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People v. Moore: Can There Be Collateral Estoppel in the Traffic Court?

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I. INTRODUCTION

Under the doctrine of collateral estoppel, an issue of ultimate fact that has been determined by a final, valid judgment may not be relitigated between the same parties in a future lawsuit.[1] "[Collateral estoppel] applies 'when a party or someone in privity with a party participates in two separate and consecutive cases arising on *different* causes of action and some controlling fact or question material to the determination of both causes has been adjudicated against that party in the former suit by a court of competent jurisdiction.' "[2] Although related to the doctrine of res judicata, collateral estoppel has a more limited application, as it serves to bar relitigating a particular issue, while the doctrine of res judicata precludes a subsequent suit involving the same claim, demand, or cause of action.[3]

Until recently, the doctrine of collateral estoppel could arise in traffic court proceedings when a motorist who had been stopped for driving under the influence (DUI) prevailed on a petition to rescind a summary suspension of his driver's license because the trial court found that the arresting officer lacked reasonable grounds to believe that the motorist was DUI. Under these circumstances, the motorist could move during his criminal DUI proceeding to quash the arrest and suppress any resulting evidence on the ground that the arresting officer lacked probable cause. In short, the motorist could assert the doctrine of collateral estoppel and argue that because he had prevailed at the summary suspen-

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1. People v. Borchers, 67 Ill. 2d 578, 582, 367 N.E.2d 955, 957 (1977) (quoting Ashe v. Swenson, 397 U.S. 436, 443 (1970)); *see also* People v. Grayson, 58 Ill. 2d 260, 263-64, 319 N.E.2d 43, 45 (1974).

2. People v. Moore, 138 Ill. 2d 162, 166, 561 N.E.2d 648, 650 (1990) (quoting Housing Auth. of LaSalle County v. YMCA of Ottowa, 101 Ill. 2d 246, 252, 461 N.E.2d, 959, 961-62 (1984) (emphasis in original)). *See generally* 6 L. PIECZYNSKI, ILLINOIS PRACTICE: CRIMINAL PRACTICE AND PROCEDURE § 21.18, at 13 (1989).

3. *Compare* BLACK'S LAW DICTIONARY 551-52 (6th ed. 1989) (estoppel) *with id.* at 1305-06 (res judicata).

sion hearing, the issue of probable cause had already been litigated in his favor.[4]

This argument seems logical. However, in *People v. Moore*,[5] the Illinois Supreme Court held that the result of a summary suspension hearing cannot collaterally estop the litigation of the same issue in a subsequent criminal DUI proceeding.[6] With the decision in *Moore*, the court not only resolved a conflict among the appellate courts, but also removed this particular application of the doctrine of collateral estoppel from traffic court.

This Article briefly discusses the origins of the doctrine of collateral estoppel. The Article then examines the doctrine in the context of several Illinois appellate court cases decided prior to the supreme court's ruling in *Moore*, with emphasis on the differing rationales of these appellate decisions. Finally, the Article discusses the holding in *Moore* and offers some suggestions for avoiding duplicative litigation in DUI criminal proceedings.

II. Origins of the Doctrine of Collateral Estoppel

The doctrine of res judicata, and the related doctrine of collateral estoppel, seem to have been fundamental principle of civil law from the beginning. However, the American criminal law system did not truly accept collateral estoppel until the early part of this century, when the United State Supreme Court decided *United States v. Oppenheimer*.[7] In *Oppenheimer*, the Court stated:

> "Where a criminal charge has been adjudicated upon by a court having jurisdiction to hear and determine it, that adjudication, whether it takes the form of an acquittal or conviction is final as to the matter so adjudicated upon, and may be pleaded in bar to any subsequent prosecutions for the same offense . . . . In this respect the criminal law is in unison with that which prevails in civil proceedings."[8]

While the Supreme Court in *Oppenheimer* clearly established the application of the doctrine of collateral estoppel in federal criminal law,[9] whether the doctrine applied in state criminal proceedings

4. People v. Moore, 184 Ill. App. 3d 102, 106-07, 539 N.E.2d 1380, 1382-83 (5th Dist. 1989), *rev'd*, 138 Ill. 2d 162, 561 N.E.2d 648 (1990).

5. 138 Ill. 2d 162, 561 N.E.2d 648 (1990).

