

No. 123385

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**IN THE  
SUPREME COURT OF ILLINOIS**

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PEOPLE OF THE STATE OF ILLINOIS, ) ) Plaintiff-Appellee, ) ) v. ) ) DAKSH N. RELWANI, ) ) Defendant-Appellant. ) ) ) ) ) )	On Petition for Leave to Appeal from the Illinois Appellate Court, Third District, No. 3-17-0201  There Heard on Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois No. 16-DT-1285  The Hon. Carmen Goodman <i>Judge Presiding</i>
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**BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT**

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**ORAL ARGUMENT REQUESTED**

Gal Pissetzky  
 Pissetzky and Berliner LLC.  
 53 W. Jackson Blvd., Suite 1515  
 Chicago, IL 60604  
 (312) 566-9900  
 gpissetzky@pbzlawfirm.com

*Counsel for Defendant-Appellant*

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### NATURE OF THE CASE

Defendant-Appellant Daksh N. Relwani (“Mr. Relwani”) was arrested for driving under the influence. At the time of his arrest, Mr. Relwani was asleep inside his car, which was parked in a Walgreens parking lot in Joliet, Illinois. Mr. Relwani filed a petition to rescind the statutory summary suspension of his driver’s license based on the private property exception to the implied consent statute. The trial court denied Mr. Relwani’s petition as well as his subsequently filed motion to reconsider. (A1, ¶ 1)<sup>1</sup>.

This action is brought to appeal the decision of the Third District Illinois Appellate Court, which affirmed the trial court’s denial of the Mr. Relwani’s petition to rescind his summary suspension. No issues are raised as to the sufficiency of the pleading.

### ISSUES PRESENTED FOR REVIEW

According to Illinois’s implied consent statute, any person who drives or is in control of a motor vehicle on a public road or highway is deemed to have agreed to chemical testing if lawfully arrested for a DUI. However, a driver can refuse to submit to chemical testing if he is arrested on private property. Must a defendant, who refuses to submit to chemical testing when arrested in a private business’s parking lot, and subsequently petitions to rescind his statutory suspension, present affirmative evidence that the subject property is privately owned and privately maintained to make a *prima facie* case for rescission?

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<sup>1</sup> Citations to A\_\_ are to the appendix. Citations to R\_\_ are to the report of proceedings from the petition to rescind the summary suspension hearing.

### JURISDICTION

This Court has jurisdiction under Illinois Supreme Court Rule 315(a). Pursuant to this rule, Mr. Relwani petitioned this Court for leave to appeal from the Third District Appellate Court's published decision dated February 21, 2018. (A1). That decision affirmed the trial court's denial of Mr. Relwani's petition to rescind his statutory suspension. This Court granted Mr. Relwani's petition on May 24, 2018. (A21).

### STANDARD OF REVIEW

A summary suspension hearing is a civil action in which the burden of proof rests on the petitioner-motorist. *People v. Plummer*, 287 Ill. App. 3d 250, 253 (4th Dist. 1997). Once the defendant establishes a *prima facie* case, the burden shifts to the state to come forward with evidence justifying the suspension. *People v. Ehley*, 381 Ill. App. 3d 937, 943 (4th Dist. 2008). At issue in this case is what amount of evidence a petitioner must put forth to establish a *prima facie* case for rescission under the private property exception to the implied consent law. This is a question of law. As such, the appropriate standard of review is *de novo*. *Id.* (“[W]here the ultimate issue involves statutory construction, review is also *de novo*.”).

**STATEMENT OF FACTS**

Mr. Relwani was charged with driving under the influence of alcohol pursuant to 625 ILCS 5/11-501(a)(2) (West 2016)). (A1 ¶ 1). At the time of his arrest, he was found asleep in his vehicle, which was located in the parking lot of a Walgreens store in Joliet, Will County, Illinois. (A2, ¶ 3).

Mr. Relwani filed a petition to rescind the statutory summary suspension of his driver's license, wherein he alleged that rescission was warranted on the following grounds: (1) the summary suspension statute did not apply because he was in a private parking lot and not on a public highway during the subject incident; and (2) defendant did not refuse to submit to chemical testing. (A2, ¶ 4).

With respect to the first ground, during the hearing on the petition, Mr. Relwani testified that his car was sitting in the Walgreens parking located at 1801 Ingalls Avenue in Joliet. (R. 8). The state, which referred to the subject parking lot as the "Walgreens parking lot," moved for a directed finding but did not present any affirmative evidence that the lot was publicly owned or maintained. (A17-19). Mr. Relwani argued the statutory summary suspension must be rescinded based on implied consent because he was arrested on private property. (R. 24). The trial court denied Mr. Relwani's petition to rescind as well as his subsequently filed motion to reconsider. (A1, ¶ 1). Mr. Relwani timely appealed. (A1, ¶ 1).

The Third District affirmed. According to the court, it is Mr. Relwani's burden "to present evidence to establish that the parking lot in this case was not a public highway...and the mere fact that the parking lot was a Walgreens parking lot, in and of

itself, was insufficient to establish that the parking lot was not a public highway.” (A7-A8, ¶ 13).

In his dissent to the majority’s opinion, Judge Lytton argued that Mr. Relwani established a *prima facie* case for rescission when he showed that his car was located in a private business’ (Walgreens’) parking lot. (A17, ¶ 39). Consequently, the burden shifted to the state to present evidence that the Walgreens parking lot is publicly owned or maintained. (A17, ¶ 38). In support of his position, Judge Lytton declined to follow the Second District’s non-binding decision in *People v. Helt* “because it places an undue burden on defendants to prove that private property is not publicly maintained.” (A18, ¶ 40). Because the state is in a much better position to know if a parking lot is publicly maintained, the dissenting opinion contends, the burden should be on the state to come forward with such evidence. (A18, ¶ 40). The dissenting opinion recognized that this case should be reversed, remanded, and a rescission granted if the state fails to show that the subject parking lot was publicly maintained. (A18-19, ¶ 42).

ARGUMENT

**The Trial Court Erred When it Denied Mr. Relwani’s Petition to Rescind His Statutory Suspension Because He Established a *Prima Facie* Case for Rescission Under the “Private Property” Exception to the Implied Consent Law**

This case involves issues regarding the summary suspension statute as it applies to private parking lots; specifically, what evidence a motorist must present to establish a *prima facie* case that the parking lot on which he was operating a vehicle was a private lot such that a statutory summary suspension should not apply. Mr. Relwani argued the summary suspension statute (also known as the implied consent statute) does not apply because, at the time of his arrest, he was operating or in physical control of a motor vehicle in a private parking lot (hereinafter referred to as the “private parking lot rule”). (A6, ¶ 12). Mr. Relwani established a *prima facie* case for rescission pursuant to the private parking lot rule when he testified that his car was located on a private business’s parking lot, namely, a Walgreens drug store. (R. 8). Thereafter, the burden should have shifted to the state to present evidence that the Walgreens parking lot – a commonly known private business – was publicly owned or maintained. The state failed to do so.

The decision below, which held that a motorist who petitions to rescind his summary suspension must present evidence that the subject parking lot was privately owned property and privately maintained, cannot be squared with other Illinois decisions in which the statutory suspensions of defendant-motorists were rescinded where the state failed to present evidence that the subject parking lots were publicly owned or maintained by a governmental entity.

Relying heavily on *People v. Helt*, the Third District’s holding effectively requires motorists who file petitions to rescind their summary suspensions pursuant to the

private parking lot rule to present affirmative evidence that the parking lot was on privately-owned property and was privately maintained. (A10, ¶ 17). As Judge Lytton warns in his dissent, however, such a requirement places an undue burden on defendants to prove that private property is not publicly maintained. (A18, ¶ 40). Because the state is in a much better position to know if a parking lot is publicly maintained, the dissenting opinion contends, the burden should be on the state to come forward with such evidence. (A18, ¶ 40).

**A. A number of Illinois decisions required only a showing that a driver was on private property to establish a *prima facie* case for rescission**

The appellate court's decision runs contrary to an established line of cases that hold a petitioner-motorist need only show that he was in control of an automobile in the parking lot of a private business to establish a *prima facie* case for rescission, namely, *People v. Ayers*, 228 Ill. App. 277 (3rd Dist. 1992); *People v. Montelongo*, 152 Ill. App. 3d 518 (1st Dist. 1987); and *People v. Kissel*, 150 Ill. App. 3d 283 (2d Dist. 1986), *overruled on other grounds by People v. Brown*, 175 Ill. App. 3d 725, 728 (1988).

As the fairly lengthy dissent by Justice Lytton indicates, the decision below is impossible to reconcile with a number of Illinois cases, all of which hold that a motorist need only show that he was operating or in control of his automobile in the parking lot of a private business to establish a *prima facie* case for rescission under the implied consent statute. *People v. Ayres*, 228 Ill. App. 3d 277, 278 (1992) (rescission affirmed where defendants were observed driving in a privately-owned parking lot); *People v. Kissel*, 150 Ill. App. 3d 283, 286 (1986) (affirmed dismissal of implied consent hearings where defendants were observed driving vehicles only on privately-owned parking lots), *overruled on other grounds by People v. Brown*, 175 Ill. App. 3d 725 (1988); *People v.*



*Montelongo*, 152 Ill. App. 3d 518, 523 (1987) (restaurant parking lot considered private); *People v. Kozak*, 130 Ill. App. 2d 334, 334-36 (1970) (grocery store parking lot considered privately-owned).

In the above-referenced cases, the petitioner-motorists had a lower burden of proof than that required by the Third District's decision in the instant case. By way of example, in *People v. Ayres*, another Third District case, the summary suspensions were properly rescinded where it was undisputed that the drivers were only observed driving on private parking lots. *Ayres* at 278. There is no mention that the defendant-petitioners presented any affirmative evidence that the subject parking lots were privately owned or maintained. Similarly, in *People v. Kissel*, a consolidated case that involves three separate drivers, all of whom were arrested for driving under the influence while operating their respective cars in areas that are commonly-regarded as private i.e. hotel parking lots, apartment house, and a shopping center, the petitioners were not required to prove, as the Third District demands of Mr. Relwani, that the said locations were privately owned or maintained. *Kissel* at 284.

In an attempt to downplay the relevance of these decisions to the instant facts, the Third District attempts to distinguish them by arguing that, in *Ayres* and *Kissel*, the state did not argue that that the lots in question constituted public highways. (A10-11, ¶ 19). This Court should not be persuaded by this argument, as the state in Mr. Relwani's case similarly did not argue that the Walgreens parking lot constituted a public highway or that Mr. Relwani should have presented affirmative evidence of its private ownership. (R. 21-22). Instead, the state maintained that the implied consent rule applied because Mr. Relwani "admitted to driving on the public roadway to get from the restaurant in Chicago

to Joliet.” (R. 21-22). Thus, the presumption that Mr. Relwani was operating his vehicle while on a private, Walgreens parking lot went un rebutted and established a *prima facie* case for rescission under the private parking lot rule. It then shifted the burden to the state to present evidence of public ownership or maintenance, which it failed to do.

