

No. 1-14-2957

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 MC3 001 173
)	
MICHAEL MAGNANT,)	Honorable
)	James N. Karahalios,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* Circuit court judgment denying defendant's petition to rescind the statutory summary suspension of his driving privileges affirmed.
- ¶ 2 Defendant Michael Magnant appeals from an order of the circuit court of Cook County denying his petition to rescind the statutory summary suspension of his driving privileges. On appeal, Magnant contends that the court erred in denying his petition because the police officer unlawfully seized him in violation of his fourth amendment rights, and the officer lacked

reasonably sufficient evidence to arrest and charge him with driving under the influence of alcohol (DUI). We disagree and affirm.

¶ 3 The record reflects that on March 17, 2014, shortly before 5:00 a.m., a Hoffman Estates police officer stopped Magnant while he was driving his vehicle, placed him under arrest, and charged him with improper lane usage, DUI and resisting a peace officer. Magnant refused to submit to a chemical test to determine the alcohol content of his breath, blood or urine, and consequently, was subject to a statutory summary suspension of his driving privileges in accordance with section 11-501.1 of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501.1 (West 2014)).

¶ 4 On April 15, 2014, Magnant filed a petition to rescind the statutory summary suspension of his driving privileges, but failed to indicate a basis to support the rescission. He later amended his petition to allege several grounds, including, *inter alia*, that (i) he was unlawfully stopped and seized in violation of his fourth amendment rights, (ii) the police officer lacked reasonable suspicion to support the traffic stop, (iii) the movement of his vehicle within his lane could not be considered "weaving," and thus, could not support a valid investigatory stop, and (iv) the officer did not have reasonable grounds to believe that he was driving under the influence of alcohol.

¶ 5 At a hearing on his petition, Magnant testified that he was employed as an operating engineer at Loyola University in Chicago, where he worked the first shift from 6 a.m. to 2 p.m. Shortly before 5 a.m. on March 17, 2014, he was driving to work from his home in Carpentersville, heading eastbound on Illinois Route 72, also known as Higgins Road. A Hoffman Estates police officer pulled him over and told him that he was "swerving all over the place." Magnant responded that he was on his way to work and handed the officer his driver's

license and insurance information. The officer issued Magnant two traffic citations for improper lane usage and DUI, and placed him under arrest for resisting a peace officer.

¶ 6 Magnant testified that he was neither swerving nor speeding, and was upset that he had been pulled over. He explained that he had a 40-mile drive to work, and tried to drive carefully and obey the speed limit so that he would not get pulled over. When asked what condition the road was in that day, Magnant testified:

"Like on most of the roads we drive there are, there are [sic] damage to the road. I try and avoid it as best I can, stay within the lane. You're trying to avoid potholes, sunken manhole covers, road debris, road kill, frost heaves, heat buckles. They're all out there. We all drive those roads. We know what the condition the roads are in."

¶ 7 Magnant further testified that he paid hundreds of dollars to repair damage to his vehicle caused by potholes and "things like that" while driving on the roads, and tried to avoid such hazards as much as he could. He presented a bill from an automotive repair shop dated May 28, 2013, ten months before his arrest in this case, for damage to the front end of his truck which he claimed was due to deteriorated roads. Magnant also presented a video of the traffic stop recorded by the camera in the police car, which was admitted into evidence and viewed by the court.

¶ 8 Magnant denied that he was driving under the influence of alcohol at the time of his arrest, was driving erratically, or crossed over the lane lines. He also testified that he suffers from hypertension and Type 2 diabetes.

¶ 9 The circuit court rejected Magnant's claims that the police officer lacked reasonable suspicion that he swerved and that the video showed that he never crossed over the lines, stating:

"I saw the video and I saw him cross the line several times, both the right-hand side and the left-hand side, and when he was crossing the bridge he came very close to

hitting the guardrail or wall, whatever you want to call it, on the driver's side of the lanes and I saw that on the DVD, and I find that the officer had reasonable grounds to stop the defendant for lanes violation."

The court allowed the petition to proceed for the State to address Magnant's allegation that the police officer lacked reasonable suspicion to arrest him for DUI, and denied all the remaining grounds in his petition.

¶ 10 Hoffman Estates police officer Fitzgerald testified that prior to initiating the traffic stop, he observed Magnant crossing over the left and right lane lines. Officer Fitzgerald approached Magnant's vehicle and told him why he pulled him over, and Magnant responded by looking straight ahead and stating that he was on his way to work. Officer Fitzgerald smelled a strong odor of alcohol on Magnant's breath as he spoke, observed that his eyes were bloodshot, and that his speech was mumbled and slurred. The officer asked Magnant if he had been drinking, and Magnant responded by repeatedly stating that he was on his way to work.

¶ 11 Officer Fitzgerald further testified that Magnant refused to take a field sobriety test, and Fitzgerald then informed him that he was under arrest for DUI. Magnant tightly grabbed the steering wheel with both hands and refused to get out of the car. The officer acknowledged that he could not tell how many drinks Magnant had, what time he had consumed those drinks, or where he had been drinking.

