

NOTICE  
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2016 IL App (5th) 150059-U

NO. 5-15-0059

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Madison County.
	)	
v.	)	No. 14-DT-411
	)	
SAMUEL DRIBBEN,	)	Honorable
	)	David K. Grounds,
Defendant-Appellee.	)	Judge, presiding.

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PRESIDING JUSTICE MOORE delivered the judgment of the court.  
Justices Chapman and Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* Circuit court erred by dismissing the defendant's driving under the influence of alcohol (DUI) citation, on the basis that police department violated Illinois Supreme Court Rule 552 (eff. Sept. 30, 2002) by filing the citation with the circuit clerk over 48 hours after the defendant's arrest, because rule is directory rather than mandatory and the defendant was not prejudiced by the violation of the rule. Reversed and remanded for further proceedings.

¶ 2 The State appeals the December 16, 2014, order of the circuit court of Madison County that granted the motion of the defendant, Samuel Dribben, to dismiss a traffic citation for DUI, for failure on the part of the Collinsville Police Department (CPD) to timely file the citation with the circuit clerk within 48 hours, in violation of Illinois

Supreme Court Rule 552 (eff. Sept. 30, 2002) (Rule 552), as a part of a clear and consistent violation of said rule. For the following reasons, we reverse the judgment of the circuit court and remand for further proceedings.

¶ 3

#### FACTS

¶ 4 At 2:19 p.m. on May 29, 2014, the defendant was issued a traffic citation by the CPD for DUI. The citation was filed in the Madison County circuit clerk's office on June 3, 2014. On November 20, 2014, the defendant filed a motion to dismiss the citation, alleging, *inter alia*, that it was not filed in a timely fashion, in violation of Rule 552.

¶ 5 A hearing on the motion was held on December 16, 2014. At the hearing, defense counsel pointed out that the DUI citation was filed more than 48 hours after the arrest, as were 93 of the last 100 citations issued by the CPD. Relying on *People v. Hanna*, 185 Ill. App. 3d 404 (1989), defense counsel argued that the CPD engaged in a clear and consistent violation of Rule 552 and dismissal was warranted to deter such conduct in the future.

¶ 6 The circuit court held that Rule 552 is mandatory and that the CPD engaged in a clear and consistent violation of the rule. Accordingly, the circuit court entered an order on December 16, 2014, granting the defendant's motion to dismiss the citation. The State filed a timely notice of appeal. On December 9, 2015, this court entered an order holding the appeal in abeyance, pending the Illinois Supreme Court's decision in *People v. Geiler*, 2016 IL 119095, and entered a subsequent order on July 20, 2016, allowing the parties to file supplemental briefs regarding the impact of *Geiler* on the instant case. We now consider those arguments.

¶ 7

## ANALYSIS

¶ 8 The issue on appeal is whether the circuit court erred by granting the defendant's motion to dismiss. Rule 552 provides, *inter alia*: "The arresting officer shall complete the form or ticket and, within 48 hours after the arrest, shall transmit [it] \*\*\* to the clerk of the circuit court of the county in which the violation occurred." Ill. S. Ct. R. 552 (eff. Sept. 30, 2002).

¶ 9 In *People v. Geiler*, 2016 IL 119095, ¶ 12, the Illinois Supreme Court stated that Rule 552 imposes an obligation for the officer to meet the 48-hour deadline. The defendant in *Geiler* received a speeding ticket on May 5, 2014, and it was not filed with the circuit clerk until May 9, 2014. *Id.* The State conceded that the deadline was not met. *Id.* Accordingly, the issue was to determine the appropriate consequence for violating the rule. *Id.* To make that determination, the *Geiler* court first had to determine whether Rule 552 is mandatory or directory. *Id.* ¶ 16.

