

**In the Circuit Court of the Twentieth Judicial Circuit  
St. Clair County, Illinois**

Prosecutor and Court Clerk dba  
under color of law as  
"The State of Illinois"

V

Mark McCoy,  
Defendant

falsely accused

Case Number(s): 09TR0009129, 09TR0009130, 09TR0009131, 09TR0009132,  
09CM0000942

**Motion to Suppress Evidence.**

**Demand for Court Reporting of every hearing.**

**Demand for E-transcript of every hearing within 48 hours.**

Proposed Venue: St. Clair County Circuit Court, Twentieth Judicial Circuit

Date: **Monday, July 13, 2009**

Time: 9:15 am

Place: Courtroom 109.

**Notice of Motion to Suppress Evidence**

To the Prosecutor: Be advised: At the venue designated in the caption, or at such other venue as the court may prescribe, I will ask the court to suppress all evidence in this case as being the fruit of the poisonous tree pursuant to the theory enunciated by the Supreme Court in the case of *Weeks*. I may also be filing other concurrent defense motions before this court.

**Declaration and Waiver of Time.**

I, Mark McCoy, declare the following under penalty of perjury: I reserve my speedy trial rights as necessary.

Signed Mark McCoy \_\_\_\_\_ Monday, July 13, 2009

**Table of Contents:**

Declaration and Waiver of Time. . . . .	-1-
<b>Statement of the case:</b> . . . . .	-2-
Table of U.S. Supreme Court Cases and 9 circuit federal case cited therein . . . . .	-4-
<b>Statutes cited herein:</b> . . . . .	-5-
Points and Authorities in support of my Demand for Suppression of Evidence . . . . .	-5-
<b>No Discretion as to the remedy.</b> . . . . .	-5-
<b>Kernel of this case: Side by side comparison of the driving patterns of Forrest and Colin.</b> . . . . .	-5-
<b>The 9th circuit held that driving on the fog line is not against the law. Specifically it does not provide probable cause to initiate a traffic stop.</b> . . . . .	-5-
<b>Touching the line is not enough to constitute lane straddling</b> . . . . .	-6-

**The court has no discretion here. U.S. v Colin is binding precedent and square on point.** . . . . .-7-  
 Proof of Service . . . . .-7-  
 Order after Hearing on Motion to Suppress Evidence . . . . .-8-

**Statement of the case:**

I was traveling northbound in the innermost lane of Illinois Highway 159 at about 2:15am on February 17, 2009 in my pickup truck when a vehicle approached from the rear and proceeded to follow behind me. After following me for a period of time I observed the vehicle display flashing emergency lights, alternating red and blue. Unable to visually identify the driver or the vehicle, as there are no lights upon this thoroughfare, and absent any audible signal, I moved my truck to the outermost lane while maintaining my speed within the posted limit, as well as activating my high-beams, in order to find a safe place to stop if necessary, as well as activating my hazard lights to acknowledge, to the driver, my awareness of the vehicle’s presence. I continued to travel under these conditions for a short period, aware of a lighted private drive in the vicinity, where I may stop if necessary. During this short period, the trailing vehicle eventually activated what I perceived to be a siren, with my understanding at that time the vehicle was most likely a police vehicle. I traveled a short-while longer to the lighted side street and proceeded to direct my truck under a street light and to a stop.

Upon rolling down my driver-side window I heard from a distance someone shouting commands for me to show my hands. I looked behind, out the window and over my left shoulder, and could only see a spot light aimed in my direction, which made it impossible to discern the identity of the person issuing the commands, but I perceived a man behind the spotlight appearing to be aiming a handgun in my direction. I replied with the question, “Am I under arrest?”, since I was under the belief that had I been suspected of having committed a traffic offense I would be met by an officer at my window. The person continued to order me out of the truck and to face away from them, with each command followed by my question, “Am I under arrest?” After the command to face away, I have no other visual recollection of what transpired, but complied with subsequent commands to get on my knees, cross my ankles, and place my hands behind my head, all of which I did comply with, absent any resistance. At this time I came to believe that I was under arrest. After having assumed a neutral, submissive, and non-threatening position, I waited to possibly be handcuffed or otherwise taken into custody. During this time, I discerned no other communication from the person, which directed me to act in any way whatsoever, nor offered any explanation for his actions, or requested any information from me.