6. *Id.* at 169-70, 561 N.E.2d at 651-52.

7. 242 U.S. 85, 87-88 (1916).

8. *Id.* at 88 (quoting The Queen v. Miles, 24 Q.B.D. 423, 431 (Hawkins, J.)).

9. *Id.* at 87-88; *see also* United States v. Kramer, 289 F.2d 909, 913 (1951) ("it is much too late to suggest that this principle [collateral estoppel] is not fully applicable" in federal criminal law).

remained unclear. Subsequently, in *Ashe v. Swenson*,[10] the Court answered this question in the affirmative. The defendant in *Ashe* was charged with armed robbery in Missouri.[11] At trial, he was acquitted because he could not be clearly identified as one of several masked gunmen who had robbed a poker game.[12] Six weeks later, at a second trial for the robbery of another player in the same game, Ashe was convicted and sentenced to thirty-five years in jail.[13] Not surprisingly, the identification testimony at the second trial was stronger.[14]

Ashe brought a federal habeas corpus proceeding, and after the writ was denied by both the district and appellate courts, the Supreme Court granted certiorari.[15]

The Supreme Court in *Ashe* stated as an initial matter that collateral estoppel applies to federal criminal proceedings through the double jeopardy provision of the fifth amendment to the United States Constitution.[16] Further, the Court stated that the doctrine applies in state criminal cases by virtue of incorporation under the fourteenth amendment.[17] Accordingly, the Court reversed Ashe's conviction at the second trial. The Court also noted that collateral estoppel must not be applied in a "technically restrictive" manner, but "must be set in a practical frame and viewed with an eye to all circumstances of the proceedings."[18]

In Illinois, the doctrine of collateral estoppel has been applied to both civil and criminal cases.[19] Additionally, one Illinois court has applied the doctrine to bar a criminal charge of theft under state law after the defendant had already been acquitted in federal court on a mail fraud charge because the two charges involved the same controlling fact.[20] Thus, both federal and state criminal courts accept collateral estoppel as a viable legal doctrine.

10. 397 U.S. 436 (1970).
11. *Id.* at 437-38.
12. *Id.* at 438-39.
13. *Id.* at 440.
14. *Id.*
15. *Id.* at 440-41.
16. *Id.* at 442.
17. *Id.* at 445-46.
18. *Id.* at 444.
19. People v. Williams, 59 Ill. 2d 557, 560-62, 322 N.E.2d 461, 462-63 (1975).
20. People v. Borchers, 67 Ill. 2d 587, 585-89, 367 N.E.2d 955, 959 (1977).

III. COLLATERAL ESTOPPEL IN THE TRAFFIC COURT

A. Background

Under Illinois law, a motorist who is stopped and arrested for DUI may face both civil and criminal proceedings.[21] The civil proceeding is the hearing to rescind the summary suspension of the offending motorist's driver's license. Under Illinois law, the Secretary of State is authorized to suspend a motorist's driver's license based upon a police officer's sworn report that (1) a blood, breath, or urine test was requested of the motorist, and (2) the motorist refused to take one of the required tests, or submitted to a test that resulted in a blood alcohol level in excess of the legal limit.[22]

A summary suspension hearing[23] is an administrative function that takes the form of a civil court proceeding.[24] At the hearing, the defendant bears the burden of presenting a prima facie case for rescission of the summary suspension.[25] Normally, the defendant will raise issues such as the sufficiency of the arresting officer's sworn report[26] and may offer evidence to rebut the charge of DUI by presenting other test results that indicate a blood alcohol level within the legal limit.[27]

The criminal DUI proceeding is separate from the summary suspension hearing.[28] In the criminal proceeding, the defendant may rebut the state's evidence on the issues of probable cause and the propriety of blood, breath, or urine tests administered in conjunction with the arrest.[29]

B. People v. Stice

A Fourth District case, *People v. Stice*,[30] was the first appellate court decision in Illinois to address whether issues decided in a summary suspension hearing are barred by collateral estoppel from a subsequent criminal DUI proceeding. In *Stice*, the defendant

21. Johnston & Higgins, *Driving Under the Influence in Illinois*, 22 LOY. U. CHI. L.J. 551 (1991).

22. ILL. REV. STAT. ch. 95 1/2, para. 11-501.1(d) (1989).

23. This proceeding is also referred to in the Article as a "rescission hearing."

24. People v. Teller, 207 Ill. App. 3d 346, 349, 565 N.E.2d 1046, 1048 (2d Dist. 1991).

25. People v. Orth, 124 Ill. 2d 326, 340, 530 N.E.2d 210, 215 (1988); People v. Gryczkowski, 183 Ill. App. 3d 1064, 1070, 539 N.E.2d 1360, 1364 (2d Dist. 1989).

