

NOTICE  
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2016 IL App (5th) 150137-U

NO. 5-15-0137

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Shelby County.
	)	
v.	)	No. 13-DT-13
	)	
TONYA DAY,	)	Honorable
	)	James L. Roberts,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE CATES delivered the judgment of the court.  
Justices Goldenhersh and Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court's order suppressing statements made by the defendant after having been advised of her *Miranda* rights is affirmed, and this case is remanded for further proceedings.

¶ 2 The defendant, Tonya Day, was arrested on May 5, 2013, and charged with driving under the influence of alcohol in violation of section 11-501(a)(2) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(2) (West 2012)). Following a hearing on the defendant's motion to suppress, the circuit court partially granted the motion. Citing the defendant's extreme intoxication, the court suppressed statements made by the defendant after she had been advised of her *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436

(1966)). The State filed this appeal under Illinois Supreme Court Rule 604(a)(1) (eff. Feb. 6, 2013). For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On May 5, 2013, the defendant was arrested for driving a Ford pickup truck under the influence of alcohol in Shelby County. The defendant was also subject to the statutory summary suspension of her driving privileges for refusing to submit to a blood-alcohol concentration (BAC) test at the Shelby County jail. Thereafter, the defendant filed a request for judicial hearing on her statutory summary suspension, and a motion to suppress statements she made both before and after *Miranda* warnings were administered to her. Over the course of several dates, the trial court conducted a hearing on both of the defendant's motions. At issue in this appeal is the defendant's motion to suppress statements that were made by her after she had been advised of her *Miranda* rights.

¶ 5 During the hearing on the defendant's motion to suppress, several witnesses provided conflicting testimony as to who had been driving the Ford pickup truck during the early morning hours of May 5, 2013. The defendant was one of the witnesses who testified that she was not the driver of the truck. Specifically, the defendant testified that the truck had a bench seat, that she was sitting next to the driver, and that a friend was seated to her right. The defendant also stated that after the truck came to a stop, the driver of the truck got out and ran. According to the defendant, by the time the police approached the truck, the driver was no longer inside, and only she and her friend remained in the vehicle. The defendant recalled speaking to the police, but she did not

remember telling any officer that she had been driving. The defendant agreed with the State that it would be fair to say that she was pretty impaired during the stop.

¶ 6 Jacob Washburn, a deputy sheriff with the Shelby County Sheriff's Office, testified that on May 5, 2013, he observed two vehicles drive past him "pretty quickly." Washburn decided to follow the vehicles. Initially, Washburn was quite a way behind the two vehicles that had passed him, but he was still able to see their taillights. He saw both vehicles pull into a parking area, and then, only one of the vehicles, a truck, pulled out. Washburn noticed that the truck's light over the license plate did not work, so he turned on his emergency lights, and initiated a traffic stop. The truck pulled into a driveway, and Washburn pulled in right behind the truck. Washburn did not see anyone exit the vehicle. He then approached the truck and initiated a conversation with the defendant. The defendant informed Washburn that she had pulled into the driveway because she knew the owner of the residence. Before going to speak to the owner of the home, Washburn waited for Deputy Litteral to arrive at the location of the stop.

¶ 7 Litteral was the second police officer at the scene. He testified that he arrived approximately 20 seconds to a minute after Washburn. After exiting the patrol car, Litteral approached the defendant, and spoke to her. He could not remember whether the defendant was inside the truck or near the truck when he began asking questions. During the conversation, Litteral asked the defendant if she had been driving. Although he could not recall her exact response, Litteral testified on direct that the defendant indicated she had been driving. Litteral noticed that the defendant had bloodshot, glassy eyes, slightly slurred speech, and had an odor of alcoholic beverage coming from her person. Litteral

then had the defendant perform three field sobriety tests, which consisted of the horizontal gaze nystagmus (HGN) test, the walk-and-turn test, and the one-leg-stand test. The defendant demonstrated signs of impairment on each test. She received the worst score on the HGN test, showed significant signs of impairment on the walk-and-turn test, and exhibited signs of impairment on the one-leg-stand test. The defendant then provided a preliminary breath test (PBT). The results of the PBT demonstrated that the defendant had a BAC of .184. Based upon the field sobriety tests, and the results of the PBT, Litteral placed the defendant under arrest. He then transported her to the Shelby County Detention Center.

¶ 8 After the defendant's arrest, while at the detention center, Litteral asked the defendant for a breath sample. The defendant refused Litteral's request. Prior to conducting a custodial interview of the defendant, Litteral read the defendant her *Miranda* rights, and had her sign a waiver of those rights. During the interview, the defendant told Litteral that she had been drinking, but that she did not know how much she had to drink. The defendant also told him that she had been driving the truck. On cross-examination, Litteral testified that during the interview, the defendant was neither more sober nor less sober than when he conducted the field sobriety tests. In his report, Litteral noted that it was obvious that the defendant was under the influence of alcohol, that she had been drinking for three hours, and that she displayed "unusual actions" of both crying and laughing. Litteral's report further indicated that the defendant's ability to understand instructions during the field sobriety tests was poor. Her ability to understand instructions at the detention center was also poor. In particular, Litteral agreed with

defense counsel that at the time he read the *Miranda* waiver to the defendant, she was still having difficulty understanding.

