2011 IL App (5th) 100031-U

NO. 5-10-0031

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Williamson County.
	)	
v.	)	No. 09-DT-374
	)	
RAYMOND G. WILLIAMS,	)	Honorable
	)	John Speroni,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Wexstten concurred in the judgment.

O R D E R

¶ 1 *Held*: Where the defendant did not subpoena the arresting officer to appear and testify at his hearing on the petition to rescind his statutory summary suspension, the admission of the officer's field report into evidence was statutorily allowed, and therefore the order denying the defendant's petition to rescind his statutory summary suspension was not contrary to the manifest weight of the evidence.

¶ 2 The facts of this case have been culled from a field report prepared by Illinois State Police Officer Jeremy Wynn. Early in the morning of October 29, 2009, Officer Wynn pulled the defendant over after witnessing his improper lane usage on southbound Interstate 57. Three field sobriety tests were given. The defendant failed all three. A portable breath-alcohol device revealed a blood-alcohol level of 0.108. Later, a second breath-alcohol test revealed a blood-alcohol level of 0.098. The defendant was cited for driving under the influence, and his driver's license was summarily suspended.

¶ 3 On November 5, 2009, the defendant filed a petition to rescind the statutory summary

suspension. At the hearing on his petition, the defendant was called and testified on his own behalf. The arresting officer, Officer Wynn, was subpoenaed to appear by the State, but he failed to do so. The State then moved for the admission of Officer Wynn's field report in the State's case. The defendant objected but was overruled by the court. The hearing was not transcribed by a court reporter. At the conclusion of the hearing, the trial court entered its order by way of a docket entry. With respect to the State's case, the court noted as follows:

"State's [*sic*] offers People Exh #1. Admitted, over objection."

The court's handwritten order stated as follows:

"The court has considered the testimony & evidence presented @ hearing on Pet[ition] To Rescind. Pet. To Rescind is denied. SSS [Statutory Summary Suspension] sustained. Clerk to notify SOS [Secretary of State]."

On January 13, 2010, the defendant filed his notice of appeal from this order.

¶ 4 The parties filed a set of stipulated facts with the court in February 2010. The relevant portion of these facts states as follows:

"The arresting officer was subpoenaed by the State but failed to appear. The Assistant State's Attorney, John Curry, on behalf of the State moved for the admission of the officer's field report (Exhibit #1).

The defense objected on grounds of foundation and hearsay. The Court, over objection, admitted the report and subsequently denied the Defendant's Petition and sustained the Statutory Summary Suspension."

¶ 5 The defendant appeals to this court and argues that the trial court improperly admitted Officer Wynn's field report, which resulted in the denial of his petition to rescind the statutory summary suspension. He argues that there was no foundation for the court to have admitted that report, and he further argues that the court's order had to have been based largely upon the facts listed in this report, because no other evidence was put on by the State

to counter the defendant's testimony.

¶ 6 A statutory summary suspension hearing is civil in nature, and the motorist bears the burden of proof to establish a *prima facie* case for a rescission of the suspension. *People v. Granados*, 332 Ill. App. 3d 860, 862, 773 N.E.2d 1272, 1274 (2002). *Prima facie* evidence is the equivalent to the amount of evidence necessary to meet the preponderance-of-the-evidence test. *Id.*; *People v. Barwig*, 334 Ill. App. 3d 738, 744, 778 N.E.2d 350, 356 (2002). Whether the defendant meets this burden of proof is a factual question for the trial judge. *Granados*, 332 Ill. App. 3d at 862, 773 N.E.2d at 1274. Thereafter, the burden shifts to the State to come forward with evidence to justify the suspension. *People v. Smith*, 172 Ill. 2d 289, 205, 665 N.E.2d 1215, 1217-18 (1996). The burden will not shift to the State unless the trial court finds that the defendant's testimony was credible. *People v. Tibbetts*, 351 Ill. App. 3d 921, 927, 815 N.E.2d 409, 415 (2004).

