2026 IL App (3d) 250440

Opinion filed November 24, 2026

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2026

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. INGO F. DEL TORO, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois, Appeal No. 3-25-0440 Circuit No. 25-DT-252 Honorable Colette Safford, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court, with opinion.
Presiding Justice Hettel concurred in the judgment and opinion.
Justice Anderson dissented, with opinion.

OPINION

¶ 1 The State appeals the Will County circuit court's order granting the motion *in limine* filed by defendant, Ingo F. Del Toro, to exclude the results of a preliminary breath test (PBT). The State argues the court erred in granting the motion because the officer properly requested that defendant take the test and defendant had an opportunity to refuse. We agree, and we reverse and remand.

¶ 2 I. BACKGROUND

¶ 3 On March 14, 2025, defendant was charged with two counts of driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1), (2) (West 2024)), improper lane usage (*id.*

§ 11-709(a)), and improper turn at an intersection (*id.* § 11-801). Defendant filed an amended motion *in limine* to preclude PBT evidence to serve as a basis for probable cause to arrest, arguing the officer ordered defendant to take the test and he did not have an opportunity to refuse. The following evidence was presented at the hearing on defendant's motion.

¶ 4 Deputy Steven Potete with the Will County Sheriff's Office testified at the hearing, and his body camera footage was admitted into evidence. Potete observed defendant's vehicle take a wide turn and sway between traffic lines. Potete initiated a traffic stop and spoke with defendant in a calm and friendly manner. Defendant stated he had consumed three or four beers. Potete administered standardized field sobriety tests. Thereafter, Potete retrieved his PBT kit and stated, "This will help me make sure you're good." Potete asked defendant whether it was all right to set the kit on the tailgate of defendant's truck, and defendant agreed. Potete began setting up the PBT and stated,

> "What I have here is called a PBT. It's a roadside breath test. What I would like you to do, is you're gonna take a really deep breath, hold it for one second and then you're gonna blow through the straw, you're gonna blow until I tell you to stop. Okay? You'll hear the machine click and then I'll tell you to stop. Okay?"

The following sequence of events occurred over 20 seconds. Potete, being one or two steps away from defendant, continued to set up the PBT and repeated the instructions. Potete asked defendant if he was ready, and defendant nodded. Defendant attempted to grab the PBT device from Potete to administer the test himself. Potete stated that he had to administer the test, and defendant complied. Defendant's breath-alcohol reading was 0.125. Potete testified that he did not command defendant to take the PBT and that his statement, "What I would like you to do," was a request.

¶ 5 Defendant argued Potete commanded him to take the test and did not give him an opportunity to refuse. The State argued that Potete's statement was a request and an expression of personal preference that defendant take the PBT. The court granted the motion, finding the statement was not a request and defendant was not given the opportunity to refuse. The State filed a certificate of substantial impairment. This appeal followed.

¶ 6 II. ANALYSIS

¶ 7 On appeal, the State argues that the court erred in granting defendant's motion *in limine* to exclude the results of the PBT. Defendant did not file an appellee's brief. 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 *People v. Kavanaugh*, 2016 IL App (3d) 150806, ¶ 24.

¶ 8 Section 11-501.5(a) of the Illinois Vehicle Code (625 ILCS 5/11-501.5(a) (West 2024)) provides for a PBT and states, as follows:

> "If a law enforcement officer has reasonable suspicion to believe that a person is violating or has violated Section 11-501 or a similar provision of a local ordinance, the officer, prior to an arrest, may request the person to provide a sample of his or her breath for a [PBT] using a portable device approved by the Illinois State Police. The person may refuse the test."

¶ 9 This language does not require the officer to explain that a suspect has a right to refuse or that the suspect must give informed consent. *People v. Gutierrez*, 2015 IL App (3d) 140194, ¶ 20. Instead, the language provides that the officer cannot command a suspect to take a PBT and there is no penalty for a suspect refusing to take the test. *Id.* Where an officer administers a PBT in violation of this statute, the defendant may file a motion to exclude the PBT evidence. See *id.* ¶ 15.

