

NOTICE

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2014 IL App (5th) 130423-U

NO. 5-13-0423

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Williamson County.
	)	
v.	)	No. 13-DT-3
	)	
JAMIE A. PART,	)	Honorable
	)	Phillip G. Palmer,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE SCHWARM delivered the judgment of the court.  
Justices Goldenhersh and Stewart concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court correctly concluded that the police officer's extraterritorial arrest of the defendant was proper.

¶ 2 The defendant, Jamie A. Part, was charged with, among other offenses, two counts of driving while under the influence of alcohol (625 ILCS 5/11-501(a)(1), (a)(2) (West 2012)). The Secretary of State thereafter suspended the defendant's driving privileges, and the defendant petitioned the circuit court of Williamson County to rescind the suspension. The circuit court denied the defendant's petition to rescind, along with the defendant's motion to reconsider, and the defendant appeals.

¶ 3 On appeal, the defendant argues that her suspension should be rescinded because the officer who arrested her was outside his jurisdiction at the time he arrested the defendant and lacked statutory authority to make the arrest. For the reasons that follow, we affirm.

¶ 4 BACKGROUND

¶ 5 On December 30, 2012, Officer Zachary S. Whitecotton cited the defendant with improper lane use (625 ILCS 5/11-709 (West 2012)), operating a vehicle displaying an expired registration sticker (625 ILCS 5/3-413(f) (West 2012)), and driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a) (West 2012)). Because the defendant's blood-alcohol concentration tested as .158, the Secretary of State summarily suspended her driver's license pursuant to section 11-501.1 of the Illinois Vehicle Code (625 ILCS 5/11-501.1 (West 2012)).

¶ 6 On January 18, 2013, the defendant filed, pursuant to section 2-118.1(b) of the Illinois Vehicle Code (625 ILCS 5/2-118.1(b) (West 2012)), a petition to rescind the statutory summary suspension. On February 5, 2013, the circuit court, after hearing testimony, which is not included in the record on appeal, denied the defendant's petition to rescind. In its docket order, the circuit court found that the arresting officer, although outside of his jurisdiction, observed the defendant's expired registration sticker and improper lane use without the use of police equipment or investigatory aid. The circuit court held that because such observations were available to any private citizen and because the offenses were not ordinance violations, the stop and arrest was authorized pursuant to section 107-3 of the Code of Criminal Procedure (725 ILCS 5/107-3 (West

2012)), which is commonly referred to as the citizen's arrest statute. The circuit court further held that the officer's use of a squad car and police lights to effect the stop were permitted under the facts. The circuit court thereby sustained the defendant's statutory summary suspension.

¶ 7 On March 6, 2013, the defendant filed a motion to reconsider and motion to quash arrest. At the July 30, 2013, hearing on the motion to reconsider, which was transcribed and is included in the record on appeal, the State noted that it had stipulated that the stop had occurred outside the officer's jurisdiction. At the hearing, the following evidence, which the defendant does not dispute, was presented.

¶ 8 On December 30, 2012, at about 2:17 a.m., Officer Whitecotton, City of Carterville police officer, was on duty and returning to the Carterville city limits from a security check of an industrial park area that had been annexed to the City of Carterville. In returning to within Carterville city limits, he traveled on Route 13, on a stretch of highway owned by the United States as part of the Crab Orchard National Wildlife Refuge in Illinois. En route, Officer Whitecotton observed that the defendant's vehicle had an invalid registration sticker showing it had expired in August 2012. Officer Whitecotton verified, through the Williamson County sheriff's office, that the defendant's registration was expired. Officer Whitecotton then followed the defendant's vehicle and observed the defendant's passenger side tires cross over the white fog line of the road by a full tire width. Officer Whitecotton activated his emergency lighting system and initiated the traffic stop.

¶ 9 Officer Whitecotton was in a marked squad car and in uniform. He approached the defendant's vehicle and requested her driver's license and insurance information. Officer Whitecotton asked the defendant if she had consumed any alcoholic beverages, and she said she had a couple of beers. As the defendant reached for her information, Officer Whitecotton noticed the defendant's slurred speech, her bloodshot and watery eyes, and a strong odor of alcoholic beverage on her breath. After the defendant performed field sobriety tests, Officer Whitecotton notified the defendant she was under arrest. Officer Whitecotton testified that he did not request assistance from Williamson County officers nor was he advised by Williamson County officers to proceed with the DUI arrest. Although he did not request backup, Officer Joe Wilde, of the City of Crainville, arrived on the scene. A breath test administered at 3:26 a.m. showed the defendant's blood-alcohol level to be .158.

