

A Preliminary Breath Screening Test (PBT) is Admissible by the State in a Motion to Quash Arrest and Suppress Evidence

By Sean D. Brady

The general rule in a driving under the influence of alcohol (DUI) case is that the State can not admit into evidence the results of a preliminary breath screening test (PBT) in its case in chief. People v. Rose, 268 Ill.App.3d 174, 181, 643 N.E.2d 865, 870 (4th Dist. 1994). However, 625 ILCS 5/11-501.5 (West 2001) does allow a defendant to admit the PBT results in a DUI criminal or civil case. In Rose, the court reviewed the issue of PBT admissibility after the trial court granted a motion in limine to exclude the PBT results at trial. After examining the legislative history of 626 ILCS 5/11-501.5, the court in dicta stated, “It appears, then, that the results of a PBT would be admissible to show probable cause existed at the time of arrest.” Rose, 268 Ill.App.3d at 180, 643 N.E.2d at 869-70. In 1998, the Third District Appellate Court addressed the issue of PBT admissibility at a motion to quash and suppress evidence.

In People v. Davis, 296 Ill.App.3d 923, 925, 695 N.E.2d 1363, 1364 (3rd Dist. 1998), the Third District Appellate Court reversed the trial court and held that the State could use the results of a PBT at a motion to quash arrest and suppress evidence in a DUI case. In Davis, the defendant was stopped for an equipment violation. The officer observed an odor of alcohol on the defendant’s breath and the defendant admitted to drinking. The defendant failed three field sobriety tests and a PBT. After Davis failed the PBT, he was arrested for DUI. Davis ultimately submitted to a breathalyzer which revealed a blood alcohol content (BAC) of 0.15. Id.

Davis filed a motion to quash arrest and suppress evidence alleging no probable cause and seeking suppression of the breathalyzer results. The State sought to admit the PBT results at the hearing on the motion. The trial court held that the PBT results were inadmissible because 625 ILCS 5/11-501.5 did not permit the use of PBT results when making a probable cause determination. The State filed an appeal on the admissibility of the PBT results at the motion to suppress. Id. at 25-26, 695 N.E.2d at 1364.

The appellate court’s first step was to look at the plain language of the statute. Section 11-501.5 of the Code stated:

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 preliminary breath screening test using a portable device approved by the Department of Public Health. The results of this 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 Sections 11-501.1 and 11-501.2, and the appropriate type of test to request. Any chemical test authorized under Section 11-501.1 and 11-501.2 may be requested by the officer regardless of the result of the preliminary breath screening test, if probable cause for an arrest exists. The result of a

preliminary breath screening test may be used by the defendant as evidence in any administrative or court proceeding involving a violation of Section 11-501 or 11-501.1. Davis, 296 Ill.App.3d at 926, 695 N.E.2d at 1365, quoting 625 ILCS 5/11-501.5 (West 1996).

After a review of the statute, the court held that 625 ILCS 5/11-501.5 was ambiguous on the issue of whether or not a PBT was admissible by the State to demonstrate probable cause. The court then looked at legislative history. The court found language in the legislative history from the House sponsor of the Senate bill that became 11-501.5 which indicated that the prosecution could use PBT results in court. Davis, 296 Ill.App.3d at 927, 695 N.E.2d at 1365. The court also found language in the legislative history from a member of the House stating that PBT results were “*used to develop probable cause for the arrest.*” Id. at 928, 695 N.E.2d at 1366, quoting 88th Ill. Gen. Assem., House Proceedings, April 20, 1993, at 22 (statement of Representative Parke).

Based on the legislative history, the court stated, “the primary purpose of section 11-501.5 is ... to aid officers in determining the existence of probable cause to arrest.” Davis, 296 Ill.App. 3d at 928, 695 N.E.2d at 1366. The court called PBT results “an investigative tool, similar to field sobriety tests.” Id. The court stated, “Since the purpose of a PBT is to aid a police officer in determining the existence of probable cause, the results of the PBT must be admissible in a proceeding where that determination is challenged.” Id.

The logical extension of Davis is that the State could use PBT results in a summary suspension hearing. The probable cause standard of a motion to suppress and the reasonable grounds standard of a summary suspension hearing are synonymous. People v. Rush, 319 Ill.App.3d 34, 38, 745 N.E.2d 157, 161 (2nd Dist. 2001). Therefore PBT results should be admissible by the State at a summary suspension hearing challenging the reasonable grounds for the arrest.

In Rush, the defendant was arrested for DUI which resulted in a suspended license. During the stop, the defendant had submitted to a PBT. The defendant filed a motion to suppress and a petition to rescind. In the motion to suppress, the results of the PBT came into evidence during the State’s case. The trial court suppressed the evidence based on no probable cause. The parties then stipulated to evidence from the motion to suppress as the evidence for the petition to rescind. Thus the parties stipulated to the PBT results as part of the petition to rescind. The trial court also granted the petition to rescind based on no reasonable grounds. The appellate court reversed the trial court on both the motion to suppress and the petition to rescind. Based on the facts, the appellate court found that probable cause / reasonable grounds were present. The appellate court based its decision on the facts of the case which included the results of the PBT. Although the appellate court did not use specific language delineating that the State could use PBT results in a summary suspension hearing, the court did rely on the PBT results as one factor in the determination that reasonable grounds were present which required a reversal of the trial court’s recession order. People v. Rush, 319 Ill.App.3d 34, 745 N.E.2d 157 (2nd Dist. 2001).

Thus, the State can use PBT results to show probable cause in a motion to suppress based on Davis. In addition, the State should be able to use PBT results to show reasonable grounds in a summary suspension hearing based on Davis and Rush. The next issue for the appellate court to address regarding PBT results may be the issue of whether or not the State can admit PBT results in rebuttal to show intoxication in a DUI criminal case. To date the appellate court has not addressed the issue.