

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2026 IL App (4th) 260572-U

NO. 4-26-0572

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 28, 2026

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff- Appellant,	)	Circuit Court of
v.	)	Ogle County
STEVEN DAUGHERTY,	)	No. 25DT157
Defendant- Appellee.	)	
	)	Honorable
	)	Clayton L. Lindsey,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Doherty and Vancil concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's grant of defendant's petition to rescind the statutory summary suspension of his driving privileges, finding the court's factual findings that defendant's demeanor and performance on field sobriety tests did not furnish reasonable grounds to believe he had been driving under the influence of alcohol were not against the manifest weight of the evidence, especially when those determinations were made based, in part, on a video that was not included in the record on appeal. Applying those findings, the appellate court agreed defendant showed the arresting officer did not have reasonable grounds to believe he was driving under the influence of alcohol.

¶ 2 In August 2025, defendant, Steven Daugherty, was charged with driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2024)). In addition, he was given notice that his driving privileges would be summarily suspended. See *id.* § 11-501.1. Defendant filed a petition to rescind the statutory summary suspension, contending, in part, that the arresting officer lacked reasonable grounds to believe that he was driving under the influence of alcohol. See *id.* § 2-118.1(b).

¶ 3 At the hearing on the matter, defendant presented evidence that he had been involved in a vehicle collision in a parking lot, and the arresting officer observed an odor of alcohol on defendant's breath. Another person told the officer defendant was under the influence of alcohol. However, defendant did not exhibit typical indicia of impairment, such as bloodshot eyes, slurred speech, or balance issues, outside of two field sobriety tests. The officer administered field sobriety tests, but his testimony did not establish defendant failed the tests. Defendant told the officer he had trouble with the tests because he had neuropathy in his feet. A video of the encounter with the arresting officer and the tests was admitted into evidence and viewed by the trial court but is not in the record on appeal. Following completion of the field sobriety tests, defendant submitted to a preliminary portable breath test that showed an alcohol concentration of 0.135. However, the arresting officer did not ask defendant when he last consumed alcohol before administering the test. The State presented no evidence.

¶ 4 The trial court granted the petition, finding that, based on the lack of evidence defendant failed the field sobriety tests and lack of typical indicia of impairment, defendant made a *prima facie* case that the arresting officer lacked reasonable suspicion to request a breath test, which also resulted in there being a lack of probable cause for the summary suspension. The court also indicated it further found the State failed to show the breath test result was admissible and thus the result could not provide probable cause. Accordingly, the court found the arresting officer lacked reasonable grounds to believe defendant was driving under the influence of alcohol.

¶ 5 The State appeals, contending defendant failed to make a *prima facie* case for rescission of the summary suspension. We find the trial court's factual determinations were not against the manifest weight of the evidence and, to the extent there are any doubts concerning the

court's findings, given the absence of the video in the record, we presume the order entered by the court was had a sufficient factual basis. Ultimately, based on the trial court's factual findings, we agree defendant showed the arresting officer did not have reasonable grounds to believe defendant was driving under the influence of alcohol. Accordingly, we affirm.

¶ 6

I. BACKGROUND

¶ 7

Defendant was charged by complaint, alleging he drove under the influence of alcohol on August 27, 2025. A law enforcement sworn report regarding notice of summary suspension of defendant's driving privileges stated defendant failed to submit to or complete testing. The arresting officer, Hunter Ilkow, wrote he was dispatched to a crash, and upon arrival, he saw defendant had appeared to have hit a parked car. While speaking to defendant, Ilkow observed an odor of alcohol. Ilkow wrote he asked defendant to do standardized field sobriety tests, and from those tests he believed defendant's blood alcohol content was above 0.08.

¶ 8

Defendant filed a petition to rescind the statutory summary suspension, contending, in part, that Ilkow lacked reasonable grounds to believe he was driving under the influence of alcohol. At the hearing on the petition, Ilkow testified he was a police officer with the Byron, Illinois, Police Department. At approximately 10:45 p.m. on August 27, 2025, Ilkow was dispatched to a brewery in Byron. Ilkow was wearing a body camera, and video from that camera was admitted into evidence. A report authored by Ilkow concerning the results of field sobriety tests was also referenced but not admitted into evidence. Neither the video nor the report is included in the record on appeal.

