STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DKT. NO. AND-24-518

STATE OF MAINE

Plaintiff-Appellee

v.

JENNILEE MCNEIL

Defendant-Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET
ANDROSCOGGIN COUNTY
DOCKET NO. CR-2023-2928

BRIEF OF APPELLANT

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Procedural History

On or about October 19, 2023 the State filed a criminal complaint charging Ms. Jennilee McNeil with one count of Criminal OUI in violation of 29-A M.R.S. §2411(1-A)(A), a Class D offense, alleged to have occurred on or about September 14, 2023. (Appendix hereinafter A. 3, 17).

On March 19, 2024, Defendant filed a Motion to Suppress. (A. 5, 18-19).

On July 2, 2024, a hearing was held on Defendant's Motion to Suppress. Judge Maria Woodman denied the motion. Findings were made on the record but no written opinion was issued. (A. 5, 14-16).

On October 4, 2024 the Court accepted Defendant's Conditional Guilty Plea pursuant to Me. Rule Crim P. 11(a)(2). (A. 6, 13).

On November 4, 2024, Defendant was sentenced to 48 hours to be served by the Alternative Sentencing Program, a $500 fine, and a 150-day suspension of her driver's license, all of which the Court stayed pending appeal. (A. 7-8, 10-12).

Notice of this appeal was then timely filed.

Factual Background

On Thursday September 14, 2023 at approximately 7:30 pm, State Police Trooper Joseph Bourdelais was on patrol on the Maine Turnpike around mile marker 76. (Tr. 6, 8, 16). This was around dusk, towards the end of rush hour with light

traffic, and "not a late-night event" occurring around "witching hour," as is common in OUI motor vehicle stops. (Tr. 15, 17). Trooper Bourdelais was traveling southbound in the left-hand lane when he observed a white Ford Explorer travelling in the same direction in the right-hand lane.[1] (Tr. 10-12, 19-23). The trooper initially tailed behind the Defendant's vehicle, from the passing lane, from approximately four car lengths behind, before closing the distance to around two and a half car lengths.[2] (Tr. 26-28). Trooper Bourdelais testified he only "followed [the Defendant's vehicle] for a couple moments there." (Tr. 12).

Trooper Bourdelais initially testified he observed the vehicle "bouncing, kind of swerving in between the lanes," before clarifying that the Defendant's tires made contact with, but did not cross over, the lane markings, and repeatedly testified that he observed the vehicle moving within the lane markings. (Tr. 11, 24, 32). The trooper's observations were recorded by the dashboard-mounted camera in his marked State Police cruiser.[3] (Tr. 8-10; State's Exhibit 1). Trooper Bourdelais stated that the Defendant's 'bouncing' or 'kind of swerving' was captured by his dashcam "maybe two or three times, and I observed it at least one more time before that, and I hit the record button." (Tr. 12). Despite the trooper's description, the dashboard

[1] The trooper was approaching the Defendant's vehicle in the 'passing lane' without passing her, which he agreed was not how a typical driver is allowed to operate. (Tr. 21).
[2] Trooper Bourdelais agreed that based on the lighting conditions at the time that a driver may not be able to tell if his vehicle was in fact a police cruiser or not. (Tr. 21).
[3] Trooper Bourdelais testified that the camera is always recording, but once he hits the recording button on his dashboard the camera automatically "backs up" to include video from one-minute prior to hitting record. (Tr. 11).

video in fact does not show any abrupt or erratic vehicle movements by the Defendant at all, but rather only shows her gradually moving within her lane while making contact with, but not crossing over, the paint of the lane lines.[4] (*see* State's Exhibit 1).

