NOTICE
Decision filed 02/07/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110215-U

NO. 5-11-0215

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Perry County.
	)	
v.	)	No. 11-DT-12
	)	
JAMES RHEINECKER,	)	Honorable
	)	Eugene E. Gross,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Stewart and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: Trial judge erred in granting petition to rescind statutory summary suspension of driver's license where arresting officer had sufficient probable cause for initial traffic stop.

¶ 2 In this appeal, the State contends the trial judge erred when he granted the defendant's petition to rescind the statutory summary suspension of his driver's license. Because we agree, we reverse and remand for further proceedings not inconsistent with this order.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal were adduced at a hearing conducted by the trial judge on April 1, 2011, and are as follows. On February 12, 2011, at approximately 2:30 a.m., Deputy William Reagan of the Perry County sheriff's department was southbound on Illinois Route 127, just north of Pinckneyville, when he observed a vehicle driven by the defendant. The defendant's vehicle was also southbound, but was traveling at about 40 or 45 miles per hour in a 55-mile-per-hour speed zone. Deputy

Reagan's squad car was equipped with a video camera, which produced a recording of the events that followed. The video recording was admitted into evidence at the hearing, and Deputy Reagan testified that it accurately depicted the events he observed at the time the recording was made. The recording shows that in the approximately two minutes between the time Deputy Reagan activated the video camera and the time he executed a traffic stop of the defendant's vehicle, the left tires of the defendant's vehicle briefly "hit" the yellow center line of the roadway one time, and the right tires of the defendant's vehicle subsequently crossed or touched the white fog line on the right side of the roadway approximately seven times. The recording shows that the defendant drove for a time with his vehicle's right rear tire over the fog line, with the fog line clearly visible to the left of the right rear tire.

¶ 5 Because Deputy Reagan believed he had observed the defendant commit the offense of improper lane usage, he pulled the defendant's vehicle over. Subsequent events, which are not relevant to the issue raised by the parties on appeal, led to the defendant's arrest for driving while under the influence of alcohol. The defendant eventually filed a petition to rescind the statutory summary suspension of his driver's license, which led to the April 1, 2011, hearing. Following the hearing, the trial judge granted the defendant's petition, finding no probable cause or reasonable suspicion that supported Deputy Reagan's stop of the defendant's vehicle, and the State's timely appeal followed.

¶ 6 ANALYSIS

¶ 7 On appeal, the State contends the trial judge erred when he granted the defendant's petition on the basis of *People v. Hackett*, 406 Ill. App. 3d 209, 214-15 (2010), *appeal allowed*, No. 111781 (Ill. Mar. 30, 2011), wherein our colleagues in the Third District held that under the Illinois Supreme Court's holding in *People v. Smith*, 172 Ill. 2d 289 (1996), a police officer must observe a driver cross a lane line "for some reasonably appreciable

distance" before the officer may execute a traffic stop for improper lane usage, and that an officer's observation of a vehicle crossing a lane line twice, for a few seconds each time, provided insufficient probable cause to stop that vehicle. We agree with the State. On January 19, 2012, we issued our opinion in *People v. Scott*, 2012 IL App (5th) 100253, in which we rejected the *Hackett* holding, finding it to be in contravention of the plain language of *Smith*. As we explained in *Scott*, in *Smith* the Illinois Supreme Court "did not interpret the improper-lane-usage statute to require that an officer observe a driver cross a lane line for a particular distance in order to have probable cause to stop the vehicle." *Scott*, 2012 IL App (5th) 100253, ¶ 16. To the contrary, the *Smith* court stated that the statute is violated any time " 'a motorist crosses over a lane line and is not driving as nearly as practicable within one lane.' " *Scott*, 2012 IL App (5th) 100253, ¶ 16 (quoting *Smith*, 172 Ill. 2d at 297). Accordingly, we held in *Scott* that probable cause to execute a traffic stop for improper lane usage existed where an Effingham County sheriff's deputy observed the right tires of a vehicle cross the white fog line twice, for a couple of seconds each time. *Scott*, 2012 IL App (5th) 100253, ¶ 17.

¶ 8 In the case at bar, it is undisputed–indeed it is clearly visible on the video that was recorded by Deputy Reagan's squad car camera and was subsequently admitted into evidence by the trial court and reviewed by this court–that the right rear tire of the defendant's vehicle fully crossed the white fog line on multiple occasions, and that the defendant drove for a time with that tire so far over the fog line that the fog line could be seen to the left of the right rear tire. Accordingly, under *Scott*, with which we agree, Deputy Reagan had probable cause to execute a traffic stop for improper lane usage.

¶ 9 CONCLUSION

¶ 10 For the foregoing reasons, we reverse the trial court's order and remand for further proceedings not inconsistent with this order.

¶ 11 Reversed and remanded.