¶ 10 Officer Whitecotton testified that his superiors had never told him to patrol outside their jurisdiction. Officer Whitecotton testified that he was instructed that in getting to and from the industrial park area that had been annexed, if he were to witness an infraction, he was not to ignore it. Officer Whitecotton estimated that he had made more than 20 but less than 100 stops in the extrajurisdictional area near the industrial park that Carterville had annexed in 2009.

¶ 11 After the hearing, the circuit court again concluded, among other things, that Officer Whitecotton observed the improper lane use and the expired sticker violations with his naked eye and thereby had proper authority to arrest the defendant under the citizen's arrest statute (725 ILCS 5/107-3 (West 2012)). The circuit court thereby denied

the defendant's motion to reconsider and motion to quash arrest. On August 29, 2013, the defendant filed a notice of appeal.

¶ 12

#### ANALYSIS

¶ 13 Section 11-501.1(a) of the Illinois Vehicle Code provides that "[a]ny person who drives or is in actual physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent \*\*\* to a chemical test or tests of blood, breath, or urine for the purpose of determining the content of alcohol \*\*\* in the person's blood if arrested \*\*\* for [DUI]." 625 ILCS 5/11-501.1(a) (West 2012). A motorist who is asked to submit to such testing shall be warned that his driving privileges will be summarily suspended if he (1) refuses testing or (2) submits to testing that reveals that the motorist's blood-alcohol level is in excess of the legal limit. 625 ILCS 5/11-501.1(c) (West 2012).

¶ 14 If testing reveals a blood-alcohol level in excess of the legal limit, "the law enforcement officer shall immediately submit a sworn report to the circuit court of venue and the Secretary of State, certifying that the test \*\*\* was \*\*\* requested under paragraph (a) and the \*\*\* testing \*\*\* disclosed an alcohol concentration of 0.08 or more." 625 ILCS 5/11-501.1(d) (West 2012). Pursuant to section 11-501.1(e), "[u]pon receipt of the sworn report of a law enforcement officer," the Secretary of State's office shall enter a summary suspension of driving privileges. 625 ILCS 5/11-501.1(e) (West 2012).

¶ 15 If a motorist's driving privileges are summarily suspended, the motorist may request a judicial hearing seeking rescission of that suspension. 625 ILCS 5/2-118.1 (West 2008). The scope of that hearing encompasses the statutory issues of whether (1)

the motorist was placed under arrest for DUI; (2) the arresting officer had reasonable grounds to believe that the motorist was driving under the influence; (3) the motorist, after proper warnings, refused to submit to testing; and (4) the motorist, after proper warnings, submitted to testing and the test revealed a blood-alcohol concentration of 0.08 or greater. 625 ILCS 5/2-118.1(b) (West 2012). In addition to the statutory grounds for rescinding summary suspension, a motorist's suspension may be rescinded where the stop of the motorist's vehicle was improper. *People v. Paige*, 385 Ill. App. 3d 486, 489 (2008). "Upon the conclusion of the judicial hearing, the circuit court shall sustain or rescind the statutory summary suspension \*\*\* and immediately notify the Secretary of State." 625 ILCS 5/2-118.1(b) (West 2012).

¶ 16 "A hearing on a petition to rescind a statutory summary suspension of driving privileges is a civil proceeding." *People v. Wiley*, 333 Ill. App. 3d 861, 863 (2002). The defendant motorist bears the burden of proof and, if she establishes a *prima facie* case for rescission, the burden then shifts to the State to come forward with evidence justifying the suspension. *Id.* In considering an appeal of a ruling on a petition to rescind, a court of review defers to the trial court's factual findings and considers *de novo* whether the petition to rescind should be granted. *People v. Wear*, 229 Ill. 2d 545, 561-62 (2008); *People v. Hacker*, 388 Ill. App. 3d 346, 350 (2009). A reviewing court also considers matters of statutory construction *de novo*. *People v. Howard*, 228 Ill. 2d 428, 432 (2008).

¶ 17 Initially, we note the defendant's failure to include in the record on appeal a transcript of the hearing on her petition to rescind. The appellant bears the burden of providing this court with a record adequate to resolve all issues. Ill. S. Ct. R. 323 (eff.

Dec. 13, 2005); R. 329 (eff. Jan. 1, 2006). In the absence of a sufficient record on appeal, this court will presume the trial court's ruling was in conformity with the law. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 18 Notwithstanding her failure to provide a complete record on appeal, however, the defendant argues that the circuit court erred in denying her petition to rescind statutory suspension. The defendant contends that the supreme and appellate courts' current interpretation of the citizen's arrest statute (725 ILCS 5/107-3 (West 2012)), which follows the plain language of the statute, produces an absurd result. The defendant argues that the offenses of illegal lane use and expired registration are "minor offenses \*\*\* which amount to no greater offense than an ordinance violation" and notes that the language of the City of Carterville's ordinance for improper lane use (Carterville Ordinance 24-11-709) mirrors the Illinois statute for improper lane use (625 ILCS 5/11-709 (West 2012)). Thus, the defendant argues that such offenses cannot support the officer's arrest pursuant to the citizen's arrest statute, which explicitly excludes ordinance violations as a basis for arrest.