The trooper testified that he had "already made up" his mind that he was going to initiate a motor vehicle stop by the time he pulled in behind the Defendant, at approximately minute 1:19 in State's Exhibit 1, stating that "at that stage when I moved behind the vehicle, I already made up that I was going to engage my blue lights to stop the vehicle. I was just waiting for a better position to do so." (Tr. 29; *see* State's Exhibit 1). At that time, the Defendant was driving behind a large tractor trailer, which she then safely passed while smoothly changing lanes and correctly using her turn signal.[5] (Tr. 28-29). Despite acknowledging the Defendant's proper operation of a motor vehicle, Trooper Bourdelais agreed that there was nothing about the fact that she safely negotiated overtaking the tractor trailer which changed his decision to initiate a motor vehicle stop. (Tr. 29). Immediately after safely passing the tractor trailer, the trooper pulled between the Defendant and the tractor trailer and activated his emergency lights. (Tr. 29-31). Trooper Bourdelais agreed the

[4] When asked how wide the lanes are on the turnpike, Trooper Bourdelais admitted he did not know the specific width of the lane but agreed it was a "typical lane." (Tr. 19).
[5] Trooper Bourdelais stated he "did not notate any bad passing," "had no issues with passing of the tractor trailer," and that there was "nothing out of the ordinary" with her turn signal use. (Tr. 25, 28-29).

Defendant acted appropriately when the emergency lights were activated, noting she put on her turn signal and "pulled over immediately" and did do smoothly, without any sudden steering. (Tr. 30-31).

As the first 2:26 of the dashboard camera video was played at the suppression hearing, Trooper Bourdelais was asked to point out every time the vehicle acted in a way that he believed was a reason to stop the vehicle. The trooper narrated the video as follows:

> So there would be one. And coming back over the skip line a little bit. Heading back over to the fog line, back over towards the skip line, back to the fog line, skip line, fog line again. And it kind of straddles the fog line here for a moment and then accelerates a little bit back to the skip, accelerating to the fog line. I get behind it, and then it goes to pass the tractor trailer unit, on the fog line, fog line.

(Tr. 13). Rather, Trooper Bourdelais described the vehicle's movement as "their passenger side tires ended up riding the fog line on the right-hand side multiple times before kind of swerving back over to the center skip line." (Tr. 12) Despite describing the Defendant as "kind of swerving," the trooper acknowledged that the video showed the Defendant's vehicle moving "back and forth in that kind of consistent motion." (Tr. 11-12). The video itself shows no abrupt or erratic steering by the Defendant. (*see* State's Exhibit 1).

The sole reason for the motor vehicle stop was the Trooper's perception of the vehicle's inability to maintain a proper lane based on his characterization of the Defendant 'kind of swerving' while operating ***within*** the travel lane and gradually

moving in-between the lane lines.[6] (*see* Tr. 12, 24, 32). Trooper Bordelais agreed that the basis of his stop "was the minute and a half to two minutes of her within her lane, if you include the white paint" and "her maneuvering within that lane." (Tr. 32). Regarding the observed movements between the lane markings, Trooper Bourdelais testified as follows:

> Q Okay. And other than the -- other than the movement within the lane, there's nothing else that's attracted your attention to this vehicle, correct?
> A There is not.
> Q And in fact, all the movement is within the confines of the lane; would you agree to that?
> A Within -- on the marked lanes and within the lane?
> Q Yes.
> A That -- is that what you're saying?
> Q So -- so according to your report and everything you've testified, neither of her tires ever crossed either the solid line or crossed the so-called skip line; is that --
> A Not completely.
> Q Okay. So the -- the -- if you want to put it this way, the worst it gets is her tires touch the solid line or are on the solid line; is that right?
> A Riding on the line, correct.
> Q Okay. So if we call the lane -- if we include the painted stripes, she's within her lane, is that right, if we include those stripes; is that fair to say?
> A If we include the stripes, correct.

(Tr. 24). Crucially, there was no testimony that the Defendant's vehicle completely crossed over any traffic control line. (*see* Tr. 24).

