

NOTICE

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2014 IL App (5th) 130428-U

NO. 5-13-0428

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,)	Williamson County.
)	
v.)	No. 13-DT-47
)	
AMI J. FROST,)	Honorable
)	Phillip G. Palmer,
Defendant-Appellant.)	Judge, presiding.

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, Ami J. Frost, was charged with improper lane use (625 ILCS 5/11-709 (West 2012)) and 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, 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¶ 3 On appeal, the defendant argues that her suspension should be rescinded because the officer who arrested her was outside his jurisdiction at the time he arrested her and lacked statutory authority to make the arrest. For the reasons that follow, we affirm.

¶ 4 **BACKGROUND**

¶ 5 On January 26, 2013, Officer Zachary S. Whitecotton cited the defendant with improper lane use (625 ILCS 5/11-709 (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 0.160, 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 March 22, 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 July 30, 2013, she filed a motion to quash arrest. In both motions, the defendant argued that her arresting officer's extrajurisdictional arrest was improper. On July 30, 2013, the case was called for hearing on the defendant's petition to rescind statutory summary suspension and motion to quash arrest.

¶ 7 At the July 30, 2013, hearing, the State stipulated that the officer's arrest of the defendant had occurred outside the officer's jurisdiction. At the hearing, the following evidence, which is not disputed by the defendant, was adduced.

¶ 8 On January 26, 2013, at about 2:28 a.m., Officer Whitecotton, City of Carterville police officer, was on duty and traveling between the Carterville city limits and an industrial park area that had been annexed to the City of Carterville. Officer Whitecotton

was traveling westbound on Illinois 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 was traveling at a very low rate of speed. Officer Whitecotton testified that "[w]ith the common eye, it was clear that she was traveling well below the posted speed limit." Officer Whitecotton then activated his radar unit, which showed that the defendant was traveling at 32 miles an hour, although the posted speed limit was 55 miles an hour.

¶ 9 Officer Whitecotton turned around to follow the defendant's vehicle. Officer Whitecotton then observed that the defendant activated her turn signal to turn north on Cambria Road, but she initially passed the entrance to the turn lane, then swerved into the lane, cutting off another vehicle. Officer Whitecotton considered the defendant's actions improper lane use. Officer Whitecotton continued to follow the defendant and further observed that the defendant's tires crossed the center line and fog line numerous times. Officer Whitecotton then activated his emergency lighting system and initiated the traffic stop.

¶ 10 Officer Whitecotton was in a marked squad car and in uniform. Once the defendant's vehicle was curbed, he notified Williamson County dispatch of the stop. Upon approaching the defendant's vehicle, Officer Whitecotton observed a male passenger who appeared to be passed out in the passenger seat. Officer Whitecotton requested the defendant's driver's license and insurance information and requested the passenger's identification. Officer Whitecotton asked the defendant if she had consumed any alcoholic beverages, and she said that she had not. Officer Whitecotton noticed the

defendant's bloodshot, watery eyes and slurred speech, and he recognized a strong odor of alcoholic beverage coming from inside the vehicle. Officer Whitecotton learned that the defendant was 19 years old.

¶ 11 After making radio contact with Williamson County dispatch again, Officer Whitecotton conducted a field sobriety exam. Although he did not request backup, Sergeant Aaron Glenn, Officer Jordan Kiesling, and Officer Ryan Prather, from the City of Carterville police department, arrived on the scene. After the defendant failed the field sobriety tests, Officer Whitecotton notified the defendant she was under arrest. A breath test administered at 3:34 a.m. showed the defendant's blood-alcohol level to be 0.160.

¶ 12 Officer Whitecotton testified that he did not request assistance from Williamson County officers. Officer Whitecotton also 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.

¶ 13 After the hearing, the circuit court noted that Officer Whitecotton's arrest of the defendant had been for improper lane use, not speeding. Therefore, in using the radar gun, Officer Whitecotton had not gathered evidence to make an arrest for improper lane use. The circuit court concluded that because Officer Whitecotton observed the defendant's improper lane use, as a citizen could have done, he 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 petition to rescind statutory summary suspension and motion to quash arrest. On August 29, 2013, the defendant filed a notice of appeal.

¶ 14

ANALYSIS

¶ 15 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).

¶ 16 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).

¶ 17 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).

¶ 18 "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).

¶ 19 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 Illinois legislature intended the citizen's arrest statute to be enforced by a private person, not a police officer, only in instances of a significant criminal offense. The defendant argues that because an ordinance, which can be punishable by up to six months in jail, is excluded as a basis for an arrest under the citizen's arrest statute, her improper lane use, which is merely a petty offense with a fine penalty, cannot form a basis for arrest under the citizen's arrest statute. The defendant further argues that the language of the City of Carterville's ordinance for improper lane use (Carterville Ordinance 24-11-709), which mirrors the Illinois statute for improper lane use (625 ILCS 5/11-709 (West 2012)), also supports her argument that improper lane use cannot be a basis for a citizen's arrest.

