2016 IL App (2d) 151173-U
No. 2-15-1173
Order filed August 15, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of De Kalb County.
Plaintiff-Appellant,	)	Nos. 15-DT-362 15-TR-9875 15-TR-9876
v.	)	15-TR-9877
STEVIE BOZARTH,	)	Honorable Robert P. Pilmer,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in granting defendant's petition to rescind her summary suspension: the arresting officer had probable cause to arrest defendant for DUI, as defendant stumbled, drove erratically, had bloodshot glassy eyes, exhibited fine-motor impairment, and smelled of alcohol.

¶ 2 Defendant, Stevie Bozarth, was charged by citation and complaint with driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2014)), improper lane usage (625 ILCS 5/11-709 (West 2014)), driving while her license was suspended (625 ILCS 5/6-303(a) (West 2014)), and operating a motor vehicle with registration suspended for no insurance (625

ILCS 5/3-708 (West 2014)). Her driving privileges were summarily suspended (625 ILCS 5/11-501.1(e) (West 2014)), and she petitioned to rescind that suspension (625 ILCS 5/2-118.1(b) (West 2014)), arguing that the arresting officer lacked reasonable grounds to believe that she was driving while under the influence of alcohol. The trial court granted the petition, and the State timely appealed. For the reasons that follow, we reverse.

¶ 3 I. BACKGROUND

¶ 4 Sycamore patrol sergeant Jeff Wig was the only witness to testify at the hearing on defendant's petition. Wig testified that, on August 23, 2015, at about 12:13 a.m., he was driving past a parking lot when he saw defendant "stumble and shuffle step with her hand extended towards a car." He parked his car in the lot to observe her. He saw defendant enter the car, turn the lights on, and pull away. Defendant's vehicle exited the parking lot "normally," and proceeded southwest on De Kalb Avenue. Wig followed behind defendant's vehicle for a couple miles, with a vehicle in between his vehicle and defendant's vehicle. Eventually, near the intersection of De Kalb Avenue and Peace Road, Wig was able to position his vehicle directly behind defendant's vehicle. The traffic light was red, and defendant's vehicle was stopped past the white line and in the crosswalk of the intersection. When the light turned green, Wig observed defendant's vehicle drift into the north lane several times over the course of about a half-mile. Wig activated his emergency lights, and defendant responded appropriately. A second officer, Officer Hayes, was behind Wig, and he activated his lights as well.

¶ 5 Wig testified that both he and Hayes approached defendant's vehicle; Wig approached the driver's side, and Hayes approached the passenger side. Wig asked defendant for her driver's license and proof of insurance. According to Wig, defendant "seemed to fumble with getting them, didn't have all her coordination," but she was able to produce the items. Wig

asked defendant where she was coming from, and she stated that she had come from Rockford and that she was dropping off her brother. When he asked where she had dropped off her brother, she told him, "Ski's." According to Wig, Ski's was nowhere near where he had first seen defendant. Wig did not ask defendant why she was in that parking lot, because "[i]t was evident" where she was coming from. He explained that there was a "big street dance downtown," and he suspected that she had been there.

¶ 6 Wig testified that he asked defendant to exit her vehicle and had her walk to the area behind her car. Defendant did not stumble or shuffle-step. Wig asked defendant to submit to field sobriety testing, and she refused. Wig testified that he asked defendant to submit to testing based on his observations of the driving violations, the fact that she fumbled when looking for her license, the fact that her eyes were "bloodshot and glassy," and the fact that he smelled alcohol in defendant's vehicle. Wig asked defendant if she had been drinking, and she said no. Wig conceded that he would not be able to identify the difference between the odor of a nonalcoholic beer and that of an alcoholic beer. Wig also conceded that there were many potential causes of glassy and bloodshot eyes and that he did not ask her why her eyes were glassy and bloodshot. Wig further testified that, after defendant refused testing, he took her into custody and placed her in his squad car. Defendant did not stumble, stagger, or shuffle-walk while walking to the squad car. Wig took defendant to the police station and, when they arrived, defendant did not stumble, stagger, or shuffle-walk while walking into the police station.

¶ 7 The squad-car video was admitted into evidence as defendant's exhibit No. 1.

¶ 8 On cross-examination, Wig detailed the training that he received in the detection of impaired drivers. Wig explained that the reactions of an impaired driver might be delayed and that it was common for an impaired driver's vehicle to drift into another lane. Wig also stated

that an impaired driver might lack motor skills and coordination in retrieving his license and proof of insurance. Wig testified that, while at the police station, defendant repeatedly stated "that she was the most sober DUI [he] had ever arrested." Wig testified that he had seen people under the influence of alcohol hundreds of times and that he had made about 40 to 50 DUI arrests. Wig believed that defendant was impaired.