[6] Despite noting the 'accelerating' of the vehicle when it approached the lane lines, Trooper Bourdelais testified that there was nothing about Defendant's speed itself that was cause for a stop. (Tr. 19). The trooper acknowledged there were no equipment defects with the Defendant's vehicle. (Tr. 30) He also testified there was "nothing out of the ordinary" about her lane change and passing of the tractor trailer. (Tr. 25, 28-29).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether, as a matter of statutory interpretation, it is a violation of 29-A M.R.S. § 2051 when a motor vehicle nominally encroaches upon, but does not completely cross over, a traffic control line.

2. Whether there was sufficient reasonable articulable suspicion for the motor vehicle stop when the only articulated reason for the stop is encroachment upon, but not completely crossing over, traffic control lines.

SUMMARY OF ARGUMENT

Defendant's tires made some degree of contact with two traffic control lines – the white fog line and the dotted center lane line. This is clear from the dashboard camera footage and the parties do not dispute this. Likewise, there is no dispute that her tires did not actually fully cross over either traffic control line.

The first question is, as a matter of statutory interpretation, if contact with, but not fully crossing, a traffic control line amounts to failure to maintain a travel lane. This is a question of first impression in Maine. Appellant argues that the travel lane should be interpreted to include the painted lane markers themselves, and that only crossing over the outer-most edge of a lane marker should constitute a lane violation. Second, in the absence of other evidence or factors not present in this case, at the time of the stop there was not reasonable suspicion of criminal activity,

a civil violation or a threat to public safety. Law enforcement had no reasonable articulable suspicion to stop the vehicle based solely on the trooper's brief observation of momentary contact with lane markings. There was nothing unusual about the Defendant's speed, the time of day was not concerning to the officer (just after rush hour on a weekday), and there was no evidence of erratic or sudden steering. The State Trooper was operating in the passing lane without overtaking Defendant in right lane and was right in her vehicle's blind spot while she was behind large tractor trailer. In these circumstances it is natural to err to the farthest side possible of the travel lane.

ARGUMENT

I. AS A MATTER OF STATUTORY INTERPRETATION, NOMINALLY ENCROACHING UPON, BUT NOT COMPLETELY CROSSING OVER, A TRAFFIC CONTROL LINE DOES NOT CONSTITUTE A VIOLATION OF 29-A M.R.S. § 2051, WHICH REQUIRES OPERATION TO BE "AS NEARLY AS PRACTICAL ENTIRELY WITHIN A SINGLE LANE"

"We review questions of statutory interpretation de novo." *State v. Christen*, 2009 ME 78, ¶ 12, 976 A.2d 980. In cases of statutory interpretation, the Court must:

> [F]irst look to the plain language of the provisions to determine their meaning. If the language is unambiguous, we interpret the provisions according to their unambiguous meaning unless the result is illogical or absurd. If the plain language of a statute is ambiguous—that is, susceptible of different meanings—we will

> then go on to consider the statute's meaning in light of its legislative history and other indicia of legislative intent. In applying these principles, we examine the entirety of the statute, giving due weight to design, structure, and purpose as well as to aggregate language. We reject interpretations that render some language mere surplusage.

State v. Dubois Livestock, Inc., 2017 ME 223, ¶ 6, 174 A.3d 308 (citations and quotation omitted.

The primary statute at issue in the case requires that:

> When a public way has been divided into 2 or more clearly marked lanes for traffic, the following provisions apply.
> 1. Single lane. A vehicle must be operated as nearly as practical entirely within a single lane.
> 1-A. Movement from lane. A vehicle may not be moved from a lane until the operator has first ascertained that the movement can be made with safety.

29-A M.R.S. §2051(1)(1-A). A 'lane' is not defined in Title 29-A, or elsewhere in Maine statutes, however it is clear from the text of 29-A M.R.S. §2051 that 'lane' is a distinct concept from a 'way.' A public way is defined as meaning "the entire width between boundary lines of a road, highway, parkway, street or bridge used for vehicular traffic, whether public or private." 29-A M.R.S. §101(92). Since a statute cannot be read to render language "mere surplusage," a lane must mean something distinct from the entirety of a public way. *State v. Dubois Livestock, Inc.*, 2017 ME 223, ¶ 6, 174 A.3d 308. Complicating the ambiguity in the statutes, 'boundary lines,' as used to mean the limits of the entire public way, is also not defined in Title 29-A. Therefore, it is not immediately clear, on the plain language

of the statute, if it is the inner- or outer-most edge of the boundary line which constitutes the width of either the public way or of a travel lane. In short, it is ambiguous on its face if the 'entire width' of either a lane, or the whole public way, includes any portion of the boundary line itself.

