No. 123385

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DAKSH RELWANI, Defendant-Appellant.	On Appeal from the Appellate Court of Illinois, Third Judicial District, No. 3-17-0201. There on Appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, No. 2016 DT 1285. The Honorable Carmen Goodman, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

DAVID H. ISKOWICH
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-3421
eserve.criminalappeals@atg.state.il.us

Counsel for Plaintiff-Appellee
People of the State of Illinois

ORAL ARGUMENT REQUESTED

E-FILED
9/17/2018 11:35 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

POINTS AND AUTHORITIES

NATURE OF THE ACTION

After he was arrested for driving while intoxicated, defendant Daksh Relwani filed a petition to rescind the statutory summary suspension of his driver's license. C24.[1] The trial court denied the petition, C34, and the Illinois Appellate Court, Third District, affirmed, A1-20. Defendant appeals that judgment.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b). This Court allowed defendant's petition for leave to appeal on May 30, 2018. *People v. Relwani*, 98 N.E.3d 41 (2018) (table).

ISSUE PRESENTED FOR REVIEW

Defendant moved to rescind the statutory summary suspension of his driver's license, arguing that rescission was appropriate because the summary suspension statute applies only to motorists operating vehicles on "public highways," and the location of his arrest — a parking lot adjacent to a Walgreen's store — could not be so characterized because it was "private property." The issue is whether the trial court correctly denied defendant's motion to rescind because he failed to make a *prima facie* showing that the parking lot was not a "public highway."

[1] The common law record is cited as "C__"; the report of proceedings as "R__"; and petitioner's Brief and Appendix as "Br__," and "A__," respectively.

STATEMENT OF FACTS

In 2016, police discovered defendant in a parking lot adjacent to a Walgreen's store in Joliet, unresponsive and behind the wheel of a vehicle. C4, C9. It was 3:30 a.m., the engine was running, and the vehicle's transmission was in "drive." R8, R13, C9. After he was arrested for driving under the influence, *see* 625 ILCS 5/11-501, defendant refused to consent to, or failed to complete, chemical testing (*e.g.*, breath, blood, or urine), and, for that reason, the Secretary of State suspended his driver's license, C9-10, as Illinois law allows when a motorist withdraws his consent to chemical testing, *see* 625 ILCS 5/11-501.1 (implied consent law).

Defendant filed a petition to rescind the summary suspension. C24. At the hearing on the petition, he argued that the implied consent law did not apply because at the time of his arrest, he was not driving (or in control of) his vehicle on a "public highway," as the statute provides; rather, he contended, he was on "private property" (the parking lot next to Walgreen's) when he was arrested.[2]

Defendant testified in support of his petition. He agreed that he had been sleeping behind the wheel of his car in the parking lot, with the engine running, when he was arrested at 3:30 a.m. R8, R13. Defendant could not recall much about the events surrounding his arrest. Before falling asleep,

[2] Defendant raised other unsuccessful grounds for rescission that he does not press on appeal.

he had been driving home from a restaurant in Chicago "with his family," although he agreed that at some point he was "the sole occupant of the vehicle." R14. He recalled performing some field sobriety tests upon being awakened by the police officer, but could not remember any details about them. R18-19. He remembered submitting a breath sample at the police station, R9, but could not recall refusing an officer's request to provide blood and urine samples, and could not remember the results, if any, of the breath test. R16, R17. And while he could not recall telling the arresting officer that he had used drugs — heroin and clozapine (a psychotropic medication) — or consumed alcohol earlier in the evening, he conceded that his lack of memory was likely attributable to his use of those drugs. R17-18 (defendant, answering "I, I don't know," and "I guess," when asked whether his drug use caused inability to remember events).

The trial court denied the motion to rescind. It declined to presume that the parking lot was privately owned simply because "it is the parking lot of Walgreen's," R29, and concluded that defendant had failed to show that rescission was warranted on that basis, R33. The court later denied defendant's motion to reconsider. C35-41, C43.