26. People v. McClain, 128 Ill. 2d 500, 504-05, 539 N.E.2d 1247, 1257-52 (1989).

27. ILL. REV. STAT. ch. 95 1/2, para. 11-501.2(a)(3) (1989).

28. Johnston & Higgins, *supra* note 21.

29. People v. Krueger, 208 Ill. App. 3d 897, 905-08, 567 N.E.2d 717, 721-24 (2d Dist. 1991).

30. 168 Ill. App. 3d 662, 523 N.E.2d 1054 (4th Dist. 1988).

motorist was arrested on a charge of DUI.[31] At the hearing to rescind the summary suspension, the court found that the state did not sufficiently prove that the arresting officer had probable cause to arrest the defendant for DUI.[32] Following his successful petition to rescind the summary suspension, the defendant moved to dismiss the criminal DUI charge. The basis for the motion was that the state was collaterally estopped from relitigating the issue of probable cause.[33] The trial court denied the defendant's motion.[34]

On appeal, the reviewing court held that the doctrine of collateral estoppel did not apply because a rescission hearing, although conducted in court, is in reality an administrative proceeding.[35] The court stated that the purpose of the hearing is to provide prompt, post-suspension review of the summary suspension in order to comply with due process requirements.[36] The court also noted that a rescission hearing is designed to be an expeditious proceeding that allows for evidence to be presented by means of a police officer's written report.[37] The court observed that application of the doctrine of collateral estoppel would defeat the goal of expediency.[38] Also, the court reasoned that the state often relies on written reports at the summary suspension hearing. If a ruling at such a hearing could affect the admissibility of evidence at a criminal DUI proceeding, the court reasoned, the state would be much less willing to rely on such written reports.[39]

C. People v. Filitti

The Second District appellate court addressed this same issue in *People v. Filitti*.[40] In that case, the trial court had concluded in a rescission hearing that the arresting officer lacked reasonable grounds to believe that the defendant had been DUI. Therefore, the court sustained the defendant's petition to rescind the suspension.[41] Thereafter, the trial court sustained the defendant's motion to suppress the evidence at the criminal DUI proceeding based

31. *Id.* at 663, 523 N.E.2d at 1054.
32. *Id.*
33. *Id.* at 664, 523 N.E.2d at 1055.
34. *Id.* at 663, 523 N.E.2d at 1055.
35. *Id.* at 664-65, 523 N.E.2d at 1055-56.
36. *Id.* at 664, 523 N.E.2d at 1055.
37. *Id.* at 664-65, 523 N.E.2d at 1055-56.
38. *Id.*
39. *Id.* at 665, 523 N.E.2d at 1056.
40. 190 Ill. App. 3d 884, 546 N.E.2d 1142 (2d Dist. 1989).
41. *Id.* at 885, 546 N.E.2d at 1143.

upon the doctrine of collateral estoppel.[42]

On appeal, the *Filitti* court held that in order for the doctrine of collateral estoppel to apply, four conditions must be met.[43] Those conditions are: (1) the issue to be precluded must be identical to the one decided at the previous hearing; (2) the issue in question must be a controlling question of fact in both the civil rescission hearing and the criminal DUI proceeding; (3) a final judgment must have been rendered in the prior rescission hearing; and (4) the precluded party under the doctrine must have been a party or in privity to a party in the previous litigation.[44] Importantly, the court also warned that collateral estoppel should be applied in a rational, realistic manner, rather than in a hypertechnical fashion.[45]

In addition to explaining when the doctrine of collateral estoppel would apply, the *Filitti* court also enumerated several circumstances in which the doctrine will not be invoked. Those exceptions include: (1) the precluded party did not have a full and fair opportunity to litigate the issue; (2) application of the doctrine would cause an injustice to the precluded party; or (3) relitigation of the issue is warranted by differences in the quality or extensiveness in the procedures followed in the two proceedings.[46]