¶ 9

Ilkow testified defendant had struck a parked vehicle while driving into a parking spot. When Ilkow arrived at the brewery, a person who identified themselves as an off-duty police officer told Ilkow that defendant had been at the brewery for several hours and was under

the influence of alcohol. Defendant told Ilkow he had arrived from Chicago, Illinois, and “was pulling in for a cheeseburger.”

¶ 10 Ilkow testified he smelled the odor of alcohol on defendant’s breath. However, he testified that he did not mention in the video or his police report any indication that defendant had red, bloodshot eyes or slurred speech. Defendant also did not demonstrate any balance issues.

¶ 11 Ilkow testified he performed a horizontal gaze nystagmus (HGN) test. He testified he was looking for six specific clues when administering the test, including “horizontal and vertical nystagmus,” but did not describe what those were. Ilkow was asked about including in his report that “there were a number of clues present” and “both horizontal and vertical nystagmus.” Ilkow testified horizontal nystagmus tested positive for the presence of alcohol. When asked what vertical nystagmus tested for, Ilkow stated he could not recall.

¶ 12 Ilkow also administered a walk-and-turn test. Before the test, defendant informed Ilkow that he had neuropathy and could not feel his feet. Defendant followed the instructions for the test. Defendant was not falling over or swaying significantly during the test. Ilkow was referred to page four of his report and was asked whether defendant took the correct number of steps. Ilkow responded that he did. Defense counsel then asked Ilkow, “So his clues that he demonstrated on the walk-and-turn test were not essentially following direction issue; they were physical issues, stepping off the line. Is that a fair summary?” Ilkow responded, “I believe so.” On cross-examination, Ilkow testified defendant had difficulty getting into the starting position, could not maintain it, and lost his balance.

¶ 13 Ilkow testified he performed a one-leg-stand test, and defendant was not swaying or falling down. Defendant did not have balance issues while Ilkow was giving him the

instructions for the test. During the test, defendant put his foot up approximately the correct amount off of the ground. However, Ilkow testified, “[H]e got clues because he put his foot down and had trouble standing on one leg.” Defendant told Ilkow he did not “ ‘have the balance to do this’ ” and could not feel his feet. On cross-examination, Ilkow testified defendant nearly fell over during the test. Ilkow never provided any information regarding whether defendant actually failed any of the field sobriety tests, and the State did not present anything to show defendant failed the tests.

¶ 14 Ilkow testified defendant was not belligerent, argumentative, or combative, and defendant understood and followed directions. When Ilkow asked defendant questions, defendant was able to provide answers that made sense. Ilkow administered a preliminary breath test, which produced a result of 0.135. Defense counsel asked Ilkow if he was trained on the use of portable breath test machines. Ilkow stated he was, but he could not remember if he was told to ask an individual being tested how long ago their last drink of alcohol was before performing the test. Ilkow did not ask defendant when he last consumed alcohol or do any investigation to determine the last time defendant consumed alcohol.

¶ 15 The State presented no evidence. Defense counsel argued Ilkow did not have probable cause to believe defendant was in control of a vehicle while under the influence of alcohol. Counsel noted the trial court was able to watch the video and see that defendant’s demeanor and performance on the tests was not consistent with a person who was under the influence of alcohol or who was mentally impaired. Regarding the breath test, counsel noted Ilkow did not ask defendant when his last drink of alcohol was and, had defendant drank alcohol shortly before the test, it could skew the result based on residual alcohol in defendant’s mouth. Counsel also argued the State had not shown the breath test was reliable.

¶ 16

The trial court stated,

“The real issue in this case, it seems to me, is whether there has been sufficient evidence or probable cause for driving under the influence. And to me, what we have is odor of alcohol and then the field sobriety tests and what I am to make of the field sobriety tests.

Now, I can watch the video. First of all, on the HGN test, I can’t see his eyes. Okay? And so I’m not going to be able to tell whether or not he—there was any defect or not. But even if I could see it, I don’t believe that—and I will also note that on the other two tests I saw him falling or wobbling, I could conclude that he was under the influence. But that’s not the right standard.

The right standard is whether the officer had reasonable grounds to do. And what I’m looking for more specifically, and what’s absent in this case is, while he—while the officer testifies that there are clues, he doesn’t say how many clues, he doesn’t identify what clues he observed. The Court finds that the summary suspension should be rescinded, and I so find.”

