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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of De Kalb County.
)	
Plaintiff-Appellant,)	
)	
v.)	Nos. 11-DT-147
)	11-TR-3484
)	11-TR-3485
)	
MICHAEL DEL RE,)	Honorable
)	Alan W. Cargerman,
Defendant-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

Held: The trial court properly granted defendant's motion to quash and suppress: the State did not address, with pertinent authority, the precise issue of whether, in the absence of any unusual driving conditions, defendant committed improper lane usage when he momentarily touched (but did not cross) the centerline, and defendant's mere slow driving was not a sufficient basis for a traffic stop.

¶ 1 Defendant, Michael Del Re, was arrested for driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1), (a)(2) (West 2010)). Chemical testing established that the alcohol content of his blood, breath, or urine exceeded the legal limit. The test result led to the statutory summary

suspension of defendant's driving privileges. See 625 ILCS 5/11-501.1 (West 2010). Defendant filed a petition to rescind the statutory summary suspension, arguing, *inter alia*, that the arresting officer had no lawful basis to conduct the traffic stop that led to his arrest. See *People v. Crocker*, 267 Ill. App. 3d 343, 345 (1994). The trial court granted the petition and defendant then moved to quash his arrest and suppress evidence. The trial court granted the motion and the State filed a timely notice of appeal.¹ We affirm.

¶2 At that hearing on defendant's petition to rescind the statutory summary suspension, De Kalb County sheriff's deputy David Christiansen testified that shortly after 4 a.m. on March 12, 2011, he observed a black Pontiac ahead of him proceeding north on Glidden Road near South Mayfield Road. There were no other vehicles on the roadway. The posted speed limit was 55 miles per hour, but the Pontiac was traveling mostly at speeds between 35 and 45 miles per hour. Christiansen testified that he observed the vehicle "cross" the centerline as Glidden Road curved to the left at a point just south of South Mayfield Road. Christiansen clarified that the roadway was marked with a yellow double centerline. The Pontiac drove onto the line closer to its lane. After three or four seconds, the Pontiac pulled back into the center of the lane. After coming around the curve, the Pontiac slowed to under 30 miles per hour (although, according to Christiansen, it was not impeding traffic). Shortly thereafter, Christiansen activated his squad car's emergency lights and the Pontiac pulled over. Defendant was driving. Christiansen testified that he stopped the Pontiac "because [it]

¹Although the notice of appeal sought review of both the order granting the motion to quash and suppress and the prior order rescinding the statutory summary suspension of defendant's driving privileges, the State concedes that the time for seeking review of the rescission order had lapsed before the notice of appeal was filed and that we lack jurisdiction to review that order.

went over the center line as well as the speed.” He also testified that during the time he followed the Pontiac, he saw it drive on the center lane marker on only one occasion.

¶ 3 Defendant argued, *inter alia*, that pursuant to the Third District’s decision in *People v. Hackett*, 406 Ill. App. 3d 209 (2010), *appeal allowed*, No. 111781 (Ill. Mar. 30, 2011), he did not commit any traffic offense by momentarily driving on the inside centerline. In *Hackett*, a divided panel of the Third District acknowledged that in *People v. Smith*, 172 Ill. 2d 289 (1996), our supreme court held that the plain language of section 11-709(a) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-709(a) (West 2010) requires a motorist to drive a vehicle as nearly as practicable within a single lane. However, the majority in *Hackett* held that the rule is violated only when a motorist “actually drives for some reasonably appreciable distance in more than one lane of traffic.” *Hackett*, 406 Ill. App. 3d at 214. Agreeing with defendant that *Hackett* was controlling, the trial court granted defendant’s petition.

¶ 4 The State moved to reconsider, arguing, *inter alia*, that the holding in *Hackett* was contrary to *Smith* and that the trial court was bound to follow *Smith*, not *Hackett*. In a written order denying the motion to reconsider, the trial court stated:

“[The State] has not cited or given defendant *** the opportunity to respond to long-standing Second District Appellate Court precedent in conflict with the Third District’s approach in [*Hackett*] or *Hackett*’s understanding of [*Smith*]. Compare *Hackett*, 406 Ill. App. 3d at 213-16, with *People v. Rush*, 319 Ill. App. 3d 34, 39-40 (2d Dist. 2001) and, *e.g.*, *People v. Wood*, 379 Ill. App. 3d 705, 709 (2d Dist. 2008).

It is one thing to say *Hackett* should be treated with ‘caution’ [citation], quite another for us to assume the role of advocate and decide the case under *Rush* and its Second District progeny without the benefit of defendant’s counter-argument.”

