

NOTICE  
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2015 IL App (5th) 130005-U

NO. 5-13-0005

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-Appellee,	)	Marion County.
	)	
v.	)	No. 11-CF-253
	)	
ROGER CAMPBELL, JR.,	)	Honorable
	)	J. Marc Kelly,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.  
Justices Welch and Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held:* Circuit court did not err in denying the defendant's motion to suppress, because reasonable suspicion supported initial traffic stop of the defendant, who was then arrested for, and subsequently convicted of, aggravated driving under the influence of alcohol.

¶ 2 The defendant, Roger Campbell, Jr., appeals his conviction and sentence, following a bench trial in the circuit court of Marion County, for one count of aggravated driving under the influence of alcohol (625 ILCS 5/11-501(d)(2)(C) (West 2010)). For the following reasons, we affirm.

¶ 3

## FACTS

¶ 4 The facts necessary to our disposition of this appeal follow. They are derived from this court's review of the record on appeal, including the defendant's exhibit No. 1, which is a DVD recording of the events leading to the initial traffic stop in this case. Early on July 24, 2011, the defendant was arrested for driving under the influence of alcohol. At a preliminary hearing held on September 28, 2011, Illinois State Police Trooper Mike Pappas testified with regard to the circumstances surrounding the arrest of the defendant. He testified that he was traveling southbound on U.S. Highway 51, leaving Sandoval, Illinois, when he observed in front of him, also traveling southbound, a white Ford being operated by the defendant. When asked what made him notice the defendant's vehicle, Trooper Pappas testified "it crossed over the fog line several times." He clarified that the "fog line" was "the white line on the right side" of the highway. When asked how many times the defendant's vehicle crossed the fog line, he testified "[a]pproximately four" and characterized the incursions as "quick jerks back and forth across the line." On cross-examination, he testified that the crossings took place within "a few seconds" of one another. When asked if the defendant's tires went "completely over the fog line" or merely touched the fog line, Trooper Pappas testified that he did not recall. At the conclusion of the preliminary hearing, the trial judge found that probable cause as to the charges against the defendant existed. The defendant waived formal arraignment, entered a plea of not guilty, and demanded a trial by jury.

¶ 5 The defendant subsequently filed a motion to suppress evidence, which was heard on April 25, 2012. At the hearing, the defendant testified that his driving was "[f]ine" at

the time he was pulled over. After the defense rested, Trooper Pappas testified for the State, again recounting the circumstances leading to the arrest of the defendant. He testified that as he was following the defendant's vehicle, he "noticed it crossed over the white fog line." He testified that the defendant crossed the fog line "[a]pproximately four times" before Trooper Pappas initiated a traffic stop of the defendant. When asked if "the whole vehicle or just the passenger side tires" crossed the fog line, he responded, "It was just the passenger side tires." He noted that each crossing "wasn't very long" and reiterated that he couldn't recall if the "whole tire" crossed the line or if the tire "just touch[ed] it." When asked if he informed the defendant of the reason for the traffic stop, he responded that he did, and that the reason was "crossing the white fog line, improper lane usage."

¶ 6 The State then requested permission to have Trooper Pappas testify as the trial judge watched the defendant's exhibit No. 1, the DVD video of footage of the traffic stop, as captured by the camera in the squad car Trooper Pappas was driving when he stopped and arrested the defendant. The defense did not object. As the DVD was played for the judge, Trooper Pappas, in response to a request from the State, noted each time he observed the defendant's tire make contact with the fog line. Trooper Pappas pointed out a total of four fog line contacts by the defendant. At the conclusion of the hearing, the trial judge took the matter under advisement. The following day, by docket entry, he denied the motion to suppress, writing that he found "Trooper Pappas' testimony to be credible as taken in conjunction with Defendant's Exhibit #1 which shows [the defendant's] passenger side tires touch and/or cross on 4 separate occasions the right" fog

line, "although briefly," and that accordingly "Trooper Pappas did have probable cause to stop [the defendant] for the traffic offense of improper lane usage." He reiterated his reasoning for the denial at a hearing held on October 3, 2012, in response to the defendant's motion to reconsider. The judge stated that he had specifically found that "the defendant's passenger tires touched and/or crossed on four separate occasions" the fog line. He denied the defendant's motion to reconsider, rejecting the defendant's argument that merely touching the fog line, rather than crossing it entirely, would not be a violation of the improper lane usage statute and accordingly could not give rise to a reasonable suspicion that would justify a traffic stop.