We review a court's ruling on a motion *in limine* for an abuse of discretion. *Id.*[1] A ruling constitutes an abuse of discretion if it is fanciful, arbitrary, or unreasonable, such that no reasonable person would agree with it. *People v. Pacheco*, 2023 IL 127535, ¶ 54.

¶ 10 This court addressed the request-and-refuse requirements in *Gutierrez*. The defendant there was an off-duty Aurora police officer who rear-ended another vehicle and left the scene before responding officers arrived. A sergeant of his own department telephoned him at home and asked him to return. Because the Aurora officers at the scene were concerned that they had a conflict of interest in investigating a fellow officer, an Illinois State Police trooper was called in, and that trooper administered the PBT. *Gutierrez*, 2015 IL App (3d) 140194, ¶¶ 4-5, 9. The defendant testified that he did not consent to the test and that a sergeant of his department had told him he was required to take it as an administrative blow, though the administering trooper never told him the test was mandatory. *Id.* ¶ 8. We held that the statute does not require affirmative consent, that the officer need not inform the suspect of the right to refuse, and that the legislature considered adding such a requirement during debate on the bill and declined to do so. *Id.* ¶¶ 20-21. Applying that construction, we concluded the results were obtained in compliance with the statute because the administering officer did not tell the defendant he was required to take the test and the defendant did not exercise his right to refuse. *Id.* ¶ 22.

[1]The State asserts the standard of review for a "motion to suppress" is two-fold where the court's factual findings and credibility determinations are under the manifest weight of the evidence standard and the ultimate legal ruling is reviewed *de novo.* However, the motion at issue is a motion *in limine*—not a motion to suppress. See *People v. Patel*, 2020 IL App (2d) 190532, ¶¶ 21-22 (noting the State applied the incorrect standard of review to a motion *in limine*). A motion to suppress is utilized to exclude evidence obtained in violation of the fourth amendment (U.S. Const., amend. IV) and invokes the exclusionary rule. See *People v. Burney*, 2011 IL App (4th) 100343, ¶¶ 59-61 (explaining the defendant should have filed a motion *in limine* rather than a motion to suppress). A motion *in limine* pertains to the court's inherent power to admit or exclude evidence for various reasons. *People v. Williams*, 188 Ill. 2d 365, 369 (1999). Here, a motion *in limine* was the proper vehicle for defendant's claim. Regardless, our decision remains the same under any of these standards of review.

¶ 11 Defendant relied on *People v. Taylor*, 2016 IL App (2d) 150634, in the circuit court, and the court cited both that decision and *Gutierrez* in ruling. The State seeks to distinguish it. *Taylor* is a decision of the Second District and does not bind this court, but we find its formulation of the statutory test useful here. *Taylor* explained that a PBT is voluntary "so long as the officer requests the PBT without commanding submission, and so long as the suspect is given an opportunity to refuse." *Id.* ¶ 42. The statute does not oblige an officer to inform a suspect of the right to refuse, but it does require that the suspect have a reasonable opportunity to refuse. *Id.*

¶ 12 The officer in *Taylor* approached the defendant holding the PBT device within inches of his chest and stated, " 'What I want you to do is take a deep breath and blow in here like you're blowing up a balloon, okay?' " *Id.* ¶ 19. The device was in the defendant's mouth within two seconds. *Id.* The officer testified that he did not ask the defendant to take the test, that he placed the stem of the device in the defendant's mouth, and that the defendant acquiesced. *Id.* ¶ 20. On those facts the Second District identified three considerations: the officer's testimony that he did not request the test; the trailing " 'okay?,' " which asked whether the defendant understood the instructions rather than whether he would take the test; and the officer's statement that he " 'want[ed]' " the defendant to submit, which made it less likely that the defendant would understand the instruction as a choice rather than a command. *Id.* ¶ 44. The court separately found no opportunity to refuse, noting that the defendant had under two seconds amid flashing lights and a passing train, with the device so close to his mouth that he could not have refused without turning his head or stepping backward. *Id.* ¶ 45.

