2012 IL App (2d) 110470-U
No. 2-11-0470
Order filed January 27, 2012

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE CITY OF CRYSTAL LAKE, Plaintiff-Appellee, v. BETHANY CATES, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of McHenry County. No. 11-TR-10168 Honorable Robert K. Beaderstadt, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

Held: The trial court properly denied defendant's petition to rescind her summary suspension, as (1) the officer provided written warnings that accurately stated the length of a suspension for a repeat offender; and (2) the officer did not need to warn defendant of her ineligibility for a monitoring device driving permit.

¶ 1 The driving privileges of defendant, Bethany Cates, were suspended. She petitioned to rescind that suspension, claiming that she was not properly warned that (1) her driving privileges would be suspended for three years if she refused to submit to a Breathalyzer test and (2) she would be ineligible for a monitoring device driving permit (MDDP) if she was a repeat offender. The City

of Crystal Lake (the City) moved for a directed finding at the close of defendant's evidence. The trial court granted that motion and denied defendant's petition, and defendant appealed. We affirm.

¶ 2 The facts relevant to resolving this appeal are as follows. During the early morning hours of March 6, 2011, a Crystal Lake police officer observed defendant driving erratically. After the officer stopped defendant, the officer observed that defendant's eyes were bloodshot and glassy, defendant admitted to consuming alcoholic beverages, and defendant failed all the field sobriety tests that were administered.

¶ 3 Defendant was arrested, and the officer gave to defendant a copy of the "Warning to Motorist." Defendant, who had her driving privileges suspended for driving under the influence of alcohol (DUI) in 2009, read the warning to herself, following along as the officer read it aloud. In relevant part, the warning provided:

> "If you refuse or fail to complete all chemical tests requested and:
>
> ! If you are a first offender, **your driving privileges will be suspended for a minimum of 12 months; *or***
>
> ! If you are not a first offender, **your driving privileges will be suspended for a minimum of 3 years.**" (Emphasis in original.)

¶ 4 The warning then detailed the length of suspension defendant faced if she submitted to testing that revealed that she was DUI. Specifically, the warning indicated:

> "If you submit to a chemical test(s) disclosing [that you are DUI] and:
>
> ! If you are a first offender, **your driving privileges will be suspended for a minimum of 6 months; *or***

! If you are not a first offender, **your driving privileges will be suspended for a minimum of 1 year.**" (Emphasis in original.)

¶ 5 Nowhere in the warning was defendant advised about whether she would be eligible for an MDDP.

¶ 6 Defendant was the only witness who testified at the summary suspension hearing. She related that she asked to make a phone call after the officer read the warning to her, which she said she understood. Additionally, she related that she did not ask the officer any other questions. However, the officer advised defendant that "if [she] bl[ew], that it'll be (unintelligible) or six months." The officer then advised defendant that "if [she] d[id not] blow, it'd be up to a year (unintelligible)." Defendant ultimately refused to submit to testing. When defendant was asked on redirect examination, "before you refused to take the breathalyzer, what did the officer tell you that the suspension would be[,]" she responded, "[s]ix months to a year."

¶ 7 The City moved for a directed finding, and the trial court granted the motion. The court found that whether defendant was warned about an MDDP was irrelevant and that defendant was properly warned about the various lengths of suspensions she faced depending on the course of action she chose. Defendant timely appeals from the denial of her petition to rescind.

¶ 8 Defendant advances two reasons why her petition should have been granted. Specifically, she claims that (1) she was not properly warned that she faced a three-year suspension of her driving privileges if she refused to submit to testing; and (2) she was not advised that a repeat offender was not eligible for an MDDP.

¶ 9 Section 11-501.1(a) of the Illinois Vehicle Code (625 ILCS 5/11-501.1(a) (West 2010)), which is part of the implied-consent statute, provides that "[a]ny person who drives or is in actual

physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent *** to a chemical test or tests of blood, breath, or urine for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds *** in the person's blood if arrested *** for [DUI]." A defendant who is asked to submit to such testing shall be warned that his driving privileges will be summarily suspended if he (1) refuses testing or (2) submits to testing that reveals that the defendant has (a) a blood-alcohol level in excess of the legal limit or (b) a prohibited controlled substance in his system. 625 ILCS 5/11-501.1(c) (West 2010).