In the Defendant's case, the only articulated reason for the stop is a violation of 29-A M.R.S. §2051 based on evidence that her vehicle's tires made momentary contact with, but not completely crossed over, traffic control lines. (Tr. 12, 24, 32; *see* State's Exhibit 1). The question for the Court is the same as was posed to Trooper Bourdelais at the suppression hearing, namely "if we include the painted stripes, she's within her lane, is that right, if we include those stripes; is that fair to say?" – to which Trooper Bourdelais responded "If we include the stripes, correct." (Tr. 24).

It is clear that the definition of the exact scope of a boundary line is susceptible of different meanings. An illustrative example of the potential differences in interpretation between considering the inner- or outer-most edge of a boundary line as the effective demarcation point comes from professional sports. For example, the issue of touching versus crossing over a line has markedly different consequences in football, where any 'crossing of the plane' counts for a touchdown,[7] as opposed to hockey, where the entire puck must cross the entire goal

[7] 2024 NFL Rulebook, Operations.NFL.Com, https://operations.nfl.com/the-rules/nfl-rulebook/#rule11 (last visited March 18, 2025).

line to score,[8] or soccer, where likewise the whole ball must cross over the goal line,[9] or baseball, where the boundary lines themselves, including foul poles, are considered fair territory.[10] Appellant argues for this latter 'baseball' interpretation, namely that the travel lane includes the entirety of the boundary line itself and that it is the outer-most edge of the boundary line that constitutes the limit of the travel lane.

It clear from the language of section 2051 that it is not an absolute requirement to operate entirely within marked lines, just operation "as nearly as practical" within the travel lane, while still preserving motorist safety. 29-A M.R.S. §2051(1). The adoption of a 'brightline' rule that any contact with a traffic control line amounts to failure to maintain a lane is contrary to the text of section 2051 itself, which allows for circumstantial flexibility on its face, and is contrary to other sections of Title 29-A which require operation to the rightmost extent possible to promote safety.

It is clear that the overall purpose of 29-A M.R.S. §2051, and Title 29-A as a whole, is ensuring motorist safety, in part by maximizing the distance between travelling vehicles. *See* *State v. Ouellette*, 2024 ME 29, ¶ 21, 314 A.3d 253, 262.

[8] NHL Official Rules 2018-2019, NHL.com, https://www.nhl.com/nhl/en/v3/ext/rules/2018-2019-NHL-rulebook.pdf (last visited March 18, 2025).
[9] Law 10: Determining the Outcome of a Match, TheFA.com, https://www.thefa.com/football-rules-governance/lawsandrules/laws/football-11-11/law-10---determining-the-outcome-of-a-match#:~:text=Goal%20scored,a%20goal%20kick%20is%20awarded (last visited March 18, 2025).
[10] Official Baseball Rules 2022 Edition, MLB.com, https://img.mlbstatic.com/mlb-images/image/upload/mlb/hhvryxqioipb87os1puw.pdf (last visited March 18, 2025).

Specifically, to promote safe distances between vehicles, the statute repeatedly requires drivers to maintain operation to the righthand travel lane, away from potential oncoming traffic. 29-A M.R.S. §2052(6) ("An operator driving on a limited-access way with a speed limit of 65 or more miles per hour is restricted in ordinary operation to the right-hand lane and may use adjacent lanes for overtaking and passing another vehicle, but must return to the right-hand lane at the earliest opportunity"); 29-A M.R.S. §2070(1) ("An operator of a vehicle passing another vehicle proceeding in the same direction must pass to the left at a safe distance and may not return to the right until safely clear of the passed vehicle. An operator may not overtake another vehicle by driving off the pavement or main traveled portion of the way").