¶ 7 On our review of a trial court's order on a petition to rescind, we will not reverse the trial court unless its findings are contrary to the manifest weight of the evidence. *People v. Rush*, 319 Ill. App. 3d 34, 38, 745 N.E.2d 157, 161 (2001).

¶ 8 The State argues that the stipulated facts and the record fail to establish that the defendant met the burden of proof necessary to shift the burden to the State–a *prima facie* case for a rescission. This failure stems from the fact that the defendant did not provide a record of the proceedings in the trial court from which he appeals.

¶ 9 The appellant bears the burden to present a sufficiently complete record. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422, 917 N.E.2d 392, 397 (2009). On appeal, we are not able to presume error that is not affirmatively reflected in the record. *People v. Harrell*, 104 Ill. App. 3d 138, 143, 432 N.E.2d 1163, 1167 (1982). With no adequate record, the court of review must presume that the trial court's order was adequately supported by the facts and in conformance with applicable law. *In re Marriage of Gulla*, 234 Ill. 2d at 422, 917 N.E.2d

at 397; *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958, 959 (1984).

¶ 10 However, despite the inadequacy of the record, we do know that the State put on evidence to justify the suspension. This would not have been necessary if the defendant had not made his *prima facie* case. Consequently, we presume that the defendant established a *prima facie* case for a rescission and that the burden of proof shifted to the State. Furthermore, we are able to review the question of whether Office Wynn's field report was properly before the court because of the parties' stipulated facts encompassing this issue.

¶ 11 We turn now to the issue of Officer Wynn's field report. The procedure applicable in a judicial statutory summary suspension hearing is governed by section 2-118.1 of the Illinois Vehicle Code (625 ILCS 5/2-118.1 (West 2008)). That statute provides that the person whose license has been suspended may make a written request for a judicial hearing. 625 ILCS 5/2-118.1(b) (West 2008). The statute further outlines the conduct of a hearing as follows:

> "The hearing may be conducted upon a review of the law enforcement officer's own official reports; provided[,] however, that the person may subpoena the officer. Failure of the officer to answer the subpoena shall be considered grounds for a continuance if in the court's discretion the continuance is appropriate." *Id.*

To understand this aspect of the rule, it is important to remember that the burden of proof in a statutory summary suspension hearing initially lies with the defendant. If the defendant plans to challenge the suspension and wants to cross-examine the officer who investigated the case and completed the reports, it is incumbent upon that person to subpoena the officer himself. There is nothing in this rule that states that the officer's official reports are inadmissible. To the contrary, the rule expressly states that the hearing can be conducted upon a review of the report. 625 ILCS 5/2-118.1(b) (West 2008). With the burden of proof initially on the defendant, the burden of getting the officer to court remains with the

defendant.

¶ 12 In the context of a statutory summary suspension hearing, the police officer's report is before the court for evidentiary purposes as soon as the report is filed. *People v. McIntire*, 236 Ill. App. 3d 732, 736-37, 602 N.E.2d 938, 940-41 (1992). No foundation is required. *Id.* Even unofficial police reports are admissible in such a hearing, so long as the trial court determines the weight to give this evidence. *In re Summary Suspension of Driver's License of Vaughn*, 164 Ill. App. 3d 49, 52, 517 N.E.2d 699, 701 (1987).

¶ 13 In this case, the defendant admits that he did not subpoena Officer Wynn to testify. Although the State served Officer Wynn with a subpoena to appear and provide testimony at the statutory summary suspension hearing and although Officer Wynn did not appear pursuant to that subpoena, the State may still proceed on the arresting officer's report. 625 ILCS 5/2-118.1(b) (West 2008); *People v. Johnson*, 186 Ill. App. 3d 951, 954, 542 N.E.2d 1226, 1228 (1989). Because the burden of proof remained with the defendant, the fact that the officer was under subpoena from the State is not of consequence relative to the admission of the report.

¶ 14 We find that the trial court did not err in admitting the officer's report into evidence, and the court's denial of the defendant's petition to rescind the statutory summary suspension was not contrary to the manifest weight of the evidence. For the foregoing reasons, the judgment of the circuit court of Williamson County is hereby affirmed.

¶ 15 Affirmed.