

# Traffic Laws & Courts

The newsletter of the Illinois State Bar Association's Section on Traffic Laws & Courts

## Improper lane usage: What you need to know to prepare a defense

BY LISA L. DUNN

Most attorneys, at one point in their career, will be asked to represent a relative, friend, spouse, or a real paying client on a charge of improper lane usage. This article will explore how to successfully represent a client who is charged with improper lane usage, 625 ILCS 5/11-709.

A careful reading of the statute is always a good start.

**"Sec. 11-709. Driving on roadways laned for traffic.**

Whenever any roadway has been divided into 2 or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply.

- (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety."

Section (a) above is almost always cited as probable cause for stopping a vehicle and will be seen in most DUI cases.

As a preliminary matter, you should read the ticket (charging instrument) very carefully. If there is a formal defect in the complaint, and it is not timely challenged, then it is considered waived. A formal defect may be waived by a defendant's failure to

make a timely challenge. *People v. Oswald*, 387 N.E.2d 886, 69 Ill.App.3d, 26 Ill.Dec. 56 (1st Dist. 1979); *People v. Tammen*, 237 N.E. 2d 517, 40 Ill.2nd 76 (1968); *People v. Sikes*, 491 N.E.2d 168, 141 Ill.App.3d 773, 96 Ill. Dec. 354 (4th Dist. 1986).

When not being cited as the basis for probable cause for stopping a vehicle, pre-trial motions are rare. Since most traffic tickets are not criminal, it is rare to file a written motion. Oral motions are common. All misdemeanor and ordinance violations are tried as criminal cases under the rules of criminal procedure. *People v. Deakynne*, 227 N.E.2d 531, 83 Ill.App.2d 338 (2nd Dist. 1967). A driver accused of an ordinary traffic violation is not entitled to discovery prior to trial. *People v. Toft*, 824 N.E.2d 309, 355 Ill.App.3d 503, 291 Ill.Dec. 733 (3rd Dist. 2005).

The Illinois Supreme Court has ruled that there is no requirement of endangerment or an accident in an improper lane usage case. In *People v. Hackett*, 2012 IL 111781, 971 N.E.2d 1058, 361 Ill.Dec. 536 (2012), the defendant was charged with aggravated DUI and aggravated driving while license revoked. The trial court granted the defendant's motion to dismiss for lack of probable cause to stop the vehicle. At the hearing, the defendant testified that he swerved twice because of potholes. The officer testified that he did not recall seeing any potholes. The

officer testified that the defendant slightly crossed the black and white lane divider twice within 4-5 seconds of each other. The officer did not allege that any other vehicles or pedestrians were present or that any endangerment occurred. The officer acknowledged that the defendant obeyed all traffic laws before and after the two slight crossings and his driving was proper when the officer stopped him. The Third District Court affirmed the suppression ruling.

The Illinois Supreme Court disagreed. The Supreme Court held that there is no requirement of endangerment in an improper lane usage case. When a police officer observes multiple lane deviations, for no obvious reason, an investigatory stop is proper. But for a conviction, there must be proof beyond a reasonable doubt that the defendant deviated from his proper lane of travel and that no road conditions necessitated the movement.

The Illinois Supreme Court has also ruled that driving "nearly as practicable" within a lane means not crossing the dividing line. In *People v. Smith*, 172 Ill.2d 289, 665 N.E.2d 1215, 216 Ill.Dec. 658 (1996), the officer stopped the defendant and arrested him for improper lane usage after observing the defendant cross the lane dividing line twice, by about six inches, for roughly 150-200 yards each time. The Court found that the plain language of the statute establishes two separate requirements for

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improper lane usage. First, a motorist must drive a vehicle as nearly as practicable entirely within one lane. Second, a motorist may not move a vehicle from a lane of traffic until the motorist has determined that the movement can be safely made. *Id.* at 661-662. So, once the defendant crossed the dividing line, he was not driving "nearly as practicable" within his own lane.

The Appellate Court in the Second District has ruled that even swerving entirely within a single lane of traffic is a sufficient basis for a traffic stop. In *People v. Greco*, 336 Ill.App.3d 253, 783 N.E.2d 201, 270 Ill.Dec. 626 (2nd Dist. 2003), the defendant was charged with driving under the influence of alcohol and other charges. The officer alleged that the defendant swerved two or three times from the centerline towards the curb, but was within his own lane. There was no other poor driving cited and no other vehicles or pedestrians were endangered. The trial court denied the motion to quash and the

Appellate Court affirmed. The Court ruled that weaving within a single lane of traffic is indeed a basis for a valid traffic stop.

The Appellate Court in the Fifth District has ruled that evidence of tires touching the fog line is a sufficient basis for a valid traffic stop. In *People v. Scott*, 2012 IL App (5th) 100253, 964 N.E.2d 708, 358 Ill.Dec. 39, the defendant was stopped for improper lane usage. The officer alleged that the defendant crossed over the fog line twice for a couple of seconds on the interstate and once more on the exit ramp. The trial court granted the motion to quash and the appellate court reversed. The Appellate Court held that the state does not need to prove endangerment to establish a valid improper lane usage citation; evidence of the tires touching the fog line was sufficient.

In *People v. Maberry*, 2015 IL App. (2nd) 150341, 46 N.E.2d 415, 399 Ill.Dec. 377, the defendant was driving on a four lane road, with 2 lanes in each direction. The defendant was driving behind the officer

and caught up to him until she was roughly one car length behind the officer's vehicle. The officer testified that he was "alarmed" when the defendant followed him for roughly a car length behind for the length of a football field. The officer stopped the defendant. The Appellate Court held that the arresting officer's observation that the defendant was following him at an unsafe distance justified an investigative traffic stop. There did not need to be any "other indications" of improper driving.

The law in Illinois is very clear: even the slightest, most minor lane violation can be a basis for an investigatory stop. ■

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