As in *Stice*, the *Filitti* court concluded that a trial court's determination at a summary suspension rescission hearing that there was no probable cause to arrest does not preclude relitigation of that issue in a subsequent criminal DUI proceeding.[47] The court noted that a contrary result would "effectively eviscerate the provision allowing the State to rely on the officer's official reports at a summary suspension hearing since the State would be forced to call its witnesses in order to prevent an adverse ruling that would jeopardize the DUI prosecution."[48]

In addition, the court analogized the rescission proceeding to an implied consent hearing. In the latter context, the Illinois Supreme Court had stated:

> "A motion to suppress is directed toward determining whether certain evidence should be admitted at trial; in many cases, suppression of the evidence results in a dismissal of the charges.

42. *Id.*
43. *Id.* at 886-87, 546 N.E.2d at 1143.
44. *Id.* at 886, 546 N.E.2d at 1143.
45. *Id.*
46. *Id.*
47. *Id.* at 887-88, 546 N.E.2d at 1144.
48. *Id.* at 888, 546 N.E.2d at 1144-45.

> However, when a defendant prevails in an implied-consent hearing, the decision does not effect the dismissal of the criminal charges, it serves only to stay the suspension of his driving privileges until the DUI proceedings are concluded."[49]

The *Filitti* court also noted that the purpose of the statutory summary suspension scheme is to protect people driving on the highways.[50] That purpose, the court observed, would not be served by permitting rescission hearings to be used as a means of destroying the state's case in the related criminal DUI proceeding.[51]

D. People v. Flynn

In *People v. Flynn*,[52] the trial court in a criminal DUI proceeding granted the defendant's motion to suppress results of a breathalyzer test. The defendant had argued that the doctrine of collateral estoppel precluded relitigation of an issue that was ruled on at the defendant's rescission hearing.[53] At the hearing, the trial court had rescinded summary suspension of the defendant's driver's license because the officer was unable to produce a valid license to operate the breathalyzer machine and because the evidence presented at the hearing indicated that there may have been a break in the twenty-minute observation period before the defendant was given the breathalyzer.[54] In granting the defendant's motion to suppress, the criminal trial court held that since a full and complete consideration of these matters had occurred at the rescission hearing, the state was collaterally estopped from any further consideration of those issues at the DUI prosecution.[55]

On appeal, the First District reversed, persuaded in part by the decisions in *Stice* and *Filitti*.[56] The appellate court in *Flynn* noted the supreme court's prior determination "that the issues involved in an implied-consent hearing [are] not so similar to the underlying criminal charge of DUI that they [become] a part of the criminal process."[57] By analogy, the court determined that collateral estoppel does not preclude the state from offering breathalyzer test re-

49. *Id.* at 888, 546 N.E.2d at 1145 (quoting Koss v. Slater, 116 Ill. 2d 389, 396, 507 N.E.2d 826, 829 (1987)).
50. *Id.* (citing People v. Gerke, 123 Ill. 2d 85, 94, 525 N.E.2d 68, 71-72 (1988)).
51. *Id.*
52. 197 Ill. App. 3d 13, 554 N.E.2d 668 (1st Dist. 1990).
53. *Id.* at 15, 554 N.E.2d at 669.
54. *Id.*
55. *Id.*
56. *Id.* at 15-17, 554 N.E.2d at 669-70.
57. *Id.* at 17, 554 N.E.2d at 670 (citing Koss v. Slater, 116 Ill. 2d 389, 395, 507 N.E.2d 826, 829 (1987)).

sults at a criminal trial for DUI, even when such results were held inadmissible at a previous rescission hearing.[58]

IV. *PEOPLE V. MOORE*

A. Facts of the Case

In *People v. Moore*,[59] a motorist was stopped by police officers after having made "two wide right turns onto unmarked streets."[60] After noticing the odor of alcohol on Moore's breath, the officers arrested him for DUI.[61] Police requested a breathalyzer test, which Moore provided after having consulted with counsel.[62] The test revealed a blood alcohol level of 0.17%.[63] In accordance with the applicable Illinois statute, Moore was immediately notified of the statutory summary suspension of his driver's license.[64]