The appellate court affirmed, finding that defendant had failed to make a *prima facie* showing that the parking lot was not a "public highway." According to precedent, a parking lot sitting on private property is a "public highway" for purposes of the summary suspension statute if the lot is (1)

open to public vehicular traffic, and (2) is publicly maintained. A9-10. Defendant presented no evidence showing that the parking lot was not publicly owned, or that, even if privately owned, it was not publicly maintained. He argued only that the lot must be private because it was adjacent to a Walgreen's store, and this was insufficient to show that the lot was not "public" under the implied consent statute. A10 ("The mere fact that the parking lot in this case was for a Walgreen's drug store did not provide any further evidence as to who actually owned or maintained the parking lot."). The court declined to decide whether, as an alternative ground of affirmance, it could infer from defendant's testimony that he had been driving on the public highways just before he arrived in the parking lot. *Id.*

Justice Lytton dissented. He believed that a defendant seeking rescission needed to show only that he was driving or in control of his vehicle in a parking lot adjacent to a private business; the burden then shifts to the People to offer proof that "the private parking lot is publicly maintained." A17-19. Justice Lytton appears to have presumed that the lot was, in fact, owned by Walgreen's or some other private interest.

ARGUMENT

I. The Trial Court Correctly Denied Defendant's Motion to Rescind the Summary Suspension of His Driving Privileges.

Illinois's implied consent provision, contained in Section 11-501.1 of the Illinois Vehicle Code (625 ILCS 5/11-501.1(a)), provides that any person who "drives or is in actual physical control of a motor vehicle upon public highways," and is arrested for driving under the influence, "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 any intoxicant in the person's blood. *See People v. Fisher*, 184 Ill. 2d 441, 444 (1998) (characterizing provision as "implied consent law"). Although a motorist may refuse to submit to this testing, that refusal will result in administrative suspension of the motorist's driver's license. *See* 625 ILCS 5/11-501.1(d). If the motorist petitions to rescind the suspension, he must establish a *prima facie* case in a civil proceeding that rescission is warranted for one or more of the reasons listed in Section 2-118(b); *People v. Cosenza*, 215 Ill. 2d 308, 313 (2005). If the motorist meets that burden, "the burden then shifts to the State to come forward with evidence in rebuttal that justifies the suspension." *Cosenza*, 215 Ill. 2d at 313.

This Court reviews the trial court's factual findings under the manifest weight of the evidence standard. *People v. Orth*, 124 Ill. 2d 326, 341 (1988). A decision is against the manifest weight of the evidence if it is clear that the

trier of fact should have reached the opposite conclusion, or if the finding is unreasonable, arbitrary, or not based on the evidence presented. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). This Court reviews *de novo* the trial court's ultimate legal ruling whether the petition to rescind should be granted. *People v. Wear*, 229 Ill. 2d 545, 561 (2008).

A. The Implied Consent Statute Applies Because Defendant Was Driving While Intoxicated on a Public Highway Before His Arrest in the Parking Lot Adjacent to Walgreen's.

Defendant does not dispute that he was intoxicated and in control of his vehicle when he was arrested in the parking lot adjacent to Walgreen's. His only argument on appeal is that because the parking lot was private property, the implied consent statute — which applies to motorists who drive while intoxicated on "public highways" — was inapplicable, and the summary suspension of his driver's license was therefore unwarranted. But this Court need not reach this question because it may affirm on a more straightforward ground. *See In re Linda B.*, 2017 IL 119392, ¶ 50 (Supreme Court is not bound by appellate court's reasoning, and may affirm on any basis in record).