I was soon thereafter met with a violent blow to my upper torso from behind and driven to the concrete surface of the private drive where I sustained numerous lacerations to the face and lip, a broken nose, a chipped tooth, multiple abrasions, swelling and bruising about my head and neck, which I believe, rendered me nearly unconscious until I felt a painful sting about my head and neck, causing me to convulse violently, which later would be revealed to me to be the application of a “dry stun” by another officer whose presence I was also not made aware of. I found it impossible to control my

bodily actions, and in fear for my life, could only concentrate on trying to be as still as possible after the cessation of the torture, whereupon I was handcuffed and pulled to my feet, which at that time, and not yet able to command full use of my senses, I was finally met with the question by what I observed for the first time to be a man in the uniform of a police officer, "What is your name?"

Somewhat incoherent and suffering great pain, I mustered the response, "I consider myself under arrest and refuse any statements until I have counsel present." At that time I was placed in the back seat of the police cruiser where I continued to suffer, bleed, experience irregular heartbeat, difficulty in swallowing, and difficulty in breathing; further denied medical attention at the scene when eventually asked, as the officer determined that my injuries were, "superficial" and would wait until we reached the station to be examined by EMS.

As a result of the events, my glasses were broken and I could not identify specifics, but I did observe what appeared to be a number of people near and around my truck with flashlights for quite some time. During this entire time, from the initiation of the stop until the time I was placed in the police cruiser, I was never examined about alcohol consumption, notified of any probable cause or reasonable suspicion, informed of any identity, requested of any identity, or informed of any existing or outstanding warrants, or other indications of having transgressed a law of the State of Illinois.

Having received a copy of the officer's report upon my release from almost 3 hours of incarceration, I was made aware that the purpose for the stop was my alleged weaving, where the officer states, "I observed it begin to weave within its own traffic lane, going from the outer far line to the inner far dash line on several occasions." Which gave rise to the pretext of my being possibly intoxicated, as confirmed by the officer's report where, "Believing the driver of the vehicle to be intoxicated, I activated my overhead lights in an attempt to conduct a vehicle stop." The officer had no probable cause to initiate a traffic stop. His pretext was improper lane use which gave rise to my possibly being "intoxicated". This was a **pretextual traffic stop**.

He falsely accused me of fleeing and eluding. He admitted facts in his report which prove that I did not commit the offense of improper lane use, or fleeing and eluding. I was not examined nor informed of any accusation drunk driving, and the officer's report is conspicuously silent on the matter aside for one sentence where he justifies the pretext for initiating a traffic stop.

Furthermore, the charges of no driver's license and no insurance derive from the officer's presumption that such do not exist after having illegally searched my truck, in violation of the 4<sup>th</sup> Amendment to the Constitution of the United States, and thereby failed to find amongst my personal belongings such items as a driver's license or proof of insurance. The officer searched without any authority conferred by a warrant, and cannot substantiate the search, being as how I was injured and confined in the back of his police cruiser during the time of the search, where the officer could not claim such search protected him from attack; prevented me from escaping; discovered the fruits of

the crime, being a traffic violation or intoxication since I was not personally examined; or in discovering anything which may have been used in the commission of, or which may constitute evidence of an offense resulting from a mere traffic violation. He did not ask for **any papers or other identification**. The fruits of the officer's search, failing to find evidence contrary to his presumptions, constitute "presumptive evidence", which he relied upon in issuing citations for alleged offenses.

