

IN THE SUPREME COURT OF MISSOURI

ATHONY JAMES SMITH,)	
)	
Appellant,)	
)	
vs.)	No. SC97811
)	
STATE OF MISSOURI,)	
)	
Respondent.)	

APPEAL FROM THE CIRCUIT COURT OF MONTGOMERY
COUNTY, TWELVETH (12TH) JUDICIAL CIRCUIT
DIVISION 1
THE HONORABLE WES DALTON

APPELLANT'S SUBSTITUTE REPLY BRIEF

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ARGUMENT

The State asserts in its brief that this Court should affirm the trial court because: 1) Appellant's crossing the fog line momentarily as he finished a lane change constitutes reasonable suspicion that a violation of R.S.Mo. § 304.015.2 occurred; and 2) That the totality of the circumstances created "reasonable suspicion" of "erratic driving," which supported a detention for an unspecified criminal offense or traffic violation. These arguments do not survive close examination.

A. No Reasonable Suspicion that § 304.015.2 was Violated

The State argues at length that a vehicle's wheels completely crossing over the fog line is a violation of R.S.Mo. § 304.015.2 and that all cases cited by Appellant are distinguishable because they did not directly address R.S.Mo. § 304.015.2 in the opinions. In so arguing, the State fails to appreciate the "objective reasonableness" standard in determining the validity of traffic stops. The constitutional reasonableness of a traffic stop does not depend on the actual motivations of the officer. *Arkansas v. Sullivan*, 532 U.S. 769, 771-72 (2001); *Whren v. United States*, 517 U.S. 806, 813 (1996). "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren*, 517 U.S. at 809. Accordingly, courts determine whether the officer's actions were objectively

authorized and legally permitted. *State v. Poindexter*, 941 S.W.2d 533, 536 (Mo. App. 1997). Put another way, a stop can be supported and upheld if sufficient evidence exists to support the stop under any legal theory, regardless of the officer's subjective reasons for initiating the stop.

So, although the cases relied on by Appellant may not specifically discuss R.S.Mo. § 304.015.2; any one of those courts could have justified the stop in those cases by simply holding the officers in those cases had reasonable suspicion for a violation of R.S.Mo. § 304.015.2. The fact that none of those cases found sufficient evidence to support a traffic stop necessarily implies that the mere fact that the tires “crossed the fog line” is insufficient to conduct a stop for a violation of §304.015.2. See *State v. Roark*, 229 S.W.3d 216, 222 (Mo. App. W.D. 2007) (“The trial court could reasonably have found that the State failed to prove by a preponderance of the evidence that a traffic stop was warranted to issue a citation or a warning for careless and imprudent driving, or any other traffic violation.”) (quoting *State v. Abeln*, 136 S.W.3d 803, 810 and n.7 (Mo. App. W.D. 2004). Of particular note, R.S.Mo. § 304.015 has not undergone a substantive revision since sometime prior to 1996. Essentially, the State seeks to have this court overturn years of precedent regarding traffic stops in Missouri and “the fog line.”

Moreover, the State's attempt to construe the Defendant's actions of briefly crossing the “fog line” is unsupported by any reasonable statutory

construction of R.S.Mo. § 304.015. The statute's plain language commands drivers to drive on the right half of the road way (as opposed to the left side). Nothing in the statute prohibits a driver or vehicle from leaving the defined "roadway" in any respect. In fact, such an interpretation of § 304.015 would result in a crime or traffic offense occurring anytime a vehicle to pull to the shoulder to examine their vehicle, to make a call for help, or any other of the countless legal reasons a motorist may pull their car off the roadway onto the shoulder of a highway. The State's interpretation would even make it unlawful for motorists to make a righthand turn, leaving the "roadway" to turn onto a private drive or other area not within the statutory definition of "roadway." Such an interpretation is facially absurd; is contradicted by decades of case law; and is unsupported by the text of the statute.

B. No Reasonable Suspicion for a Stop

In this case, the record establishes that the Appellant was observed operating his vehicle in a controlled and safe fashion. He was observed making several normal and safe lane changes. He operated his turn signal in a legally satisfactory manner. In operating his signal, Appellate terminated the signal at various times prior to completing a lane change, but after having given sufficient notice of his intent to surrounding motorists. According to the arresting officer, the observed blinker usage was legally

sufficient; but, unusual and indicative of possible inattentive driving.

Appellant then briefly crossed the white “fog line” by a few inches, for a few seconds. According to the arresting officer, the wheels briefly crossing the fog line was also a sign of potential inattentive driving. At no time does the record establish that anything about Appellant’s driving was indicative of intoxication based on the observing officer’s training and experience. The officer’s subjective reason for making the stop was that he believed briefly crossing the fog line was a traffic violation.

The totality of the circumstances – at most – establishes that Appellant might have been driving with “some inattention.” No traffic violation occurred. No law was broken and there is no statute that makes mere inattentive driving *per se* a crime or infraction of any kind. The record does not establish facts that would lead a reasonable officer to believe a crime had been committed, was about to be committed, or that Appellant’s vehicle contained evidence of criminal activity. There was no lawful reason to detain Appellant.

CONCLUSION

Wherefore for the above stated reasons the Appellant submits that the trial court committed reversible error by not granting Appellant’s motion to suppress evidence, by not sustaining Appellant’s

timely objection at trial, and not granting Appellant's motion for a new trial. Appellant requests the case be reversed and remanded for further proceedings consistent with this Court's ruling.

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CERTIFICATE OF SERVICE

A copy of the above and foregoing was via electronically filed to: Mr. Garrick Aplin, Assistant Attorney General, P.O. Box 899 Jefferson City, MO 65102, Garrick.Aplin@ago.mo.gov on this 9th day of September, 2019.

/s/ John James
John D. James #61070

ATTORNEY CERTIFICATION

I, John D. James certify to the Court the following:

1. The attached brief complies with the limitations contained in Rule 84.06(b).
2. The attached brief contains 1129 words, not including the certificate of service, certificate required by Rule 84.06(c), signature block, and appendix.

/s/ John D. James

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**IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT**

ANTHONY SMITH,)	
)	
Appellant,)	
)	
vs.)	Appeal No. ED 106830
)	
STATE OF MISSOURI,)	
)	
Respondent.)	

CERTIFICATE OF COMPLIANCE

I, John D. James certify to the Court the following:

- 1. Four paper copies of the Brief filed in this appeal including this**

Certificate of Compliance has been mailed this 21st day of

December, 2018.

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/s/ John James

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