¶ 7 The defendant's bench trial was held on January 2, 2013. Therein, Trooper Pappas again testified that his attention was drawn to the defendant's vehicle because that vehicle "crossed over the fog line several times." When questioned, he stated that "[t]he right side tires went over the fog line, came back on" a total of four times. He again testified that he could not recall if the tires touched, or fully crossed over, the fog line, and again testified that he informed the defendant that the reason he had stopped him was improper lane usage. Trooper Pappas characterized the stretch of U.S. Highway 51 in question as "a straight, flat roadway" that "turns into a left curve and a right curve." He also testified in detail about his administration of field sobriety tests, about the defendant's poor performance on those tests, and about the fact that the defendant's subsequent breath sample "showed he had a blood alcohol level of .185." On cross-examination, Trooper Pappas testified that the sole reason for the stop of the defendant was the fact that the defendant had made contact with the fog line four times. At the

conclusion of the bench trial, the defendant was found guilty and an agreed sentence was entered that consisted of 90-day work release, 30 months' probation, and various fines, costs, fees, and conditions. This timely appeal followed.

¶ 8

#### ANALYSIS

¶ 9 On appeal, the defendant asks this court to review *de novo* the traffic stop DVD, to conclude that at most the defendant merely touched, and did not ever fully cross,<sup>1</sup> the fog line, and to hold that: (1) touching, without fully crossing, a fog line does not constitute improper lane usage, and (2) accordingly Trooper Pappas could have had no reasonable suspicion that the traffic offense of improper lane usage had been committed and thus his stop of the defendant's vehicle was without legal justification. In his prayer for relief, the defendant asks us to reverse the denial of his motion to suppress, vacate his conviction and sentence, and enter a judgment of acquittal on both counts originally charged against the defendant.

¶ 10 We begin by noting that we have reviewed the defendant's exhibit No. 1, and that we agree with the parties that the video, which is somewhat grainy and which, of course, was taken during hours of darkness, is less than perfectly clear with regard to the defendant's interactions with the fog line. However, our review of the DVD demonstrates that the defendant at the very least touched the fog line on more than one occasion, and,

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<sup>1</sup>For purposes of this appeal, the defendant defines fully "crossing" a lane demarcation such as a fog line as "clearing the outer edge" of the painted lane demarcation.

as the State points out, also swerved to the left enough to nearly touch the center line twice. The DVD also shows a general swerving by the defendant within the lane he occupied, even on a straight stretch of a roadway that was at other times curvy. Therefore, for the following reasons, we conclude Trooper Pappas was legally justified in initiating his traffic stop of the defendant.

¶ 11 In support of his position, the defendant cites three Illinois cases that he contends stand for the proposition that one must fully cross, rather than merely touch, the fog line to commit the offense of improper lane usage: (1) *People v. Hackett*, 2012 IL 111781; (2) *People v. Smith*, 172 Ill. 2d 289 (1996); and (3) *People v. Scott*, 2012 IL App (5th) 100253. However, as the State aptly notes in response, these cases stand only for the proposition that fully crossing the fog line, even once, is definitely a violation of the improper lane usage statute; the cases do not consider whether merely touching the fog line violates the statute, because that was not an issue in the cases. In terms of persuasive authority, the defendant cites *United States v. Zambrana*, 402 F. Supp. 2d 953 (S.D. Ill. 2005), in which a federal court held that merely touching the fog line does not constitute a violation of the Illinois improper lane usage statute. The State counters that this court is under no obligation to follow *Zambrana*, and that in any event, the holding of *Zambrana* was based upon the lack of credibility of the officer who testified about the traffic offense, and that any language about the Illinois improper lane usage statute in *Zambrana* constitutes mere *dicta*. The defendant also contends the plain language of the improper lane usage statute mandates the conclusion that one must fully cross a fog line, rather than merely touch it, to commit improper lane usage. The State takes issue with this

point as well, arguing that a reasonable reading of the statute is that one must only touch the fog line to violate the statute.