Consequently, the trial court erred when it granted the state’s motion for directed finding.

**B. Mr. Relwani met the low threshold of a *prima facie* showing when he established that he was in a private parking lot at the time of his arrest**

The Third District’s decision, in direct conflict of other Illinois appellate findings in which summary suspensions were rescinded based on similar *prima facie* showings, ignores the fact that Mr. Relwani did create a presumption – which went uncontested – that he was on private property when he testified that his vehicle was located in the Walgreens parking lot. It further improperly heightened a petitioner-motorist’s burden of proof with respect to establishing a *prima facie* case of rescission pursuant to the private parking lot rule.

A hearing on a petition to rescind a summary suspension is a civil proceeding during which the defendant bears the burden of establishing a *prima facie* case for rescission. *People v. Marsala*, 376 Ill. App. 3d 1046, 1048 (2d Dist. 2007). *Prima facie* evidence is that evidence sufficient to establish a fact and which will remain sufficient if un rebutted. *People v. Knoblett*, 179 Ill. App. 3d 1015, 1016 (4th Dist. 1989); see also *People v. Barwig*, 334 Ill. App. 3d 738, 744 (5th Dist. 2002) (“[p]rima facie evidence has been characterized as being equivalent to the quantum of evidence required to meet the preponderance-of-the-evidence standard.”). A defendant “makes out a *prima facie* case if he puts on *some* evidence on every element essential to his cause of action.” *People v.*

*Tibbetts*, 351 Ill. App. 3d 921, 927 (5th Dist. 2004) (emphasis added). If the defendant establishes a *prima facie* case, the burden shifts to the state to provide evidence justifying the suspension. *Marsala* at 1046.

Mr. Relwani made such a showing when he established that he was sleeping in his car in the parking lot of a private business – Walgreens – and, further, when the state failed to rebut this presumption by providing any evidence of public ownership or maintenance. (R. 13-19). The appellate court held that such evidence was insufficient because “[t]he mere fact that the parking lot in this case was for a Walgreens drug store did not provide any further evidence as to who actually owned or maintained the parking lot.” (A10). This holding contradicts the above-referenced appellate decisions, none of which stand for the proposition that a defendant must show that a private actor owns or maintains the parking lot in order to establish a *prima facie* case for rescission under the implied-consent statute. Indeed, by the court’s own admission, neither the defendants in *Ayre* nor in *Kissel* presented any evidence of private ownership or maintenance, yet the subject property was nevertheless considered to be privately-owned. (A11).

To hold otherwise would place a higher burden than *prima facie* case on petitioner-motorists, and would also create an undue burden on petitioner-motorists who may not have access to the information necessary to satisfy the Third District’s “publicly maintained” requirement. Because the state is in a much better position to know if a parking lot is publicly maintained, the dissenting opinion contends, the burden should be on the state to come forward with such evidence. (A18, ¶ 40). Indeed, the state is in a far better place to ascertain the relationship between public entities and private property owners than are private citizens. It has the resources and the authority to more easily

obtain the relevant information, which could require subpoenaing witnesses or discovery in the very short time between rescission and the summary suspension hearing. It is thus imperative that this Honorable Court find that a petitioner-motorist, when seeking to rescind a statutory summary suspension pursuant to the private parking lot rule, need only show that he was on private property at the time of his arrest in order to make a *prima facie* case. Anything more would prove overly burdensome on Illinois motorists.

### CONCLUSION

For the foregoing reasons, Mr. Relwani respectfully requests that this Honorable Court find that a motorist who petitions to rescind his summary suspension on the basis of being arrested on private property need not show that the subject property is also privately maintained in order to establish a *prima facie* case for rescission. In so doing, Mr. Relwani asks that this Honorable Court reverse the judgment of the Third District Appellate Court, and Illinois Circuit Court, Will County, and grant Mr. Relwani's petition to rescind his summary suspension or remand the case for further proceedings.

Dated: June 28, 2018

Respectfully submitted,

/s/Gal Pissetzky  
Gal Pissetzky  
Counsel for Defendant-Appellant  
Daksh N. Relwani  
Pissetzky and Berliner LLC.  
53 W. Jackson Blvd., Suite 1515  
Chicago, IL 60604  
(312) 566-9900  
gpissetzky@pbzlawfirm.com

**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 or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 10 pages.

/s/Gal Pissetzky  
Gal Pissetzky

**CERTIFICATE OF SERVICE**

I, Gal Pissetzky, an attorney, certify that I caused a copy of the attached Brief and Argument of Defendant-Appellant to be filed by electronic means on the Clerk's Office, and caused a copy of the attached Brief and Argument of Defendant-Appellant to be served on the person named below at the address by placing said copies in the United States mail with proper postage prepaid on June 28, 2018.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/Gal Pissetzky  
Gal Pissetzky

**PERSON SERVED:**

James W. Glasgow  
Will County State's Attorney  
57 N. Ottawa Street  
Joliet, IL 60432  
(815)727-8453

Lawrence Bauer  
State's Attorney  
Appellate Prosecutor  
628 Columbus St., Suite 300  
Ottawa, IL 61350  
(815)434-7010

Lisa Madigan  
Illinois Attorney General  
500 S. Second St  
Springfield, IL 62701  
(217)787-1090

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that he is the attorney for defendant-petitioner and that he filed the foregoing **Brief and Argument for Defendant-Appellant** by causing the original of the Notice of Filing and 13 copies of the Brief to be delivered to a third-party commercial carrier at Chicago, Illinois, before the hour of 5:00 p.m. on June 28, 2018 for overnight delivery to the Clerk of the Court. Delivery charges were prepaid and the package was addressed to:

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Illinois Supreme Court  
Supreme Court Building  
200 East Capitol Avenue  
Springfield, IL 62701-1721

/s/Gal Pissetzky  
Gal Pissetzky

No. 123385

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**IN THE  
SUPREME COURT OF ILLINOIS**

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PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff-Appellee,	)	On Petition for Leave to Appeal from the Illinois Appellate Court, Third District, No. 3-17-0201
	)	
v.	)	
	)	There Heard on Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois No. 16-DT-1285
DAKSH N. RELWANI,	)	
	)	
Defendant-Appellant.	)	The Hon. Carmen Goodman <i>Judge Presiding</i>
	)	
	)	

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**APPENDIX TO BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT**

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Gal Pissetzky  
 Pissetzky and Berliner LLC.  
 53 W. Jackson Blvd., Suite 1515  
 Chicago, IL 60604  
 (312) 566-9900

*Counsel for Defendant-Appellant*

Dated June 28, 2018



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## APPENDIX A

2018 IL App (3d) 170201

Opinion filed February 21, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-17-0201 Circuit No. 16-DT-1285
DAKSH N. RELWANI,	)	
Defendant-Appellant.	)	The Honorable Carmen Julia Lynn Goodman, Judge, presiding.

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JUSTICE CARTER delivered the judgment of the court, with opinion.  
Justice Wright concurred in the judgment and opinion.  
Justice Lytton dissented, with opinion.

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**OPINION**

¶ 1 Defendant, Daksh Relwani, was charged with driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2016)). He filed a petition to rescind his statutory summary suspension, which the trial court denied after a hearing. Defendant filed a motion to reconsider, which the trial court also denied. Defendant appeals. We affirm the trial court's judgment.

¶ 2

FACTS

¶ 3 On October 10, 2016, at about 3:30 a.m., defendant was asleep in the driver's seat of his vehicle in the parking lot of a Walgreens drug store in Joliet, Will County, Illinois. Defendant was the only person in the vehicle at the time. The keys to the vehicle were in the ignition, and the engine was running. Police officers approached the vehicle, woke defendant, and subsequently arrested defendant for DUI. After defendant was arrested, he was taken to the police station, where he allegedly refused to submit to some form of chemical testing. Defendant's driver's license was later summarily suspended by the Secretary of State.

¶ 4 In November 2016, defendant filed a petition to rescind the statutory summary suspension of his driver's license. Defendant alleged in the petition that rescission was warranted based on, among other things, the following two grounds: (1) the summary suspension statute did not apply in this case since defendant was located in a private parking lot and not on a public highway during the incident in question and (2) defendant did not refuse to submit to chemical testing.

¶ 5 A hearing was held on the petition to rescind in January 2017. In his case-in-chief, defendant testified to many of the facts set forth above. Defendant also stated, among other things, that the police officer asked him at the police station to submit to a breath test and that he agreed. Defendant identified in court the copy of the notice of summary suspension that he was given by the arresting officer at the police station, and the document was admitted into evidence. According to defendant, as he viewed the document in court, none of the check boxes on the document were marked to show whether defendant had submitted to, or refused, chemical testing, and the space provided for the officer to write in the date and time of any refusal was left blank.

¶ 6 On cross-examination, when the prosecutor asked defendant if he had told the police officer that he had just driven down Larkin Avenue from Chicago, defense counsel objected that the question was beyond the scope of direct examination. The trial court overruled the objection, stating that “this [was] cross-examination.” Defendant responded that he came home from a restaurant with his family. Defendant stated that he did not remember the exact words he had stated to the officer but acknowledged that he had been driving from the restaurant with his family (or that he told the officer that). The prosecutor asked defendant where the restaurant was located, and defense counsel objected again, stating that the question was beyond the scope of direct examination. The trial court overruled the objection, commenting that it was cross-examination, so the question could not be beyond the scope. When defendant was asked during cross-examination whether he was told the results of the breath test that he had agreed to take, defendant stated that he did not remember. Defendant also stated, upon inquiry, that he did not remember whether the officer had asked him to submit to a blood or urine test or whether he had refused that request. During further cross-examination, defendant stated that he remembered performing some of the field sobriety tests that evening but did not remember performing all of the field sobriety tests. When defendant was asked if the reason he did not remember was because he was intoxicated and had taken heroin and clozapine that evening, defendant responded, “I, I don’t know. I guess.”

¶ 7 On redirect examination, defendant stated that while he was at the police station, he was administered a drug and then taken to the hospital for treatment because of his condition.

¶ 8 After defendant testified, he rested his case-in-chief. The prosecutor moved for a directed finding in the State’s favor on the petition to rescind. During argument on the motion (and in opening statement), defense counsel suggested to the trial court that it could take judicial notice

of what was in the court file (presumably the sworn report) and commented that the document in the court file was marked that defendant had refused to submit to, or failed to complete, chemical testing, which was completely different from the document defendant received.