¶ 13 This record differs from *Taylor* in each respect the Second District found significant. Potete testified that he did not command defendant to take the PBT and that his statement, "What I would like you to do," was a request. That testimony is the opposite of the testimony on which *Taylor*

first relied. Potete asked defendant whether it was all right to set the kit on the tailgate of his truck before he began and spoke throughout in a calm and friendly manner. He explained what the device was, gave the instructions, and repeated them. He then asked defendant whether he was ready. That question is not the "okay?" at issue in *Taylor*, which asked only whether the defendant had understood what he was told. Asking a person whether he is ready asks whether he is willing to proceed. Defendant answered by nodding and then reached for the device to administer the test himself.

¶ 14 *Gutierrez* confirms that this conduct satisfied the statute. The defendant there testified affirmatively that he did not consent and that a supervisor had told him the test was mandatory, and we nonetheless held the statute satisfied because the administering officer never told him he was required to take the test and he did not refuse. *Gutierrez*, 2015 IL App (3d) 140194, ¶¶ 8, 22. Defendant here made no claim that he was told the test was mandatory, and nothing in the record suggests Potete conveyed as much. If the record in *Gutierrez* satisfied section 11-501.5(a), this one does as well.

¶ 15 Defendant also had a reasonable opportunity to refuse. The sequence that followed Potete's initial instruction occurred over 20 seconds. During that period Potete continued setting up the device, repeated the instructions, and asked defendant whether he was ready. Potete stood one or two steps away throughout. Defendant was free to decline in words or by conduct at any point, and he did neither. The record discloses nothing comparable to the circumstances that concerned the *Taylor* court, where the device was at or in the defendant's mouth as the instruction ended and a refusal would have required the defendant to turn his head or step backward. See *Taylor*, 2016 IL App (2d) 150634, ¶ 45.

¶ 16 We do not suggest that an officer's phrasing controls the analysis. Whether a statement is a request or a command cannot be determined by syntax alone, and the presence of a question mark does not by itself make a statement a question. An officer who says, "I want to look in your trunk, okay?" may well be understood, depending on the surrounding circumstances, as announcing an intention rather than inviting a choice. But that principle cuts in both directions. If form does not control, the analysis cannot end with the words "would like" either. The surrounding circumstances here—the calm and friendly exchange, the request to set the kit down, the officer standing one or two steps away, the instructions given and repeated, the question whether defendant was ready, the nod in response, and defendant's reaching for the device—establish that defendant was presented with a choice and made one.

¶ 17 The circuit court found that Potete's statement was not a request and that defendant was not given an opportunity to refuse. That finding rests on a construction of section 11-501.5(a) that would require an officer to secure something approaching informed consent before administering a PBT. *Gutierrez* forecloses that construction, and the legislature declined to impose it. See *Gutierrez*, 2015 IL App (3d) 140194, ¶¶ 20-21. The finding also turned on the particular words the deputy used: the court faulted Potete for not asking "Would you, Will you" and described his statement as "What I want you to do," while the recording and his testimony show that he said "What I would like you to do." The statute requires only that the officer not command submission. *Id.* ¶ 20. It prescribes no particular words, and the distinction the court drew rested in part on words the deputy did not use. A ruling that rests on an erroneous construction of the governing statute is unreasonable within the meaning of that standard. See *Pacheco*, 2023 IL 127535, ¶ 54. The court therefore abused its discretion in granting the motion *in limine*.

¶ 18 III. CONCLUSION

¶ 19 The judgment of the circuit court of Will County is reversed, and the cause is remanded for further proceedings.

¶ 20 Reversed and remanded.

¶ 21 JUSTICE ANDERSON, dissenting:

¶ 22 I respectfully dissent. While the majority correctly recognizes that whether an officer requests or commands a motorist to submit to a PBT depends on the circumstances and not syntax alone, it ultimately substitutes its assessment of those circumstances for the circuit court's and concludes that no reasonable judge could find that Potete commanded defendant to take the test. I disagree. The circuit court did not abuse its discretion.

