

STATE OF MICHIGAN

IN THE DISTRICT COURT FOR THE COUNTY OF BARRY

_____/

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

[redacted],

Defendant.

_____/

Case No. 08-[redacted] SD

Hon. Gary R. Holman

PEOPLE'S RESPONSE TO
DEFENDANT'S MOTION TO
DISMISS

PHILLIP B. TOUTANT (Practicing by Rule)
Intern for the People of the State of Michigan
Office of the Barry County Prosecutor
206 West Court St., Ste. 201
Hastings, MI 49058
(269) 945-1297

_____/

[redacted]
Attorney for Defendant
[redacted]
Hastings, MI 49058
[redacted]

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS BECAUSE OF
LACK OF REASONABLE CAUSE TO CONDUCT TRAFFIC STOP

NOW COMES The People of the State of Michigan, by and through the Office of
the Barry County Prosecutor; intern Phillip B. Toutant, and states as follows in response
to Defendant's motion to dismiss.

1. Deny.

The area where the Defendant was driving did in fact have lines in the roadway.
Irrespective of whether or not there are lines in the roadway, pursuant to MCL 257.634,
the Defendant must stay right of the center of the road. There are no statutory exceptions

for any of the justifications presented by defense counsel. Officer [redacted] had reasonable cause to pull the Defendant over for traveling left of the center of the roadway. Not only did the Defendant travel left of the center of the road, Defendant, when turning from State Street to Division Street, turned fully into the left, oncoming traffic side of the road.

Moreover, Officer [redacted] had reasonable cause to pull the Defendant over to investigate his suspicions that the Defendant was operating a motor vehicle while intoxicated, in violation of MCL 257.625.¹

For these reasons, Officer [redacted] had reasonable cause to pull over the Defendant.

WHEREFORE, The People respectfully request that the Defendant's motion be denied.

Respectfully submitted,

Phillip Toutant (Practicing by Rule)

¹ See *People v Nelson*, 443 Mich 626, 632; 505 NW2d 266 (1993) (attached); *People v Rizzo*, 243 Mich App 151, 156; 622 NW2d 319 (2000) (attached); *People v Helton*, unpublished opinion per curiam of the Court of Appeals, issued December 18, 2001 (Docket No. 230256) (attached).

STATE OF MICHIGAN

IN THE TRIAL COURT FOR THE COUNTY OF BARRY – DISTRICT DIVISION

_____ /

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

v.

[redacted],

Defendant.

_____ /

PHILLIP B. TOUTANT (Practicing by Rule)
Intern for the People of the State of Michigan
Office of the Barry County Prosecutor
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_____ /

Case No. 08-[redacted] SD

Hon. Gary R. Holman

BRIEF IN RESPONSE TO
DEFENDANT’S MOTION
TO DISMISS

[redacted]
Attorney for Defendant
[redacted]
Hastings, MI 49058
[redacted]

BRIEF IN SUPPORT OF PEOPLE’S OPPOSITION TO DEFENDANT’S MOTION TO
DISMISS

NOW COMES The People of the State of Michigan, by and through the office of
the Barry County Prosecutor; intern, Phillip B. Toutant, and states as follows in support
of The People’s opposition of the Defendant’s motion to dismiss.

I. DEFENDANT HAS NOT PRESENTED A VALID JUSTIFICATION
PURSUANT TO STATUTE; THEREFORE OFFICER STAINES’ TRAFFIC STOP IS
VALID

Defense counsel provides four purported excuses for Defendant’s violation of the
Michigan Motor Vehicle Code. Defendant contends that there were no lines in the road;

the roadway is wider where the Defendant was stopped; that the roadway was designed for wider turns; and that the roadway curves in that area are more compact.

MCL 257. 634(1) considers two-lane roadways and provides that “a driver of a vehicle shall drive the vehicle upon the right half of the roadway...” The statute then provides four exceptions to the right-side-of-the-road rule:

1. when passing another vehicle;
2. when the right half of the road is closed for construction;
3. when done by vehicle driven by a state agent; and
4. on a three-lane roadway, pursuant to that roadway’s rules. MCL 257.634(1)(a)-(d).

None of these valid excuses match Defendant’s purported excuses. Further, the Defendant’s purported justifications are not allowed by Michigan case law.² Finally, even if the Defendant did fit within any relevant common-law exception, Officer [redacted] would still have valid reasonable cause to conduct the traffic stop, as he could not have ascertained the Defendant’s reason for the disregard of the right-side-of-the-road rule. Therefore, Officer [Redacted]’s stop of the Defendant for turning into the left oncoming traffic lane and then traveling in that lane was valid.

II. EVEN IF OFFICER [redacted]’S STOP FOR VIOLATION OF THE RIGHT-SIDE-OF-THE ROAD RULE IS NOT VALID, OFFICER [redacted]’S STOP TO INVESTIGATE A POTENTIAL DRUNK DRIVER IS SUPPORTED BY THE DEFENDANT’S CONDUCT BEHIND THE WHEEL.

Where an officer is investigating a potential violation of the law, the attendant circumstances that support the officers reasonable suspicion need not be independent violations of the law. *People v Nelson*, 433 Mich 626, 632; 505 NW2d 266 (1993). In

² The explanations that are acceptable under the common law of Michigan are 1. vehicular skid; 2. the other side of the road appeared practically impassible; and 3. that there was a sudden emergency.

Nelson, the Michigan Supreme Court addressed the conduct necessary to provide suspicion for a traffic stop:

The question is not whether the conduct is innocent or guilty. Very often what appears to be innocence is in fact guilt, and what is indeed entirely innocent may in some circumstances provide the basis for the suspicion required to make an investigatory stop. *Id.*

Moreover, when conducting investigatory stops for drunk driving investigations, the police officer should be given deference, as he has experience and training in the patterns of particular types of law-breakers. *People v Rizzo*, 243 Mich App 151, 156; 622 NW2d 319 (2000).

For example, in *People v. Helton*, unpublished opinion per curiam of the Court of Appeals, issued December 18, 2001 (Docket No. 230256), the Court of Appeals held that an officer's investigatory stop for Mr. Helton's being unable to remain in his lane and making a wide, improper turn had the requisite level of suspicion, and was valid. In *Helton*, the officer observed the defendant weaving in and out of his lane, then making an improper wide turn. *Id.* at 2. The court of appeals held that the officer's observation of this conduct, given his considerable training, was sufficient to provide the suspicion to validly stop the defendant and conduct an OWI investigation. *Id.*

Here, like in *Helton*, the Defendant has displayed two driving behaviors that may have been indicative of operating while intoxicated, providing the cause for further investigation. Officer [redacted] observed Defendant cut her left turn short, turning into the left oncoming-traffic side of the road and then travel down that side of the road for approximately 25 yards. These two behaviors of the Defendant clearly provide the cause to perform an investigatory stop for suspicion of operating while intoxicated.

In conclusion, as Officer [redacted] had reasonable cause to pull the Defendant over for violation of MCL 257.634(1) or reasonable suspicion to pull the Defendant over for an OWI investigation, the Defendant's motion to dismiss should be denied.

Respectfully submitted,

Phillip B. Toutant (Practicing by Rule)