

2011 IL App (3d) 100664
Appellate Court of Illinois,
Third District.

The PEOPLE of the State of
Illinois, Plaintiff–Appellant,

v.

Igoris DOVGAN, Defendant–Appellee.

No. 3–10–0664. | Dec. 5, 2011.

Synopsis

Background: Defendant, who had been charged with two counts of aggravated driving under the influence (DUI), filed motion to suppress evidence of a breath test result administered four-and-a-half hours after his arrest. The Circuit Court, Will County, [Amy Bertani–Tomczak, J.](#), granted motion. State appealed.

[Holding:] The Appellate Court, [Schmidt, J.](#), held that definition of “alcohol concentration” in Uniform Commercial Driver's License Act (UCDLA) as that which results from a breath test administered within two hours of a driver being stopped or detained did not apply to defendant's case.

Reversed and remanded.

[Holdridge, J.](#), specially concurred, with opinion.

West Headnotes (2)

[1] **Automobiles**

🔑 [Time for test](#)

Definition of “alcohol concentration” in Uniform Commercial Driver's License Act (UCDLA) as that which results from a breath test administered within two hours of a driver being stopped or detained did not apply to prosecution of defendant for aggravated driving under the influence (DUI) under the Illinois Motor Carrier Safety Law (IMCSL), as the UCDLA definition of “alcohol concentration” began by noting it was limited by the definitions set forth elsewhere in vehicle code and applied only for the purposes

of enforcing the UCDLA, and legislature, via the IMCSL, had adopted provision of Code of Federal Regulation (CFR) defining “alcohol concentration,” which contained no time limitation for testing. S.H.A. 625 ICS 5/6–500, 5/18b–103, 5/18b–105, 5/18b–108; [49 C.F.R. § 382.107](#).

[Cases that cite this headnote](#)

[2] **Criminal Law**

🔑 [Filing and service \(failure to file or to file in time\)](#)

Appellate Court would examine state's appeal of trial court's grant of defendant's motion to suppress results of his breath test in which defendant did not file a responsive brief, as the matter was not complex and it could be decided without aid of defendant's responsive brief.

[Cases that cite this headnote](#)

Attorneys and Law Firms

***230** [Terry A. Mertel](#), Deputy Director, State's Attorneys Appellate Prosecutor, James Glasgow, State's Attorney, Laura E. DeMichael, State's Attorneys Appellate Prosecutor, for People.

No brief filed for appellee.

Opinion

OPINION

Justice [SCHMIDT](#) delivered the judgment of the court, with opinion.

****202** ¶ 1 The State charged defendant, Igoris Dovgan, with two counts of aggravated ****203** ***231** driving under the influence in violation of sections 18b–103, 18b–105 and 18b–108(b) of the Illinois Vehicle Code (Vehicle Code) ([625 ILCS 5/18b–103](#), 18b–105, 18b–108(b) (West 2008)). The circuit court of Will County granted defendant's motion to suppress evidence of a breath test administered 4 ½ hours after defendant's arrest. The State appeals.

¶ 2 FACTS

¶ 3 The facts of this matter were not disputed below. Trooper Korando arrived on the scene of a traffic crash on Interstate 80 at 9:48 a.m. on May 11, 2009. The crash involved a commercial motor vehicle driven by defendant. Upon arrival, Trooper Korando placed defendant under arrest. The arresting trooper remained at the scene of the accident for an extended period of time. The trooper administered a breath test to defendant at 2:35 p.m., which indicated defendant's blood alcohol content to be 0.032.

¶ 4 The bill of indictment alleged:

“Count I

* * * [D]efendant, a commercial motor vehicle driver, willfully operated a commercial motor vehicle * * * at a time when he had a measured alcohol concentration in his blood or breath, based on the definition of blood or breath units in Chapter 625, Section 11–501.2, as prohibited by 49 CFR 392.5, in violation of Chapter 625, Section 5/18b–103, Section 5/18b–105 and section 5/18b–108(b) of the Illinois Compiled Statutes * * *.

Count II

* * * [D]efendant, a commercial motor vehicle driver, willfully operated a commercial motor vehicle * * * at a time when he had a detectable presence of alcohol on his person, as prohibited by 49 CFR 392.5, in violation of Chapter 625, Section 5/18b–103, Section 5/18b–105 and section 5/18b–108(b) of the Illinois Compiled Statutes * * *.”

¶ 5 Defendant filed a motion to suppress, claiming that the State administered his alcohol test outside the two-hour time limit imposed by section 6–500 of the Vehicle Code. 625 ILCS 5/6–500 (West 2008). As such, defendant claimed the results of the tests were inadmissible. After originally rejecting defendant's argument, the trial court granted defendant's motion to suppress. Following denial of its motion to reconsider, the State filed a certificate of substantial impairment. This appeal followed.