¶ 23 Standard of review matters. We review the circuit court's ruling on a motion *in limine* for an abuse of discretion. *People v. Cady*, 311 Ill. App. 3d 348, 350 (2000). We may not reverse simply because we would have weighed the circumstances differently. See *People v. Peterson*, 2017 IL 120331, ¶ 125. This requires us to defer to the court's judgment unless its decision is "arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *People v. McDonald*, 2016 IL 118882, ¶ 32. On this record, the circuit court could reasonably find that Potete's instructions communicated an expectation of compliance. The court viewed the body-camera footage and heard live testimony. Its interpretation was not unreasonable merely because the majority finds another interpretation more persuasive. The abuse-of-discretion standard does not ask which interpretation we find more convincing; it asks whether the circuit court's interpretation was one a reasonable judge could reach. The majority's contrary conclusion effectively replaces that standard with a different one: whether the majority would have ruled the same way. I respectfully disagree.

¶ 24 The majority also suggests that the circuit court's ruling rests on an erroneous construction of the statute. *Supra* ¶ 17. I disagree. The circuit court could reasonably be understood as finding that, in the circumstances presented, Potete commanded defendant to take the test rather than requested that he do so. That is a determination about what the officer communicated during this particular encounter, not necessarily a misinterpretation of the statute. We should not convert a disagreement about the inferences to be drawn from the evidence into a legal error simply because we would draw a different inference.

¶ 25 Section 11-501.5(a) of the Illinois Vehicle Code provides that an officer with reasonable suspicion of DUI "may request" a breath sample and that "[t]he person may refuse the test." 625 ILCS 5/11-501.5(a) (West 2024). As *Gutierrez*, 2015 IL App (3d) 140194, ¶¶ 20-21, explains, the statute does not require an officer to advise a motorist of the right to refuse or obtain informed consent. But the absence of those requirements does not eliminate the statute's express distinction between a request and a command. An officer need not recite a prescribed warning, but the officer must request the test rather than direct the motorist to take it. *Id.* For the following reasons, I would conclude that it was not unreasonable to find Potete's statement, "What I would like you to do," was a command rather than a request.

¶ 26 In finding that Potete's statement was a request rather than a command, the majority emphasizes that Potete's statement of "would like" is different from "want."[2] This distinction may

[2]The majority faults the circuit court for referring to Potete's statement as "What I want you to do" rather than the actual words, "What I would like you to do." I agree that the distinction should be accurately quoted. But the difference in phrasing does not resolve the statutory question. As the majority itself acknowledges, the analysis cannot end with the words "would like." *Supra* ¶ 16. The circuit court's ultimate task was to determine whether the officer's words and conduct amounted to a request or a command. Its reference to "want" does not establish that it misunderstood the governing statute, particularly when the court also considered whether defendant had an opportunity to refuse. We should not infer an erroneous construction of the statute merely because the court's explanation included an imprecise characterization of the officer's words.

be relevant in some contexts, but it cannot carry the weight the majority assigns it. Polite phrasing does not necessarily turn a directive into a request. Consider a courtroom setting: if a judge states to a witness, "I would like you to answer the question," would anyone seriously understand the judge to be asking whether the witness wishes to answer? Would the witness reasonably respond, "No, thank you"? The response would be perfectly polite, but it would not be an acceptable refusal to comply with the judge's directive. The judge has softened the wording, not surrendered the authority to require an answer. The same linguistic point applies here: "would like" can be a courteous way of expressing a command, not necessarily an invitation to choose.

¶ 27 My position is not that the words "would like" always communicate a command. It plainly can express a request. The point is that the phrase does not, by itself, establish that a genuine choice was offered to defendant. Its meaning depends on the entire interaction, including what follows. Here, after stating, "What I would like you to do," Potete immediately instructed defendant "you're gonna take a really deep breath, hold it for one second and then you're gonna blow through the straw, you're gonna blow until I tell you to stop." Potete explained the mechanics of the test and repeated the instructions. He did not ask defendant whether he agreed or wished to take the PBT, and defendant said nothing but complied.