He refused to assist me in understanding the particulars for the stop when I asked if I was under arrest. I could only operate on inference, given the limited knowledge of the circumstances before me, and even then to an even more limited degree, having suffered blows and electric shock to my head, neck and back which deprived me of my ability to comprehend some aspects of the events. The police officer, having no positive confirmation of who I was, attempting to procure such information after my having sustained injuries to the head and face as well as being rendered somewhat incoherent. It has been established law for many years that touching the dividing lane is insufficient probable cause to justify a traffic stop. The arrest was made under color of law.

All this the police officer's actions are a flagrant violation of the officer's oath to support the constitution

The officer was violent, hostile, callous, unprofessional, and outside any endowed authority afforded by law. The officer admits, by way of his report, that my truck did not cross the lines dividing my lane of travel, but rather, "...weave **WITHIN ITS OWN TRAFFIC LANE...**"

This court has no discretion in this case. The holding of **U.S. v Colin** is square on all fours and is binding precedent in this case. The court must dismiss this case.

**Table of U.S. Supreme Court Cases and 9th circuit federal case cited herein**  
**Bell v Burson** (1971) 402 US 535, 29 L Ed 2d 90, 91 S Ct 1586

**Cleveland Board of Education v La Fleur** (1974) 414 US 632, 39 L Ed 2d 52, 94 S Ct 791.

**Marbury v Madison** (1803)

Marbury holds that a void act is void ab initio. "An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection' it creates no office; it is in legal contemplation, as inoperative as though it had never been passed".

**Shuttlesworth v Birmingham** (1969) 22 L Ed 2d 162, 394 U.S. 147 at page 152, 89 S Ct 935

**U.S. v Eric Colin** (9th circuit 2002)

Touching the lane divider line is legal.

Touching the lane divider line is insufficient probable cause to initiate a traffic stop.

Evidence stemming from such a stop must be suppressed. This case is binding

precedent in the instant case. This trial court has no discretion. They must dismiss this case.

***Weeks v. United States* (1914)**

232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652, L.R.A. 1915 B 834, declared that an illegal search and seizure barred the use of such evidence in a criminal prosecution.

**Statutes cited herein:**

**Points and Authorities in support of my Demand for Suppression of Evidence**

I demand that all the evidence in this case be suppressed pursuant to ***Weeks v U.S.*** and its progeny. ***Weeks v. United States*** (1914) 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652, L.R.A. 1915 B 834. In ***Weeks*** the U.S. Supreme Court declared that an illegal search and seizure barred the use of such evidence in a criminal prosecution. The Weeks case is a milestone in American Jurisprudence. The theory of Weeks is so well respected that this ***Weeks*** case is cited as authority in Canada and presumably other civilized nations.

**No Discretion as to the remedy.**

The prophylactic remedy of suppression is prescribed by the U.S. Supreme Court. This court has no discretion. The driving pattern described by the officer is precisely that pattern described by the 9<sup>th</sup> circuit in the case of ***U.S. v Colin*** discussed below. The 9 circuit ruled th that this driving pattern is insufficient to justify a traffic stop.

The officer had no lawful basis for arresting me , searching my truck, or beating me.

**Kernel of this case: Side by side comparison of the driving patterns of Forrest and Colin.**

The facts are nearly identical to the statement of the officer in the case of ***U.S. v Eric Colin*** (9<sup>th</sup> circuit 2002)

Mark McCoy's driving pattern is less culpable than the driving pattern reported in the 9th circuit case of ***U.S. v Colin***. Here is the report of the Colin driving pattern with was held insufficient to justify a traffic stop:

"He observed the car drift onto the solid white fog line on the far side of the right lane and watched the car's wheels travel along the fog line for approximately ten seconds. The Honda then drifted to the left side of the right lane, signaled a lane change, and moved into the left lane. Carmichael next observed the car drift to the left side of the left lane where its left wheels traveled along the solid yellow line for approximately ten seconds. The car then returned to the center of the left lane, signaled a lane change, and moved into the right lane. Carmichael pulled the car over for possible violations of California Vehicle Code § 21658(a) (lane straddling) and California Vehicle Code § 23152(a) (driving under the influence)." - the driving pattern reported in the 9th circuit case of U.S. v Colin.