At the pursuant summary suspension hearing, the court found that Moore's wide right turns did not give rise to probable cause for the initial stop of the vehicle.[65] Accordingly, the court rejected as hearsay police reports that the state had offered to prove the results of the breathalyzer test.[66] Thereafter, at his criminal DUI trial, Moore argued that the principles of collateral estoppel barred relitigation of the prior finding of no probable cause.[67] The trial court agreed with Moore and sustained his motion to suppress the breathalyzer test results as evidence in the criminal proceeding.[68]

B. The Appellate Court Opinion

On appeal, the Fifth District upheld the trial court's holding. The appellate court reasoned that a summary suspension hearing is comparable to a felony preliminary hearing. Both proceedings are designed to be expeditious in nature. The objective of the felony preliminary hearing, the court stated, is the prompt determination of whether a crime was committed, and if so whether the arresting officer had probable cause to believe that the defendant was the

58. *Id.*
59. 184 Ill. App. 3d 102, 539 N.E.2d 1380 (5th Dist. 1989), *rev'd*, 138 Ill. 2d 162, 561 N.E.2d 648 (1990).
60. *Moore*, 138 Ill. 2d at 165, 561 N.E.2d at 649.
61. *Id.* at 164, 561 N.E.2d at 649.
62. *Id.*
63. *Id.*
64. *Id.* at 164-65, 561 N.E.2d at 649; *see also* ILL. REV. STAT. ch. 95 1/2, para. 11-501.1(f) (1989).
65. *Moore*, 184 Ill. App. 3d at 104, 539 N.E.2d at 1381.
66. *Id.*
67. *Id.*
68. *Id.*

perpetrator of the crime.[69] In that context, the court observed, "if defendant files a pretrial motion to suppress evidence which is heard and granted at the preliminary hearing, that ruling is *res judicata* of the issues raised by the motion."[70] By analogy, the court concluded that the same rationale should apply to a prior ruling in a summary suspension hearing.

The court further observed that if the state believes that police reports alone are inadequate to establish probable cause at the suspension hearing, the state nevertheless should be barred from relitigating the issue at the subsequent criminal trial under the doctrine of collateral estoppel.[71] The court reasoned that the state retains the option to call the arresting officers or other witnesses to supplement the written reports that purport to establish probable cause. Further,

> If probable cause is found at the suspension hearing, after the officer testifies, there would be no need to file a motion to suppress on the basis of lack of probable cause to suppress. The evidence presented at the suspension hearing may be indicative of the strength or weakness of the State's case. The State might decide to dismiss a DUI criminal prosecution if the [summary suspension] hearing indicates weakness in its case or a defendant might decide to plead guilty if the hearing suggests a strong case for the State.[72]

Accordingly, the appellate court in *Moore* held that the finding in the rescission hearing of no probable cause to arrest precluded the state from relitigating the same issue in the subsequent criminal DUI prosecution.[73]

C. The Illinois Supreme Court Opinion

On appeal, the Illinois Supreme Court rejected the reasoning underlying the Fifth District opinion in *Moore*. Instead, the supreme court adopted the reasoning of the appellate panels in *Stice*, *Filitti*, and *Flynn*. First, the supreme court noted with approval the reasoning in *Stice* that collateral estoppel should not apply to summary suspension hearings because that would frustrate the goal of expediency, as the state would be forced to call witnesses and generally treat the proceeding as a trial.[74] The court also embraced

69. *Id.* at 105-06, 539 N.E.2d at 1382.
70. *Id.* at 106, 539 N.E.2d at 1383 (emphasis in original).
71. *Id.* at 106, 539 N.E.2d at 1383.
72. *Id.* at 106-07, 539 N.E.2d at 1383.
73. *Id.* at 107, 539 N.E.2d at 1383.
74. *Moore*, 138 Ill. 2d at 167, 561 N.E.2d at 651.

the observation in *Filitti* that collateral estoppel would not apply "when an injustice would be worked against a party or when it is 'warranted by differences in the quality or extensiveness in the procedures followed by the two courts.' "[75] Additionally, the supreme court looked to the *Flynn* decision, which had reasoned that a summary suspension proceeding is an administrative hearing rather than part of the criminal process.[76] In addition to these three appellate court decisions, the supreme court also relied upon its own decision in *Koss v. Slater*,[77] in which the court had ruled that "the summary suspension hearing is not part of the criminal process, but is, rather, merely an administrative device that is designed to remove impaired drivers from the road promptly."[78]