¶ 6 ANALYSIS

[1] ¶ 7 When reviewing a trial court's ruling on a motion to suppress evidence, we apply the two-part standard of review adopted by the Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); *People v. Luedemann*, 222 Ill.2d 530, 306 Ill.Dec. 94, 857 N.E.2d 187 (2006). We are to review a trial court's findings of historical fact for clear error, give due weight to any inferences drawn from those facts by the trial court and reverse those findings only if they are against the manifest weight of the evidence. *Id.* at 542, 306 Ill.Dec. 94, 857 N.E.2d 187. However, we remain free to undertake our own assessment of the facts in relation to the issues and draw our own conclusions when deciding what relief should be granted. *Id.* As such, we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Id.*

¶ 8 Contained within the Vehicle Code are numerous different rules, laws and acts. See 625 ILCS 5/18b–100 *et seq.* (West 2008) (Illinois Motor Carrier Safety Law (IMCSL)); 625 ILCS 5/18c–1101 *et seq.* (West 2008) (Illinois Commercial Transportation Law); *232 **204 625 ILCS 5/11–100 *et seq.* (West 2008) (the Rules of the Road); 625 ILCS 5/6–500 *et seq.* (West 2008) (the Uniform Commercial Driver's License Act (UCDLA)). At issue in this appeal is section 6–500 which states as follows:

“Notwithstanding the definitions set forth elsewhere in this Code, for purposes of the Uniform Commercial Driver's License Act (UCDLA), the words and phrases listed below have the meanings ascribed to them as follows:

* * *

(2) Alcohol concentration. ‘Alcohol concentration’ means:

(A) the number of grams of alcohol per 210 liters of breath; or

(B) the number of grams of alcohol per 100 milliliters of blood; or

(C) the number of grams of alcohol per 67 milliliters of urine.

Alcohol tests administered within 2 hours of the driver being ‘stopped or detained’ shall be considered that driver's ‘alcohol concentration’ for the purposes of enforcing this UCDLA.”

625 ILCS 5/6–500 (West 2008).

¶ 9 Defendant convinced the trial court that this section of the UCDLA mandated suppression of the results of his breath test conducted beyond two hours after he had been stopped or detained. The State argued to the trial court that it never charged defendant with violating the UCDLA and, as such, section 6–500 is totally inapplicable to defendant's prosecution. The State noted that it alleged defendant operated a commercial motor vehicle in violation of the IMCSL (625 ILCS 5/18b–100 *et seq.* (West 2008)): specifically, sections 18b–103, 18b–105, and 18b–108. The State reiterates those arguments on appeal, claiming the trial court erred in using a section of the UCDLA as authority to suppress evidence in a prosecution initiated under the IMCSL. Alternatively, the State asserts that even if section 6–500 of the UCDLA is applicable to this matter, proper application of the statute does not mandate suppression of the results of defendant's breath test.

[2] ¶ 10 Defendant has not filed a responsive brief in this matter and, as such, we review this appeal pursuant to the standards set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill.2d 128, 345 N.E.2d 493 (1976); (see also *People v. Miller*, 212 Ill.App.3d 195, 156 Ill.Dec. 480, 570 N.E.2d 1202 (1991)). The *Talandis* court held that reversal should not be automatic when an appellee fails to file a brief but, instead, when the record is simple and the claimed error is such that the reviewing court can easily decide the matter without the aid of an appellee's brief, the court should decide the merits of the appeal. *Talandis*, 63 Ill.2d at 133, 345 N.E.2d 493; *Miller*, 212 Ill.App.3d at 199, 156 Ill.Dec. 480, 570 N.E.2d 1202. If a case is complex, a court of review should not be compelled to serve as an advocate for the appellee. *Talandis*, 63 Ill.2d at 133, 345 N.E.2d 493; *Miller*, 212 Ill.App.3d at 199, 156 Ill.Dec. 480, 570 N.E.2d 1202. We find this matter is not complex and that it can be decided without the aid of defendant's brief.

¶ 11 As noted above, both the UCDLA and the IMCSL are found within the Vehicle Code. 625 ILCS 5/1–100 *et seq.* (West 2008). Our task of determining whether the trial court properly suppressed the results of defendant's breath test calls upon us to interpret statutes contained within the Vehicle Code. Specifically, we must determine how section 6–500 of the UCDLA applies, if it applies at all, to someone charged under the IMCSL.