¶ 12 Officer Fitzgerald testified that he ran a computer check on Magnant following the arrest, and did not recall telling another officer that he ran an earlier check and saw that Magnant had a prior DUI. The court accepted defense counsel's representation that the video included audio of Officer Fitzgerald stating that he ran a background check on Magnant as he pulled him over and knew that he had a "basis."

¶ 13 The circuit court noted Officer Fitzgerald's testimony that he saw Magnant weaving from side to side and crossing the lane line markers on both the right and left, and after pulling Magnant over, smelled alcohol on his breath and observed that he had bloodshot eyes and slurred speech. The court found that the officer had probable cause to arrest Magnant, and denied his petition to rescind the statutory summary suspension of his driving privileges.

¶ 14 Magnant filed a motion to reconsider the denial of his petition alleging that the court failed to consider his constitutional claims that Officer Fitzgerald conducted an unlawful stop and seizure, that he was arrested without probable cause, and that the officer lacked reasonable suspicion to suspect that he was under the influence of alcohol. Magnant also claimed that the court failed to properly review the video and erroneously found that he crossed over the lane lines.

¶ 15 At a hearing on Magnant's motion, the circuit court again viewed the video, and thereafter stated that it saw Magnant commit lane violations three times. The court found that Officer Fitzgerald had probable cause to stop Magnant, and that the officer's testimony was clear and convincing. The court denied Magnant's motion to reconsider.

¶ 16 On appeal, Magnant first contends that that the court erred in denying his petition because Officer Fitzgerald unlawfully seized him in violation of his fourth amendment rights where the officer had no reasonable suspicion that he was engaged in any criminal activity or wrongdoing. Magnant argues that he did not violate the statute that restricts drivers to remain within a single lane, but instead, claims that it was necessary for him to deviate from the lane to avoid potholes and road damage which could have caused damage to his vehicle. Magnant argues that the State did not submit any evidence to rebut his testimony that there was road damage.

¶ 17 At a hearing on a petition to rescind a statutory summary suspension of driving privileges, the burden of proof rests with the petitioner. *People v. Wear*, 229 Ill. 2d 545, 559-60 (2008). If the petitioner establishes a *prima facie* case for rescission of the summary suspension, the burden then shifts to the State to present evidence that justifies the suspension. *Id.* at 560.

¶ 18 As a threshold matter, we note that the parties disagree about the proper standard of review for this case. Magnant asserts that this court should apply *de novo* review because the facts in this case are not in dispute, and the issue is purely a question of law. The State, on the other hand, asserts that our review involves a two-part analysis where we review the circuit court's factual findings to determine if they are against the manifest weight of the evidence, and apply *de novo* review to the court's legal ruling on the petition to rescind. The State is correct.

¶ 19 On review of an appeal of a petition to rescind, we utilize the standard applicable to the review of suppression hearings. *Id.* at 561. Thus, we defer to the circuit court's factual findings and reverse those findings only if they are against the manifest weight of the evidence. *Id.* However, we are free to undertake our own assessment of the facts in relation to the issues and draw our own conclusions when deciding what relief may be granted. *Id.* at 562. Therefore, we apply *de novo* review to the circuit court's ultimate legal ruling as to whether defendant's petition to rescind should have been granted. *Id.*

¶ 20 As a preliminary issue, the State, in a footnote, asks us to take judicial notice that in July 2015 Magnant pleaded guilty to reckless driving for the incident in this case, which refutes his argument that the officer had no basis for stopping his vehicle. Accordingly, the State maintains, this court must reject Magnant's argument because he is estopped from asserting inconsistent positions. *People v. Goestenkers*, 278 Ill. App. 3d 144, 149 (1996).

¶ 21 We note Magnant's conviction, but find *Goestenkers* inapposite. In *Goestenkers*, the circuit court denied the defendant's petition to rescind the statutory summary suspension of his

driving privileges, and defendant then pleaded guilty to a charge of improper lane usage for crossing over the center line in exchange for the dismissal of his DUI charge. *Id.* at 147.

Defendant later appealed the denial of his petition to rescind, and the appellate court found that the defendant's guilty plea to improper lane usage constituted a judicial admission which precluded him from later contesting the initial traffic stop and estopped him from reverting to his preplea assertion that he did not cross over the center line. *Id.* at 149.

¶ 22 Here Magnant filed his notice of appeal after the circuit court denied his petition to rescind and his motion to reconsider that ruling. On January 27, 2015, Magnant filed his appellate brief raising the instant challenges to the initial stop and his arrest for DUI, and five months later, pleaded guilty to reckless driving.

¶ 23 Under the doctrine of judicial estoppel, once a defendant affirms under oath that a particular state of facts exists, he cannot later assert that the contrary is true. *People v. Hood*, 265 Ill. App. 3d 232, 240 (1994). We recognize that by pleading guilty to reckless driving, Magnant essentially admitted that Officer Fitzgerald had reasonable suspicion to stop him. But based on the sequence of events in this case, where Magnant raised and briefed his challenges well before entering his plea, we decline to find that he is judicially estopped from pursuing his arguments in this court.