Where direct or circumstantial evidence shows that a motorist drove upon a public highway while intoxicated shortly before his arrest for that offense, the implied consent statute applies even if the motorist is ultimately arrested on private property. *See People v. Kissel*, 150 Ill. App. 3d 283, 286-

87 (2d Dist. 1986), *overruled on other grounds by People v. Brown*, 175 Ill. App. 3d 725 (2d Dist. 1988); *People v. Foster*, 170 Ill. App. 3d 306, 310 (2d Dist. 1988). It would be inconsistent with the legislative purpose of the implied consent law — to promote highway safety and allow law enforcement to more easily gather evidence of intoxicated driving, *People v. Wegielnik*, 152 Ill. 2d 418, 424-25 (1992) — to exclude intoxicated motorists from the law's reach simply because the arrest occurs on private property, *see People v. Brummett*, 279 Ill. App. 3d 421, 429 (4th Dist. 1996) (implied consent statute applies to motorists "whose intoxicated travels happen, by pure chance, to land them on private property at the culmination of their travels").

The circumstantial evidence here permits and, indeed, compels, the reasonable inference that defendant drove on the public highways just before ending his "intoxicated travels," *id.*, in the parking lot adjacent to Walgreen's; thus it makes no difference whether that parking lot was a "public highway" for purposes of the implied consent law. Defendant's own testimony at the rescission hearing sealed the case. He conceded that when the police discovered him unresponsive in his vehicle, the engine was running. R13. He conceded that before his arrest, he had been driving home "with his family" from a restaurant in Chicago, and he related that account to the arresting officer. R14-15. He conceded that, at some point after leaving the Chicago restaurant, he had been "the sole occupant of the vehicle." R14. And he conceded that his inability to remember much of anything was likely

attributable to his ingestion of heroin and clozapine earlier in the evening. R14, R17. It is reasonable to infer from this testimony that defendant had become intoxicated earlier that night, had driven on the public roads from Chicago (or some other point of origin) to Joliet, had stopped his vehicle in the parking lot, and had passed out there with the engine running.[3]

Therefore, defendant was subject to the implied consent law regardless of whether the parking lot is characterized as a "public highway," and this Court should affirm on that basis. *See*, *e.g.*, *Foster*, 170 Ill. App. 3d at 310 (implied consent statute applied where motorist admitted driving on public highway before arrest on private property, and same conclusion was reasonably inferred from other facts surrounding arrest independent of her testimony); *People v. Wingren*, 167 Ill. App. 3d 313, 322-23 (2d Dist. 1988) (implied consent law applied where officer had not seen motorist drive on public highway, but where, according to officer, motorist had told him that

[3] The only possible exculpatory version of events consistent with this testimony — that defendant's family (1) drove him to the parking lot early in the morning on their way home from a Chicago restaurant, (2) abandoned him there, alone, intoxicated, and with the engine running and the transmission in "drive," and then (3) procured an alternative means of transportation for themselves — does not withstand scrutiny. Moreover, there is no reasonable possibility that defendant became intoxicated only after arriving at the parking lot. The arresting officer discovered only one open bottle of beer in the center console, C9, and nothing in the record indicates that any other related evidence, such as heroin, clozapine, or other drug paraphernalia, was found in the vehicle. And, as discussed, the vehicle was in gear and defendant could not remember much about how he got there.

she had driven on nearby public road just before becoming stuck on private property); *cf. People v. Kloke*, 193 Ill. App. 3d 101, 102-03 (3d Dist. 1990) (court could not infer that motorist had driven on public highway where credible testimony showed that sleeping motorist had been transported to private property by friend and left there in other vehicle); *Kissel*, 150 Ill. App. 3d at 286 (implied consent statute did not apply because it was undisputed that motorists had driven only on private property; evidence did not permit any contrary inferences).

B. The Implied Consent Law Applies Because Defendant Failed to Make a *Prima Facie* Case that the Parking Lot was not a "Public Highway."

Alternatively, the trial court's judgment may be affirmed on the ground that defendant did not make a *prima facie* case that he was not on a "public highway" when he was arrested in the parking lot.