¶ 9 After the arguments on the motion for directed finding had concluded, the trial court granted the motion in favor of the State on both of the grounds for rescission listed above. In making its decision, the trial court commented:

“Here, privately-owned parking lots are—is really referring to if you’re in your own driveway and they see people sitting in their own driveway and they walk out to their car.

Here we have not truly established the fact, by the petitioner’s case, that this truly was—they said he was in the Walgreens, that it was privately-owned parking lot. If I don’t know that. I can’t assume that simply because it is the parking lot of Walgreens.

Also, it was put into evidence the officer’s—and taken judicial notice of the summary suspension revocation. I will admit that somehow or another this copy, it says “Transfer to SDF” on here, which is not on the original that I have. Not only on the original that—or on the one that’s in the file does it show the refusal date at the place and time at the top of the ticket looks blank.

But this is where this gets—and this is why I say this is a copy. It says, [b]ecause you refused—there’s a line down here, because you refused to submit to or to—or fail to complete testing, your driving privileges will be suspended for a minimum of 12 months.

On the copy that was in the—and this is dealing with the defects of an officer's report and a summary suspension does not show—it shows a big line that, that's clearly marked in. The copy, though, had you take[n] a really good look at this copy, it looks like at one point in time it was marked. It looks like a little bitty X that was there, but it is light and it's faint.

\*\*\*

Now, the defendant did testify that he did not—he clearly testified that he was woken up by the police officers and that he was sleeping behind the wheel of a car on direct examination and that he agreed to provide a breath test.

However, when asked several questions under cross-examination—and it was cross[-]examination so it's not beyond the, the scope—his ability to remember and recall, he pretty much says—I guess he didn't[ ] recall because of taking a multiple number of drugs. \*\*\*

\* \* \*

That his ability to recall—he recalls some things. Most of he didn't recall. He didn't even recall some of the tests. We know that—we know that some tests were administered—it's not that many tests for sobriety tests. And he said he recalled some and he didn't recall others because of heroin and such.

So we have not truly established that this was privately-owned parking lots. And we have to be very careful on what's privately owned. Even up under the statute when you're dealing—and there's a litany of case law—even if you were dealing with driving while your license was suspended, some parking lots—

and it has to be on a public highway—some parking lots are considered private and some are not. Especially the airport.

So I don't know if Walgreens, that parking lot was public—privately owned or publicly owned because it is accessed by the public on a daily basis.

\* \* \*

So when they say 'privately owned,' they're pretty much talking about your own parking lot."

¶ 10 Defendant filed a motion to reconsider, which the trial court subsequently denied. Defendant appealed.

¶ 11 ANALYSIS

¶ 12 As his first point of contention on appeal, defendant argues that the trial court erred in granting the State's motion for a directed finding at the summary suspension hearing at the conclusion of defendant's case-in-chief. Defendant asserts that the trial court's finding—that defendant had failed to establish a *prima facie* case for rescission—was against the manifest weight of the evidence. More specifically, as to the first ground for rescission put forth by defendant—that the relevant events in this case took place on a private parking lot and not on a public highway—defendant contends that the trial court's finding was against the manifest weight of the evidence and contrary to a long line of cases, which unequivocally held that the summary suspension statute (also known as the implied consent statute) cannot be applied to an individual who was driving or in actual physical control of a motor vehicle in a private parking lot, rather than on a public highway (referred to hereinafter as the private parking lot rule). Defendant contends further that the State did not present any evidence in this case to show that defendant was observed driving on a public street or that the parking lot in question was publicly



owned or was maintained by a government entity as was necessary to establish that the parking lot was a public highway. According to defendant, the trial court's ruling on this particular ground for rescission was based upon the trial court's incorrect belief that the private parking lot rule applied only when an individual was in his own driveway when the incident occurred. As for the second ground for rescission put forth by defendant—that defendant did not refuse to submit to chemical testing—defendant again contends that the trial court's ruling was against the manifest weight of the evidence, which defendant claims showed that defendant agreed to submit to a breath test. Furthermore, defendant contends that the State did not present any evidence to show that defendant had refused to submit to any chemical tests requested by the police officer. For all of the reasons stated, defendant asks in his briefs on appeal that we vacate the trial court's ruling and rescind defendant's statutory summary suspension. In oral argument, however, defendant acknowledged that since the trial court granted a directed finding in this case, the more appropriate remedy for this court to grant if defendant prevails on this issue is to remand this case for the trial court to complete the remainder of the summary suspension hearing.

¶ 13 The State argues that the trial court's ruling granting the State's motion for directed finding was proper and should be upheld. As for the first ground for rescission put forth—the private parking lot rule—the State asserts that under the established law, a parking lot on privately owned property may constitute a public highway for purposes of the summary suspension statute and that it was defendant's burden, therefore, to present evidence to establish that the parking lot in this case was not a public highway, which defendant failed to do. Specifically, according to the State, defendant failed to present any evidence to show that the parking lot was privately owned and privately maintained, and the mere fact that the parking lot was a Walgreens parking lot, in and of itself, was insufficient to establish that the parking lot was

not a public highway. In addition, the State maintains, the fact that the vehicle was in the Walgreens parking lot and that defendant was the only person in the vehicle gave rise to an inference that defendant had driven the vehicle to that location on the public streets, as did defendant's statement to the police that he had come back to Joliet in the vehicle from a restaurant in Chicago. The State contends, therefore, that defendant failed to establish a *prima facie* case for rescission on the first ground put forth. As for the second ground for rescission put forth—that defendant did not refuse to submit to chemical testing—the State asserts that defendant failed to present any evidence that he did not refuse to submit a blood or urine test and that the sworn report, of which defendant asked the trial court to take judicial notice, indicated that defendant had refused to submit to chemical testing and noted the place and time of that refusal. The State maintains, therefore, that defendant failed to establish a *prima facie* case for rescission on the second ground put forth. The State points out, however, that even if we agree with defendant, the proper remedy would be to remand this case for the State to present its evidence in the summary suspension hearing (to proceed with the rest of the hearing), not to rescind the summary suspension, as defendant suggests.

¶ 14 A hearing on a petition to rescind a statutory summary suspension of a person's driving privileges is a civil proceeding. *People v. Helt*, 384 Ill. App. 3d 285, 287 (2008). The defendant bears the burden of proof at the hearing to establish a *prima facie* case for rescission and must present some evidence on every necessary element of the ground asserted. *Id.* If the defendant does so, the burden shifts to the State to come forward with evidence to justify the summary suspension. *Id.* However, if the defendant fails to establish a *prima facie* case, a directed finding should be granted for the State on the petition to rescind. *Id.* A trial court's finding of whether a defendant has established a *prima facie* case for rescission will not be reversed on appeal unless

it is against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only if it is clearly evident from the record that the trial court should have reached the opposite conclusion or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 15

#### I. The Private Parking Lot Rule

¶ 16

As noted above, the first ground for rescission put forth by defendant was that the relevant events took place in a private parking lot and not upon a public highway. Under the summary suspension statute (also known as the implied consent statute), any person who drives or is in actual physical control of a motor vehicle on a public highway is deemed to have given his or her consent to a chemical test or tests of blood, breath, other bodily substance, or urine for the purpose of determining the content of alcohol, drugs, intoxicating compounds, or any combination thereof in the person's blood if the person is arrested for any offense as defined in section 11-501 of the Illinois Vehicle Code (DUI), a similar provision of a local ordinance, or section 11-401 of the Vehicle Code (a motor vehicle accident involving death or personal injury) (625 ILCS 5/11-401 (West 2016)). 625 ILCS 5/11-501.1 (West 2016); *People v. Culbertson*, 258 Ill. App. 3d 294, 296 (1994). As the language of the statute indicates and defendant asserts, the summary suspension statute only applies to individuals who were driving or in actual physical control of a motor vehicle on a public highway. See 625 ILCS 5/11-501.1 (West 2016); *Culbertson*, 258 Ill. App. 3d at 296. The summary suspension statute does not generally apply to a person who was driving or in actual physical of a motor vehicle on private property. See 625 ILCS 5/11-501.1 (West 2016); *Culbertson*, 258 Ill. App. 3d at 296.

¶ 17

Pursuant to the established case law, however, a parking lot on privately owned property may constitute a public highway for the purposes of the summary suspension statute. *Helt*, 384

Ill. App. 3d at 288; *Culbertson*, 258 Ill. App. 3d at 296-97. If the parking lot is open to the public for use for vehicular travel and publicly maintained, it will constitute a public highway for summary suspension purposes, even if the parking lot is on privately owned property. See 625 ILCS 5/1-126 (West 2016) (defining the term, “[h]ighway,” as used in the Vehicle Code); *Helt*, 384 Ill. App. 3d at 288; *Culbertson*, 258 Ill. App. 3d at 296-97. Therefore, where a defendant claims at a summary suspension hearing that the summary suspension statute does not apply to him because he was driving or in actual physical control of a motor vehicle on a private parking lot and not on a public highway, to establish a *prima facie* case for rescission, he must present some evidence that the parking lot in question did not constitute a public highway under the law. See *Helt*, 384 Ill. App. 3d at 288. That is, he must present some evidence that the parking lot was on privately owned property and was privately maintained. See *id.*

¶ 18 In the present case, defendant did not dispute that he was in actual physical control of the motor vehicle in the Walgreens parking lot and presented no evidence whatsoever to show that the parking lot was on privately owned property and that it was privately maintained. The mere fact that the parking lot in this case was for a Walgreens drug store did not provide any further evidence as to who actually owned or maintained the parking lot. Thus, the trial court’s ruling—that defendant had failed to establish a *prima facie* case for rescission based upon the private parking lot rule—was not against the manifest weight of the evidence. We need not determine, therefore, whether the facts of this case created an inference that defendant had driven on the public streets, as suggested by the State.