¶ 5 At the hearing on defendant’s motion to quash and suppress, the parties stipulated that Christiansen’s testimony at the rescission hearing could be considered. The trial court also heard additional testimony from Christiansen. He testified that, while following defendant’s vehicle on northbound Glidden Road, he observed the vehicle weaving before and after it “crossed” the center line. According to Christiansen, “[defendant] initially went over and touched the white fog line with the passenger side tires and then had come [sic] over to the center line and then back to the center and then had crossed over the center line and then came back to the center line and then twice more to the center line and back.” Asked how far defendant traveled from the point he touched the fog line to the point he “crossed” the centerline, Christiansen replied, “I would say within one mile.” Christiansen’s squad car was equipped with a video camera, and a recording of defendant’s vehicle as it proceeded north on Glidden Road was played at the hearing and admitted into evidence. There is no dispute that Christiansen followed defendant’s vehicle for an unspecified period before activating the camera. The recording, which is time-stamped, begins at approximately 4:09:18 a.m. Just under one minute later, defendant’s vehicle is seen proceeding around a curve to the left. At the beginning of the curve, the centerline marker consists of a solid double line. However, the inside line becomes a broken line. The outer edge of the left rear tire of defendant’s vehicle can be observed crossing the inner line of the center lane marker for approximately three seconds before the vehicle travels back to the center of the lane. Christensen effected a traffic stop about 90 seconds later.

¶ 6 In granting the motion to quash and suppress, the trial court stated:

“Clearly the defendant has the burden of proving *** that the arresting officer did not have reasonable suspicion under [*Terry v. Ohio*, 392 U.S. 1 (1968),] to, shall we say, pull the defendant over, detain him ***.

Based on the record I have before me and especially now the videotape, I’m going to find that the defendant has convinced me by a preponderance of the evidence that the defendant (sic) did not have reasonable grounds under Terry to believe the defendant had committed the offense of improper lane usage in violation of Section 11-709 of the Vehicle Code or, may I suggest, any other violation of Illinois law at the time the officer activated his lights on his squad car and pulled defendant over.”

The trial court augmented this ruling from the bench with a written order stating that “the arresting officer did not have reasonable suspicion to conduct a Terry stop or probable cause to arrest defendant for improper lane usage.”

¶ 7 The State moved to reconsider, relying in part on *Rush*, in which this court held that “a driver’s single, momentary crossing of the center line, without more, is a sufficient basis for a stop,” and that a stop conducted in those circumstances “is invalid only if the officer knows *additional* facts that make it reasonably apparent that the crossing is legal.” (Emphasis in original.) *Rush*, 319 Ill. App. 3d at 40. The State essentially admitted, however, that the evidence established that the tire of defendant’s vehicle merely touched the center lane marker, but did not cross over it. The State also argued that the stop was proper in view of defendant’s “erratic” driving. In denying the motion the trial court stated, “I think the videotape was not at all supportive of the State’s case in viewing that and then evaluating the officer’s testimony in the context of that physical evidence I believe the

defendant has sustained his burden of proof *** to find *** that there was in fact a Fourth Amendment violation.”

¶ 8 On appeal from a trial court’s ruling on a motion to quash and suppress, the reviewing court “will accord great deference to the trial court’s factual findings and will reverse those findings only if they are against the manifest weight of the evidence.” *People v. Close*, 238 Ill. 2d 497, 504 (2010). However, the trial court’s ultimate decision to grant or deny the motion is subject to *de novo* review. *Id.*

¶ 9 The State argues that the trial court erred because it found *Hackett* to be controlling authority on the question of whether a traffic stop for improper lane usage was permissible. According to the State, the trial court should have followed *Smith* and *Rush*, pursuant to which, in the State’s view, the stop was proper. Although it is true that the trial court relied on *Hackett* in granting defendant’s petition to rescind the statutory summary suspension of his driving privileges—a ruling that is not before us in this appeal—there is no reason to assume that the trial court did so in ruling on the motion to quash and suppress. In denying the State’s motion to reconsider the rescission ruling, the trial court expressly noted that the State’s failure to cite *Rush* deprived defendant of “the opportunity to respond to long-standing Second District Appellate Court precedent in conflict with the Third District’s approach in [*Hackett*] or *Hackett*’s understanding of [*Smith*].” As a result of this ruling, defendant was aware of *Rush*—and of the conflict between *Rush* and *Hackett*—when he presented his motion to quash and suppress. At that point, the trial court’s reason for following *Hackett* no longer existed and there is nothing in the record to suggest that the court treated *Hackett* as controlling authority in deciding the motion to quash and suppress.

