NOTICE
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2012 IL App (4th) 110978-U

Filed 8/30/12

NO. 4-11-0978

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Cass County
JOSAFAT AYALA,	)	No. 11DT19
Defendant-Appellee.	)	
	)	Honorable
	)	Richard D. Greenlief,
	)	Judge Presiding

JUSTICE POPE delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court erred in rescinding defendant's statutory summary suspension as defendant did not establish a *prima facie* case the arresting officer did not have reasonable grounds to conclude defendant was driving under the influence of alcohol.

¶ 2 On September 29, 2011, the trial court granted defendant Josafat Ayala's petition to rescind his statutory summary suspension. The State appeals, arguing the court erred in granting Ayala's petition. We reverse the court's rescission of Ayala's statutory summary suspension.

¶ 3 I. BACKGROUND

¶ 4 On April 24, 2011, at 12:46 a.m., Beardstown police officer Michael Pokora ticketed Ayala for driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2010)). Because Ayala refused to submit to testing, he received notice his license would be

summarily suspended.

¶ 5 On May 11, 2011, Ayala filed a petition to rescind his summary suspension. The petition alleged the arresting officer, at the time of detention, had no reasonable grounds to believe that Ayala "was driving or in actual physical control of a motor vehicle while under the influence of alcohol, other drug, or combination thereof." Ayala also stated other grounds for the rescission of his statutory summary suspension. However, Ayala did not challenge the propriety of the vehicle stop.

¶ 6 At the hearing on his petition, Ayala's counsel stated he was only proceeding on the allegation the arresting officer "had no reasonable grounds to believe [Ayala] was driving while under the influence of alcohol." Ayala's counsel called Officer Michael Pokora, Magda Avalos, and Ayala.

¶ 7 Officer Pokora testified he was trained in DUI detection and arrest at the University of Illinois police institute. On April 24, 2011, he was dispatched to 1113 Oak Street in Beardstown at 12:26 a.m. Pokora spoke with Avalos, a woman he mischaracterized as Ayala's wife. He learned a domestic dispute had occurred. Avalos told the officer that Ayala had been drinking and refused to get out of his truck. She did not want Ayala to leave because she was afraid his driving would risk his own safety. She pointed out a partially full beer bottle sitting by the truck. Pokora did not pick up the bottle and did not know whether the beer was cold.

¶ 8 Officer Pokora testified he also spoke to Ayala. However, the language barrier between the two made the conversation difficult. Pokora testified he could smell a strong odor of alcohol coming from Ayala. Pokora was about two feet from Ayala at that time. Ayala produced

his driver's license upon Pokora's request. Other than the language barrier, Pokora did not notice Ayala having any trouble complying with his requests.

¶ 9 Pokora testified he told Ayala not to drive and left. According to Pokora's testimony, "I told him he wasn't going to be able to drive away due to the bloodshot, watery eyes that I could see and the smell of alcohol and the bottle I had seen on the floor." Pokora also told defendant not to drive because his wife said he was drinking or had been drinking.

¶ 10 After he left the scene, Officer Pokora parked about a block and a half away from Ayala's residence. From that location, Pokora saw someone get into the truck and drive away. Pokora stopped the truck after it weaved a couple of times across the center of the road. He believed Ayala may have been driving while intoxicated and felt defendant was driving erratically.

¶ 11 Pokora testified Ayala immediately stopped when Pokora activated his overhead lights. Ayala did not appear to have any trouble pulling the truck to the side of the road. During this second encounter, Pokora again could smell a strong odor of alcohol coming from Ayala. Defendant's eyes were glassy, watery, and bloodshot.

¶ 12 Pokora asked Ayala to perform field sobriety tests. Ayala initially agreed to perform the field sobriety tests but indicated he needed an interpreter. Pokora transported Ayala to the Beardstown police department. After an interpreter arrived, Ayala refused all field sobriety tests. At that point, Pokora arrested Ayala for driving under the influence.

¶ 13 Magda Avalos testified she is Ayala's girlfriend and lived with him at 1113 Oak Street in Beardstown. Avalos testified she had not been with Ayala the evening of April 23 because she was at his niece's birthday party at a park in Beardstown. Ayala was supposed to

meet her there but never came. She testified she was mad at him. She got home at approximately 11 or 11:30 p.m. and called the police at approximately 12:30 a.m. on April 24, 2011.