¶ 10 A defendant who has received notice that his driving privileges have been summarily suspended may petition to rescind that suspension based on, among other things, improper warnings. See *People v. Bavone*, 394 Ill. App. 3d 374, 378 (2009). Warnings that misinform a defendant about the actual length of his suspension warrant rescinding the suspension. *People v. Johnson,* 197 Ill. 2d 478, 488 (2001). However, that is not to say that the warnings are given to protect a defendant's best interest. *Id.* at 486. Indeed, nothing in the implied-consent statute mandates that a defendant understand the warnings or be given the warnings so that he can make an " 'informed choice' " about whether to submit to or refuse testing. *Id.* at 486-87.

¶ 11 Defendant's petition was denied after the trial court granted the City's motion for a directed finding. "A statutory summary suspension hearing is a civil proceeding in which the [defendant] initially bears the burden of establishing a *prima facie* case by putting on some evidence on every element essential to his or her cause of action for rescission of the suspension." *Bavone*, 394 Ill. App. 3d at 377. " 'If the [defendant] establishes a *prima facie* case, the burden then shifts to the [City] to negate the [defendant's] claim and justify the suspension.' " *Id.* (quoting *People v. Tibbetts,* 351 Ill. App. 3d 921, 927 (2004)). "When the [City] moves for entry of judgment at the close of the

[defendant's] evidence, 'the trial court must consider all the evidence *** including evidence favorable to the [City]' and must 'assess the witnesses' credibility, draw all the reasonable inferences from their testimony, and consider the weight and the quality of the evidence.' " *Id.* (quoting *Tibbetts*, 351 Ill. App. 3d at 927-28). "The trial court's ruling on the [City's] motion will not be reversed unless it is against the manifest weight of the evidence." *Id.*

¶ 12 Here, the trial court found that defendant was adequately warned about the length of suspension she faced. This finding is not against the manifest weight of the evidence, as defendant admitted that she was given a copy of the warning, read the warning to herself while the officer read it aloud, and, importantly, understood the warning. Although defendant stated that, before she refused to submit to testing, the officer told her that her suspension would be six months to one year, which is the length of suspension a first-time offender faces, nothing in the record indicates that the officer was aware that defendant was not a first-time offender. In any event, the written warning clearly conveyed the length of the suspension for repeat offenders. Because, under these facts, nothing suggests that the officer misinformed defendant about the length of her suspension, we conclude that defendant's petition was properly denied. See *Johnson*, 197 Ill. 2d at 488.

¶ 13 Second, we address whether the suspension of defendant's driving privileges must be rescinded because defendant was not told that a repeat offender was not eligible for an MDDP. This court addressed a similar issue in *People v. Hart*, 313 Ill. App. 3d 939 (2000). There, the defendant argued that his summary suspension should be rescinded because the officer's warnings did not inform him that he could not apply for a restricted driving permit for two years if he refused to take the test. *Id.* at 940-41. Noting that section 11-501.1(c) of the Code does not require that drivers be warned about the additional potential consequences flowing from a summary suspension, this court

concluded that the warnings that must be given to drivers who are DUI need not include warnings about the eligibility for restricted driving permits. *Id.* at 942.

¶ 14 The holding in *Hart* applies here. A sufficient warning does not require that the defendant understand all the possible consequences of the summary suspension. *Johnson*, 197 Ill. 2d at 488. Rather, section 11-501.1(c) of the Code requires only that the defendant be informed that refusing a test will result in the summary suspension of his driving privileges for a period outlined in section 6-208.1 of the Code (625 ILCS 5/6-208.1 (West 2010)). *Id.* at 488-89. As noted, defendant was given these warnings.

¶ 15 Acknowledging that *Hart* warrants this conclusion, defendant nevertheless argues that, because the implied-consent statute was enacted to make highways safer, defendants stopped for DUI should be warned that a repeat offender is not eligible for an MDDP. Be that as it may, we see no reason to depart from *Hart*.

¶ 16 For these reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 17 Affirmed.