**The 9th circuit held that driving on the fog line is not against the law. Specifically it does not provide probable cause to initiate a traffic stop.** Specifically the court said:

“Estrada-Nava and Colin's car touched for approximately ten seconds, but did not cross, the fog line and the solid yellow-painted line. The district court concluded on the basis of these facts that Carmichael had reasonable suspicion to stop Estrada-Nava and Colin for lane straddling because “[a] common sense definition of lane straddling . . . includes a situation in which a vehicle's wheels rest on the marking line.” We disagree, and conclude that based on the “totality of the circumstances,” Carmichael lacked the requisite reasonable suspicion to stop Estrada-Nava and Colin for lane straddling. [7] As the district court pointed out, neither section 21658(a) nor California case law specifies what is meant by “drive as nearly as practical entirely within a single lane.” It therefore is unclear under California law whether a car's wheels must cross over a line for there to be a violation of lane straddling.

Courts in other states, however, that have interpreted statutes similar to, if not the same as, section 21658(a) have held that **touching the line is not enough to constitute lane straddling**. See, e.g., *United States v. Gregory*, 79 F.3d 973, 978 (10th Cir. 1996) (holding that an isolated incident of a vehicle crossing into the emergency lane of a roadway does not violate state statute's requirement that vehicles remain entirely in a single lane “as nearly as practical”); *United States v. Guevara-Martinez*, 2000 WL 33593291, at \*2 (D. Neb. May 26, 2000) (interpreting a similar Nebraska statute and concluding that touching, but not crossing, the broken line between two southbound lanes twice in a half mile did not violate the statute's “near as practicable” requirement), *aff'd*, 262 F.3d 751 (8th Cir. 2001); *Rowe v. State of Maryland*, 769 A.2d 879, 889 (Md. 2001) (concluding that “momentary crossing of the edge line of the roadway and later touching of that line” was not reasonable suspicion to justify traffic stop); *State v. Caron*, 534 A.2d 978, 979 (Me.1987) (holding that there was not reasonable suspicion to justify a stop because a vehicle's “one time straddling of the center line of an undivided highway is a common occurrence”); “ - the 9th circuit in the case of ***U.S. v Colin*** (2002)

The remedy for illegal search and seizure is clear. It is that prophylactic remedy of suppression.

**The court has no discretion here. U.S. v Colin is binding precedent and square on point.**

The rule of ***U.S. v Colin*** was established law long before the Colin opinion of 2002 and long before the illegal search and seizure upon the body and automobile of Mark McCoy on February 17, 2009.

I demand that the evidence be suppressed and case dismissed.

Signed \_\_\_\_\_ Mark McCoy Date: Monday, July 13, 2009

I, Mark McCoy, hereby declare the following under penalty of perjury:

Today I served this document upon the prosecutor in this case by personal delivery to him.

Signed: Mark McCoy \_\_\_\_\_ Monday, July 13, 2009

**Proposed Order**  
**St. Clair County Circuit Court, Twentieth Judicial Circuit**  
#10 Public Square  
Belleville, Illinois

State of Illinois

V

Mark McCoy

Case Number(s): 09TR0009129, 09TR0009130, 09TR0009131, 09TR0009132, 09CM0000942

**Order after Hearing on Motion to Suppress Evidence**

I have considered the arguments of the parties. I hereby rule that going from the outer far line to the inner far dash line on several occasions, or weaving within one's own lane of traffic is not sufficient probable cause to justify a traffic stop. I find that going from the outer far line to the inner far dash line on several occasions was the only inference by the officer that the Defendant may have been intoxicated, but failed to act upon that suspicion as justification for the traffic stop in the instant case. This driving pattern is insufficient to justify a traffic stop.

The traffic stop was unjustified. Following the rule of Weeks I now order that all evidence stemming from this traffic stop shall be suppressed. The case is hereby dismissed with prejudice.

So Ordered \_\_\_\_\_ Date \_\_\_\_\_  
Judge, St. Clair County, Illinois