¶ 19 In reaching the conclusion that we have reached on this particular ground for rescission, we must take a moment to comment upon the three cases relied upon by defendant in support of his position: *People v. Ayres*, 228 Ill. App. 3d 277, 278 (1992); *People v. Kissel*, 150 Ill. App. 3d

283, 285-87 (1986), *overruled on other grounds by People v. Brown*, 175 Ill. App. 3d 725, 728 (1988); and *People v. Montelongo*, 152 Ill. App. 3d 518, 521-23 (1987). In *Ayres* and *Kissel*, it appears that it was undisputed between the parties that the parking lots in question were private property and not public highways for the purposes of the summary suspension statute (see *Ayres*, 228 Ill. App. 3d at 278 (refers to the parking lots in question in the recitation of the facts as private parking lots and makes no reference that the State asserted that the lots constituted public highways); *Kissel*, 150 Ill. App. 3d at 285 (the State did not argue that the lots in question constituted public highways but, rather, argued instead that the summary suspension statute applied to any person shown to have driven at any time in the past on a public highway)). And in *Montelongo*, evidence was presented to show that the parking lot in question was privately owned and privately maintained (see *Montelongo*, 152 Ill. App. 3d at 520 (police officer testified that he had never seen any governmental agencies maintaining the parking lot, defendant testified that the parking lot was fenced and had a sign indicating that the lot was private and was provided for the use of patrons, and another witness indicated that she believed the lot was provided only for the use of the patrons of the establishment)). Thus, the facts and the arguments made in all three of the cases relied upon by defendant here are readily distinguishable from the facts and arguments made in the present case. See *Ayres*, 228 Ill. App. 3d at 278; *Kissel*, 150 Ill. App. 3d at 285; *Montelongo*, 152 Ill. App. 3d at 520.

¶ 20 Furthermore, the fact that the trial court was apparently mistaken in its belief about the application of the private parking lot rule does not change the result here, as we may affirm on any basis supported by the record. See *People v. Lee*, 2016 IL App (2d) 150359, ¶ 14 (applying that rule in the context of a trial court's mistake about a material fact). Indeed, it is well

established that it is the trial court's judgment, and not its reasoning, that is the subject of our review on appeal. See *People v. Cleveland*, 342 Ill. App. 3d 912, 915 (2003).

¶ 21 II. The Refusal to Submit to Chemical Testing

¶ 22 As noted above, the second ground for rescission put forth by defendant was that he did not refuse to submit to chemical testing. When the summary suspension statute applies, it requires that an individual submit to chemical testing and imposes a period of suspension (or in some cases, a revocation) upon a person who refuses to submit to those tests or who tests at or above a certain level for the presence of alcohol, drugs, intoxicating compounds, or a combination thereof in his or her blood. See 625 ILCS 5/11-501.1 (West 2016). An officer may request that a defendant submit to more than one type of chemical test under the summary suspension statute. See *People v. Kirk*, 291 Ill. App. 3d 610, 615 (1997) (stating that an officer who has probable cause to believe that a driver is chemically impaired and arrests him for DUI may request, under the summary suspension statute, that the driver submit to any or all of the chemical tests listed in the statute to determine whether the driver is, in fact, chemically impaired).

¶ 23 In this particular case, defendant testified that he agreed to submit to a breath test. Defendant, however, could not remember what had happened with that test and also could not remember whether the officer had asked him to submit to a blood or urine test and whether he had refused to do so. In addition, the sworn report, of which defendant asked the trial court to take judicial notice, showed defendant had refused to submit to, or failed to complete, chemical testing and also indicated the place and time of that refusal. Therefore, even if defendant established that he did not refuse to submit to a breath test, he failed to establish that he did not refuse to submit to a test of his blood or urine. Furthermore, although defendant attempts to

suggest suspicious conduct on the part of the arresting officer based upon an alleged difference between the form that defendant received and the form that was in the court file, it appears from the record that the trial court believed, based upon a review of the forms in question, that the difference could be explained by the fact that the form in the court file was the original and that the form given to defendant was merely a copy and that some of the print may not have transferred through to the copy that defendant was given. Under the circumstances of the present case, therefore, we conclude that the trial court's finding as to the second ground put forth for rescission—that defendant did not refuse to submit to chemical tests—was not against the manifest weight of the evidence. See *Best*, 223 Ill. 2d at 350.

¶ 24 III. Defendant's Beyond-the-Scope Objection to Cross-Examination

¶ 25 As his final point of contention on appeal, defendant argues that the trial court committed reversible error when it overruled defendant's beyond-the-scope objection to some of the prosecutor's questions of defendant in cross-examination. According to defendant, the trial court's incorrect ruling was based upon the court's erroneous belief that a beyond-the-scope objection did not apply to cross-examination. Defendant asserts, albeit in his reply brief, that he was prejudiced by the trial court's erroneous ruling because it allowed the State to elicit testimony from defendant, which formed the basis for the State's contention that defendant had driven on public streets. Defendant asks, therefore, that we reverse the trial court's ruling and remand this case for a new hearing on defendant's petition to rescind statutory summary suspension.

¶ 26 The State argues that the trial court's ruling was proper and should be upheld. The State asserts first that the trial court properly overruled the objection because the questions asked by the prosecutor about other statements defendant had made to police (regarding where he had

come from in the vehicle) did not exceed the scope of direct examination, since defendant testified in direct examination about some of the statements he had made to police. Thus, according to the State, the questions merely offered the ability to explain defendant's testimony by putting it in the context of the whole conversation defendant had with the police officers. Second, and in the alternative, the State asserts that even if the trial court should have sustained the objection, any error that occurred was harmless, as the evidence presented already showed that defendant was in actual physical control of a motor vehicle on a public highway (the parking lot). For both of the reasons set forth, the State asks that we affirm the trial court's judgment.

¶ 27 The scope of cross-examination is generally limited to the subject matter of direct examination plus any matters affecting the credibility of the witness. Ill. R. Evid. 611(b) (eff. Oct. 15, 2015); *People v. Milbratz*, 323 Ill. App. 3d 206, 211 (2001). Courts, however, should liberally construe that limitation to allow inquiry into whatever subject tends to explain, qualify, discredit, or destroy the witness's direct testimony. Ill. R. Evid. 611(b) (eff. Oct. 15, 2015); *Milbratz*, 323 Ill. App. 3d at 211. The determination as to the amount of latitude to be given to a litigant in cross-examination is a decision that rests within the sound discretion of the trial court and will not be reversed on appeal absent a clear abuse of discretion that results in manifest prejudice to the defendant. *Milbratz*, 323 Ill. App. 3d at 211-12. The threshold for finding an abuse of discretion is a high one and will not be overcome unless it can be said that the trial court's ruling was arbitrary, fanciful, or unreasonable or that no reasonable person would have taken the view adopted by the trial court. See *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009); *In re Leona W.*, 228 Ill. 2d 439, 460 (2008).

¶ 28 Upon our review of the record in the present case, we find that the trial court's ruling did not constitute an abuse of discretion. See *Blum*, 235 Ill. 2d at 36; *Leona W.*, 228 Ill. 2d at 460.



Defendant testified on direct examination about his interactions with the police officers that night at both the scene of the incident and at the police station and about some of the statements that he had made to the police officers. We cannot say, therefore, that the trial court committed an abuse of discretion by ruling that questions about other statements that defendant had made to the police officers during those same interactions that evening were within the scope of direct examination. See *Milbratz*, 323 Ill. App. 3d at 211. We also believe that, contrary to defendant's assertion, the questions did, to some extent, pertain to defendant's credibility, as the more selective defendant's memory appeared to be in response to questions, the less credibility defendant had as a witness in this case. Finally, as the State correctly points out, there was no prejudice to defendant from the information elicited as we have already determined that the evidence presented at the summary suspension hearing showed that defendant was in actual physical control of a motor vehicle and that defendant failed to establish a *prima facie* case that the parking lot in question was not a public highway. We, therefore, reject defendant's argument on this issue.

¶ 29

## CONCLUSION

¶ 30

For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 31

Affirmed.

¶ 32

JUSTICE LYTTON, dissenting:

¶ 33

I dissent from the majority's opinion for two reasons. First, I disagree that it was defendant's burden to prove that the Walgreens parking lot where he was found sleeping in his vehicle was not a public highway. I also disagree that the State met its burden of proving that defendant improperly refused to submit to chemical testing. I would reverse and remand for a new summary suspension hearing.

¶ 34

## I. Private Parking Lot

¶ 35

The implied consent statute provides: “Any person who drives or is in actual physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent \*\*\* to a chemical test or tests of blood, breath, other bodily substance, or urine for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds or any combination thereof in the person’s blood if arrested \*\*\* for [DUI].” 625 ILCS 5/11-501.1(a) (West 2016). Under this statute, a defendant arrested for DUI on the public highways must either submit to chemical testing or face statutory summary suspension. *People v. Garriott*, 253 Ill. App. 3d 1048, 1051 (1993).

¶ 36

The Illinois Vehicle Code (Code) defines a “highway” as “[t]he entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.” 625 ILCS 5/1-126 (West 2016). Private parking lots are not “highways” unless they are publicly maintained. See *People v. Helt*, 384 Ill. App. 3d 285, 288 (2008); *People v. Culbertson*, 258 Ill. App. 3d 294, 297 (1994); *People v. Bailey*, 243 Ill. App. 3d 871, 874 (1993); *People v. Jensen*, 37 Ill. App. 3d 1010, 1013 (1976).

¶ 37

“A statutory summary suspension hearing is a civil action where the defendant motorist, as the petitioner, requests the judicial rescission of a suspension, and the State is placed in the position of a civil defendant.” *People v. Tibbetts*, 351 Ill. App. 3d 921, 926 (2004). “[T]he motorist initially bears the burden of establishing a *prima facie* case by putting on some evidence of every element essential to his or her cause of action for rescission of the suspension.” *People v. Bavone*, 394 Ill. App. 3d 374, 377 (2009). Once the motorist establishes a *prima facie* case, the burden shifts to the State to negate the motorist’s claim and justify the summary suspension. *Id.*

A motorist's failure to establish a *prima facie* case warrants a directed finding in favor of the State. *People v. Marsala*, 376 Ill. App. 3d 1046, 1048 (2007).

¶ 38 I disagree with the majority that defendant had to prove that the parking lot where he was arrested was both privately owned and privately maintained in order to establish a *prima facie* case for rescission. A motorist establishes a *prima facie* case for rescission by showing that he was operating or in control of his automobile in the parking lot of a private business. See *People v. Ayres*, 228 Ill. App. 3d 277, 278 (1992) (rescission affirmed where defendants were observed driving in privately owned parking lots); *People v. Kissel*, 150 Ill. App. 3d 283, 286 (1986) (affirming dismissal of implied consent hearings where defendants were observed driving vehicles only on privately owned parking lots), *overruled on other grounds by People v. Brown*, 175 Ill. App. 3d 725 (1988). The burden should then shift to the State to present evidence that the private parking lot is publicly maintained and, therefore, falls within the definition of a "highway" under the Code. See 625 ILCS 5/1-126 (West 2016).