¶ 9 On redirect examination, Wig testified that he did not observe defendant for the entire walk to her car in the parking lot. He did not know if she had tripped before he saw her stumble and shuffle-step. Wig agreed that other signs of driver impairment included traveling too fast or too slow and not reacting appropriately to emergency equipment. Wig agreed that, other than seeing defendant stumble and shuffle-step, he did not notice any impairment in gross motor skills. Wig's opinion that defendant was impaired was based on the odor of alcohol, defendant's driving, defendant's initial stumbling, the way she retrieved her driver's license, and the fact that she gave him a story that was not accurate. When asked about the inaccurate story, Wig agreed that the fact that defendant stated that she was coming from Rockford was not mutually exclusive with her story that she had dropped her brother off at Ski's. Wig further agreed that the fact that defendant was parked near a festival was also not mutually exclusive with her statements.

¶ 10 At the close of defendant's case, the State moved for a directed finding. The trial court denied the motion. The State then indicated that it had brought out all of its evidence during cross-examination and rested.

¶ 11 Thereafter, the trial court granted the petition to rescind. In doing so, the court made the following comments. The court first noted that Wig's testimony was uncontradicted. The court found that Wig's testimony and the video showed that defendant had difficulty staying within her

lane and thus there was "probable cause" for the stop. The court next found that probable cause for the arrest was "[t]he more difficult issue." The court noted Wig's testimony that defendant's eyes were bloodshot and glassy but also noted that such a condition could be caused by something other than alcohol. The court also noted Wig's testimony that there was an odor of alcohol coming from defendant but found that an odor of alcohol does not indicate how much alcohol someone consumed or his level of impairment. The court acknowledged Wig's testimony that defendant had some difficulty producing her driver's license and proof of insurance, but noted that she ultimately did produce the items. With regard to the stumble and shuffle-step that Wig observed, the court stated: "It's possible that it was caused by other things. It's hard to say. The sergeant testified that he had maybe a 10 to 20-second observation period, but relatively short in the scheme of that." The court further noted that defendant was able to exit her vehicle and walk to the rear of her car and that she had no difficulty walking when taken to the police station. Finally, the court found that, although defendant was in the vicinity of a street dance, there was no indication that defendant had not been honest with Wig concerning where she was prior to being stopped.

¶ 12 The State timely appealed.

¶ 13 II. ANALYSIS

¶ 14 The State argues that defendant's petition to rescind the summary suspension of her driver's license should not have been granted. According to the State, the trial court erred in finding that Wig did not have probable cause to arrest defendant for DUI, because the combination of facts upon which Wig relied would lead a reasonable person to believe that defendant had driven while under the influence of alcohol. Defendant has not filed an appellee's brief responding to the State's arguments. Nevertheless, we may address the merits of the

appeal, because the record is simple and the claimed error can be easily decided without the aid of an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976); see also *People v. Marcella*, 2013 IL App (2d) 120585, ¶¶ 23, 36 (deciding under *Talandis* whether undisputed facts established probable cause to detain the defendant). We turn now to the merits.

¶ 15 If a motorist's driving privileges are summarily suspended, the motorist may petition for rescission of that suspension. 625 ILCS 5/2-118.1 (West 2014). A hearing on a petition to rescind a summary suspension is a civil proceeding in which the motorist bears the burden of proof. *People v. Wear*, 229 Ill. 2d 545, 559-60 (2008). If the motorist establishes a *prima facie* case for rescission, the burden then shifts to the State to present evidence justifying the suspension. *Id*. at 560. Four issues may be raised in a rescission hearing, but we are concerned only with whether Wig had reasonable grounds to believe that defendant was driving while under the influence of alcohol. 625 ILCS 5/2-118.1(b)(2) (West 2012). When reviewing the trial court's ruling on a petition to rescind, we defer to the court's factual findings and credibility assessments and will reverse those findings only if they are against the manifest weight of the evidence. *Wear*, 229 Ill. 2d at 560-61. However, we review *de novo* the ultimate question of whether the petition should have been granted. *Id*. at 562.