The court’s written order stated it granted defendant’s motion because the State did not have reasonable grounds to believe defendant was under the influence of alcohol.

¶ 17

The State filed a motion to reconsider, noting various facts indicating defendant was under the influence of alcohol based on time stamps from the video that were not testified to by Ilkow, including that that Ilkow “indicated” the portable breath test machine had been calibrated and the breath test was administered at approximately minute 23 of the video. The State argued Ilkow was not required to accept as true defendant’s claim that he had neuropathy and that the trial court did not appear to have considered the preliminary breath test result of

0.135.

¶ 18 At the hearing on the motion to reconsider, the trial court asked the State, “[W]ouldn’t you agree that, before we get to the preliminary breath test, the officer has to have reasonable suspicion to do it? Now, you may believe that that was established when the other things—but if the Court finds that he did not have reasonable suspicion, how do I consider the preliminary breath test at that point?”

¶ 19 Counsel for defendant noted Ilkow did not testify whether the device for the portable breath test had been calibrated or was accurate and that Ilkow did not ask defendant when his last drink of alcohol was. The State argued the video showed the device had been calibrated.

¶ 20 The trial court found defendant made a *prima facie* showing that Ilkow did not have reasonable grounds to believe he was under the influence of alcohol. The court noted Ilkow smelled alcohol and that a person told Ilkow defendant was under the influence of alcohol. However, the court stated it placed little weight on those factors. Addressing the field sobriety tests, the court stated Ilkow’s testimony was “sufficiently weak” and did not identify the number of clues required to fail a test or the number of clues defendant failed on any given test. Specifically, the court stated,

“The Court knows that the protocol is there are six cues in HGN. You need four of them to fail. There are eight on the one-leg-stand; you need two of them to fail. I’m sorry. There’s eight on the walk-and-turn; you need two to fail. And four on the one-leg-stand; you need two to fail. And there was no indication as to how many he failed.”

¶ 21 The trial court next noted defendant reported he had neuropathy, and nothing was

presented to refute that. Thus, the court took as true that defendant had a disability. The court also stated, “Very specifically the officer also testified there was no bloodshot eyes; there was no slurring of words; there was no balance issues. He was calm and collected.” The court found Ilkow needed reasonable suspicion to request a preliminary breath test, the burden to show that had shifted to the State, and the State failed to meet its burden.

¶ 22 The trial court then stated the following regarding the breath test:

“And for all the other reasons that have been already stated, there are all kinds of reasons why that might—it’s not admissible and why it might not be used. But again, taking the totality of the circumstances, the Court did not believe that the State met its burden, and it—I denied—or I granted the petition. The Court hereby denies the motion to reconsider.”

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, the State contends the trial court erred in rescinding defendant’s statutory summary suspension because defendant failed to make a *prima facie* case that Ilkow did not have reasonable grounds to believe defendant was driving under the influence of alcohol. The State argues Ilkow had both reasonable suspicion to administer a breath test and probable cause under the facts to believe defendant was driving under the influence of alcohol.

¶ 26 At the outset, we note defendant did not file an appellee’s brief in this matter. However, we will proceed with this appeal, as the record is simple and the issue can be easily decided without the aid of an appellee’s brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 27 We also note the parties and the trial court at times alternated between use of the

terms reasonable grounds, probable cause, and reasonable suspicion, all of which are applicable in this appeal. Ultimately, the court found defendant made an un rebutted *prima facie* case that Ilkow lacked reasonable suspicion to request a preliminary breath test, which also resulted in there being a lack of reasonable grounds, which is synonymous with probable cause, for Ilkow to believe defendant was driving under the influence of alcohol. The court also indicated it further found the State failed to show the breath test result was admissible to show probable cause, even if reasonable suspicion was found.