¶ 39 Here, the undisputed evidence shows that defendant was found sleeping in his car in a Walgreens parking lot. Because Walgreens is a private business, defendant established that he was in a private parking lot when he was in control of his vehicle. See *People v. Montelongo*, 152 Ill. App. 3d 518, 523 (1987) (restaurant parking lot private); *Kissel*, 150 Ill. App. 3d at 284 (hotel, apartment, house, and shopping center parking lots private); *People v. Kozak*, 130 Ill. App. 2d 334, 334-36 (1970) (grocery store parking lot private). Thus, he made a *prima facie* showing for rescission. See *Ayres*, 228 Ill. App. 3d at 278; *Kissel*, 150 Ill. App. 3d at 286. The burden then should have shifted to the State to present evidence that the Walgreens parking lot was publicly maintained.

¶ 40 In requiring defendant to prove that the parking lot in this case was not only privately owned but also privately maintained, the majority relies on *Helt*, 384 Ill. App. 3d 285. However, we are not bound by that decision. See *State Farm Fire & Casualty Co. v. Yapejian*, 152 Ill. 2d 533, 542 (1992). We should decline to follow the Second District's decision in *Helt* because it places an undue burden on defendants to prove that private property is not publicly maintained. Because the State is in a much better position to know if a parking lot is publicly maintained, the burden should be on the State to come forward with such evidence. See *Hussein v. Cook County Assessor's Office*, 2017 IL App (1st) 161184, ¶ 27 (placing burden of proof on party who had greater access to information needed to prove or disprove disputed fact). If the State fails to do so, it should be presumed that the property is not publicly maintained. See *Southwest Federal Savings & Loan Ass'n of Chicago v. Cosmopolitan National Bank of Chicago*, 23 Ill. App. 2d 174, 181-82 (1959) (where a party possesses information concerning a disputed fact and fails to bring it forward, a presumption arises that the fact does not exist).

¶ 41 In this case, the trial court erroneously concluded that defendant failed to establish his right to rescission because "privately owned" means "your own driveway." However, that is not the law. As set forth above, a privately owned parking lot can be owned by a business, as was the case here. See *Montelongo*, 152 Ill. App. 3d at 523; *Kissel*, 150 Ill. App. 3d at 284; *Kozak*, 130 Ill. App. 2d at 334-36. Because the undisputed evidence establishes that defendant was found to be in control of his vehicle in a privately owned parking lot, the trial court should have granted defendant's petition for rescission absent evidence from the State that the parking lot was publicly maintained.

¶ 42 I would reverse and remand for a new rescission hearing where the State may present evidence regarding the maintenance of the parking lot. If the State fails to present evidence that

the parking lot was publicly maintained, the trial court should grant defendant's petition to rescind.

¶ 43

## II. Refusal of Chemical Testing

¶ 44

When an officer has probable cause to arrest a driver for DUI, the officer may request a blood, breath, or urine test for alcohol, drugs, or a combination of both. *People v. Miranda*, 2012 IL App (2d) 100769, ¶ 17. “[U]nder certain circumstances refusal to submit to multiple testing warrants suspension of a motorist’s driver’s license.” *People v. Klyczek*, 162 Ill. App. 3d 557, 561 (1987). However, “multiple testing is not always proper.” *Id.* at 560.

¶ 45

When a defendant undergoes one chemical test of blood, breath, or urine, the officer must “present reasonable evidence for requesting a second test.” *Id.* at 561-62. An officer cannot request a second test to obtain a higher blood alcohol content (BAC) reading or to confirm the defendant’s alcohol level. See *People v. Kirk*, 291 Ill. App. 3d 610, 617 (1997); *People v. Krosse*, 262 Ill. App. 3d 509, 512 (1994); *Klyczek*, 162 Ill. App. 3d at 562. An officer can, however, request subsequent testing to determine if there are drugs in the defendant’s system. *Klyczek*, 162 Ill. App. 3d at 562; see also *Krosse*, 262 Ill. App. 3d at 512 (officer’s request for blood test after breath test proper where officer suspected defendant might be under the influence of drugs because defendant’s speech and unusual behavior were not consistent with breath test results).

¶ 46

Here, only defendant testified at the rescission hearing. He testified that he agreed to take a breath test and did so. He stated that he did not remember the results of that test and did not remember whether the officer asked him to take a blood or urine test after the breath test. The State admitted into evidence a copy of the notice of summary suspension given to defendant,

which states that defendant refused to submit to chemical testing. This evidence was insufficient to warrant a directed verdict in favor of the State at the rescission hearing.

¶ 47 Although the State presented evidence that defendant refused to submit to chemical testing, it failed to establish that the officer's request for a second chemical test was proper. The State was required to present testimony from the requesting officer showing that he had reasonable grounds to request further testing after defendant submitted to the breath test. See *Kirk*, 291 Ill. App. 3d at 617; *Krosse*, 262 Ill. App. 3d at 512; *Klyczek*, 162 Ill. App. 3d at 561. Without testimony from the officer about his reasons for requesting additional testing, the trial court erred in granting the State's motion for a directed verdict.

¶ 48 I would reverse and remand for a new hearing. The State can then present the testimony of the requesting officer regarding his reasons for requesting that defendant undergo additional chemical testing. If the State fails to present reasonable grounds for the additional test, defendant's petition to rescind should be granted.

**SUPREME COURT OF ILLINOIS**

SUPREME COURT BUILDING  
200 East Capitol Avenue  
SPRINGFIELD, ILLINOIS 62701-1721  
(217) 782-2035

Gal Pissetzky  
Pissetzky & Berliner, LLC  
53 West Jackson Blvd., Suite 1515  
Chicago IL 60604

FIRST DISTRICT OFFICE  
160 North LaSalle Street, 20th Floor  
Chicago, IL 60601-3103  
(312) 793-1332  
TDD: (312) 793-6185

May 30, 2018

In re: People State of Illinois, Appellee, v. Daksh N. Relwani, Appellant.  
Appeal, Appellate Court, Third District.  
123385

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

*Carolyn Taft Gusbell*

Clerk of the Supreme Court

A21

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APPENDIX R

1 STATE OF ILLINOIS )  
 2 COUNTY OF WILL )SS:  
 3 IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
 4 WILL COUNTY, ILLINOIS

5 THE PEOPLE OF THE )  
 6 STATE OF ILLINOIS, )  
 7 vs ) No. 16 DT 1285  
 8 DAKSH N. RELWANI, )  
 9 Defendant. )

10  
 11 REPORT OF PROCEEDINGS had in the above-entitled  
 12 before the Honorable CARMEN GOODMAN, Judge of the  
 13 Circuit Court of Will County, Illinois, on the 4th day  
 14 of January, 2017.

15 APPEARANCES:

16  
 17 WILL COUNTY STATE'S ATTORNEY'S OFFICE  
 18 BY: MS. AMANDA TASKER, and  
 19 MS. CHRISTINA BRAGGS, 711 Student,  
 Appeared on behalf of the People  
 of the State of Illinois;

20 MR. GAL PISSETZKY,  
 21 Attorney at Law,  
 Appeared on behalf of the Defendant.

22  
 23  
 24 TRACY HOYT, CSR  
 WILL COUNTY COURTHOUSE  
 JOLIET, ILLINOIS 60432

R 2

1 THE COURT: Daksh Relwani.

2 MR. PISSETZKY: Good morning, your Honor. Daksh  
3 Relwani.

4 THE COURT: Daksh Relwani, which is 16 DT 1285.

5 And this will be up for hearing on a petition  
6 to revoke. And we don't have a video, am I correct?

7 MR. PISSETZKY: Not -- motion to rescind summary --

8 MS. TASKER: Petition to rescind, Judge. Judge,  
9 yes. Yes.

10 THE COURT: Petition to rescind. Okay. Same  
11 thing, statutory summary suspension to reset, but we  
12 will not have a video, am I correct?

13 MS. TASKER: That's correct.

14 MR. PISSETZKY: That's correct, there is no video.

15 THE COURT: And -- okay. And this is -- I am  
16 trying to find the --

17 MR. PISSETZKY: I can tell you the basis --

18 THE COURT: Well, if, if -- if we can -- every one  
19 sit down for a second.

20 MR. PISSETZKY: Sure.

21 THE COURT: Let me take some preliminary notes and  
22 we'll get to that.

23 (Whereupon, a brief pause was had.)

24 THE COURT: Show the defendant is present --

1 petitioner is present with his attorney. Okay.  
2 Petitioner is represented by? Counsel, just for the  
3 record? These proceedings are being recorded.

4 MR. PISSETZKY: For the record, Gal, G-A-L,  
5 Pissetzky, P-I-S-S-E-T-Z-K-Y.

6 MS. BRAGGS: And for the State --

7 THE COURT: And the State?

8 MS. BRAGGS: -- Christina Braggs, pursuant to 711,  
9 with Amanda Tasker.

10 THE COURT: Okay. Miss Tasker.

11 Okay. And this is (inaudible). The grounds  
12 will be, Counsel, for your petition to rescind?

13 MR. PISSETZKY: Your Honor, I have two grounds.

14 No. 1, your Honor, there is implied consent  
15 that this, that this summary suspension could not have  
16 been given to my client since the case -- this -- the  
17 stop happened at the Walgreens parking lot on  
18 1801 Ingalls Avenue in Joliet, which is a private lot.

19 THE COURT: Well, before, before you -- I  
20 understand you're giving an opening.

21 What I need to do, you filed a petition to  
22 rescind a statutory summary suspension. I indicate the  
23 grounds exactly --

24 MR. PISSETZKY: Well --

1 THE COURT: -- you have all of them marked, so  
2 which one?

3 MR. PISSETZKY: Well, number -- the first ground is  
4 a ground that it could not have been given in the, the  
5 first place, Judge, which is not on the petition.

6 I can add it in writing, but this is something  
7 I am bringing to your attention, because the petition  
8 cannot even have been issued to my client since it was  
9 on private property.

10 THE COURT: Okay.

11 MR. PISSETZKY: The other ground, your Honor, is  
12 because I am only going on the third ground, she did not  
13 refuse to submit to a breathalyzer as well, if your  
14 Honor --

15 THE COURT: Well, the third ground says, I was not  
16 properly warned.

17 The fourth ground --

18 MR. PISSETZKY: Four, four.

19 THE COURT: -- I did not refuse -- okay.

20 MR. PISSETZKY: Four.

21 THE COURT: Okay.

22 MR. PISSETZKY: Right.

23 THE COURT: To submit to -- okay. Okay. Let me  
24 see. To submit. Okay.

1           Now, the opening for -- or any pretrial -- or  
2 pre-hearing motions from the Petitioner?

3           MR. PISSETZKY: Well, since there is no police  
4 officer here, then, no.

5           Motion to exclude, but I don't think there's  
6 going to be --

7           THE COURT: All right. Any pretrial motions? I  
8 don't know if there were any motions at all, any  
9 pretrial motions.