¶ 10 The outcome of this case differs from those in *Smith* and *Rush* not because the trial court considered *Hackett* to be controlling, but because the salient facts of this case differ from those of *Smith* and *Rush*. In each of those cases, the defendant's vehicle actually crossed over a lane marker. The defendant in *Smith* was traveling on "a four-lane street with a fifth lane in the center for turning." *Smith*, 172 Ill. 2d at 293. The arresting officer testified that the defendant's vehicle was located in the left-hand northbound lane. The *Smith* court described the officer's other observations as follows:

"[H]e saw the driver's side wheels of defendant's car cross over the lane line dividing the left lane from the center lane by at least six inches. He stated that defendant failed to signal a lane change and that the car remained over the lane line for approximately 100 to 150 yards. A short time later, he saw defendant cross over the lane line dividing the left lane from the right lane by approximately six inches for 150 to 200 yards. Once again, defendant did not signal. After these two occurrences, [the officer] determined that defendant had violated the Code for failing to signal a lane change and he stopped defendant. [The officer] conceded that defendant did not endanger any other vehicles or persons when he deviated across the lane lines and that defendant never completely left the lane in which he was traveling." *Id.*

¶ 11 The defendant in *Smith* argued that the officer had not witnessed a violation of section 11-709(a) and therefore had no basis for conducting a traffic stop. Section 11-709(a) provides:

"Whenever any roadway has been divided into 2 or more clearly marked lanes for traffic the following rules *** shall apply.

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.” 625 ILCS 5/11-709(a) (West 2010).

The defendant insisted that a violation occurs only when a motorist endangers others, not when a motorist momentarily crosses a lane line. Our supreme court disagreed:

“The plain language of the statute establishes two separate requirements for lane usage. First, a motorist must drive a vehicle as nearly as practicable entirely within one lane. Second, a motorist may not move a vehicle from a lane of traffic until the motorist has determined that the movement can be safely made. It follows that when a motorist *crosses* over a lane line and is not driving as nearly as practicable within one lane, the motorist has violated the statute.

Once [the arresting officer] saw defendant *cross over a lane line and drive in two lanes of traffic*, [the officer] had probable cause to arrest defendant for a violation of the Code. [Citation.] Thus, [the officer’s] stop of defendant was proper.” (Emphases added.) *Smith*, 172 Ill. 2d at 296-97.

¶ 12 *Smith* does not speak to the issue in this case—whether momentarily driving onto, but not crossing, a lane marker is a traffic offense. The same is true of *Rush*. In *Rush* the arresting officer observed the defendant’s vehicle cross the fog line once and cross the centerline once. The trial court determined that the momentary crossing of the centerline was not grounds for a traffic stop. We relied on section 11-701(a) of the Code—not section 11-709(a)—in reversing the trial court’s decision. Section 11-701(a) provides:

“(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movements;

2. When an obstruction exists making it necessary to drive to the left of the center of the roadway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the roadway within such distance as to constitute an immediate hazard;

3. Upon a roadway divided into 3 marked lanes for traffic under the rules applicable thereon;

4. Upon a roadway restricted to one way traffic;

5. Whenever there is a single track paved road on one side of the public highway and 2 vehicles meet thereon, the driver on whose right is the wider shoulder shall give the right-of-way on such pavement to the other vehicle.” 625 ILCS 5/11-701(a) (West 2010).

In *Village of Lincolnshire v. DiSpirito*, 195 Ill. App. 3d 859 (1990), we cited this provision for the proposition that “vehicles are generally required to drive on the right-hand side of the centerline on the roadway” (*id.* at 863-64) and we held that a police officer had authority to stop a motorist who drove his westbound vehicle “completely into the eastbound lane of Old Half Day Road for about 100 feet until he drifted back into the westbound lane” (*id.* at 861). In *Rush* we relied on *DiSpirito* to hold that “a driver’s single, momentary *crossing* of the center line, without more, is a sufficient basis for a stop.” (Emphasis added.) *Rush*, 319 Ill. App. 3d at 40. We are aware of no published

decision in Illinois holding that merely driving onto the centerline, but not crossing it, is grounds for a stop. Although there is *dicta* in *Dispirito* that a vehicle must generally travel on the right-hand side of the centerline, the authority cited for that proposition—section 11-701(a) of the Code—makes no reference to the centerline; it merely requires a motorist to operate a vehicle *upon the right half of the roadway*. There is no evidence that, when defendant’s vehicle traveled onto the inside line of the double centerline, it strayed from the right half of the roadway. In this respect it is noteworthy that the center lane pavement marking may be placed at a location that is not the geometric center of the roadway. See United States Department of Transportation Federal Highway Administration, Manual on Uniform Traffic Control Devices (MUTCD), § 3B.01(02) (2009); Illinois Department of Transportation, Illinois Supplement to the National MUTCD, 1, 14 (2009) (adopting Part 3 of the MUTCD). Thus, driving on the centerline pavement marking and driving “upon the right half of the roadway” (625 ILCS 5/11-701(a) (West 2010)) are not necessarily mutually exclusive acts.