¶ 28 The majority interprets Potete's question, if defendant was ready, as whether defendant was willing to proceed. That is one possible interpretation—but it is not the only reasonable one. In context, the question could just as naturally have meant whether defendant was ready to begin following Potete's instructions. A person can acknowledge instructions and prepare to comply without having been offered a meaningful choice whether to comply in the first place. Defendant's nod and attempt to take the device are consistent with cooperation, but they do not conclusively establish that Potete had requested rather than commanded him to take the test.

¶ 29 Potete's request to place the PBT kit on the truck's tailgate does not resolve the issue. That request concerned where the officer could put his equipment; it did not establish that Potete separately asked defendant whether he would submit to the test. The contrast is telling. When Potete wanted permission to place the kit on the truck, he asked. When he turned to the test itself, he proceeded to explain what defendant was going to do. The circuit court could reasonably view that difference as supporting its conclusion that Potete instructed defendant to take the test rather than asked whether he would. Nor does the request concerning the equipment establish that defendant understood he could decline the test. A motorist might readily agree to an officer placing equipment on a vehicle without understanding that the officer's ensuing instructions are optional. Consent to the placement of the kit is not consent to take the test, much less proof that the test was presented as a choice. And the fact that Potete asked permission to place the kit does not establish that defendant would have felt equally free to refuse the test. An officer's request for permission to do one thing does not transform his subsequent instructions into a request—and defendant might not have felt he could say no to either "request."

¶ 30 The majority also places substantial weight on Potete's testimony that he intended his statement, "What I would like you to do," as a request. But the question is not what Potete supposedly intended; it is what his words and conduct communicated to defendant on the side of the road, dark but for the flashing red and blue LED lights. An officer cannot turn a command into a request simply by describing it as one after the fact. Otherwise, the statute's protection would depend not on whether a motorist was given a choice, but on how the officer later characterized the encounter. The statute governs what an officer does, not the label the officer gives it.

¶ 31 The State relies on *United States v. Warren*, 984 F.3d 1301 (8th Cir. 2021), but it works against the majority's position. In *Warren*, the defendant was in a vehicle when an officer stated,

" 'Sir, can you just stay in there for me, please?' " *Id.* at 1302. The defendant argued he was subject to an unlawful seizure and the officer's statement was equivalent to " 'Don't get out of the car.' " *Id.* at 1304. The court concluded this was a request and the officer spoke to the defendant "with respect in a voice that was polite, calm, and normal in volume and tone." *Id.* at 1303. Here, the State argues that Potete's statement and demeanor support a finding that he made a request on this basis. I disagree. The statement made by the officer in *Warren* started with "can you" and was followed by "please," which could arguably indicate a request rather than a command. While Potete had a calm and friendly demeanor, no such language was used here to clearly indicate Potete requested the PBT. Regardless, even an officer who has detained someone on the side of the road, with emergency lights flashing, need not raise their voice, display a weapon, or physically compel compliance to communicate that a motorist is expected to do as instructed.

¶ 32 Significantly, the officer in *Warren* testified that, if the defendant had walked away, he would have told the defendant to stop. *Id.* at 1304. However, this "post-hoc rephrasing of a request into the words of a command disregards the fact that [the officer's] statement and actions did not manifest an intent to compel compliance." *Id.* Stated another way, the officer's subjective intent was irrelevant as it was not conveyed to the defendant. *Id.* The case at bar is the same in this regard. Potete testified that his statement was a request instead of a command despite the language he chose to use. Viewed objectively, it is not unreasonable to find Potete's statement was a command. While his subjective intent was a request, such is irrelevant where he failed to convey this to defendant.

