents of the containers, based on the labels he described one as "like a grape-flavored vodka" and the other as a "honey-flavored whiskey or something." He conveyed to Deputy Loyd, who was still at the house, that he had found two opened bottles of liquor that had "come from the vehicle." Deputy Loyd admitted on cross-examination that he did not keep the two bottles or charge defendant with transporting an open container of alcohol.

¶ 12 After meeting with defendant, Deputy Loyd drove to the accident scene. He testified that the weather was clear and cold, but he could not recall if there was snow on the ground. He indicated on the traffic citation and complaint that the roadway was wet and that snow affected visibility. He observed tire tracks that left the roadway and continued into the side of a field entrance. The truck, which had been traveling west on Route 64, was facing east about 40 feet from the roadway and on the other side of the field entrance.

¶ 13 In the meantime, defendant had been taken to a hospital. About 45 minutes after talking with defendant at the residence, Deputy Loyd met with defendant at the hospital. Defendant was on a backboard and was being treated for his injuries. Deputy Loyd described defendant as “bleeding from the area of his nose and mouth” and having his nostrils “full of drying blood.”

¶ 14 Deputy Loyd, who had made approximately 200 DUI arrests in his 16-year career, described defendant’s eyes as “red, watery[,] *** [and] bloodshot.” Defendant “still had that slight odor of an alcoholic beverage” on his breath. Deputy Loyd could not assess defendant’s speech, because of defendant’s facial injuries. Because of defendant’s medical condition, Deputy Loyd did not ask him to perform any field sobriety tests or a horizontal gaze nystagmus test.

¶ 15 Defendant agreed to take a preliminary breath test (PBT). When asked if he checked to see if defendant had anything in his mouth before administering the PBT, Deputy Loyd answered that defendant “just had the blood and stuff from his injuries in his mouth area.” Defendant completed the test, which showed that his blood alcohol content (BAC) was 0.121.

¶ 16 After obtaining the PBT result, Deputy Loyd arrested defendant for DUI. After arresting defendant, Deputy Loyd asked him to submit to both a urine and a blood test. Defendant agreed to both, but was unable to urinate.

¶ 17 In ruling on the motion and the petition, the trial court barred the PBT result, because Deputy Loyd did not observe defendant for 15 minutes before administering the test and because defendant had blood in his mouth when the PBT was administered. The court ruled that, absent the PBT result, there was insufficient probable cause to arrest defendant for DUI. Although the court referred to defendant’s having red, watery, and bloodshot eyes, having the odor of an alcoholic beverage on his breath, and having been in an accident, it did not mention the evidence

regarding the partially filled bottles of liquor found near defendant's truck. The court granted the motion and the petition.

¶ 18 The State filed a motion to reconsider. In arguing that Deputy Loyd had probable cause to arrest defendant, the State did not rely on the PBT result.

¶ 19 The State filed a certificate of impairment (Ill. S. Ct. R. 604(a)(1) (eff. Dec. 11, 2014)) and a timely notice of appeal.

¶ 20 II. ANALYSIS

¶ 21 On appeal, the State contends that: (1) the trial court erred in barring the PBT results; and (2) the court erred in ruling that there was no probable cause to arrest defendant for DUI.

¶ 22 Defendant responds that: (1) the State forfeited its arguments regarding the admissibility of the PBT result, because it failed to raise them in the trial court; (2) forfeiture aside, the court correctly barred the PBT result, because the circumstances surrounding its administration established a *prima facie* showing that the result was inaccurate and the State failed to satisfy its burden to provide a proper foundation for admissibility; and (3) absent the PBT result, there was no probable cause to arrest defendant for DUI.

¶ 23 On a motion to quash an arrest and suppress evidence, it is the defendant's burden to present a *prima facie* case that the police lacked probable cause for an arrest. *People v. Lurz*, 379 Ill. App. 3d 958, 965 (2008). Once the defendant has done so, the State has the burden of going forward with evidence that counters the *prima facie* case. *Lurz*, 379 Ill. App. 3d at 965. When reviewing the trial court's decision, we greatly defer to the court's factual findings and credibility assessments and will reverse those findings only if they are against the manifest weight of the evidence. *Lurz*, 379 Ill. App. 3d at 965. However, we review *de novo* the ultimate question of whether the motion should have been granted. *Lurz*, 379 Ill. App. 3d at 965. The

same standards apply to the grant of a petition to rescind a statutory summary suspension. *People v. Wear*, 229 Ill. 2d 545, 561 (2008).

¶ 24 Initially, we note that we need not decide the issues related to the admissibility of the PBT. That is so because, independent of the PBT result, there was probable cause to arrest defendant for DUI.

