



ILLINOIS STATE BAR ASSOCIATION

TRAFFIC LAWS & COURTS

The newsletter of the Illinois State Bar Association's Section on Traffic Laws & Courts

Constitutionality of Secretary of State BAIID violation hearings

By Larry A. Davis

The State of Illinois, over the last 20 years has mandated the ever-increasing use of the breath alcohol ignition interlock device (BAIID) for 2 classes of drivers: a) those whose licenses are revoked for driving while under the influence (DUI) and are required to have a BAIID installed as a condition of holding a restricted driving permit (RDP) and; 2) those who have a statutory summary suspension as a result of a recent DUI arrest and are required to have a BAIID installed as a condition of a monitored device driving permit (MDDP). These devices are designed to monitor the driver's consumption of alcohol and to prevent the operation of the vehicle

when alcohol is detected which exceeds a certain set point or the device detects an attempt to circumvent its operation. The devices are regularly downloaded and the results are provided to the Secretary of State in the form of a monitor report.

The Secretary of State's office is charged with the enforcement of the BAIID laws including the promulgation of administrative rules and conducting hearings for those drivers who wish to seek to challenge license sanctions imposed for alleged BAIID violations. The law provides for several types of sanctions for BAIID violations which,

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Guilty of driving while license suspended even if the suspension is rescinded after the fact

By Lisa L. Dunn

Imagine the very real and plausible scenario that you are representing your client in a DUI case. You timely file the Petition to Rescind the Statutory Summary Suspension and it is set for hearing. Days before the hearing on the Petition to Rescind the Statutory Summary Suspension, your client informs you that he has been arrested for driving while his license was suspended. The suspension is due to the statutory summary suspension. A few days later, the court, at the summary suspension hearing, grants the Petition to Rescind. Your client's driving privileges are no longer suspended. So, your client wants to know what will happen to him on the charge of driving while his license was suspended. After all, that suspension has been rescinded so it would

hardly appear just for him to be convicted of the offense of driving while license suspended.

The Illinois Supreme Court recently ruled on that exact issue in *People v. Elliott*, 2014 IL 115308. Unfortunately for your client, the result is not in his favor. The Illinois Supreme Court ruled that a driver can be found guilty of driving on a suspended license even if the suspension is later rescinded.

In *People v. Elliott*, the Supreme Court considered whether conduct that occurred after the commencement of, but before the rescission of the defendant's statutory summary suspension renders the charge invalid. The Court viewed

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## Guilty of driving while license suspended even if the suspension is rescinded after the fact

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the issue as one of statutory construction. In order to construe a statute, the objective is to consider and give effect to the legislature's intent. The Court looked at section 12-118.1(b) of the Illinois Vehicle Code to ascertain the plain meaning of "rescind." 625 ILCS 5/2-118.1(b) (West 2008). Unfortunately, the Code contains an extensive catalog of defined terms, but "rescind" is not contained therein.

The Court next turned to the dictionary definition of "rescind." Here, there are two meanings: either prospective or retroactive. The dictionary defines "rescind" as "to do away with: take away: remove" and "to abrogate (a contract) by tendering back or restoring to the opposite party what one has received from him." Webster's Third New International Dictionary 1930 (2002). The dictionary offers no additional assistance when you look at the word "rescission", giving both a prospective and retroactive meaning.

The Court next reviewed how the Illinois legislature has dealt with the term "rescind" in other legislation. The Court reviewed section 5(b) of the Life Care Facilities Act where it found "rescind" was meant to have a retroactive meaning. However, in section 108A-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/108A-1 (West 2008)), the legislature used the term "rescind" to have only a prospective meaning.

Finally, the Court reviewed the public policy of the statutory summary suspension statute which is to protect the public from impaired drivers and to "swiftly remove them from our roadways" *People v. Moore*, 218 Ill.2d 375, 379 (2006). The summary suspension statute, Section 11-501.1 of the Illinois Vehicle Code authorizes the Secretary of State to summarily suspend the license of a driver arrested for DUI who refuses to submit to chemical testing, tests above the legal alcohol concentration limit, or tests positive for intoxicating substances. 625 ILCS 5/11-501.1(d) (West 2002). The purpose of the statutory summary suspension is to ensure that drivers charged with DUI are removed from the roads certainly and swiftly. This purpose comports more closely with a prospective interpretation of "rescind".

The Court found a second reason that "rescind" should be read prospectively is that

it more closely comports with other provisions of statutory summary suspension laws. A pending petition to rescind does not stay or delay the implementation of the statutory summary suspension. 625 ILCS 5/2-118.1(b) (West 2002).

The third reason the Court found "rescind" should be read prospectively is to avoid absurd or unjust results. If "rescind" is to be read retroactively, then the driving on a suspended license charge could not be resolved with any certainty as the underlying charge might be in flux at the trial court level, and upon appeal. This would make the enforcement of the charge very difficult.

Finally, a prospective reading of "rescind" is consistent with the statutory summary suspension case law.

The lesson to be learned from *People v. Elliott* is that we must impress upon our clients who are charged with DUI and have filed a Petition to Rescind the Statutory Summary Suspension is that they should not drive. It will not matter if the summary suspension is rescinded *after* they are arrested for driving on a suspended license. The important point to remember is the existing status of the driver's license at the time of the arrest is controlling. The ultimate validity of the underlying suspension is not a dispositive factor.

The next question you should be asking yourself is whether "rescind" applies prospectively to all of the other suspensions contained in the Illinois Vehicle Code. (625 ILCS 5/6-206). *People v. Elliott* did not address this question. It certainly leads one to consider what will be the consequences in other non-statutory summary suspension situations. Given the reasoning in the instant case, it would seem that if your client's driving privileges were suspended at the time of the arrest, then even vacating the suspension will have no effect upon the underlying charge of driving while license suspended. This could lead to harsh results for you client. ■

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