¶ 10 To resolve the mandatory-directory inquiry, the court in *Geiler* noted the presumption "that procedural commands to governmental officials are directory [and] [t]he presumption is overcome \*\*\* only if (1) negative language in the statute or rule prohibits further action in the case of noncompliance or (2) the right the statute or rule is designed to protect would generally be injured under a directory reading." *Id.* ¶ 18.

¶ 11 The *Geiler* court observed that Rule 552 neither specifies any consequences for violating the timing requirement nor provides any negative language to prohibit prosecution or other action for noncompliance. *Id.* ¶ 19. Accordingly, the court concluded that the exception regarding negative language does not apply. *Id.* Regarding

the second exception, the court observed that "Rule 552 is designed to ensure judicial efficiency and uniformity in processing citations" (*id.* ¶ 20) and that would generally not "be injured under a directory reading of the rule" (*id.* ¶ 21). The court further observed that there was only a two-day delay in filing the citations and there was no evidence that the delay impaired the trial court's management of its docket. *Id.*

¶ 12 The *Geiler* court added that "there is no indication that violation of the rule will ordinarily prejudice the rights of a defendant" (*id.* ¶ 22), noting that "a defendant may be prejudiced by a \*\*\* violation if there is a lengthy delay in transmitting a citation in a given case, but no reason exists to believe that would generally be true" (*id.* ¶ 23). The court concluded that "a violation of Rule 552 will not generally impede the trial court in processing citations or prejudice a defendant's rights and, therefore, it does not require an exception to the rule that procedural commands to governmental officials are directory." *Id.* Accordingly, the court held that the second exception to the presumption of a directory reading does not apply and concluded that Rule 552 is directory and not mandatory, and no consequence is triggered by noncompliance with the rule. See *id.* ¶ 24.

¶ 13 The *Geiler* court observed, however, that while "automatic dismissal of a citation is not an appropriate consequence for a violation of [the rule], a defendant may still be entitled to relief if he can demonstrate he was prejudiced by the violation." *Id.* In *Geiler*, there was no evidence that the defendant was prejudiced by the two-day delay, nor did the defendant even contend that he was prejudiced. *Id.* ¶ 26. The citation was filed four days after the citation was issued and the defendant's first appearance in court was

scheduled over a month after the citation was filed. Accordingly, the court concluded that the defendant was not prejudiced by the violation of the rule and therefore, no remedy was required. See *id.*

¶ 14 Applying these principles to the case at bar, although the defendant requests that we remand this case for a hearing to determine whether he was prejudiced by the delay in filing the citation, we decline to remand for such a hearing because that determination can be made based on the record and applying that evidence to the analysis and holding in *Geiler*. The citation here was issued on Thursday, May 29, 2014, and was filed five days later on Tuesday, June 3, 2014. The 48-hour deadline fell on a Saturday and the courthouse was closed during two of the five days. In *Geiler* there was a four-day delay. The defendant in that case received the citation on Monday, May 5, 2014, and it was filed on Friday, May 9, 2014. There was no weekend interim in that case and yet, the Illinois Supreme Court held the defendant was not prejudiced by the delay. For these reasons, we cannot say that the defendant here was prejudiced as a result of the delay. Accordingly, the dismissal of the citation should be reversed.

¶ 15 As a final matter, we note the defendant's argument that this cause should be remanded for a hearing to determine if the CPD deliberately violated Rule 552. We find the defendant waived the issue of whether the actions of the CPD were deliberate because the defendant presented no evidence at the hearing to suggest that the CPD's violation of the rule was deliberate, nor did he even argue that point. See *People v. Krinitsky*, 2012 IL App (1st) 120016, ¶ 26 (issues not raised in the trial court are deemed waived and may

not be raised for the first time on appeal). Accordingly, we decline to remand to allow the defendant to present further evidence on his motion to dismiss.

¶ 16

#### CONCLUSION

¶ 17 For the aforementioned reasons, we reverse the December 16, 2014, order of the circuit court of Madison County and remand to the circuit court for further proceedings not inconsistent with this order.

¶ 18 Reversed and remanded.