

2019 IL App (1st) 181959-U
No. 1-18-1959
Order filed September 26, 2019

Fourth Division

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
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 18 MC 6002806
)	
MARCOE JOHNSON,)	Honorable
)	Thomas J. Carroll,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's denial of the defendant's petition to rescind his statutory summary suspension is affirmed over his contention that the State failed to rebut his *prima facie* case that he did not receive the necessary warnings with admissible evidence.

¶ 2 Defendant Marcoe Johnson appeals from the trial court's order denying his petition to rescind the statutory summary suspension of his driver's license. When defendant was arrested for driving under the influence of alcohol, his driver's license was summarily suspended when he

refused to submit to a Breathalyzer test. On appeal, defendant contends his petition to rescind the statutory summary suspension should have been granted because, at the hearing on his petition, the State presented no admissible evidence to rebut his testimony that he did not receive the required warnings of the consequences of his refusal to submit to testing as prescribed by section 11-501.1(c) of the Illinois Vehicle Code (625 ILCS 5/11-501.1(c) (West 2016)). We affirm.¹

¶ 3 At approximately 6:55 a.m. on May 6, 2018, a police officer conducted a traffic stop on defendant's vehicle while that vehicle was parked in a gas station parking lot in the 3500 block of West 159th Street in Markham. The officer arrested defendant for driving under the influence of alcohol and, when defendant refused to submit to a Breathalyzer test, served him notice that his driver's license was summarily suspended. The Illinois Secretary of State sent defendant a letter confirming the suspension. The letter reflects that defendant was not a first-time offender and his driver's license would be suspended on June 21, 2018, for a period of three years.

¶ 4 On May 16, 2018, defendant filed a petition to rescind the statutory summary suspension of his driver's license. The petition alleged numerous grounds for rescission including, as relevant here, that defendant was not "properly warned by the officer as provided in section 11-501.1" of the Code.

¶ 5 On June 26, 2018, a hearing was held on defendant's petition. In lieu of a transcript of the hearing, defendant has submitted a bystander's report, signed by the trial judge, pursuant to Illinois Supreme Court Rule 323(c) (eff. July 1, 2017). The bystander's report does not reflect which grounds for rescission defendant raised to the court.

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 6 According to the bystander's report, defendant testified he was not driving on a public roadway and was in command and control of the vehicle only while it was on private property. Defendant testified he was arrested and taken to a police station but was not properly warned about the consequences of his failure to complete a Breathalyzer test.

¶ 7 The bystander's report reflects the State presented no witnesses and requested admission into evidence of "the police reports" and "the Police body camera video." The court admitted the evidence over defendant's objection to lack of foundation. The bystander's report does not specify what police reports were admitted, but the record on appeal contains the arresting officer's sworn report regarding the stop and a "Warning to Motorist" form signed by the same officer, both dated the day of defendant's arrest, May 6, 2018. The video recording is not included in the record on appeal.

¶ 8 In the sworn report, the officer certifies that, because defendant refused to submit to or failed to complete chemical testing at 7:34 a.m. on May 6, 2018, his driving privileges would be suspended, effective 46 days later. The officer averred reasonable grounds to believe defendant was in violation of section 11-501.1 as follows:

"Driver was behind the wheel in driver's seat during suspicious vehicle stop. Eyes bloodshot, red watery. Speech slurred. Strong odor of alcoholic beverage on breath. Admitted to having 'a couple beers.' Failed FSTs [field sobriety tests]. Refused PBT [portable Breathalyzer test]."

Pursuant to section 11-501.1, the officer had served defendant with "immediate notice" of the summary suspension of the driving privileges.

¶ 9 In the “Warning to Motorist” form, the same officer certifies that the “time of warning” was 7:08 a.m. on May 6, 2018. The form sets forth the consequences of the refusal or failure to complete requested chemical testing. Pertinent here, the form states that, if a motorist who is not a first-time offender refuses or fails to complete all chemical testing requested, his driving privileges will be suspended for a minimum of three years. A line at the bottom of the form indicates the “Warning [was] Issued To” and lists defendant’s printed name and driver’s license number. On the signature line provided for the motorist to acknowledge receiving the warnings, the word “Refused” is hand-written.

¶ 10 The bystander’s report reflects that trial court denied defendant’s petition to rescind the summary suspension, finding that, based on the body camera video, defendant had been properly warned of the consequences of his failure to blow into the Breathalyzer machine. The court also found sufficient evidence was presented “to assume” defendant had been driving on the public roadway and discussion regarding the private nature of the property where he was arrested was unnecessary.

¶ 11 On appeal, defendant contends the trial court should have granted his petition to rescind the statutory summary suspension because his testimony that he was not given the required warnings established a *prima facie* case that was not rebutted by the State. He asserts the State did not lay a foundation for the admission of the body camera video, which the trial court stated was the basis of its ruling. Thus, he argues the video evidence was inadmissible and did not rebut his testimony that he did not receive the warnings. The State responds that other evidence in the record, namely the arresting officer’s sworn report and “Warning to Motorist” form, supports the trial court’s denial of his petition to rescind his suspension.