¶ 12 The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent, while presuming the legislature did not intend to create **205 *233 absurd, inconvenient, or unjust results. *In re E.B.*, 231 Ill.2d 459, 326 Ill.Dec. 1, 899 N.E.2d 218 (2008); *In re B.L.S.*, 202 Ill.2d 510, 270 Ill.Dec. 23, 782 N.E.2d 217 (2002). The language of the statute is the best indication of legislative intent, and we must give that language its plain and ordinary meaning. *Id.* at 515, 270 Ill.Dec. 23, 782 N.E.2d 217. “Because all provisions of a statutory enactment are viewed as a whole [citations], words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute [citations]. * * * Accordingly, in determining the intent of the legislature, the court may properly consider not only the language of the statute, but also the reason and necessity for the law, the evils sought to be remedied, and the purpose to be achieved.” *In re Detention of Lieberman*, 201 Ill.2d 300, 308, 267 Ill.Dec. 81, 776 N.E.2d 218 (2002).

¶ 13 We acknowledge, as defendant argued to the trial court, that section 6–500 of the UCDLA defines “alcohol concentration” as that which results from a breath test administered within two hours of a driver being stopped or detained. 625 ILCS 5/6–500 (West 2008). However, that definition begins by noting it is limited by “the definitions set forth elsewhere in this Code” and further only applies “for the purposes of enforcing [the] UCDLA.” 625 ILCS 5/6–500 (West 2008).

¶ 14 Through section 18b–105 of the IMCSL, the legislature adopted various provisions of the Code of Federal Regulations. 625 ILCS 5/18b–105(b) (West 2008). Section 18b–105(b) states that the “following parts of Title 49 of the Code of Federal Regulations, as now in effect, are hereby adopted by reference as though they were set out in full: * * * Part 382—Controlled Substances and Alcohol Use and Testing; * * * Part 392—Driving of Motor Vehicles.” 625 ILCS 5/18b–105(b) (West 2008).

¶ 15 Part 382 states:

“Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.” 49 C.F.R. § 382.107 (2010).

¶ 16 Section 392.5(a)(1) prohibits any driver from using alcohol “within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle.”

49 C.F.R. § 392.5(a)(1). Section 392 further states that “no driver shall * * * [u]se alcohol * * * or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle.” 49 C.F.R. § 392.5(a)(2).

¶ 17 We find nothing in either part 382 or part 392 of title 49 of the Code of Federal Regulations that limits the definition of “alcohol concentration” to results from tests administered within two hours of the driver being stopped or detained as is found within section 6–500 of the UCDLA. We note the definition of “alcohol concentration” found in section 382.107 of title 49 of the Code of Federal Regulations contains no time limitation whatsoever. 49 C.F.R. § 382.107. The definition of “alcohol concentration” found within the IMCSL, under which the State charged defendant, differs from that contained within the UCDLA. Again, our legislature was clear in its language that the definition of “alcohol concentration” found in section 6–500 of the UCDLA only applies “for the purposes of enforcing [the] UCDLA” and does not trump “the definitions set forth elsewhere in this Code.” 625 ILCS 5/6–500 (West 2008).

¶ 18 As the State did not charge defendant under the UCDLA but, instead, **206 *234 charged him under the IMCSL, which contains a competing definition of “alcohol concentration,” we hold as a matter of law that section 6–500 of the UCDLA is inapplicable to this prosecution. As such, we find the trial court improperly relied upon section 6–500 (625 ILCS 5/6–500 (West 2008)) as authority to suppress the results of defendant's breath test.

¶ 19 Courts have routinely held the timing of a breath exam goes to the weight of the test and not its admissibility. *People v. Zator*, 209 Ill.App.3d 322, 332, 154 Ill.Dec. 162, 568 N.E.2d 162 (1991) (“Illinois law is well settled that any delay between the time of the incident and the breathalyzer test goes to the weight given the results, viewed in light of the totality of the circumstances.”). While we may one day be called upon to

determine whether and how section 6–500 alters that general principal, today is not that day.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Will County is reversed and this matter remanded for further proceedings.

¶ 22 Reversed and remanded.

Justice **WRIGHT** concurred in the judgment and opinion.

Justice **HOLDRIDGE** specially concurred, with opinion.

¶ 23 Justice **HOLDRIDGE**, specially concurring:

¶ 24 I agree with the majority's judgment and analysis. I write separately to note that, even if the results of the breath test were properly suppressed, the State likely could have proceeded against the defendant on count II of the indictment based entirely on the testimony of the arresting officer. Count II alleged that the defendant “willfully operated a commercial motor vehicle * * * at a time when he had a *detectable presence of alcohol on his person*, as prohibited by 49 CFR 392.5,” which the Illinois Motor Carrier Safety Law (IMCSL) adopts by reference. See 625 ILCS 5/18b–105 (West 2008). During the bond hearing, the State informed the court that the arresting officer “noted an odor of alcohol on the defendant's breath” immediately after the accident. If the officer were able to testify to that effect, such testimony alone could establish that the defendant operated a commercial motor vehicle at a time when he had a “detectable presence of alcohol on his person,” in violation of section 18b–105.

Parallel Citations

2011 IL App (3d) 100664, 959 N.E.2d 230