As discussed, application of the implied consent law is conditioned on the motorist having driven (or controlled his vehicle) while intoxicated on a "public highway." 625 ILCS 5/11-501.1(a). Accordingly, the law provides that a motorist may contest the applicability of the implied consent law on the ground that he was not, in fact, driving on a "public highway." 625 ILCS 5/11-501.1(d). A "highway" is defined as the area "between the boundary lines of every way publicly maintained" that is "open to the use of the public for purposes of vehicular traffic." 625 ILCS 5/1-126. Given this expansive definition, courts have held that parking lots located on private property may

qualify as "public highways" for purposes of the implied consent law if they are (1) publicly maintained, and (2) open to public traffic, and defendant does not dispute this rule. *See People v. Helt*, 384 Ill. App. 3d 285, 288 (2d Dist. 2008); *People v. Culbertson*, 258 Ill. App. 3d 294, 297 (2d Dist. 1994).

Applying this rule, and considering defendant's *prima facie* burden of proof at a rescission hearing, this Court should hold, as the appellate majority determined below, that a motorist who petitions for rescission on the ground that a parking lot adjacent to a retail establishment was not a "public highway" must clear two hurdles. A9-10. First, he must show by a preponderance of the evidence that the parking lot was, in fact, on private property; if he fails to do so, the inquiry ends and rescission is unwarranted. Second, if the motorist establishes that the parking lot was on private property, he must then show by a preponderance of the evidence that it is not a "public highway" because it was not publicly maintained or open to public vehicular traffic. *See Black's Law Dictionary* 1228 (8th ed. 2004) (*prima facie* case requires a party to establish a "legally required rebuttable presumption," or to produce "enough evidence to allow the fact-trier to infer the fact at issue"); *see also People v. Hacker*, 388 Ill. App. 3d 346, 349-50 (4th Dist. 2009) (defendant's *prima facie* burden equivalent to preponderance standard); *People v. Brown*, 229 Ill. 2d 374, 385 (2008) (preponderance standard satisfied if evidence renders fact at issue more likely that not).

Under this test, defendant failed to make a *prima facie* case for rescission. Defendant's entire case for rescission rested solely on the fact that he was arrested in a parking lot adjacent to a Walgreen's store. He presented no evidence — such as testimony from the arresting officer, or proof of posted signs indicating that the property was owned by Walgreen's or some other private entity, that the lot was reserved for store patrons, or that vehicles would be towed if left unattended — suggesting that the lot was privately owned or maintained. It is not reasonable to infer that any parking lot of this type must be privately owned simply because it lies adjacent to a retail store, as defendant and the dissenting justice maintain; precedent indicates that a motorist must do more to make his case, especially considering that the burden of proof falls squarely on the motorist at this stage of the rescission proceedings. *See Culbertson*, 258 Ill. App. 3d at 296-97 (defendant submitted lease indicated that parking lot was owned by private entity, but rescission unwarranted where other evidence showed that lot was publicly maintained); *People v. Montelongo*, 152 Ill. App. 3d 518, 520, 523 (1st Dist. 1987) (defendant presented sufficient evidence showing that parking lot was privately owned, including testimony from (a) responding officer, that he had never seen governmental agencies on or maintaining lot; (b) defendant, that lot was fenced, and signs designated area as private and reserved for patrons of bar; and (c) eyewitness, that lot was reserved for patrons and that she had never seen governmental agencies maintaining it); *People v. Kozak*, 130 Ill.

App. 2d 334, 334-35 (1st Dist. 1970) (reversing conviction of driving on suspended license where evidence — including testimony of arresting officers that parking lot was owned by grocery store, was not public, and was not maintained by city — established that lot was privately owned). Therefore, the trial court did not err when it determined that defendant had failed to make a *prima facie* showing that he was not on "public property" when he was arrested.

Both defendant and the dissenting justice voice concern that requiring motorists to present this kind of evidence would create an undue burden, reasoning that the "state is in a much better position to know if a parking lot is publicly maintained." Br9-10; A18. This concern is unfounded. The legislature deliberately chose to place the burden of making out a *prima facie* case for rescission on the motorist. And the grounds for rescission listed in Section 2-118(b), by their very nature, require the motorist to obtain and then present the same kinds of documentary or testimonial proof that petitioner contends would be unduly burdensome. *See* (b)(1) (requiring defendant to show that he was not arrested for predicate offense listed in Section 11-501 or violation of similar local ordinance); (b)(2) (requiring defendant to show that he was not driving or in control of vehicle on highway while intoxicated); (b)(3) (requiring defendant to show that he did not refuse request to submit to testing, or did not complete that testing); and (b)(4) (requiring defendant who

submitted to testing to show that result was not above legal limit of intoxication).