¶ 33 Next, the majority's reliance on *Gutierrez* is misplaced. The majority reasons that if the statute was satisfied in *Gutierrez*, it must be satisfied here. However, *Gutierrez* does not establish that a motorist's failure to refuse necessarily cures an officer's failure to request the test. The

statute contemplates both a request by the officer *and* the motorist's ability to refuse. *Taylor*, 2016 IL App (2d) 150634, ¶ 42. In *Gutierrez*, the officer did not tell the defendant that the test was mandatory, and the defendant did not exercise his right to refuse. *Gutierrez*, 2015 IL App (3d) 140194, ¶ 22. Those circumstances supported the conclusion that the statute had been satisfied on that record. *Id.* It does not stand for the proposition that an officer's instruction, absent an express statement that the test is mandatory, constitutes a request. Indeed, if the mere absence of an express command were sufficient, the statutory requirement that the officer "may request" a PBT would have little, if any, independent meaning. See 625 ILCS 5/11-501.5(a) (West 2024).

¶ 34 Further, *Taylor* is more persuasive than the majority gives it credit for. The officer in that case stated, " 'What I want you to do is take a deep breath and blow in here like you're blowing up a balloon, okay?' " *Taylor*, 2016 IL App (2d) 150634, ¶ 19. The court concluded that the officer did not " 'request' " the defendant take the PBT based on the following evidence: (1) the officer testified he did not make a request, (2) the officer's statement followed by " 'okay?' " asked the defendant whether he understood the directions—it was not a request to take the test, and (3) the officer's statement that he " 'want[ed]' " the defendant to take the test made it less likely that the defendant would understand the instruction as a choice rather than a command. *Id.* ¶ 44. Based on these considerations, it would be reasonable to conclude that Potete did not "request" that defendant take the PBT in this case. Potete's inclusion of the statements, "This will help me make sure you're good" and "What I would like you to do ***," is very similar to *Taylor* where the officer stated, "What I want you to do." This phrasing made it less likely that defendant understood Potete's statement was a request instead of a command. Also, like *Taylor*, while Potete asked defendant, "Okay?" following the aforementioned statements and the PBT instructions, this question is reasonably interpreted as asking defendant whether he understood the instructions for

the PBT and did not have the effect of making Potete's previous statements appear as a request rather than a command.

¶ 35 Last, the majority concludes that defendant had a reasonable opportunity to refuse because the sequence occurred over 20 seconds and defendant could have declined verbally or through his conduct. But the relevant question is not simply how much time elapsed during the encounter. It is whether, under the circumstances, defendant had a reasonable opportunity to understand that taking the test was optional and decline it. Potete used the intervening time to set up the device, repeat his instructions, and prepare to administer the test. He did not tell defendant that he could decline, although the statute admittedly did not require him to do so. The absence of such an advisement is not dispositive, but neither is the passage of 20 seconds. The circuit court could reasonably conclude the interaction presented the PBT as an expectation rather than an opportunity to refuse.

¶ 36 The statute does not require officers to use particular words, and courts should not impose a verbal formula. But the absence of a prescribed script does not mean that any polite formulation will suffice. The legislature authorized officers to request a motorist to submit to a PBT and expressly preserved the motorist's ability to refuse. Whether an officer honored that distinction must be determined from the encounter as a whole, not merely from the officer's stated intention or the politeness of his phrasing. A sentence does not become a question simply because it could be punctuated with a question mark—particularly when the person asking it has the authority to make "No, thank you" a less-than-practical response. Context determines whether words invite a choice or communicate an expectation of compliance. The majority may reasonably read this encounter as a request. But that is not enough. The question is whether the circuit court acted

unreasonably in reading it as a command. Because the record permits that conclusion, I would like to affirm. Okay?

***People v. Del Toro*, 2026 IL App (3d) 250440**

Decision Under Review:	Appeal from the Circuit Court of Will County, No. 25-DT-252; the Hon. Colette Safford, Judge, presiding.
Attorneys for Appellant:	James W. Glasgow, State's Attorney, of Joliet (Patrick Delfino, Thomas D. Arado, and Justin A. Nicolosi, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Attorneys for Appellee:	No brief filed for the appellee.