¶ 25 Probable cause to arrest exists when the totality of 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. *Wear*, 229 Ill. 2d at 563-64. Probable cause concerns probabilities and not technicalities. *Wear*, 229 Ill. 2d at 564. That is, probable cause is based on the factual and practical considerations of everyday life upon which reasonable, prudent people, not legal technicians, act. *Wear*, 229 Ill. 2d at 564. Probable cause is more than a mere suspicion (*People v. Wingren*, 167 Ill. App. 3d 313, 320 (1988)) but less than proof beyond a reasonable doubt (*Wear*, 229 Ill. 2d at 564).

¶ 26 The elements of DUI under section 11-501(a)(2) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(2) (West 2014)) are: (1) the defendant was driving or in actual physical control of the vehicle; and (2) the defendant was under the influence of alcohol. *Lurz*, 379 Ill. App. 3d at 967. Here, only the second element is at issue.

¶ 27 There are several pieces of evidence that indicated that defendant was under the influence. When considered in their totality, they provided Deputy Loyd with probable cause to arrest defendant for DUI.

¶ 28 First, defendant had an odor of an alcoholic beverage on his breath. Although Detective Loyd described it as “slight,” the odor was present both at the house and 45 minutes later at the hospital. The persistent odor in this case, when considered in conjunction with the officers’

other observations detailed below, gave rise to a reasonable belief that defendant was under the influence of alcohol. See *Wingren*, 167 Ill. App. 3d at 320-21 (“Probable cause to arrest a motorist for DUI has been commonly established by the testimony of the arresting officer, in spite of the defendant’s contradictory testimony, that the motorist had about him or her the odor or strong odor of alcohol, had slurred speech or had red and glassy eyes. [Citations.] Generally, these observations are supplemented by other observations apparent to the officer or inferred from his observations such as speeding, weaving, erratic driving, driving on the wrong side of the road, being stuck in a ditch [citation] or, as in the case at bar, being in a vehicle which is stuck in the mud.”).

¶ 29 Second, Sergeant Grum had advised Deputy Loyd that two opened bottles of liquor came from the truck. For purposes of assessing probable cause, that information is attributed to Deputy Loyd. See *People v. Walter*, 374 Ill. App. 3d 763, 775 (2007) (probable cause can be established by the collective knowledge of the police even if it is not within the personal knowledge of the arresting officer). The partially filled bottles of liquor further evinced that defendant was under the influence. See *People v. Rush*, 319 Ill. App. 3d 34, 40-41 (2001) (open can of beer in vehicle was some evidence of driving under the influence).

¶ 30 Third, defendant’s eyes were red, watery, and bloodshot. That is also a fact that with other indicia of intoxication demonstrated that defendant was under the influence. See *People v. Brodeur*, 189 Ill. App. 3d 936, 941 (1989).

¶ 31 Finally, defendant was in a traffic accident. A traffic accident that an officer could reasonably conclude was caused, at least in part, by the driver’s intoxication is relevant in deciding whether there was probable cause to arrest the driver for DUI. *Brodeur*, 189 Ill. App. 3d at 941; see also *Wingren*, 167 Ill. App. 3d at 320-21 (an accident, even though explainable by

adverse weather conditions, does not preclude an officer from inferring that the accident was the result of the driver's intoxication). Here, the evidence showed that the accident occurred about four miles past the road that defendant could have taken to get home. The truck left the roadway and struck the field entrance with enough force to flip on its side. The truck came to rest on its side 25 to 40 feet from the roadway and was facing the opposite direction from which it had been traveling. Given the evidence that defendant had been drinking, and given the nature of the accident, Deputy Loyd reasonably could conclude that a contributing cause of the accident was defendant's being under the influence.

¶ 32 Defendant relies on *People v. Boomer*, 325 Ill. App. 3d 206 (2001), in arguing that there was no probable cause to indicate that he was under the influence. *Boomer*, however, is readily distinguishable from this case.

¶ 33 In *Boomer*, the only evidence of intoxication was that the defendant, who was operating a motorcycle, had apparently skidded off the road, had a strong odor of alcohol on his breath, and acknowledged to the arresting officer that he had been drinking. *Boomer*, 325 Ill. App. 3d at 209. In holding that there was no probable cause to arrest the defendant for DUI, we emphasized that the only evidence of intoxication was the unexplained accident and defendant's drinking. *Boomer*, 325 Ill. App. 3d at 210-11.

¶ 34 In this case, however, there was evidence of DUI beyond that in *Boomer*. As discussed, defendant also had red, watery, bloodshot eyes. There were also two partially filled containers of alcohol found near his truck. Thus, this case involves a much stronger basis for probable cause to arrest defendant for DUI.

¶ 35 Because there was ample evidence that defendant was under the influence when he had his accident, there was probable cause to arrest him for DUI. Thus, the trial court erred in granting defendant's motion to suppress and petition to rescind.

¶ 36 **III. CONCLUSION**

¶ 37 For the reasons stated, we reverse the judgment of the circuit court of De Kalb County and remand for further proceedings.

¶ 38 Reversed and remanded.