¶ 24 Turning to the merits, we find that Officer Fitzgerald had a reasonable, articulable suspicion that Magnant had violated the statute on lane usage, and thus, the initial traffic stop was constitutional. Vehicle stops are subject to the reasonableness requirement of the fourth amendment, and although such stops are often supported by probable cause, where a police officer has a "reasonable, articulable suspicion" that a traffic violation has occurred, an investigative stop is constitutional regardless of whether it is supported by probable cause.

People v. Hackett, 2012 IL 111781, ¶ 20. Where an officer can point to specific facts which,

when considered with rational inferences, reasonably warrant the intrusion, he is justified in conducting a brief, investigatory stop. *Id.*

¶ 25 Section 11-709(a) of the Code provides, in pertinent part, that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane." 625 ILCS 5/11-709(a) (West 2014). Our supreme court examined the plain language of this statute and held " '[W]hen a motorist crosses over a lane line and is not driving as nearly as practicable within one lane, the motorist has violated the statute.' " *Hackett*, 2012 IL 111781, ¶ 26, quoting *People v. Smith*, 172 Ill. 2d 289, 297 (1996). The court further explained that where "a police officer observes multiple lane deviations, for no obvious reason, an investigatory stop is proper." *Hackett*, 2012 IL 111781, ¶ 28. Although additional evidence is necessary to establish probable cause and sustain a conviction, such as evidence that there were no road conditions that necessitated the movement, an officer's observation of apparent lane violations is sufficient to justify an investigatory stop, which would then allow him to make further inquiry into the reason for the lane deviation. *Id.*

¶ 26 In this case, Officer Fitzgerald testified that, prior to initiating the traffic stop, he observed Magnant crossing over the left and right lane lines. This observation alone was sufficient to justify the investigatory traffic stop. *Id.* at ¶ 29. In addition to the officer's testimony, the circuit court viewed the video from the police car camera, and thereafter stated "I saw him cross the line several times, both the right-hand side and the left-hand side, and when he was crossing the bridge he came very close to hitting the guardrail or wall, whatever you want to call it, on the driver's side of the lanes." We, too, have viewed the video included in the record on appeal and although Magnant's vehicle did not veer significantly outside lane lines, it is obvious that Magnant swerved several times in an erratic fashion, both left and right, so that an investigatory stop was warranted.

¶ 27 Further, although Magnant testified that the roads are damaged and he tries to avoid hazards such as potholes as best as he can, he did not testify that, on this particular occasion, he swerved to avoid specific hazards or that the road he was traveling on was in such condition. Again, nothing in the video supports Magnant's claim that road conditions prompted his erratic driving. Regardless, even if he had so testified, his testimony would not have eliminated the justification for an investigatory stop. *Id.* at ¶ 29 (slight, momentary lane deviations sufficient to justify investigatory stop). Based on the officer's testimony and its own video observations, the circuit court found that Officer Fitzgerald had sufficient reasonable suspicion to stop Magnant for committing lane violations. We defer to the court's factual findings and hold that the traffic stop in this case did not violate Magnant's fourth amendment rights.

¶ 28 Magnant next contends that Officer Fitzgerald lacked sufficient evidence to arrest and charge him with DUI. Magnant maintains that he was not weaving in his lane of travel, but instead, was maneuvering around potholes, and that Officer Fitzgerald stopped him based on mere suspicion or a hunch. He further maintains that weaving alone is not a sufficient basis for stopping a vehicle, and that there was no other indicia that he was intoxicated.

¶ 29 A police officer has probable cause to arrest a person "when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *Wear*, 229 Ill. 2d at 563. "[T]he existence of probable cause depends upon the totality of the circumstances at the time of the arrest." *Id.* at 564. Pursuant to section 11-501(a)(2) of the Code, a person shall not drive or be in actual physical control of a vehicle while he is under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2014). Courts have consistently held that where a defendant exhibits a strong odor of alcohol, bloodshot eyes and slurred speech, such factors constitute indicia of intoxication sufficient to provide an officer

with probable cause to arrest the defendant for DUI. *People v. Lurz*, 379 Ill. App. 3d 958, 966 (2008) (and cases cited therein).

¶ 30 Here, the record shows that Magnant exhibited several indicators of intoxication which gave Officer Fitzgerald probable cause to arrest him for DUI. Officer Fitzgerald first testified that he observed defendant drive over the left and right lane lines, which, as discussed above, gave the officer reasonable articulable suspicion to conduct the traffic stop. The officer further testified that when he approached Magnant, he smelled a strong odor of alcohol on his breath, observed that his eyes were bloodshot, and that his speech was mumbled and slurred. Officer Fitzgerald's testimony is corroborated by the video, which shows him commenting on the odor of alcohol shortly after he approached Magnant's vehicle. The officer then asked Magnant if he had been drinking, and he responded by repeatedly stating that he was on his way to work. Magnant then refused multiple requests to submit to a field sobriety test. These facts gave rise to a reasonable belief that Magnant was driving under the influence of alcohol, and provided probable cause for his arrest.

¶ 31 Accordingly, we conclude that the circuit court's factual findings in this case were not against the manifest weight of the evidence, and the court's denial of Magnant's petition to rescind the statutory summary suspension of his driving privileges was proper. We therefore affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.