¶ 19 "This court's primary objective in construing a statute is to ascertain and give effect to the intent of the legislature." *Poris v. Lake Holiday Property Owners Ass'n*, 2013 IL 113907, ¶ 47. "The most reliable indicator of the legislature's intent is the plain language of the statute." *Id.* "When the statutory language is clear and unambiguous, it should be applied as written without resort to extrinsic aids or tools of interpretation." *Id.*

¶ 20 "If the language of a statute is ambiguous, this court turns to extrinsic aids of statutory construction, including legislative history and well-established rules of

construction." *Id.* However, as noted by the State, "[t]here is no rule of statutory construction that authorizes a court to declare that the legislature did not mean what the plain language of the statute says." *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 184 (2007). "When a statute is unambiguous, it must be enforced as enacted, and a court may not depart from its plain language by reading into it exceptions, limitations, or conditions not expressed by the legislature." *People v. Wright*, 194 Ill. 2d 1, 29 (2000).

¶ 21 Under the doctrine of *stare decisis*, this court is also bound by the decision of a higher judicial tribunal. *Kelley v. Sheriff's Merit Comm'n of Kane County*, 372 Ill. App. 3d 931, 934 (2007); *Orr v. Edgar*, 298 Ill. App. 3d 432, 442 (1998) ("It is fundamental that the appellate court does not have the authority to abandon supreme court precedent."). Our supreme court and appellate courts following supreme court precedent have established the rule that a peace officer outside his or her jurisdiction may use section 107-3 of the Code of Criminal Procedure of 1963 as a basis for making an arrest. See *People v. Lahr*, 147 Ill. 2d 379, 382 (1992); *People v. Kleutgen*, 359 Ill. App. 3d 275, 278 (2005); *People v. Shick*, 318 Ill. App. 3d 899, 905 (2001); *People v. Ciesler*, 304 Ill. App. 3d 465, 470 (1999); *People v. Plummer*, 287 Ill. App. 3d 250, 253 (1997); *People v. O'Connor*, 167 Ill. App. 3d 42, 45-46 (1988); *People v. Gupton*, 139 Ill. App. 3d 530, 533-34 (1985); *People v. Rowe*, 128 Ill. App. 3d 721, 724 (1984). The citizen's arrest statute, found in section 107-3 of Code of Criminal Procedure of 1963, provides:



"Any person may arrest another when he has reasonable grounds to believe that an offense other than an ordinance violation is being committed." 725 ILCS 5/107-3 (West 2012).

¶ 22 "[I]mproper lane use is an 'offense other than an ordinance violation' for the purposes of creating authority to arrest under section 107-3." *Kleutgen*, 359 Ill. App. 3d at 279 (section 11-709 of the Illinois Vehicle Code (625 ILCS 5/11-709 (West 2002))), which contains the prohibition on improper lane use, is a penal statute and is an enactment of the General Assembly, and thus, is not an ordinance enacted by a municipality). Likewise, operating a vehicle with an expired registration sticker (625 ILCS 5/3-413(f) (West 2012)) is also not an ordinance enacted by a municipality, nor is driving under the influence of alcohol (625 ILCS 5/11-501(c), (d) (West 2012)).

¶ 23 Accordingly, pursuant to the plain language of the citizen's arrest statute, a police officer, as any other citizen, may effect a citizen's arrest for improper lane use and displaying an expired registration sticker, neither of which is an ordinance violation. We decline to ignore the plain language of the statute or supreme court precedent recognizing a police officer's authority to act under the citizen's arrest statute and arrest a defendant he has reasonable grounds to believe has committed an offense other than an ordinance violation. See 725 ILCS 5/107-3 (West 2012). "The responsibility for the wisdom or justice of legislation rests with the legislature, and courts may not rewrite statutes to make them consistent with the court's idea of orderliness and public policy." *Wright*, 194 Ill. 2d at 29.

¶ 24 Moreover, we agree with the circuit court's decision that Officer Whitecotton's

arrest of the defendant outside of his jurisdiction constituted a valid citizen's arrest in this case.