¶ 28 Under section 11-501(a)(2) of the Illinois Vehicle Code (Code), a person shall not drive or be in actual physical control of a vehicle while he or she is under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2024). A person is under the influence of alcohol when he is “ ‘less able, either mentally or physically, or both, to exercise clear judgment, and with steady hands and nerves operate an automobile with safety to himself and to the public.’ ” *People v. Bostelman*, 325 Ill. App. 3d 22, 34 (2001) (quoting *People v. Seefeldt*, 122 Ill. App. 3d 106, 108 (1983)). Factors relevant to probable cause to arrest for DUI include slurred speech, glassy or bloodshot eyes, an odor of alcohol, staggering, and failed field sobriety tests. *People v. Elliott*, 337 Ill. App. 3d 275, 281 (2003). Poor driving, stumbling, falling, or an inability to communicate may also be factors. *People v. Motzko*, 2017 IL App (3d) 160154, ¶ 20.

¶ 29 A defendant’s driving privileges are summarily suspended if he or she is arrested for DUI and he or she refuses to submit to drug testing or submits to a test that discloses an alcohol concentration of 0.08 or more. 625 ILCS 5/11-501.1(d) (West 2024). This suspension may be rescinded if the driver demonstrates that the police officer had no “reasonable grounds” to believe the person was driving under the influence of drugs or alcohol. *Id.* § 2-118.1(b)(2). Illinois courts utilize a probable cause analysis under the fourth amendment (U.S. Const., amend.

IV) to determine if an officer had reasonable grounds to arrest a driver for DUI. *People v. Wear*, 229 Ill. 2d 545, 560 (2008).

¶ 30 A person who has received a notice of the summary suspension of his or her driving privileges may file a request for a hearing seeking to rescind the summary suspension. 625 ILCS 5/2-118.1(b) (West 2024). A statutory summary suspension hearing is a civil action in which 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. Araiza*, 2020 IL App (3d) 170735, ¶ 16. “In a petition to rescind, the motorist may challenge the propriety of the traffic stop leading to his or her DUI arrest.” *Id.*

¶ 31 “The petitioner has the burden of providing a *prima facie* case for the rescission.” *People v. Rozela*, 345 Ill. App. 3d 217, 222 (2003). “The burden then shifts to the prosecution to present evidence justifying the suspension.” *Id.* The term “*prima facie*” has been defined as “a fact presumed to be true unless disproved by some evidence to the contrary.” *People v. Miles*, 344 Ill. App. 3d 315, 319 (2003); *People v. Atteberry*, 213 Ill. App. 3d 851, 854 (1991). “A *prima facie* case is ‘[a] party’s production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party’s favor.’ ” *People v. Relwani*, 2019 IL 123385, ¶ 18 (quoting Black’s Law Dictionary 1310 (9th ed. 2009)).

¶ 32 The State contends our review is *de novo*. However, “[i]n weighing the evidence before it, the trial court is charged with passing on the credibility of the witnesses and the weight to be given to their testimony.” *Rozela*, 345 Ill. App. 3d at 222.

“In reviewing a trial court’s decision on a petition to rescind a statutory summary suspension, the trial court’s factual findings and credibility assessments will be reversed only if the findings are against the manifest weight of the evidence,

while its conclusion as to whether the rescission was warranted is reviewed *de novo*.” *Araiza*, 2020 IL App (3d) 170735, ¶ 16.

In particular, “ ‘[t]he trial judge’s finding as to the *prima facie* case will not be overturned upon appeal unless against the manifest weight of the evidence.’ ” *Relwani*, 2019 IL 123385, ¶ 18 (quoting *People v. Orth*, 124 Ill. 2d 326, 341 (1988)). “A finding is against the manifest weight of the evidence only if ‘the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.’ ” *Id.* (quoting *People v. Deleon*, 227 Ill. 2d 322, 332 (2008)). It is only the ultimate legal ruling regarding rescission based on the trial court’s factual findings that we review *de novo*. See *id.*

¶ 33 Section 11-501.5 of Code provides that, if a law enforcement officer has reasonable suspicion to believe that a person is in violation of section 11-501, pertaining to DUI, the officer, prior to an arrest, may request the person to provide a sample of his or her breath for a preliminary breath screening test using a portable device approved by the Illinois State Police. 625 ILCS 5/11-501.5(a) (West 2024). The person may refuse the test, and the results of the preliminary breath screening test may be used by the law enforcement officer for the purpose of assisting with the determination of whether to require a chemical test as authorized under other sections of the code. *Id.*

¶ 34 Section 11-501.5(a) permits an officer to conduct a preliminary breath test only if the officer has reasonable suspicion that the suspect has committed DUI. *Rozela*, 345 Ill. App. 3d at 224. The reasonable suspicion standard of section 11-501.5(a) is the same as the standard that generally applies to traffic stops. *Id.* at 224-25.