The court further determined that the Illinois General Assembly intended the summary suspension process to be swift and of limited scope.[79] That purpose would be frustrated, the court reasoned, if the doctrine of collateral estoppel were applied. More specifically, application of the doctrine would dissuade the state from offering police reports at the summary suspension hearing as permitted by statute. As a result, the court stated, application of the collateral estoppel doctrine would force the state to produce the arresting officers and other witnesses at rescission hearings, contrary to the expressed intent of the state legislature.[80]

The supreme court in *Moore* also rejected the lower court's suggestion to adopt a case-by-case approach to the application of collateral estoppel at criminal DUI proceedings. Moore had argued that when the record of one's rescission proceeding reveals that the hearing provided a full and fair disposition of a material issue, collateral estoppel should preclude relitigation of that issue in the criminal DUI proceeding. The supreme court disagreed, however, reasoning that when an issue is resolved in a cursory fashion, the doctrine of collateral estoppel should not be applied.[81] The court

75. *Id.* at 168, 561 N.E.2d at 651 (citing People v. Filitti, 190 Ill. App. 3d 884, 886, 546 N.E.2d 1142, 1144 (2d Dist. 1989) (citing Collins v. St. Jude Temple No. 1, 157 Ill. App. 3d 708, 712, 510 N.E.2d 979, 982 (1st Dist. 1987) and quoting RESTATEMENT (SECOND) OF JUDGMENTS § 28(3) (1982))).

76. *Id.*

77. 116 Ill. 2d 389, 507 N.E.2d 826 (1987).

78. *Moore*, 138 Ill. 2d at 168-69, 561 N.E.2d at 651. The court in *Koss* held that indigent defendants are not entitled to the appointment of public defenders in summary suspension hearings, citing the differences between those proceedings and criminal trials. *Koss*, 116 Ill. 2d at 394-95, 507 N.E.2d 829-30.

79. *Moore*, 138 Ill. 2d at 169, 561 N.E.2d at 651.

80. *Id.* at 169, 561 N.E.2d at 651.

81. *Id.* at 169, 561 N.E.2d at 652.

noted that if collateral estoppel could be applied at the criminal DUI proceeding, the state would likely find it necessary to treat every suspension as an integral part of the criminal trial, rather than merely an administrative device through which the defendant can halt the otherwise automatic suspension of his driving privileges. The court predicted that the process "would seldom, if ever, be swift" and "that law enforcement officers would be required to testify regardless of whether the defendant had subpoenaed them."[82] Thus, for both legal and practical reasons, the supreme court in *Moore* rejected the case-by-case approach adopted by the lower courts.

V. ANALYSIS

As a practical matter, courts may avoid relitigating a motion to suppress, after a full and complete rescission hearing in which all the witnesses testified and were subject to cross examination, by having both parties stipulate that the testimony in the criminal proceeding would merely duplicate the testimony heard in the prior summary suspension hearing. In such an instance, the judge presiding over the criminal proceeding could simply read the transcript of the rescission hearing and rule on the motion to suppress. Importantly, the judge hearing the motion could rule differently from the judge who presided over the rescission hearing. Thus, such a process would still fall within the holding of the supreme court in *Moore*, since the doctrine of collateral estoppel would not apply between the rescission hearing and criminal DUI proceeding. In application, however, the process described above may be difficult to implement if the criminal trial judge is the same judge who heard the petition to rescind the summary suspension.

Perhaps another way to avoid repetitive litigation would be for the parties to agree to conduct their rescission hearing and the motion to suppress for the criminal trial simultaneously. This would seem to be an efficient way to avoid repetitive litigation and promote judicial economy, since both parties and the issue of burden of proof are identical in the two proceedings.

VI. CONCLUSION

The doctrine of collateral estoppel has long been applied in civil cases, and, more recently, in criminal cases by virtue of the double jeopardy provision of the fifth amendment. The vitality of the doc-

82. *Id.* at 170, 561 N.E.2d at 652.

trine in criminal cases was not diminished by the decision of the Illinois Supreme Court in *People v. Moore*. That case does stand for the proposition, however, that collateral estoppel will no longer bar issues decided in a summary suspension hearing from being relitigated in a related criminal DUI proceeding.