¶ 14 When the police arrived at the house, she told Officer Pokora Ayala had been drinking. However, she testified she had not seen defendant drinking but only assumed he had been. She did not tell Officer Pokora this. She also testified the beer bottles on the ground in the front yard were from a prior cookout and had not yet been cleaned up. However, once again, she did not tell Pokora this. According to her testimony, the beer bottles had nothing to do with her calling the police. At some point after Ayala was arrested, Avalos wrote a letter claiming what she told the police was not true.

¶ 15 Ayala testified through an interpreter at the hearing. Ayala testified he had four or five beers between the hours of 1 and 5 p.m. on April 23, 2011. He got home about 5 p.m. and had one more beer. He took a bath and went to sleep about 6 p.m. He woke up when "the lady came to bother him" about not going to the birthday party. This was about 11:30 p.m. or midnight. Ayala testified he did not consume any alcohol between 6 p.m. and the time the police arrived.

¶ 16 Ayala testified he had not brushed his teeth after drinking that afternoon or after he woke up and the police arrived. He stated he got in the truck because he did not want to continue the argument with "the lady."

¶ 17 After Ayala's testimony, Ayala's counsel told the trial court he had no further evidence. The State moved for a directed finding against Ayala on the basis he failed to establish a *prima facie* case for rescission, specifically that he was not in actual physical control of the

vehicle while under the influence of alcohol. Ayala's attorney responded:

> "I think the burden from the defendant's perspective is fairly low in that we just have to establish a *prima facie* case that the officer did not have a reasonable belief. I will say, and I believe that if the Court denies the motion that [the State] will have further argument[,] that I don't think it's fair, and I don't intend to criticize what Mr. Pokora did because he did base at least part of his decision on what he learned from the female at the scene, the point being it just turned out not to be true. And I don't think that just the presence of an odor of alcohol and bloodshot eyes at 12:30 or [1] in the morning is enough to establish a reasonable belief that my client was intoxicated."

¶ 18 The State responded Ayala did not present any evidence he was not under the influence of alcohol. The State pointed to Ayala's testimony he had consumed alcoholic beverages late in the afternoon prior to the arrest. He also refused tests offered to conclusively establish that he was not under the influence of alcohol. The State finished:

> "So in short, Your Honor, the defendant didn't deny that he had consumed alcohol and didn't testify that he was not under the influence of alcohol, and as a consequence of counsel's narrowing of the issues at the beginning of the hearing[,] that's the only remaining issue before the court. And in the absence of any such evidence, a directed finding is proper because there's been no

prima facie case established."

¶ 19 The trial court denied the motion for a directed verdict and stated the burden had shifted to the State. The court stated:

> "I'm going to deny the motion because you quite frankly at the time, at the scene in particular, the officer testified, Mr. Ayala testified there was a lack of communication between the two and that was because of the language barrier that was there. It's not because of the officer, it's not because of Mr. Ayala[,] other than their inability to communicate one with the other because of the language barrier. His failure to communicate any of these matters quite honestly until he was asked those questions[,] I don't think he was under an obligation to communicate any of that to the officer and apparently at the, when he was taken to the squad room or taken to conduct the field sobriety tests with the interpreter[,] he was not asked those questions at that time so I'm going to deny the motion at this point. I would say the burden has shifted from the defendant to the People."

¶ 20 The State did not present any further evidence, instead arguing the State simply had to establish Officer Pokora had a reasonable basis to believe Ayala was in physical control of the vehicle and under the influence of alcohol. The State noted the parties did not dispute Ayala was in physical control of the vehicle. According to the State, the fact Avalos now claimed she did not see Ayala consuming alcohol was irrelevant to the issue before the trial court. The State

noted Officer Pokora directly observed Ayala had watery and bloodshot eyes and smelled strongly of alcohol. Pokora also saw Ayala driving erratically. The State argued Officer Pokora had a reasonable basis to believe Ayala was under the influence of alcohol.