10          MS. TASKER: The State would join in the motion --

11          MS. BRAGGS: Yeah, the State joins in the motion to  
12 exclude but --

13          THE COURT: Well, there's no one --

14          MS. BRAGGS: -- necessary.

15          THE COURT: -- to exclude from what I've been told.

16                 Any opening, now? Opening from the petitioner?

17          MR. PISSETZKY: Your Honor, thank you.

18                 You will hear that my client was approached by  
19 police officers on October 10th, 2016, at about  
20 3:30 a.m. at a location of 1801 Ingalls Avenue, Joliet,  
21 which is a Walgreens parking lot. He was parked and  
22 asleep behind the wheel.

23                 Officers approached him, woke him up, and then  
24 eventually arrested him for a DUI, took him to the

1 station. And at the station, Mr. Relwani was asked to  
2 submit a sample of his breath and he did not refuse.

3 Your Honor can take judicial notice because it  
4 is a motion to rescind summary suspension of the sworn  
5 report of the notice of the summary suspension in your  
6 file and see that it is marked as if he did refuse.

7 THE COURT: Okay. Any opening from the State?

8 MS. BRAGGS: The State waives opening.

9 (Whereupon, a brief pause was had.)

10 THE COURT: Okay. Petitioner, call your first  
11 witness.

12 MR. PISSETZKY: I'll call Mr. Relwani.

13 THE COURT: Okay. Sir, be sworn in by my clerk.

14 (Witness duly sworn.)

15 THE WITNESS: I do.

16 THE COURT: Okay. Sir, from time to time you may  
17 hear an objection. If you do, please wait until this  
18 Court has the courtesy -- or give this Court the  
19 courtesy of waiting until I've had an opportunity to  
20 rule before you answer.

21 You may proceed, Counsel.

22 MR. PISSETZKY: Thank you, your Honor.

23

24

1                                    DAKSH RELWANI,  
2    called as a witness herein, having been first duly  
3                    sworn, was examined and testified as follows:

4                                    DIRECT EXAMINATION

5    BY MR. PISSETZKY:

6            Q.    (Inaudible), can you tell your Honor your first  
7    name last and spell?

8            A.    Daksh Relwani.    D-A-K-S-H.    Last name,  
9    R-E-L-W-A-N-I.

10           Q.    Daksh, can I talk to you about October 20 --  
11    October 10th, 2016, about 3:30 a.m.?

12           A.    Yes.

13           Q.    Where were you at that time?

14           A.    In the Walgreens parking lot.

15           Q.    Is that located at 1801 Ingalls Avenue in  
16    Joliet?

17           A.    Yes.

18           Q.    And where were you -- were you in your car?

19           A.    Yes, I was.

20           Q.    Parked?

21           A.    I was parked.

22           Q.    And what were you doing?

23           A.    I was sleeping behind the wheel of my car.

24           Q.    And after -- were you woken up at some point?



1           A.    I was woken up by police officers.

2           Q.    And after they woke you up, did they arrest

3   you?

4           A.    They did arrest me for a DUI.

5           Q.    After arresting you for a DUI, did they take

6   you to the station?

7           A.    Yes.

8           Q.    At the station did they read you and ask you if

9   you wanted to provide a breath test?

10          A.    Yes.

11          Q.    Did you agree to provide it?

12          A.    I did.

13          Q.    Okay.  After you were -- eventually, after you

14   were processed, were you released?

15          A.    I eventually got bonded out, yes.

16          Q.    Right.  And when you were bonded out, were you

17   given some documents?

18          A.    Yes, I was.

19          MR. PISSETZKY:  May I approach, your Honor?

20          THE COURT:  Yes.

21   BY MR. PISSETZKY:

22          Q.    I am gonna show you two documents, one named,

23   "Notice of Summary Suspension Revocation," and the

24   other, "Warning To Motorist."

1           Can you look at these? I am marking them as  
2 Exhibit 1.

3           A. Yes.

4           Q. Are these the documents that you -- part of the  
5 documents that were given to you?

6           A. Yeah, they are.

7           Q. Okay. If you'll look at the warning to mote --  
8 the notice -- the first one, the notice of summary  
9 suspension.

10           Is that the same notice that you received?

11           A. Yes, it is.

12           Q. And is it in the same condition as it was when  
13 you received it?

14           A. Yes.

15           Q. And you recognize it?

16           A. Yeah, I do.

17           Q. Is there any markings on this warning to -- on  
18 this notice indicating whether or not you submitted or  
19 refused the summary suspension?

20           A. There's a refusal date that's not filled in.

21           Q. There is a refusal date with no date or time?

22           A. Correct.

23           Q. And is there a marking on the side in any of  
24 the boxes to be marked to show whether or not you

1 refused or submitted?

2 A. No, there's no markings.

3 Q. It's blank?

4 A. Yes.

5 MR. PISSETZKY: Your Honor, I would ask for the  
6 original that I just showed Mr. Relwani to be entered  
7 into evidence.

8 THE COURT: Any objection?

9 MS. BRAGGS: No objection --

10 MS. TASKER: Judge, if I may just have one moment?

11 THE COURT: (No audible response.)

12 (Whereupon, a brief pause was had.)

13 MS. TASKER: Judge, may we approach?

14 THE COURT: Sure.

15 MS. TASKER: Your Honor, with respect to the Court  
16 copy, I am not sure if it -- if it's light. I do have  
17 it pulled up on the clerk's website. There is a, there  
18 is a refusal date --

19 MR. PISSETZKY: Well, I -- your Honor, I am not  
20 denying that there is a refusal (inaudible) on there. I  
21 am denying that the, that the -- what they gave my  
22 client looks completely different, Judge.

23 MS. TASKER: So, Judge --

24 THE COURT: Okay. Wait a minute. You're going

1 with the copy that was purported to be given to him --

2 MR. PISSETZKY: Well, not purported. Yeah, it was  
3 given -- that's the original that was given to him at  
4 the station, yes.

5 THE COURT: Well, this is a copy of -- let me see  
6 what the original looks like. Because the State is  
7 objecting to it.

8 (Whereupon, a brief pause was had.)

9 THE COURT: And your objection is, again, what,  
10 Counsel? You're objecting and your objection is what,  
11 again?

12 MS. TASKER: Judge, just based on the nature of the  
13 document. I believe the court file has the, has the  
14 actual filled out copy.

15 But, your Honor, the State, at this time could  
16 withdraw our objection. We can (inaudible) in our case,  
17 if necessary.

18 THE COURT: Okay. Right. You'll withdraw your --  
19 so this is, what, Defendant's Exhibit No. 1 --

20 MR. PISSETZKY: Yes.

21 THE COURT: -- for identification? Okay.

22 MR. PISSETZKY: Well, I am gonna ask for it to be  
23 admitted into evidence in our case, Judge.

24 THE COURT: Right. I understand that, but it has

1 to be admitted as something. So that is Defendant's  
2 Exhibit -- or Petitioner's Exhibit No. 1; am I correct?

3 MR. PISSETZKY: Correct, Judge.

4 THE COURT: And that's the copy of the notice of,  
5 of --

6 MR. PISSETZKY: Summary --

7 THE COURT: -- suspension.

8 MR. PISSETZKY: Right. That was given to my client  
9 at the station.

10 THE COURT: Uh-hum. All right. Okay.

11 MR. PISSETZKY: And based on that, I have nothing  
12 else, Judge.

13 THE COURT: Uh-hum. All right.

14 Cross-examination.

15 MS. BRAGGS: Thank you, Judge.

16 CROSS-EXAMINATION

17 BY MS. BRAGGS:

18 Q. Mr. Relwani, while you were -- isn't it true  
19 that when you -- the officer found you in the Walgreens  
20 parking lot, the keys were in the engine and the car was  
21 running?

22 A. Yes.

23 Q. And at that time you stated that you had just  
24 driven down Larkin Avenue from Chicago?

1 MR. PISSETZKY: Objection.

2 THE COURT: What's the objection?

3 MR. PISSETZKY: That's beyond --

4 THE COURT: What what's it --

5 MR. PISSETZKY: Beyond the scope, your Honor.

6 THE COURT: Okay. Well --

7 MS. BRAGGS: (Inaudible).

8 THE COURT: -- this is cross-examination.

9 Overruled.

10 You may answer the question.

11 THE WITNESS: I, I was -- I was on my -- or I came

12 home from a restaurant with my -- from a restaurant with

13 my family.

14 BY MS. BRAGGS:

15 Q. So is it correct that when the officer asked

16 you where you came from, you stated that he just -- you

17 just drove down Larkin from Chicago?

18 A. I don't remember the exact words that I said.

19 Q. But you had been driving from the restaurant

20 with your family?

21 A. Correct.

22 Q. And were you the sole occupant of the vehicle?

23 A. Yes, I was.

24 Q. And where was the restaurant located that you

1 were coming from?

2 MR. PISSETZKY: Objection, Judge.

3 THE COURT: What's your objection?

4 Because if you just say objection, the grounds  
5 will be relevance. Other than that, you have to object  
6 and you have to tell me the grounds.

7 MR. PISSETZKY: Well --

8 THE COURT: -- that's --

9 MR. PISSETZKY: It's beyond the scope. I never  
10 asked --

11 THE COURT: But this, this is cross-examination.

12 MR. PISSETZKY: I understand.

13 THE COURT: And so it can't be beyond the scope.

14 Now, if this was -- if you did the  
15 cross-examination, then it would be beyond the scope.  
16 This is cross-examination. Overruled.

17 Based on that -- those grounds, you may answer  
18 the question.

19 THE WITNESS: What was the question, again?

20 BY MS. BRAGS:

21 Q. Do you recall where the restaurant was that you  
22 had driven from that night?

23 A. I don't know exactly where it was. I know it  
24 was in Chicago.

1 Q. And the Walgreens parking lot you were parked  
2 at was in Joliet; is that correct?

3 A. Yes.

4 (Whereupon, a brief pause was had.)

5 BY MS. BRAGGS:

6 Q. After you had submitted a breath sample, were  
7 you told the results of the breath test?

8 A. I don't remember.

9 Q. Is it true that you, you were then asked to  
10 submit a blood or urine sample?

11 A. I don't remember either.

12 Q. Isn't it true that the officer asked you to  
13 submit a blood or urine sample and you refused?

14 A. I don't remember.

15 Q. Do you remember anything that occurred during  
16 that booking room?

17 A. Some stuff. Not all of it.

18 Q. Do you recall falling to the floor?

19 A. No.

20 Q. Do you recall being asked to remove your shoes  
21 and socks?

22 A. No.

23 Q. Isn't it true that you told the officer you  
24 used heroin and clozapine for your birthday that night?



1 A. I don't remember that either.

2 MS. BRAGGS: Could I have a minute, Judge?

3 THE COURT: Yeah.

4 (Whereupon, a brief pause was had.)