Precedent shows that motorists routinely comply with these evidentiary demands, whether the asserted grounds for rescission rest on the "public highway" rule, or on other alleged deficiencies in the State's case listed in Section 2-118(b). *See Culbertson*, 258 Ill. App. 3d at 296-97 (defendant submitted copy of lease showing lot privately owned); *Montelongo*, 152 Ill. App. 3d at 520, 523 (1st Dist. 1987) (defendant called three witnesses to testify on issue of private property); *Kozak*, 130 Ill. App. 2d at 334-35 (defendant called police officers to testify on issue of private property); *see also Orth*, 124 Ill. 2d at 340-41 (although *prima facie* case challenging accuracy of breathalyzer may include credible testimony from defendant that he was not intoxicated, probative evidence is *not* limited to testimony); *People v. Tibbetts*, 351 Ill. App. 3d 921, 929 (5th Dist. 2004) (rescission denied where defendant failed to present physical or psychological "medical evidence" showing that aversion to needles precluded him from refusing consent to testing); *People v. Bank*, 251 Ill. 2d 187, 191 (5th Dist. 1993) (rescission denied where motorist failed to submit "medical testimony" establishing that he could not refuse consent because of physical disability, or other evidence showing that BAL (blood alcohol level) machine was defective).

Finally, *People v. Ayres*, 228 Ill. App. 3d 277 (3d Dist. 1992), and *Kissel* — cited by defendant for the proposition that he need not present any further

evidence, other than the mere fact of arrest in a retail establishment's parking lot, to show private ownership — neither provide guidance on determining what *prima facie* evidence suffices at this stage nor conflict with the appellate court's decision below. Br9. The parties in *Ayers* and *Kissel* did not dispute the issue of private ownership; this fact was presumed to be true in each case. *See Ayres*, 228 Ill. App. 3d at 278 (addressing whether rescission was appropriate where defendants were observed driving on private parking lots); *Kissel*, 150 Ill. App. 3d at 286 (addressing whether implied consent law applied to defendants because they had driven at some time — not necessarily in immediate past — on public highways prior to arrest in private parking lots). Because those cases did not consider, much less create, a rule relieving defendants from submitting additional proof of private ownership, they provide no guidance on the quantum of evidence necessary to satisfy defendant's *prima facie* burden on that question, and do not conflict in any way with the appellate court's decision here.

Because defendant failed to show that the Walgreen's parking lot was privately owned and, if privately owned, publicly maintained, he failed to meet his burden of proof, and the trial court correctly denied his motion to rescind the statutory summary suspension of his driving privileges. And even if defendant did meet his burden in that regard, the State would have been able to meet its burden to show that the implied consent law nonetheless applies for the reason given in Section I.A., above.

CONCLUSION

The judgment of the appellate court should be affirmed.

September 13, 2018

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

DAVID H. ISKOWICH
Assistant Attorney General
100 West Randolph Street, 12thFloor
Chicago, Illinois 60601-3218
(312) 814-3421
eserve.criminalappeals@atg.state.il.us

Counsel for Plaintiff-Appellee
People of the State of Illinois

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 15 pages.

/s/ David H. Iskowich
DAVID H. ISKOWICH
Assistant Attorney General

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

CERTIFICATE OF SERVICE

Under penalty of law as provided in 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 13, 2018, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served on counsel listed below by sending a copy from my e-mail address to counsel's e-mail address:

Gal Pissetzky
Pissetzky & Berliner
53 West Jackson Boulevard
Suite 1515
Chicago, Illinois 60604
gpissetzky@pbzlawfirm.com

/s/David H. Iskowich
DAVID H. ISKOWICH
Assistant Attorney General

Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail an original and twelve copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.