¶ 9 Following arguments of counsel, the circuit court took the matter under advisement. On March 20, 2015, in a written order, the trial court partially denied, and partially granted, the defendant's motion to suppress statements. The court found that the defendant was not in custody until the conclusion of the field sobriety tests, when she was advised that she was under arrest. Therefore, the court denied the defendant's motion to suppress statements that were made prior to her arrest. The court also found that the defendant was significantly impaired, which was based on and confirmed by the police officer's investigation, including field sobriety test observations and the PBT results of .184 BAC. The court further found that the defendant had difficulty comprehending and answering questions after being advised of her *Miranda* rights. Based upon these findings, the circuit court concluded that it had insufficient information to find that the defendant knowingly, and intelligently, understood and voluntarily waived her *Miranda* rights due to her extreme intoxication. Thus, the statements elicited from the defendant after she had been advised of her *Miranda* rights were suppressed. This appeal followed.

¶ 10 ANALYSIS

¶ 11 A court of review applies a bifurcated standard of review to a trial court's determination as to whether a defendant's statement was voluntarily made. *People v. Westmorland*, 372 Ill. App. 3d 868, 876 (2007). The ultimate question of whether the confession was voluntary is reviewed *de novo*. *People v. Richardson*, 234 Ill. 2d 233, 251 (2009). However, a trial court's findings of fact and credibility determinations are

given great deference and will not be reversed unless they are contrary to the manifest weight of the evidence. *People v. Braggs*, 209 Ill. 2d 492, 505 (2003); see also *People v. Perkins*, 248 Ill. App. 3d 762, 767 (1993). Factual findings and credibility determinations are against the manifest weight of the evidence "only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). Considerable deference is accorded to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses. *Deleon*, 227 Ill. 2d at 332.

¶ 12 On a motion to suppress statements, the State bears the burden of proving, by a preponderance of the evidence, that the defendant's statement was made voluntarily. *Braggs*, 209 Ill. 2d at 505. Voluntariness includes proof that the defendant made a knowing and intelligent waiver of her *Miranda* rights. *Braggs*, 209 Ill. 2d at 505. Whether a statement is made voluntarily is dependent upon the totality of the circumstances of the particular case. *People v. Richardson*, 234 Ill. 2d 233, 253 (2009).

¶ 13 With regard to intoxication, the law is well settled that where a suspect is so grossly intoxicated to the point where she no longer has the capacity to waive her rights, any statements made while in that condition will be suppressed. *People v. Garcia*, 165 Ill. 2d 409, 421 (1995). Intoxication by itself does not render a waiver of *Miranda* rights involuntary; rather, the evidence must plainly show that the defendant was so grossly intoxicated that she no longer had the capacity to knowingly waive her rights. *People v. Sleboda*, 166 Ill. App. 3d 42, 51 (1988). The decision of the trial court on this issue will

not be reversed unless it is against the manifest weight of the evidence. *Sleboda*, 166 Ill. App. 3d at 51.

¶ 14 On appeal, the State contends that the trial court erred in suppressing the defendant's post-*Miranda* statements because she was not grossly intoxicated. In support of its argument, the State posits that the evidence regarding the defendant's impaired condition did not clearly demonstrate that she lacked the capacity to knowingly waive her rights. Specifically, the State avers that the defendant's ability to recall the events of the night in question demonstrates that the defendant was not grossly intoxicated.

¶ 15 In this case, the circuit court determined that the defendant was grossly intoxicated based upon Deputy Litteral's testimony, including the observations he made during the field sobriety tests that were administered to the defendant. The court also accorded some weight to the defendant's admission that she was pretty intoxicated. Based upon a review of the record, the evidence in this case plainly shows that the circuit court's determination that the defendant was grossly intoxicated was not in error. In particular, Litteral marked in his report that it was obvious that the defendant was intoxicated. Litteral also testified that the defendant's level of intoxication remained the same between the time the field sobriety tests were administered, and when the *Miranda* warnings were given at the detention center. Litteral further testified that the defendant had difficulty understanding instructions during the field sobriety tests and when she was read her *Miranda* rights at the detention center. Moreover, Litteral determined that the defendant failed each of the sobriety tests, noting that the defendant showed signs of impairment on

the one-leg-stand test, received the worst possible score on the HGN test, and showed significant signs of impairment on the walk-and-turn test.

¶ 16 Litteral's testimony regarding the defendant's level of intoxication did not end there. His testimony further revealed that he administered a PBT test and the results showed that the defendant had a BAC of .184, which is more than twice the legal limit. When the State asked the defendant if it would be fair to say that she was "pretty impaired" on the night in question, the defendant agreed. In light of this evidence, we cannot conclude that the trial court erred in determining that the defendant was grossly intoxicated, and that the level of intoxication did not change from the time Deputy Litteral initiated his field sobriety tests until his reading of the *Miranda* warnings to the defendant. As such, we agree with the circuit court's determination that the defendant was so grossly intoxicated at the time she was advised of her rights under *Miranda*, that she was unable to knowingly and voluntarily waive these rights. Therefore, we affirm the circuit court's order suppressing the statements that the defendant made after she had been advised of her rights under *Miranda*, and remand this case for further proceedings.

¶ 17 Affirmed; cause remanded.