¶ 13 Here, the record reflects that the trial court found that defendant’s vehicle merely drove *onto* the double centerline, but did not actually cross it. The record on appeal, including, in particular, the recording from the video camera in Christiansen’s squad car, fully supports that finding. We note that courts in other jurisdictions with statutes similar to section 11-709(a) have considered whether merely touching a lane marker is grounds for a stop and have reached varying results. See *United States v. Colin*, 314 F.3d 439, 444 (9th Cir. 2002) (traffic stop was invalid because “[t]ouching a dividing line, even if a small portion of the body of the car veers into a neighboring lane, satisfies the statute’s requirement that a driver drive as ‘*nearly as practical* entirely within a single lane’ ” (emphasis in original)); *United States v. Bassols*, 775 F. Supp. 2d 1293, 1302-03 (D. N.M. 2011) (determination of whether a motorist violates a New Mexico statute requiring a motorist

to drive “ ‘as nearly as practicable within a single lane’ ” (N.M. Stat. Ann. § 66-7-317 (1978)) by making contact with the line dividing the road from the shoulder entails a fact-sensitive inquiry requiring consideration of the weather, road features, and other circumstances bearing on the motorist’s ability to keep the vehicle within its lane, and traffic stop was permissible where motorist was driving a normal-sized automobile on a straight, well-maintained stretch of interstate highway with no obstacles and at a time when there was no wind); see also *United States v. Lopez-Rojo*, No. 3:07-CR-00080-LRH-RAM, 2008 WL 2277495, at *5 (D. Nev. May 29, 2008) (distinguishing *Colin* because defendant crossed over the fog line rather than merely touching it). The State has not discussed these cases or any similar ones, and thus has provided us with no basis to choose among the competing interpretations. The judgment of the trial court is presumed correct and the appellant bears the burden of overcoming the presumption. *Levy v. Markal Sales Corporation*, 268 Ill. App. 3d 355, 375 (1994). The State’s citation to *Smith* and *Rush* is insufficient to establish error.

¶ 14 The State also argues that Christiansen had a reasonable suspicion, based on defendant’s erratic driving, that defendant was under the influence of alcohol. See *People v. Greco*, 336 Ill. App. 3d 253, 257 (2003) (“The well-accepted rule in this state is that erratic driving, including weaving within a single lane, is sufficient to justify a traffic stop”). However, there was conflicting evidence on whether defendant’s driving was erratic. Although Christiansen testified that defendant’s vehicle was weaving within its lane both before and after “crossing” the centerline, the recording from the camera in Christiansen’s squad car does not depict the weaving that Christiansen described. Moreover, we note that, during the hearing on defendant’s petition to rescind the statutory summary suspension of his driving privileges, Christiansen offered no testimony that he saw defendant weaving. The trial court was not obliged to credit Christensen’s testimony at the hearing on the

motion to quash and suppress. See *People v. Juarbe*, 318 Ill. App. 3d 1040, 1052 (2001) (“It is the trial judge’s function in making a probable cause determination to weigh the testimony, assess the credibility of the witnesses, and draw reasonable inferences from the testimony.”). We also note that, although Christiansen observed defendant operating his vehicle significantly slower than the posted speed limit, the State does not argue that, absent weaving, this constituted “erratic” driving that would justify a traffic stop. See *People v. Rotkvich*, 256 Ill. App. 3d 124, 129 (1993) (“in the absence of a posted minimum speed limit, slow driving that does not affect traffic does not [justify a traffic stop]”).

¶ 15 Finally, we reject the State’s argument that the trial court applied the wrong standard in determining the lawfulness of the traffic stop. As we noted in *Rush*, “[a] traffic stop requires reasonable suspicion that the vehicle or an occupant is subject to seizure for a violation of law.” *Rush*, 319 Ill. App. 3d at 39. The State contends that the trial court required a showing of probable cause. The State notes the trial court’s remark, in ruling from the bench, that “the defendant (sic) did not have *reasonable grounds* under Terry” to believe that defendant had committed a traffic offense. (Emphasis added.) “Reasonable grounds” is equivalent to “probable cause.” *Id.* We are convinced, however, that the trial court merely misspoke. Earlier in the same bench ruling, the trial court indicated that the arresting officer lacked a reasonable suspicion under *Terry*. In its written order, the trial court stated that “the arresting officer did not have reasonable suspicion to conduct a Terry stop or probable cause to arrest defendant for improper lane usage.” It is thus clear that the trial court understood that reasonable suspicion is the standard for a traffic stop pursuant to *Terry*. It is equally clear that, when the trial court extemporaneously spoke of “reasonable grounds under Terry,”

the court merely transposed the word “grounds” for “suspicion.” Under the circumstances, the error in terminology does not signify application of an incorrect legal standard.

¶ 16 For the foregoing reasons, the judgment of the circuit court of De Kalb County is affirmed.

¶ 17 Affirmed.