¶ 16 The issue here is whether Wig had reasonable grounds to believe that defendant was under the influence of alcohol. Courts have determined "reasonable grounds" by applying a probable-cause analysis. *Id*. at 560. Probable cause to arrest exists when the totality of the facts known to the officer when he makes the arrest are sufficient to lead a reasonable person to believe that the arrestee has committed an offense. *Id*. at 563-64. Probable cause is based on the factual and practical considerations of everyday life upon which reasonable, prudent people, not

legal technicians, act. *Id*. at 564. It is more than a mere suspicion (*People v. Wingren*, 167 Ill. App. 3d 313, 320 (1988)) but less than proof beyond a reasonable doubt (*Wear*, 229 Ill. 2d at 564).

¶ 17 Here, the evidence derived from Wig's testimony, which the court found to be uncontradicted and credible, established that defendant stumbled and shuffle-stepped prior to entering her vehicle, committed two driving violations consistent with those made by impaired drivers (stopping her vehicle over the line at a red light and weaving in and out of her lane), had bloodshot and glassy eyes, demonstrated fine-motor impairment when attempting to retrieve her driver's license and proof of insurance, and had an odor of alcohol emanating from her vehicle. Although the trial court acknowledged Wig's testimony that defendant stumbled and that she had bloodshot and glassy eyes, the court gave these observations little, if any, weight, noting that there could have been causes other than alcohol. However, there was no testimony as to any other cause. Absent some other explanation, the court should have relied on all of the facts and circumstances observed by Wig, taking into consideration Wig's 15 years of experience as a patrol officer during which time he had made between 40 and 50 DUI arrests. As this court has previously noted, "[t]he officer's factual knowledge, based on his prior police experience, is relevant to the probable cause determination." *People v. Brodeur*, 189 Ill. App. 3d 936, 940 (1989). We agree with the State that the totality of the facts known to Wig at the time of defendant's arrest were sufficient to lead a reasonably prudent person to conclude that defendant was operating her vehicle under the influence of alcohol. See *Wingren*, 167 Ill. App. 3d at 320-21 ("Probable cause to arrest a motorist for DUI has been commonly established by the testimony of the arresting officer, in spite of the defendant's contradictory testimony, that the motorist had about him or her the odor or strong odor of alcohol, had slurred speech or had red

and glassy eyes. [Citations.] Generally, these observations are supplemented by other observations apparent to the officer or inferred from his observations such as speeding, weaving, erratic driving, driving on the wrong side of the road, being stuck in a ditch [citation] or, as in the case at bar, being in a vehicle which is stuck in the mud.").

¶ 18 Our conclusion finds support in *Brodeur*, where we reversed the rescission of the defendant's summary suspension. In *Brodeur*, the arresting officer observed the defendant to have red, bloodshot eyes, slurred speech, and a strong odor of alcohol on her breath. In addition, the defendant was involved in a motor-vehicle accident with a tow truck. We stated: "When all of these facts and circumstances are viewed in their entirety, *especially by a 13-year veteran police officer who had observed intoxicated individuals on hundreds of occasions*, it was reasonable to conclude that [the] defendant had committed the offense of driving while under the influence of alcohol." (Emphasis added.) *Brodeur*, 189 Ill. App. 3d at 941.

¶ 19 The dissenting justice in *Brodeur* maintained that the evidence, at best, established only that the officer had a *suspicion* that the defendant was under the influence of alcohol. The dissent's conclusion was based in part on its finding that the accident was caused not by the defendant but by the tow-truck driver and thus the accident did not "*manifestly* imply that the defendant was 'under the influence.' " (Emphasis in original.) *Id.* at 943 (McLaren, J., dissenting). The dissent found relevant the fact that the officer did not observe the defendant driving the car. The dissent held that the indicia of alcohol consumption (*i.e.* bloodshot and glassy eyes and odor of alcohol) were insufficient without additional evidence "in the nature of admissions and/or observations of the defendant or observations of defendant's vehicle" that established that the defendant was " 'under the influence.' " *Id.* at 944 (McLaren, J., dissenting).

¶ 20 Here, the *Brodeur* dissent's concerns are satisfied because, as noted above, in addition to defendant's bloodshot and glassy eyes and the odor of alcohol, Wig observed defendant stumble and shuffle-step prior to entering her vehicle, he witnessed her commit two traffic violations consistent with those committed by impaired drivers, and he saw her exhibit fine-motor impairment in her attempt to retrieve her driver's license and proof of insurance.

¶ 21 Based on the foregoing, we hold that, because the totality of the facts and circumstances known to Wig at the time of defendant's arrest were sufficient to lead a reasonably prudent person to conclude that defendant was operating her vehicle under the influence of alcohol, the trial court erred in granting defendant's petition to rescind the summary suspension of her driver's license.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we reverse the judgment of the circuit court of De Kalb County.

¶ 24 Reversed.