Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-382

JULY TERM, 2019

State of Vermont* v. Rebecca Slen	}	APPEALED FROM:
	}	
	}	Superior Court, Lamoille Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 61-11-18 Lecs
		Trial Judge: Megan J. Shafritz

In the above-entitled cause, the Clerk will enter:

The State appeals the dismissal of the civil suspension of defendant's driver's license. The superior court dismissed the civil suspension on defendant's motion because a preliminary civil suspension hearing had not been held within twenty-one days of the alleged offense, in violation of 23 V.S.A. § 1205(g). We affirm.

The relevant facts are as follows. On November 5, 2018, the same day of the alleged offense, defendant was charged with driving under the influence of intoxicating liquor (DUI), in violation of 23 V.S.A. § 1201(a)(2), and she was sent a notice of intent to suspend her driver's license, id. § 1205(c) (requiring notice of intent to suspend). Because defendant's license had previously been suspended, this new suspension of her license would become effective eleven days after she received notice of the intent to suspend. See id. § 1202(e)(2). The notice required defendant to mail or deliver a request for a hearing by November 12, 2018 and stated that, if requested, a preliminary hearing would be held on November 21, 2018. Defendant requested a hearing,[*] and the State's Attorney's Office received the request from the Department of Motor Vehicles on November 20, 2018. The State filed the request with the superior court on November 26, 2018.

Meanwhile, on November 21, 2018, defendant was arraigned in the superior court on the criminal DUI charge. At the arraignment, when the court asked if there was a civil suspension, the court clerk stated that it had not yet been filed. The State's attorney was uncertain as to why his office had received the hearing request but the court had not. The court stated that without the civil suspension paperwork having been filed, there was nothing it could do. The State's attorney expressed concern "about the civil piece because of the rules and the days and whether to bring somebody back to court to handle it that way." Defendant's counsel noted that it was a civil matter and that he was just "down the road" and could appear if needed. The court responded that if nothing was on file, "there's nothing that we're going to be able to enter. So we'll have to come back another day."

[*] Nothing in the record demonstrates that defendant's request was untimely.

On November 28, 2018, defendant filed a motion to dismiss the civil suspension on grounds that a preliminary civil suspension hearing had not been held within the statutorily required twenty-one days of the alleged offense. The superior court granted the motion, relying upon State v. Love, 2017 VT 75, ¶ 12, 205 Vt. 418, in which this Court held that "for second or subsequent offenses, the court must comply with the twenty-one-day rule in subsection (g) . . ., absent consent by the defendant or good cause shown, or the civil suspension hearing must be dismissed for lack of jurisdiction." Our holding in Love relied heavily on 23 V.S.A. § 1205(t), which was enacted in response to a prior decision by this Court, and which provides that "[f]or a first offense, the time limits set forth in subsections (g) and (h) of this section are directive only, and shall not be interpreted by the court to be mandatory or jurisdictional." This case involved a second or subsequent offense insofar as the State alleged that the officer had reasonable grounds to believe defendant had violated § 1201 and defendant had had her driver's license previously suspended on another occasion after 1991. See 23 V.S.A. § 1205(e)(2).

On appeal, the State's sole argument is that the superior court erred in dismissing the civil suspension because the criminal arraignment held on November 21, 2018 effectively accomplished all that is required in a preliminary civil suspension hearing and thus satisfied the statutory requirement of holding a civil suspension hearing within twenty-one days of the date of the alleged offense. In support of this argument, the State notes that at the November 21 arraignment, the State's attorney provided defendant's attorney with all the discovery materials necessary to prepare for the final hearing, which was scheduled within the statutory timeframe for holding a final hearing. See id. § 1205(g) ("The preliminary hearing shall be held in accordance with procedures prescribed by the Supreme Court."); see also V.R.C.P. 80.5(e) (setting forth requirements for disclosure of information to defendant).

We find the State's argument unavailing. At the November 21 criminal arraignment, the superior court indicated that it could not hold a preliminary hearing on the civil suspension. Thus, the court neither "ensure[d] that the required disclosure had occurred" nor "provide[d] the defendant with an explanation of the procedures to be followed at the hearing on the merits," as required by Rule 80.5(e). As a result, we disagree with the State's contention that "for all intents and purposes" a preliminary hearing was held on November 21. In short, there was no timely preliminary civil suspension hearing, as required by § 1205(g). Accordingly, under the circumstances of this case, the superior court did not err in dismissing the civil suspension based on this Court's holding in Love.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

_____

Beth Robinson, Associate Justice

_____

Harold E. Eaton, Jr., Associate Justice