Likewise, when driving on a highway, as was the case with the Defendant, operators are required to "keep the vehicle as close as practicable to the right-hand boundary of the public way, and allow faster moving vehicles reasonably free passage to the left." 29-A M.R.S. §2053 (2). This requirement to travel 'as close as practicable to the right-hand boundary' forces drivers to maximize the distance between traffic passing on the left-hand side, and thus promote motorist safety for all traffic. Operating a vehicle along the righthand traffic control line itself is the furthest extent possible to the righthand side and can therefore amount to operation 'as close as practical' to the right-hand side. This 'as close as practicable' language

is very similar to the 'as nearly as practical' language present in section 2051(1) and cannot be interpreted as "mere surplusage." *State v. Dubois Livestock, Inc.*, 2017 ME 223, ¶ 6, 174 A.3d 308. Section 2051 should be interpreted in light of the requirement of section 2053 to maximize distance between vehicles and so should be interpreted in the same way, namely that operation of a vehicle 'nearly as practical entirely within' a lane allows momentary touching of or nominal encroachment upon a traffic control lane on the righthand side.

While this Court has not specifically addressed this specific 'boundary line' issue before, many other jurisdictions have come to the conclusion advocated by Appellant, namely that brief, momentary contact with traffic control lanes does not, by itself, amount to a failure to maintain operation as nearly as practicable entirely within a single lane.[11]

For example, a court in Maryland, which has nearly identical language requiring motorists to travel 'as nearly as practicable entirely within a single lane,' found that as a matter of law the Defendant did not fail to maintain his lane even where there was evidence that the Defendant's vehicle actually crossed over the traffic line and drove on the shoulder rumble strip. *Rowe v. State*, 363 Md. 424, 769

[11] The survey of caselaw contained herein from other jurisdictions is by no means exhaustive, but illustrative that the position advocated by Appellant has received favorable treatment in rulings from at least a dozen states, as well as multiple federal district and circuit decisions. *See also State v. Binette*, 33 S.W.3d 215, 219 (Tenn.2000); *Neal v. Commonwealth*, 27 Va.App. at 239, 498 S.E.2d at 425; *Salter v. North Dakota Department of Transportation*, 505 N.W.2d 111, 113 (N.D.1993).

A.2d 879 (2001). In support of this ruling, *Rowe* provides an excellent survey of numerous court decisions, which have "interpreted their statues as requiring more for violation than a momentary crossing or touching of an edge or lane line." *Rowe*, 363 Md. at 438–39, 769 A.2d at 887–88 (2001).[12]

Another example comes from Oregon, which likewise has very similar statutory language requiring operation "as nearly as practicable entirely within a single lane," where a court ruled that de minis contact with traffic control lines did not amount, as a matter of statutory interpretation, to failure to maintain a lane. *State v. Little*, 326 Or. App. 788, 794–95, 533 P.3d 1107, 1111 (2023). Likewise, in support of this ruling, the court noted that its "interpretation of that language is consistent with the approaches taken by the courts of several other states." *Little*, 326 Or. App. at 795, 533 P.3d at 1112.[13] The court also stated that the "the policy