¶ 21 Ayala did not dispute he was in physical control of the vehicle. However, his counsel argued:

> "I think Mr. Ayala's testimony indicates to the court that he's being honest in regard to how much alcohol he consumed. He doesn't deny that he drank five or six beers between one and 6 p.m. on Saturday, went to bed and was awakened around 11:30. It would not be unreasonable to expect that he had bloodshot eyes or an odor of alcohol. And with regard to Mr. Ayala's girl[]friend and in her statement to Officer Pokora, again I don't fault him for conducting an investigation based on what she told him, but she lied. And, your Honor, the reason, in response to Mr. Wright's argument that we've not established that my client was [not] unlawfully under the influence of alcohol is precisely because that's not his problem. That's the burden of the State. And our position is simply that Officer Pokora, based on the fact that he knew that there was a domestic dispute, made the arrest based on very sketchy information that he had. And based upon the facts that he knew at that time, we do not believe there were reasonable grounds sufficient to indicate to Officer Pokora that my client was

unlawfully intoxicated. And for those reasons, we'd ask the court to rescind the statutory summary suspension."

¶ 22 After hearing the parties arguments, the trial court found no fault with Officer Pokora. However, the court then stated:

> "[Y]et in the same respect[,] I look at the evidence which would suggest impairment[,] and that is actually four elements–strong odor of alcohol as testified by the officer, bloodshot and watery eyes, weaving, and the presence of a partially-filled bottle of beer near the scene of the initial questioning.
>
> Taking the last element first, we don't know whether the bottle, that bottle was from that night or from previous occasions. We don't know whether the bottle was cold or the contents were cold or for that matter whether there was any intoxicant in the bottle. Tak[en] in light of the defendant's testimony, there's no question that there was an odor of alcohol on his breath[,] but there is no testimony that either his girl[]friend or the officer witnessed him drinking beer. This odor or strong odor could have come from his drinking earlier in the night or actually the previous evening. The same would be the case for the bloodshot and watery eyes. There is more than one explanation for that. Had the driving taken place on a lane, highway, or road where the lanes were clearly

> marked[,] crossing the center line or crossing the fog line in itself would be probable cause for the stop. It is the Court's conclusion that the testimony or evidence with regard to the weaving is not strong enough for a finding of probable cause, and as a result, I grant the defendant's motion to rescind the statutory summary suspension."

¶ 23 In asking the trial court for clarification, the State said "it's my understanding that the Court's finding is that there was not a reasonable basis, there wasn't probable cause for the stop or reasonable suspicion." The court answered, "[a]nd the further indication that Mr. Ayala was under the influence of alcohol." However, the court's written order stated, "The [c]ourt is of the belief that Officer Pokora did not have probable cause to conduct a traffic stop on Josafat Ayala."

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 Our supreme court has made clear a hearing on a petition to rescind a statutory summary suspension is a civil matter in which the burden of proof is placed on the driver. *People v. Wear*, 229 Ill. 2d 545, 559-60, 893 N.E.2d 631, 640 (2008). The driver must first establish a *prima facie* case for rescission. *Wear*, 229 Ill. 2d at 560, 893 N.E.2d at 640. "*Prima facie* evidence has been defined as 'the quantum of evidence required to meet the preponderance-of-the-evidence standard.' " *People v. Tibbetts*, 351 Ill. App. 3d 921, 927, 815 N.E.2d 409, 414 (2004) (quoting *People v. Barwig*, 334 Ill. App. 3d 738, 744, 778 N.E.2d 350, 356 (2002)); see also *People v. Wise*, 282 Ill. App. 3d 642, 646, 669 N.E.2d 128, 131 (1996) ("In a summary

suspension proceeding, the motorist must show by a preponderance of the evidence that he is entitled to rescission"). The fact that a motorist has presented some credible evidence in a rescission of summary suspension case does not require denial of the State's motion for a directed verdict pursuant to section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2008)). *Wise*, 282 Ill. App. 3d at 647, 669 N.E.2d at 131-32. If the driver is able to establish his *prima facie* case, the State must then come forward with evidence justifying the summary suspension. *Wear*, 229 Ill. 2d at 560, 893 N.E.2d at 640.