5 BY MS. BRAGGS:

6 Q. When the officer asked you to provide a breath  
7 sample, what did the officer say to you when it was  
8 completed?

9 A. I don't know.

10 Q. So, previously to the arrest, though, you did  
11 have a conversation with the officer; is that correct?

12 A. Yes.

13 Q. And you stated you had one Modelo beer and a  
14 few Budweiser beers at a birthday party?

15 A. I don't, I don't remember saying that.

16 Q. Do -- is it -- isn't it correct that the  
17 officer was able to observe one bottle of open Budweiser  
18 beer in the center console of your car?

19 MR. PISSETZKY: Objection, Judge, what the officer  
20 could observe. How could my client know what the  
21 officer could observe?

22 THE COURT: Okay. That will be sustained.

23 BY MS. BRAGGS:

24 Q. Isn't it true there was an open bottle of

1 Budweiser beer in your car that night?

2 A. I'm not sure.

3 Q. Do you recall stepping out of your car that  
4 night?

5 A. Yes, I do.

6 Q. Do you recall performing field sobriety  
7 testing?

8 MR. PISSETZKY: Objection. That is beyond the  
9 scope, Judge.

10 The cross-examination cannot go into subjects  
11 that I did not ask about at all.

12 THE COURT: Okay. Based on those grounds,  
13 overruled.

14 You may answer the question.

15 THE WITNESS: Could you repeat the question?

16 BY MS. BRAGGS:

17 Q. Do you recall performing field sobriety testing  
18 that evening?

19 A. Some of it, I don't remember all of it.

20 Q. And you don't remember that because you were  
21 intoxicated and had taken heroin and clozapine that  
22 night?

23 A. I, I don't know. I guess.

24 Q. So you don't recall doing any of the testing?

1 Like, with your eyes, for example?

2 A. No, I do. I remember some of it.

3 Q. And did the officer give you the results of  
4 those tests?

5 A. I don't remember that either. I just remember  
6 getting arrested.

7 Q. Isn't it true that you had trouble keeping your  
8 balance and following instructions during these tests?

9 MR. PISSETZKY: Your Honor, I have to object again.  
10 I am sorry, Judge.

11 This -- I mean, when I questioned him and  
12 limited the scope of my direct examination --

13 THE COURT: Your direct examination is limited --  
14 and I've indicated that. If that's the basis,  
15 overruled.

16 But if you have any other bases that would be  
17 --

18 MR. PISSETZKY: Relevance, Judge?

19 THE COURT: Okay. What's the relevance?

20 MS. TASKER: It goes to his ability to recall that  
21 evening. So he says that he does not recall -- he does  
22 recall certain parts of the evening but does not recall  
23 other parts.

24 And I believe that goes to whether or not he

1 remembers exactly what happened at the station with when  
2 he refused certain tests but submitted to others; the  
3 breathalyzer versus the urine and the blood.

4 MR. PISSETZKY: I -- I'm still not understanding  
5 how is it relevant and how --

6 THE COURT: Well --

7 MR. PISSETZKY: -- is it part --

8 THE COURT: Well, it's been asked and answered. He  
9 said he remembers some fields and he says he doesn't  
10 remember other ones.

11 So let's move on.

12 MS. BRAGGS: Okay. Thank you, Judge.

13 THE COURT: It's been asked and answered. So, at  
14 this stage, it -- it's -- I can't see the relevance of  
15 asking. He says he remembers some and doesn't remember  
16 all of 'em.

17 (Whereupon, a brief pause was had.)

18 MS. BRAGGS: No further questions, Judge.

19 THE COURT: All right.

20 MR. PISSETZKY: Just one, Judge.

21 THE COURT: Redirect.

22 MR. PISSETZKY: Just one. Thank you.

23

24

1 REDIRECT EXAMINATION

2 BY MR. PISSETZKY:

3 Q. After -- while you were at the police station,  
4 you were actually administered, administered a drug and  
5 then taken to Saint Joseph for treatment because of your  
6 condition, right?

7 A. Correct.

8 MR. PISSETZKY: I have nothing else.

9 MS. BRAGGS: Nothing based on that, Judge.

10 THE COURT: Okay. You may step down, sir.

11 (Witness excused.)

12 THE WITNESS: Thank you.

13 MR. PISSETZKY: Judge, I rest.

14 THE COURT: Okay. Petitioner rests.

15 Any motions?

16 MS. BRAGGS: The State would make a motion for  
17 directed finding.

18 THE COURT: Okay. Argument.

19 MS. BRAGGS: Thank you, Judge.

20 Judge, the petitioner's has not met its burden  
21 -- met his burden in this case.

22 We have admission by the defendant that he was  
23 drinking and to taking drugs that evening. We also have  
24 that he admitted to driving on the public roadway to get

1 from the restaurant in Chicago to Joliet. That he was  
2 found to be the sole occupant in the vehicle with the  
3 keys still in the ignition and the car still running.

4 For the fourth ground, that he submitted to  
5 requested test or tests, but the test sample of  
6 blood-alcohol concentrations did not indicate the .08 or  
7 more -- or, I am sorry, he did not refuse to submit to  
8 or -- and/or complete the required chemical tests or  
9 tests, the fourth prong.

10 He did submit to the breath test but refused  
11 the blood and urine test -- urine samples. Which, in  
12 this case, we have evidence of the intoxication of the  
13 alcohol based on the police -- the sworn police report  
14 that was indicate today earlier and his admission of  
15 drinking that evening.

16 He explained that the reason why he didn't  
17 recall the events was the combination of the drinking  
18 and the drug use that he had done for his birthday  
19 celebration.

20 And he did -- although he did submit the sample  
21 of breaths -- breath tests, he did not submit to the  
22 blood and urine sample, which would have shown why he  
23 was impaired that evening to the point of falling on the  
24 floor and being unable to follow simple instructions.

1           We don't have an indication of whether or not  
2 he was successful with the breath test because he does  
3 not recall the results of the breath tests. He only  
4 remembers being arrested.

5           For the statutory summary suspension, the  
6 specific language describes -- let me turn to the page.  
7 There's three different categories on the summary  
8 suspension based on the combination of alcohol and drug  
9 use. There's three different types of tests that might  
10 be requested.

11           In this case he did the breathalyzer. He did  
12 not submit to any of the urine or blood tests,  
13 therefore, he did not -- he refused certain tests that  
14 would have shown his impairment. And that was the basis  
15 for the statutory summary suspension. He was warned of  
16 that, but he did not go based on those grounds, he  
17 signed that form.

18           So I do not believe that the petitioner has met  
19 his burden in this case.

20           THE COURT: Okay. Counsel?

21           MR. PISSETZKY: Your Honor, thank you.

22           No. 1, this is a prima facie requirement for  
23 us. So it is a very small burden to show that there is  
24 some evidence. I think in this situation there's not

1 some, there's quite a, quite a few.

2 Counsel asked my client how he arrived there.  
3 He said he -- that's a quote from my client, Judge, and  
4 I am sure you wrote it down -- he said he drove with his  
5 family from Chicago because he was with his family at a  
6 restaurant. Counsel never followed up with any  
7 questions of, "Did you drive the car on your own?" Or,  
8 "Did you get there on your own?" He specifically told  
9 them that he got there with his family.

10 So -- but that's a, that's a little bit of a  
11 red herring, your Honor. And why I am saying it is a  
12 red herring because case law says -- and actually it's a  
13 case from this district -- Roberts versus -- People  
14 versus I-R-A-Y-R-E-S. Specifically instructs that the  
15 statutory summary suspension must be rescinded based on  
16 implied consent, which is applicable when somebody is  
17 arrested on private property. And --

18 THE COURT: Do you have that case?

19 MR. PISSETZKY: Yes, Judge.

20 THE COURT: And you have a copy for the State?

21 MR. PISSETZKY: Yes, Judge.

22 THE COURT: Thank you.

23 MR. PISSETZKY: And, your Honor, the reason behind  
24 this is, is not if he drove, because everybody



1 technically, possibly, gets to the private lot somehow  
2 if they are behind the wheel of the car.

3           The actual question is, did the police officer  
4 observe the individual driving his vehicle or onto the  
5 lot before he made the arrest. So for somebody driving  
6 on the street and turns into the lot just to avoid being  
7 arrested, that doesn't work. But if somebody is on the  
8 lot already and that is when the officer approached,  
9 then it is implied that you are not driving on a private  
10 highway and you are a privately-owned lot, you cannot  
11 receive the summary suspension.

12           THE COURT: Uh-hum.

13           MR. PISSETZKY: Second, your Honor -- if we even  
14 have to go there because I think the law is pretty clear  
15 on, on the private property issue -- if you look at what  
16 my client received from the officer, it does not  
17 indicate at all whether or not he refused. And, in  
18 fact, the time of refusal is not there.

19                           (Whereupon, a brief pause was had.)

20           MR. PISSETZKY: And, therefore, you can take  
21 judicial notice as well based on what your Honor has in  
22 the file. And I believe that it's something that is  
23 completely different.

24           THE COURT: Uh-hum.

1 MR. PISSETZKY: In there it says I think there's a  
2 box marked. And I can't -- I'm not (inaudible) read  
3 over your shoulder.

4 THE COURT: No. No.

5 (Whereupon, a brief pause was had.)

6 THE COURT: Go ahead. What, what are you --

7 MR. PISSETZKY: The box that is marked -- what is  
8 it marked, Judge?

9 THE COURT: Which box are you referring to,  
10 Counsel?

11 MR. PISSETZKY: I'm sorry. There's a box that the  
12 officer marked right here.

13 THE COURT: Because you refused to submit or failed  
14 to complete testing. Go ahead.

15 MR. PISSETZKY: Right. And if you look at his box,  
16 nothing is marked, Judge.

17 THE COURT: Uh-hum.

18 MR. PISSETZKY: And that raises prima facie case on  
19 that ground alone, Judge. Because this, this document  
20 that I provided to the Court and admitted into evidence  
21 is an original document, as you can tell --

22 THE COURT: Uh-hum.

23 MR. PISSETZKY: -- from the police officer.

24 And the, the document that he provided to the

1 Court is completely different. And, therefore, it  
2 raises suspicion and makes enough evidence for the prima  
3 facie case, Judge.

4 THE COURT: Okay. Thank you.

5 State, anything further on your motion to --  
6 for directed finding?

7 MS. BRAGGS: Only that you're allowed to make  
8 reasonable inferences. And it is unreasonable that his  
9 family would leave him in the parking lot at Walgreens.