¶ 25 As noted, in interpreting section 107-3, courts have held that a warrantless arrest made by a police officer outside of his jurisdiction may constitute a valid citizen's arrest. *Lahr*, 147 Ill. 2d at 382-83; *Ciesler*, 304 Ill. App. 3d at 470-71. However, when outside his jurisdiction, a police officer's right to arrest under section 107-3 is no greater than that of a private citizen. *Id.* An extraterritorial arrest by a police officer will not be upheld under section 107-3 if in making the arrest the officer uses the powers of his office to obtain evidence not available to a private citizen. *Lahr*, 147 Ill. 2d at 382-83 (use of radar gun was assertion of officer's police authority and justified quash of arrest of speeding motorists); *People v. Kirvelaitis*, 315 Ill. App. 3d 667, 672-73 (2000) (use of radar gun, without officer testimony that he observed the defendant speeding prior to using the radar gun, was assertion of police authority and invalidated arrest as a citizen under section 107-3). On the other hand, when a police officer outside his jurisdiction has obtained evidence sufficient to warrant a traffic stop through his own observations without resorting to the power of his office, the subsequent use of his powers of office to acquire further evidence not available to a private citizen does not invalidate an arrest. *People v. Erby*, 375 Ill. App. 3d 860, 863 (2007). "[A]n arrest under section 107-3 becomes improper only if an out-of-jurisdiction officer used the powers or equipment to collect the evidence that justified the arrest." *Kleutgen*, 359 Ill. App. 3d at 280.

¶ 26 We agree with the circuit court and conclude that Officer Whitecotton's extraterritorial arrest of the defendant was valid because he first obtained evidence

sufficient to warrant the traffic stop merely by using his own powers of observation without resorting to the powers of his office. See *People v. Smith*, 172 Ill. 2d 289, 297 (1996) (where officer sees vehicle weave across lane line, he has probable cause to arrest the defendant for improper lane use (625 ILCS 5/11-709(a) (West 1992))); see also *People v. Greco*, 336 Ill. App. 3d 253, 258-59 (2003) (erratic driving, including weaving within a single lane, gives reasonable suspicion of driving under the influence, which is sufficient to justify a traffic stop). Officer Whitecotton used his unaided powers of observation to determine that the defendant's registration sticker had expired and that the defendant was swerving outside her driving lane. This evidence, available to any private citizen and not first obtained through his official capacity as an officer, sufficiently provided Officer Whitecotton with reasonable grounds to stop the defendant. See *Plummer*, 287 Ill. App. 3d at 253 (because the officer stopped the defendant based upon evidence available to a private citizen—he observed the defendant driving erratically—he had reasonable grounds to stop the defendant under citizen's arrest statute).

¶ 27 The fact that Officer Whitecotton used his powers of office to acquire further evidence not available to a private citizen does not invalidate the subsequent arrest of the defendant. See *Shick*, 318 Ill. App. 3d at 905 (because officer had reasonable grounds based on radio bulletin available to ordinary citizen, officer's use of his police radio, MARS lights, spotlight, and gun did not affect the validity of an arrest made under section 107-3); *Ciesler*, 304 Ill. App. 3d at 471 (because officer had previously obtained evidence sufficient to warrant a traffic stop through own observations, subsequent taking of license, running computer check, calling backup officers, and performing field sobriety

test did not invalidate proper stop). Likewise, the subsequent breathalyzer test did not invalidate the arrest. See *Plummer*, 287 Ill. App. 3d at 253 (extraterritorial arrest for DUI based upon breathalyzer test was not improper, where officer stopped the defendant after observing him driving erratically); *People v. Gutt*, 267 Ill. App. 3d 95, 99 (1994) (extraterritorial arrest for DUI based upon breathalyzer test was not improper, where officer stopped defendant after observing him make a left turn without signaling); *Gupton*, 139 Ill. App. 3d at 534 (extraterritorial arrest for DUI based upon sobriety tests and breathalyzer test was not invalid where officer stopped the defendant after observing him swerving); *Rowe*, 128 Ill. App. 3d at 724 (extraterritorial arrest for DUI based upon breathalyzer test and statements made by defendant was not invalid where officers stopped the defendant after observing him swerving).

¶ 28 We further note that the supreme court's concern in *Lahr* with police authorities establishing extraterritorial radar surveillance for speeding is not applicable here. *Lahr*, 147 Ill. 2d at 386-87. Officer Whitecotton testified that his superiors had never told him to patrol outside their jurisdiction, and the circuit court noted that it had not heard any evidence that the City of Carterville police officers were patrolling outside their jurisdiction. Further, Officer Whitecotton did not arrest the defendant for speeding based on a radar reading and had not "establish[ed] extraterritorial radar surveillance for speeding violations" as in *Lahr*. *Id.* Our holding here in no way abolishes the general rule regarding an officer's power outside his jurisdiction. *Id.* at 387.

¶ 29 For these reasons, we hold that the circuit court did not err in denying the defendant's petition to rescind the statutory summary suspension of her driver's license.

Accordingly, we affirm the judgment of the circuit court of Williamson County.

¶ 30

#### CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Williamson County.

¶ 32 Affirmed.