¶ 27 In this case, Ayala proceeded on only one ground for the rescission of his statutory summary suspension, *i.e.*, Officer Pokora did not have reasonable grounds to believe Ayala "was driving or in actual physical control of a motor vehicle while under the influence of alcohol, other drug, or combination thereof." As a result, Ayala was clearly seeking rescission of his summary suspension pursuant to section 2-118.1(b)(2) of the Illinois Vehicle Code (625 ILCS 5/2-118.1(b)(2) (West 2010)). At the hearing, Ayala conceded he was in actual physical control of the motor vehicle in question.

¶ 28 In *Wear*, our supreme court stated in determining whether " 'reasonable grounds' " existed pursuant to section 2-118.1(b)(2) of the Illinois Vehicle Code (625 ILCS 5/2-118.1(b)(2) (West 2008) for a police officer to determine a driver was under the influence of alcohol, a court should apply the probable cause analysis derived from the fourth amendment. *Wear*, 229 Ill. 2d at 560, 893 N.E.2d at 640. A police officer has probable cause to make an arrest when the facts known to the officer at the time of the arrest are sufficient for a reasonably cautious person to believe the arrestee has committed a crime. *Wear*, 229 Ill. 2d at 563, 893 N.E.2d at 642. The supreme court continued:

> "[T]he existence of probable cause depends upon the totality of the circumstances at the time of the arrest. [Citations.] In dealing with probable cause, *** we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. [Citations.] The standard for determining whether probable cause is present is probability of criminal activity, rather than proof beyond a reasonable doubt. [Citations.] Indeed, probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false." (Internal quotation marks omitted.) *Wear*, 229 Ill. 2d at 564, 893 N.E.2d at 642-43.

¶ 29 Further, in *Wear*, our supreme court directed courts to use the standard of review applicable to the review of suppression hearings. *Wear*, 229 Ill. 2d at 561, 893 N.E.2d at 641.

> "We apply the two-part standard of review that the United States Supreme Court adopted in *Ornelas v. United States*. [Citations.] A reviewing court will uphold findings of historical fact made by the circuit court unless such findings demonstrate clear error, and a reviewing court must give due weight to any inferences drawn from those facts by the fact finder. [Citations.] In other words, we give great deference to the trial court's factual findings, and we will reverse those findings only if they are against

> the manifest weight of the evidence. [Citations.] A reviewing court, however, remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief may be granted. [Citations.] Accordingly, we review *de novo* the trial court's ultimate legal ruling as to whether the petition to rescind should be granted." (Internal quotation marks omitted.) *Wear*, 229 Ill. 2d at 561-62, 893 N.E.2d at 641.

¶ 30 After the State moved for a directed verdict at the close of defendant's case, the trial court denied the motion, stating the burden shifted from Ayala to the State. This was clearly error. Ayala failed to establish by a preponderance of the evidence that Officer Pokora lacked probable cause to arrest him for driving under the influence of alcohol, considering the information Pokora had before him at the time of the arrest, which included the following.

¶ 31 Pokora was called to a domestic dispute between midnight and 1 a.m. Ayala's girlfriend told Pokora that Ayala had been drinking and she was afraid he would risk his safety by driving. She pointed to a partially full beer bottle sitting next to the truck in which Ayala was sitting. Pokora spoke to Ayala and smelled a strong odor of alcohol coming from where he was sitting. Pokora also testified Ayala had bloodshot, watery eyes. Pokora told Ayala not to drive. Despite having been instructed not to drive, Ayala did so anyway, and Officer Pokora saw Ayala cross the center of the road more than once, driving erratically. All of this evidence was *undisputed*. In other words, the trial court had no evidence before it Ayala's eyes were not bloodshot or glassy, that Ayala did not smell of alcohol, that he did not weave across the center

of the road a couple of times, or that his girlfriend had not told Officer Pokora Ayala had been drinking and she was afraid he could not drive safely. There was no basis to rescind the statutory summary suspension in this case.

¶ 32 Based on the information known to Officer Pokora when he arrested Ayala for driving under the influence, he undeniably had probable cause to make the arrest. Because Ayala did not establish a *prima facie* case for the rescission of his statutory summary suspension, the trial court erred in denying the State's motion for a directed finding.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we reverse the trial court's order rescinding Ayala's statutory summary suspension.

¶ 35 Reversed.