¶ 35 The test for reasonable suspicion is less exacting than that for probable cause. *People v. Culbertson*, 305 Ill. App. 3d 1015, 1024 (1999). “Probable cause” means that “a

reasonable and prudent person, having the knowledge possessed by the officer at the time of the arrest, would believe the defendant committed the offense.” *People v. Fortney*, 297 Ill. App. 3d 79, 87 (1998). By contrast, a reasonable suspicion of criminality, which is a decidedly lower standard than probable cause, arises when an officer observes unusual conduct which leads him to reasonably conclude in light of his experience that criminal activity may be afoot. *People v. Whiles*, 2024 IL App (4th) 231086, ¶ 26.

¶ 36 The reasonable suspicion standard requires that “a police officer must be able to point to specific, articulable facts which, when taken together with the rational inferences from those facts, reasonably warrant the intrusion.” *People v. Schacht*, 233 Ill. App. 3d 271, 275 (1992). For purposes of determining the existence of reasonable suspicion, “[t]he facts should not be viewed with analytical hindsight, but instead should be considered from the perspective of a reasonable officer at the time that the situation confronted him or her.” *People v. Thomas*, 198 Ill. 2d 103, 110 (2001). Because reasonable suspicion must be based on specific and articulable facts, a mere hunch is insufficient. *People v. Brodack*, 296 Ill. App. 3d 71, 74 (1998).

¶ 37 Our research has not uncovered any Illinois cases addressing whether passing field sobriety tests negates reasonable suspicion or probable cause. However, courts in other jurisdictions have held it does not when there are sufficient other indicia of intoxication. See *Mesenburg v. Commissioner of Public Safety*, 969 N.W.2d 642, 649-50 (Minn. App. 2021). Instead, the performance on field sobriety tests is part of the totality of the circumstances the trial court should consider when determining if there is reasonable suspicion or probable cause. See *City of Wichita v. Molitor*, 301 Kan. 251, 265, 341 P.3d 1275 (2015) (citing *State v. Edgar*, 296 Kan. 513, 294 P.3d 251 (2013)). However, courts in Illinois have held that, standing alone, the presence of an odor of alcohol and driving after consuming alcohol is not illegal in itself, and

mere consumption of alcoholic beverages does not establish intoxication. See *People v. Bruni*, 406 Ill. App. 3d 165, 169-70 (2011). Being involved in an accident is also an insufficient basis upon which to support a DUI probable cause determination. *Motzko*, 2017 IL App (3d) 160154, ¶ 20.

¶ 38 The Illinois appellate court has affirmed a trial court's recission of summary suspension when the arresting officer merely noted a very strong odor of alcohol on the defendant's breath and observed that the defendant " 'staggered somewhat' " while walking to a car. *People v. Rockey*, 322 Ill. App. 3d 832, 839-40 (2001). In doing so, the court noted the indicia of intoxication for probable cause to develop in the officer's presence are ordinarily far more substantial than the mere odor of alcohol, such as staggering, swaying while standing, slurred speech, and bloodshot eyes. *Id.* at 840 (citing *People v. Scott*, 249 Ill. App. 3d 597, 604 (1993)). The court ultimately also found the facts did not support a finding of either reasonable suspicion or probable cause. *Id.* at 841.

¶ 39 It also has been held it is not necessary for a defendant to testify that he was not under the influence of alcohol in order to establish a *prima facie* case for recission. *People v. Tucker*, 245 Ill. App. 3d 161, 165 (1993). Instead, once the defendant presents some evidence that the officer did not have reasonable grounds to believe the defendant was driving under the influence, it is permissible for the trial court to find the defendant presented a *prima facie* case and shift the burden to the State. *Id.* A trial court's finding that the mere odor of alcohol and a defendant's failure to complete an unspecified performance test was insufficient to rebut a defendant's *prima facie* case has been affirmed when that finding was supported by the record. *Id.* at 164, 166.