¶ 12 Furthermore, the State counters that because this is not an appeal of a conviction of the traffic offense of improper lane usage, the relevant question on appeal is not whether the statute was violated; instead, the question is whether a reasonable suspicion that the statute had been violated supported the traffic stop of the defendant. We agree. "A traffic stop requires a reasonable suspicion that the vehicle or an occupant is subject to seizure for a violation of the law." *People v. Greco*, 336 Ill. App. 3d 253, 257 (2003). More than a "mere hunch" is required to justify a stop; the appellate court has held that in general "an officer's observation of a traffic violation or erratic driving provides a sufficient basis for a traffic stop." *Id.* "The well-accepted rule in this state is that erratic driving, including weaving within a single lane, is sufficient to justify a traffic stop." *Id.* The foregoing notwithstanding, "a traffic stop based on a mistake of law is generally unconstitutional, even if the mistake is reasonable and made in good faith." *People v. Cole*, 369 Ill. App. 3d 960, 967 (2007). On the basis of this holding in *Cole*, the defendant contends that if Trooper Pappas was mistaken about the law at the time that he stopped the defendant's vehicle, the stop would not be constitutional. However, we decline to find that Trooper Pappas made a mistake of law.

¶ 13 Unlike in *Cole*, in which the plain language of the statute should have alerted the officer in question to his mistake of law (see 369 Ill. App. 3d at 961-62), the improper lane usage statute does not state that one must fully cross, rather than merely touch, a fog line to violate the statute. Moreover, even to this date there is no mandatory authority in

Illinois in support of the proposition that one must fully cross, rather than merely touch, a fog line to commit improper lane usage, and there was certainly no mandatory authority to that effect at the time of the traffic stop in this case, more than 3½ years ago. Trooper Pappas repeatedly testified that he observed the defendant's passenger side tires "cross" the fog line. He also testified that he could not recall if the tires fully crossed over the line, or merely touched it. He testified that he stopped the defendant's vehicle for improper lane usage and notified the defendant that this was the basis for the stop. The only reasonable interpretation of the testimony of Trooper Pappas is that he believed he had observed one or more violations of the improper lane usage statute, regardless of whether the defendant's tires fully crossed the fog line or merely touched it. There is no authority in support of the proposition that he was mistaken about the state of the law on the date he stopped the defendant's vehicle. Accordingly, we decline to conclude that on the date of the traffic stop in this case, Trooper Pappas made a mistake of law that rendered his stop unconstitutional.

¶ 14 Moreover, in judging a police officer's conduct with regard to initiating a traffic stop, we "apply an objective standard: 'would the facts available to the officer at the moment of the seizure \*\*\* "warrant a man of reasonable caution in the belief" that the action taken was appropriate?' " *People v. Close*, 238 Ill. 2d 497, 505 (2010) (quoting *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)). Given the fact that the improper lane usage statute does not state, and no Illinois state court has held, that one must fully cross, rather than merely touch, a fog line to commit improper lane usage, we find the observations of



Trooper Pappas on the night in question provided him with a reasonable suspicion that the defendant had committed improper lane usage.<sup>2</sup>

¶ 15 As an alternative basis for upholding the trial court's decision, we note that the facts about the defendant's driving articulated by Trooper Pappas—and the facts evidenced by the DVD—would warrant a police officer of reasonable caution in the belief that the action taken—initiating a traffic stop of the defendant—was appropriate for additional reasons as well: chiefly, the fact that erratic driving, including weaving within a single lane, is sufficient to justify a traffic stop. See, e.g., *People v. Greco*, 336 Ill. App. 3d 253, 257 (2003). Although the defendant is correct that Trooper Pappas never testified directly that the defendant was driving erratically, and did not state "erratic driving" or "weaving within a single lane" as a basis for the traffic stop, we note that he was never asked to characterize the defendant's driving in those or similar terms, or even to characterize the defendant's driving at all. Nevertheless, contained within his description of the defendant's driving, and within the DVD recording of the defendant's driving, are facts from which a reasonable officer could have concluded that the defendant was driving erratically, and could have, without running afoul of the Constitution, initiated a traffic stop of the defendant.

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<sup>2</sup>We note as well that the United States Supreme Court recently held, in *Heien v. North Carolina*, \_\_\_ U.S. \_\_\_, \_\_\_, 135 S. Ct. 530, 536 (2014), that under certain circumstances a "reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition."

¶ 16 We reiterate that if the defendant were appealing a conviction for the offense of improper lane usage, we might very well need to determine whether merely touching, rather than fully crossing, a fog line constitutes improper lane usage. However, because we need not answer that question to affirm the trial court's decision in this case, we leave that question for another day, and a more appropriate case.

¶ 17 **CONCLUSION**

¶ 18 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 19 Affirmed.