10 He admitted to driving from a restaurant in  
11 Chicago to --

12 MR. PISSETZKY: No. Objection. He never admitted  
13 that he drove, Judge.

14 MS. BRAGGS: He admitted he came from a  
15 restaurant --

16 MR. PISSETZKY: Correct.

17 MS. BRAGGS: -- in Chicago to Joliet, and you're  
18 allowed to make reasonable inferences.

19 It would be extremely unreasonable for his  
20 family to leave him in a Walgreens parking lot with a  
21 running car, with keys in the engine, as he did admit he  
22 was the sole occupant of the vehicle at that time, with  
23 the engine running.

24 Thank you, Judge.

1 THE COURT: Thank you. All right. I am given both  
2 -- with that, I gave them another opportunity to respond  
3 to your argument.

4 Anything further that you need to say, Counsel?

5 MR. PISSETZKY: Your Honor, again, this is a red  
6 herring. It doesn't matter -- even if your Honor thinks  
7 he drove there, the officer never saw him drive. The  
8 officer saw him on the private lot.

9 But there's no questions of whether or not his  
10 family was in, in the Walgreens either, so.

11 THE COURT: See this is, this is the problem that  
12 we have here -- and I am gonna tell you with his private  
13 lot situation.

14 On the issue -- there's two grounds here that  
15 -- and I am using People versus Ayres, which is out of  
16 the Third District you cited, cited in 1992. It's -- I  
17 am not sure if it's still good law, but it has been  
18 tendered to me as much, cited at 591 N.E.2d 931, decided  
19 in 1992.

20 And they said here, Summary suspensions of  
21 defendant's driver's license under implied consent law  
22 were properly rescinded by the trial court where  
23 defendants had not been driving on a public highway.

24 Here it was undisputed the defendants were only

1 observed driving on a publicly owned parking lot. And  
2 this is for the purposes of this DUI. And it's  
3 different when we're dealing with parking lots. It's  
4 slightly different when we're dealing with DUIs and  
5 we're dealing with driving on a public highway.

6 Here, privately-owned parking lots are -- is  
7 really referring to if you're in your own driveway and  
8 they see people sitting in their own driveway and they  
9 walk out to their car.

10 Here we have not truly established the fact, by  
11 the petitioner's case, that this truly was -- they said  
12 he was in the Walgreens, that it was privately-owned  
13 parking lot. If I don't know that. I can't assume that  
14 simply because it is the parking lot of Walgreens.

15 Also, it was put into evidence the officer's --  
16 and taken judicial notice of the summary suspension  
17 revocation. I will admit that somehow or another this  
18 copy, it says "Transfer to SDF" on here, which is not on  
19 the original that I have. Not only on the original that  
20 -- or on the one that's in the file does it show the  
21 refusal date at the place and time at the top of the  
22 ticket looks blank.

23 But this is where this gets -- and this is why  
24 I say this is a copy. It says, Because you refused --

1 there's a line down here, because you refused to submit  
2 to or to -- or fail to complete testing, your driving  
3 privileges will be suspended for a minimum of 12 months.

4 On the copy that was in the -- and this is  
5 dealing with the defects of an officer's report and a  
6 summary suspension does not show -- it shows a big line  
7 that, that's clearly marked in. The copy, though, had  
8 you take a really good look at this copy, it looks like  
9 at one point in time it was marked. It looks like a  
10 little bitty X that was there, but it is light and it's  
11 faint.

12 And the only reason I am going by that is  
13 because I compared, also, the handwriting of the, of the  
14 officer's report that indicated that they responded to a  
15 traffic crash call.

16 Now, the defendant did testify that he did not  
17 -- he clearly testified that he was woken up by the  
18 police officers and that he was sleeping behind the  
19 wheel of a car on direct examination and that he agreed  
20 to provide a breath test.

21 However, when asked several questions under  
22 cross-examination -- and it was cross examination so  
23 it's not beyond the, the scope -- his ability to  
24 remember and recall, he pretty much says -- I guess he

1 didn't recall because of taking a multiple number of  
2 drugs. He doesn't recall having a -- any beer in his  
3 vehicle, but yet put into evidence again was the fact  
4 that the officer wrote that he observed an open bottle  
5 of alcohol --

6 MR. PISSETZKY: But your, your Honor, that's not in  
7 evidence yet. That's --

8 THE COURT: Let, let me --

9 MR. PISSETZKY: -- for the State --

10 THE COURT: Let me finish. I understand that. But  
11 you put this in. I know that they would have a right,  
12 if the burden shifts -- I haven't made my decision yet,  
13 Counsel. I am making my decision and the rationale from  
14 my decision. Don't mean to cut you all. I'm trying to  
15 give you all due respect.

16 But if we have a, a conversation back and forth  
17 and I gave people twice the opportunity, I do know that  
18 they would have an opportunity to bring in the police  
19 reports. But I am just now going by what was already  
20 admitted into evidence and taken judicial notice of, I  
21 can go by that.

22 That his ability to recall -- he recalls some  
23 things. Most of he didn't recall. He didn't even  
24 recall some of the tests. We know that -- we know that

1 some tests were administered -- it's not that many tests  
2 for sobriety tests. And he said he recalled some and he  
3 didn't recall others because of heroin and such.

4 So we have not truly established that this was  
5 privately-owned parking lots. And we have to be very  
6 careful on what's privately owned. Even up under the  
7 statute when you're dealing -- and there's a litany of  
8 case law -- even if you were dealing with driving while  
9 your license was suspended, some parking lots -- and it  
10 has to be on a public highway -- some parking lots are  
11 considered private and some are not. Especially the  
12 airport.

13 So I don't know if Walgreens, that parking lot  
14 was public -- privately owned or publicly owned because  
15 it is accessed by the public on a daily basis.

16 I have to take in consideration he was behind  
17 the wheel of a car. I know this wasn't reasonable doubt  
18 -- behind the wheel of a car, purportedly with the  
19 engine open -- with the engine running.

20 And we do know if we go further than that in a  
21 parking lot situation, we go further than that when we  
22 go beyond a reasonable doubt, that would be enough for a  
23 DUI being having the access. There's a whole litany of  
24 cases.



1           So when they say "privately owned," they're  
2 pretty much talking about your own parking lot.

3           MR. PISSETZKY: That's --

4           THE COURT: All right? You have not established  
5 that. Motion for a directed finding is granted in favor  
6 of the petitioner -- I mean, in favor of the State.

7           MR. PISSETZKY: Your Honor, again, I have to put on  
8 the record, because I am going to file a motion to  
9 reconsider. This is absolutely inaccurate and against  
10 the law case law.

11           And I can bring your Honor a hundred cases that  
12 shows that -- and this case, this case that I gave you  
13 is not a private drive. That is, that is a driveway. A  
14 parking lot is considered to be -- and there's another  
15 case that explains lots, but I didn't think -- I am  
16 gonna have to show you this, your Honor, because I  
17 thought you would know what a public lot is. But a  
18 public lot is something that the city maintains. And  
19 the private lot is something that the city does not  
20 maintain.

21           There's no evidence -- and it's not -- I showed  
22 --

23           MS. BRAGGS: (Inaudible).

24           MR. PISSETZKY: -- enough prima facie evidence --

1 THE COURT: Okay.

2 MR. PISSETZKY: -- to show that Walgreens --

3 THE COURT: -- Counsel, I have made my ruling. I  
4 understand with what you're saying.

5 MR. PISSETZKY: Your Honor --

6 THE COURT: -- I have made my ruling.

7 MR. PISSETZKY: -- file a motion to reconsider --

8 THE COURT: Okay. You can file a motion to  
9 reconsider.

10 MR. PISSETZKY: -- because this is absolutely  
11 inaccurate.

12 THE COURT: -- you can file a motion to reconsider  
13 if you wish.

14 MR. PISSETZKY: I am gonna --

15 THE COURT: This case will go back downstairs.

16 What date do you want for another --

17 MS. BRAGGS: Judge, it is actually being set to  
18 follow a felony case.

19 MR. PISSETZKY: I need my, my --

20 THE COURT: It's set to follow a felony case?

21 MS. TASKER: It, it will be, Judge, so that's what  
22 we're asking to do now, is having the case set to follow  
23 the felony.

24 Would you like us to go back downstairs to do

1 that? We just need a date in 400 --

2 THE COURT: I don't know if my computer is up or  
3 not. And what felony is this due to follow?

4 MS. TASKER: It's --

5 MR. PISSETZKY: Your Honor --

6 MS. TASKER: -- 16 CF 1201. I believe it is in  
7 Room 400, Judge. I believe the state's attorney on the  
8 case told me it's February 15th. But if we could double  
9 check --

10 MR. PISSETZKY: It is correct, it is February 15th.

11 THE COURT: It's February 15th?

12 MR. PISSETZKY: Yes, your Honor.

13 THE COURT: Okay. It's February 15th. The case  
14 will follow.

15 MR. PISSETZKY: Your Honor, I need my evidence from  
16 the file, please, so I can have it so I can file my  
17 motion to reconsider.

18 THE COURT: Okay. One of the things -- let me make  
19 a copy of this. You have entered this into evidence.

20 MR. PISSETZKY: Right.

21 THE COURT: This needs to now stay with the file  
22 because you have filed this --

23 MR. PISSETZKY: Well, then, I need --

24 THE COURT: -- in evidence. So if you can make a

1 copy of this and then we can file the original that was  
2 entered into evidence here.

3 MR. PISSETZKY: Your Honor, I'd like to finish  
4 making my record, though. I mean, I, I was cutoff by  
5 everybody.

6 THE COURT: You know what, Counsel, I gave you an  
7 opportunity. I made my ruling.

8 Now, what you want me to do is change my ruling  
9 based on some more arguments. If you wanna do a motion,  
10 that's improper.

11 MR. PISSETZKY: Okay.

12 THE COURT: If you wanna do a motion to reconsider,  
13 I'll give you all the time.

14 MR. PISSETZKY: I --

15 THE COURT: I think your record has been made.

16 MR. PISSETZKY: Okay.

17 THE COURT: All right.

18 MR. PISSETZKY: How -- that's fine.

19 THE COURT: Okay. And we will also impound your,  
20 your case law as well that you used.

21 (Whereupon, a brief pause was had.)

22 THE COURT: And you want this traffic, of course,  
23 to go -- this traffic is independent. You want the  
24 traffic to follow as well?

1 MS. BRAGGS: Yes, Judge. It's also -- that's just  
2 up for a petition to revoke by the State.

3 THE COURT: Okay. So that will -- to follow --

4 MS. BRAGGS: That's to follow the felony.

5 THE COURT: -- in Room 400 as well.

6 MS. BRAGGS: Thank you.

7 THE COURT: You're welcome.

8 (Which were all the proceedings had.)

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