¶ 20 "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.*

¶ 21 "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).

¶ 22 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). Section 107-3, referred to as the citizen's arrest statute, 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).

¶ 23 "[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, driving under the influence of alcohol (625 ILCS 5/11-501(c), (d) (West 2012)) is also a penal statute enacted by the General Assembly and not an ordinance enacted by a municipality.

¶ 24 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, which is not an ordinance violation. A police officer, as any other citizen, may also effect a citizen's arrest for driving under the influence, which is not 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.

¶ 25 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, despite Officer Whitecotton's use of a radar gun.

¶ 26 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; *People v. Kirvelaitis*, 315 Ill. App. 3d 667, 672-73 (2000). 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.

¶ 27 We agree with the circuit court and conclude that Officer Whitecotton's extraterritorial arrest of the defendant was valid because he 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 a lane line, officer 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 was driving at a very low speed and that the defendant repeatedly swerved outside her driving lane. This evidence, available to any private citizen and not obtained through his official capacity as an officer, sufficiently provided Officer Whitecotton with reasonable grounds to believe that an offense other than an ordinance violation was being committed (725 ILCS 5/107-3 (West 2012)). See *Kleutgen*, 359 Ill. App. 3d at 278-79 (where parties did not dispute that officer saw car veering in and out of its lane before he made the arrest, the officer had probable cause to believe the driver was committing improper lane use, an offense "other than an ordinance violation" justifying citizen's arrest).

¶ 28 The defendant nevertheless argues that Officer Whitecotton's use of the radar gun rendered his citizen's arrest improper. In *Lahr*, the Illinois Supreme Court upheld the quash of an arrest made by an officer who utilized a radar gun to detect speeding motorists outside the officer's jurisdiction. According to the court, the use of the radar gun removed the arrest from the purview of the citizen's arrest statute because a private citizen is not typically armed with a radar gun. Therefore, because the officer used the power of his office (access to a radar gun) to obtain evidence unavailable to a private citizen, the arrest did not qualify as a citizen's arrest. *Lahr*, 147 Ill. 2d at 386-87. Nevertheless, the supreme court noted in *Lahr* that the record was silent as to whether the officer had been able to determine without the aid of the radar that the defendant was speeding and that no evidence other than the radar indicated that the officer had reasonable grounds to believe a crime had been committed. *Id.* at 385.

¶ 29 Likewise, in *Kirvelaitis*, the court held that the use of a radar gun was an assertion of police authority and invalidated the officer's citizen's arrest for speeding. *Kirvelaitis*, 315 Ill. App. 3d at 673. Similar to *Lahr*, however, the court in *Kirvelaitis* noted that the officer had not testified that he had observed the defendant speeding before using his radar gun. *Kirvelaitis*, 315 Ill. App. 3d at 673. The court also noted that there was no evidence that the officer had "observed defendant driving erratically or in a manner that would indicate that defendant was driving while under the influence of alcohol." *Id.* at 672. The court stated as follows: "We would be presented with a very different situation if Officer Symonds testified that he had experience as a traffic officer, knew when cars were speeding, and observed, based on his experience, that defendant was speeding. Without this type of evidence, we cannot say that Officer Symonds saw defendant speeding and then used his radar only after making this visual observation." *Id.* at 673.

¶ 30 Unlike *Lahr* and *Kirvelaitis*, where the police officers stopped the defendants based only upon evidence obtained through the power of their office (using a radar gun), Officer Whitecotton stopped the defendant based upon evidence he acquired through his own eyes—he observed the defendant's extremely low rate of speed and he observed the defendant driving erratically. Officer Whitecotton testified that "[w]ith the common eye, it was clear that [the defendant] was traveling well below the posted speed limit." Officer Whitecotton thereafter observed the defendant nearly cause a collision in a turn lane on Route 13 and repeatedly cross the center and fog lines of the road. This evidence, available to any private citizen and not obtained through his official capacity as a deputy, 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 private citizen—he observed the defendant driving erratically—he had reasonable grounds to stop the defendant).

¶ 31 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 obtained evidence sufficient to warrant a traffic stop through own observations, 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).

¶ 32 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.* Thus, our holding here in no way abolishes the general rule regarding an officer's power outside his jurisdiction. *Id.* at 387.

¶ 33 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.

¶ 34 CONCLUSION

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

¶ 36 Affirmed.