¶ 40 Here, defendant presented evidence he was involved in a collision with a vehicle

in a parking lot. It was disputed whether defendant had just arrived or had been there for some time. Ilkow did not see the collision. Ilkow observed an odor of alcohol on defendant's breath, but there were none of the other typical signs defendant was under the influence of alcohol, and Ilkow did not ask defendant when he last drank alcohol. Ilkow stated a person who identified themselves as an off-duty police officer told Ilkow defendant was under the influence of alcohol, but no further details were provided. Ilkow then performed field sobriety tests, but he never stated defendant failed the tests. Instead, Ilkow stated the HGN test looked for six clues, and he identified "a number" of them, including horizontal and vertical nystagmus, but was unable to say what vertical nystagmus tested for. On the tests requiring balance, defendant followed instructions, and he was not falling over or swaying significantly. Ilkow testified defendant had physical difficulties during the tests, but defendant told Ilkow he had a disability that affected his performance on the tests, and that could explain his physical problems. There also was no evidence defendant actually failed the tests. Defendant otherwise correctly followed instructions and was not belligerent, combative, or argumentative.

¶ 41 Particularly important here is that defendant also provided Ilkow's body camera video, which is not in the record. The trial court watched the video and discounted the HGN testimony, stating it could not see defendant's eyes but, even if it could, the court would not believe there was "any defect." Further, we note, "HGN testing is an indicator of alcohol consumption, [but] *** not necessarily a sign of impairment." *Motzko*, 2017 IL App (3d) 160154, ¶ 21. The court then noted the other tests and, while it stated it saw defendant falling or wobbling during the tests, which could allow the court to conclude defendant was under the influence of alcohol, the court then observed the lack of specific details regarding defendant's performance on the field sobriety tests. The court also specifically discounted the testimony that another person told Ilkow defendant

was under the influence of alcohol. When it denied the motion for reconsideration, the court further emphasized the lack of evidence defendant failed any of the field sobriety tests and specifically found Ilkow's testimony "sufficiently weak." While the court stated it "knows *** the protocol" for the tests, it is unclear whether that knowledge came from the video or if the court was relying on personal knowledge. In any event, the State did not object to the court's statement, nor does it take issue with it on appeal. The court's determinations of defendant's performance on the field sobriety tests, defendant's overall demeanor, the lack of evidence defendant failed any of the tests, and the weight to give to such facts were factual findings and credibility assessments which we will reverse only if they were against manifest weight of the evidence. In that regard, those determinations were also made based, in part, on the video that is not in the record.

¶ 42 "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of a complete record, we must presume that the court acted properly. See *id.* at 392.

¶ 43 Ultimately, the trial court found defendant presented un rebutted evidence supporting the conclusion Ilkow lacked reasonable suspicion to request a breath test based on defendant's demeanor, the lack of many of the standard indicia of impairment, and the lack of evidence defendant failed any of the field sobriety tests. It was reasonable for the trial court, under those facts, to find defendant made a *prima facie* case that Ilkow lacked reasonable suspicion to administer a preliminary breath test and thus also lacked probable cause to believe defendant was driving under the influence of alcohol. Thus, the court's determinations were not

against the manifest weight of the evidence. To the extent we might have doubts concerning the court's findings, given the absence of the video in the record on appeal, we must presume the order entered by the court had a sufficient factual basis. *Id.*

¶ 44 As to the overall “reasonable grounds” or probable cause for the summary suspension, the trial court indicated it need not consider the result of the breath test because it determined reasonable suspicion for the breath test was lacking, and thus, it was inadmissible. At that point, for the same reasons the State did not rebut the finding of a lack of reasonable suspicion, it also did not show probable cause. See *People v. Boomer*, 325 Ill. App. 3d 206, 208, 211 (2001) (affirming the determination that the combination of a motorcycle accident, the odor of alcohol, and admission to drinking alcohol, without more, was insufficient to establish probable cause); see also *Motzko*, 2017 IL App (3d) 160154, ¶¶ 4, 22-24 (finding speeding and being involved in an accident were insufficient bases upon which to support a DUI probable cause determination, and the additional circumstances of an odor of alcohol on the defendant's breath, bloodshot and glassy eyes, and admission to drinking did not amount to probable cause to arrest for DUI); *People v. Bold*, 2026 IL App (2d) 250207-U, ¶¶ 76-77 (finding of lack of probable cause was not against the manifest weight of the evidence when the defendant passed two out of the four tests administered, recorded no clues on a vertical gaze nystagmus test, and exhibited one clue on a one-leg-stand test, despite failing an HGN test).