¶ 12 A motorist who operates a vehicle on a public highway in Illinois is deemed to have given consent that, if arrested for DUI, he will submit to chemical testing to determine the content of alcohol, drugs, or other intoxicants in his blood. 625 ILCS 5/11-501.1(a) (West 2016). If the motorist refuses to undergo testing, the motorist's driving privileges will be summarily suspended. *Id.* §11-501.1(d), (e). A motorist who is asked to submit to testing as provided in section 11-501.1 is required to receive a warning from the law enforcement officer requesting the test that the refusal to submit to the test will result in the statutory summary suspension of driving privileges. *Id.* § 11-501.1(c). The motorist must acknowledge receipt of the required warning in writing. *Id.* If the motorist refuses to acknowledge receipt of the warning, the law enforcement officer must make a written notation that the person refused to sign the warning. *Id.* Refusal to sign the warning is not evidence that the person was not read the warning. *Id.*

¶ 13 If a motorist refuses to undergo testing, the law enforcement officer must immediately submit a sworn report certifying that a test was requested and the motorist refused to submit to the test to the Illinois Secretary of State, who will enter the summary suspension upon receipt. *Id.* § 11-501.1(d), (e). The law enforcement officer submitting the sworn report must serve immediate notice of the statutory summary suspension on the motorist. *Id.* §11-501.1(f). A summary suspension becomes effective on the 46th day following the notice of summary suspension. *Id.* §11-501.1(g).

¶ 14 A motorist may file a petition to rescind a statutory summary suspension on multiple grounds, including failure to receive the required statutory warnings before refusing to submit to chemical testing. 625 ILCS 5/2-118.1(b)(3) (West 2016); *People v. Gafford*, 218 Ill. App. 3d 492, 497 (1991) (failure to give the section 11-501.1 warnings is grounds for rescission of the

statutory summary suspension). A statutory summary suspension hearing is civil in nature, and the motorist bears the burden of proof to establish a *prima facie* case that the suspension of his driving privileges should be rescinded. *People v. Relwani*, 2019 IL 123385, ¶ 16. If that showing is made, then the burden shifts to the State to come forward with rebuttal evidence sufficient to justify the suspension. *Id.* ¶ 17. When considering an appeal of a ruling on a petition to rescind, the factual findings of the trial court are reviewed under the manifest weight of the evidence standard, but this court reviews *de novo* the legal ruling as to whether the petition to rescind should have been granted. *Id.* ¶ 18.

¶ 15 Here, defendant testified he was not properly warned about the consequences of his failure to complete a Breathalyzer test. Given that the court allowed the State to present rebuttal evidence, we presume the court initially found defendant sufficiently credible to establish a *prima facie* case for rescission and shift the burden to the State to justify the summary suspension. See *Relwani*, 2019 IL 123385, ¶ 19 (only if the trial court finds a defendant credible does the burden shift to the State to present evidence to justify the summary suspension). After reviewing the State's evidence, the court found the body camera video established defendant had been properly warned of the consequences of his refusal to blow into the Breathalyzer machine.

¶ 16 The video evidence is not in the record on appeal. As the appellant, it is defendant's burden to present a sufficiently complete record of the proceedings in the trial court to support his claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). In the absence of such a record on appeal, we will presume the order entered by the trial court was in conformity with law and had a sufficient factual basis, and any doubts arising from the incompleteness of the record will be resolved against defendant. *Id.* at 392. We therefore presume the court's

determination that the video showed, contrary to defendant's testimony, that he was properly warned of the consequences of refusing to submit to the test was supported by the evidence, and the court therefore correctly denied the petition to rescind the statutory summary suspension.

¶ 17 Defendant nevertheless argues the court improperly admitted the body cam video over his objection, and it thus relied on improper evidence in denying his request to rescind the suspension. This court can affirm the judgment of the trial court on any basis that is supported by the record. *People v. Slavin*, 2011 IL App (2nd) 100764, ¶ 24. Here we find that, even if the video was improperly admitted, the State presented sufficient other evidence to rebut defendant's *prima facie* case, specifically the arresting officer's sworn report and the Warning to Motorist form.

¶ 18 A hearing challenging a summary suspension "may be conducted upon a review of the law enforcement officer's own official reports," though the motorist may also subpoena the officer. 625 ILCS 5/2-118.1(b) (West 2016). From the bystander's report, it appears the arresting officer who prepared the sworn report and Warning to Motorist form did not testify, and there is nothing in the record to show defendant subpoenaed the officer. Further, in the context of a suspension hearing, the officer's sworn report is before the court for evidentiary purposes as soon as the report is filed with the Secretary of State, and no foundation is required to enter the report into evidence. *People v. McIntire*, 236 Ill. App. 3d 732, 736-37 (1992); 625 ILCS 5/11-501.1(e) (West 2016).

¶ 19 In the sworn report, the officer certified defendant's driving privileges were summarily suspended because he refused to take a breath test at 7:34 a.m. In the "Warning to Motorist" form warning of the consequences of such refusal, the officer certified that the warning had been

issued to defendant at 7:08 a.m. that same day, *i.e.*, well before defendant refused to take the test. The trial court “could properly rely on the officer’s reports as evidence that the required warnings were given” before defendant refused the test, and could find the defendant’s testimony was not credible based upon the reports. *People v. Gafford*, 218 Ill. App. 3d 492, 498 (1991) (finding motorist’s testimony that he did not receive section 11-501.1(c) warnings was rebutted by police officer’s sworn report and “Warning to Motorist” form). Although defendant refused to acknowledge receipt of the warnings by signing the Warning to Motorist form, his refusal to sign the form is not evidence that the officer did not read him the warning. 625 ILCS 5/11-501.1(c). Accordingly, we find the sworn report and the “Warning to Motorist” form sufficient to rebut defendant’s testimony that he was not properly warned of the consequences of refusing to submit to the Breathalyzer test. Accordingly, the trial court’s judgment denying defendant’s petition to rescind his statutory summary suspension is affirmed.

¶ 20 Affirmed.