¶ 45 Regardless, even if we were to find reasonable suspicion existed to perform the breath test, the trial court also indicated it found deficiencies in the test. “Where the motorist argues for rescission on the basis that the test results were unreliable, such evidence may consist of any circumstance which tends to cast doubt on the test's accuracy.” *Orth*, 124 Ill. 2d at 341.

¶ 46 Once a motorist has made a *prima facie* case that the breath test did not accurately

reflect his or her blood alcohol concentration, the State can avoid rescission only by moving for the admission of the test into evidence and laying the required foundation. *Id.* at 340. Such a foundation includes evidence that (1) the test was performed according to uniform standards; (2) the person administering the tests was certified; (3) the machine used was an approved model, was tested regularly for accuracy, and was working properly; (4) the motorist was observed for 20 minutes prior to the test and, during this period, the motorist did not smoke, regurgitate, or drink; and (5) the results appearing on the “printout” sheet can be identified as the test given to the motorist. *Id.*; see *Rozela*, 345 Ill. App. 3d at 228 (indicating applicability of the rule requiring the State to provide foundation to cases concerning rescission of the summary suspension of driving privileges where the accuracy of a preliminary breath test is called into question); *People v. Nieto*, 2026 IL App (1st) 242179-U, ¶ 34 (applying the same in an appeal from a summary suspension hearing).

¶ 47 Here, defendant presented evidence Ilkow did not investigate or ask him when he last consumed alcohol, and Ilkow was unable to recall if he was ever told to ask an individual being tested how long ago their last drink of alcohol was. Counsel for defendant also argued there was a lack of evidence the portable breath test machine was calibrated or reliable. Thus, defendant raised inferences the test was incorrectly administered, which might skew the result, or that the test was otherwise inadmissible. As a result, he made a *prima facie* case for rescission based on the alleged inaccuracy or inadmissibility of the test. Nothing in the record on appeal shows the State rebutted that or provided facts supporting that there was foundation for the admissibility of the test for purposes of showing probable cause.

¶ 48 The test was video recorded, but the video is not in the record. While the State provided additional facts about the test in its motion to reconsider, including an indication the

machine was calibrated and the test performed after 20 minutes into defendant's encounter with Ilkow, those facts were not testified to by Ilkow, and we are unable to view the video to determine if the State's assertions were accurate. The trial court noted "all kinds of reasons" why the test might not be or was not admissible. The admissibility and reliability of the test under these circumstances was an issue of fact for the court to determine. Thus, even if we were to find Ilkow had reasonable suspicion to administer the test, the court's ultimate findings leading to its determination there was a lack of probable cause were not against the manifest weight of the evidence and, given the absence of the video in the record, any doubts concerning the court's findings must be resolved against the State.

¶ 49 Ultimately, the trial court's findings of fact regarding defendant's *prima facie* case and the State's failure to rebut it were not against the manifest weight of the evidence. Given those findings and our inability to view the video, to the extent the facts found by the court present a question of law to be reviewed *de novo*, we find the court's ultimate legal ruling rescinding the summary suspension was appropriate. Based on the trial court's factual findings, the only indicia that defendant drove under the influence of alcohol were the odor of alcohol, an unverified hearsay report that he was under the influence, and the existence of a vehicle collision. Defendant did not exhibit the typical indicia of being under the influence of alcohol, there was a lack of evidence he failed any field sobriety test, any physical issues he had with the tests were explained by un rebutted evidence he had a disability, and there was an un rebutted inference the breath test was improperly administered or was inadmissible. The State had the opportunity to counter these issues and instead chose to ask few questions on cross-examination and did not present any of its own evidence at all. See *Rockey*, 322 Ill. App. 3d at 840-41 (noting the State's failure to further develop issues concerning reasonable suspicion and probable cause

when it could have easily done so). Thus, the State left defendant's *prima facie* case entirely un rebutted. Under these circumstances, defendant showed Ilkow did not have reasonable grounds to believe defendant was driving under the influence of alcohol. Accordingly, we affirm.

¶ 50

III. CONCLUSION

¶ 51

For the reasons stated, we affirm the trial court's judgment.

¶ 52

Affirmed.