[12] The court cited the following cases: *Frasier v. Driver And Motor Vehicle Services Branch (DMV)*, 172 Or.App. 215, 220, 17 P.3d 582 (2001) ("When read in context, the words 'practicable' and *439 'refrain' demonstrate that the legislature intended that the statute would not be violated unless the driver did not stay within the lane because of an act or omission that was within his control."); *United States v. Guevara Martinez*, 2000 U.S. Dist. LEXIS 7202, at *4 (D.Neb.2000) ("touching or even crossing the broken lane divider twice over a half mile cannot be reasonably interpreted as 'erratic' or unsafe driving, and crossing 'barely into the center lane' must mean the same as driving 'as nearly as practicable' within the same lane."); *State v. Williams*, 86 Ohio App.3d 37, 619 N.E.2d 1141, 1144 (1993) (holding, even as it recognized that " weaving, even within a single lane can justify an investigatory stop[,]" that crossing the lane dividing line by one tire width on two occasions over a two mile stretch of highway, which it characterized as "minor weaving," "is not so unreasonable as to give a legitimate suspicion of criminal activity."). *See State v. Caron*, 534 A.2d 978, 979 (Me.1987) ("A vehicle's brief, one time straddling of the center line of an undivided highway is a common occurrence and, in the absence of oncoming or passing traffic, without erratic operation or other unusual circumstances, does not justify an intrusive stop by a police officer."); *United States v. Gregory*, 79 F.3d 973, 978 (10th Cir.1996), (a "single occurrence of moving to the right shoulder of the roadway ... could not constitute a violation of Utah law and therefore does not warrant the invasion of Fourth Amendment protection.").

[13] The court cited the following cases: *State v. Marx*, 289 Kan. 657, 674, 215 P.3d 601, 612 (2009) (reasoning that "[t]he express language employed—'as nearly as practicable'—contradicts the notion that any and all intrusions upon the marker lines of the chosen travel lane constitute a violation"); *Commonwealth v. Enick*, 70 A.3d 843, 847 (Pa Super Ct 2013), *rev. den.*, 624 Pa. 671, 85 A.3d 482 (2014) (distinguishing from the case before it the statutory language requiring motorists to maintain a single lane "as nearly as practicable," because that language "does not

arguments in favor of limiting officers from stopping citizens for very minor traffic offenses have been thoroughly explored in scholarly literature." *Little*, 326 Or. App. at 794, 533 P.3d at 1111.[14]

Additionally, the Ohio Supreme Court came to the same conclusion in 2020 and ruled that since the Defendant in that case "did not cross the single solid white longitudinal line—the fog line—and driving on it or touching it is not prohibited under R.C. 4511.33(A)(1), no violation occurred." *State v. Turner*, 2020-Ohio-6773, 170 N.E.3d 842, 849. The court noted that it's ruling was "consistent with the greater weight of authority in jurisdictions across the nation that touching the single solid white longitudinal line on the right-hand side of the roadway does not constitute a violation of" it's version of 29-A M.R.S. §2051. *Turner*, 170 N.E.3d at 849–50.[15]

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foreclose minor deviations"); *State v. Prado*, 145 Wash App 646, 647, 186 P.3d 1186, 1186-87 (2008) (concluding that the "requirement that automobile drivers remain within a single lane of travel 'as nearly as practicable' does not impose strict liability" and that "[a] vehicle crossing over a lane once for one second by two tire widths does not, without more, constitute a traffic violation"); *State v. Livingston*, 206 Ariz. 145, 148, 75 P.3d 1103, 1106 (Ariz Ct App 2003), *rev. den.* (Apr. 19, 2004) (determining that the language "as nearly as practicable" demonstrates "an express legislative intent to avoid penalizing brief, momentary, and minor deviations outside the marked lines").

[14] The court cited the following: Harvey Gee, *"U Can't Touch This" Fog Line: The Improper Use of a Fog Line Violation as a Pretext for Initiating an Unlawful Fourth Amendment Search and Seizure*, 36 N. Ill. U. L. Rev. 1, 2 (2015) (observing that "police are relying on statutes as an excuse to pull over cars which may have only momentarily crossed the fog line and where the drivers have done nothing else unlawful" and that this practice "affords police tremendous leeway to conduct pretextual stops, unreasonably detain suspects, and unlawfully search vehicles"); Lewis R. Katz, *"Lonesome Road": Driving Without the Fourth Amendment*, 36 Seattle U. L. Rev. 1413, 1413 (2013) (asserting that "[o]ur streets and highways have become a police state where officers have virtually unchecked discretion about which cars to stop for the myriad of traffic offenses contained in state statutes and municipal ordinances"); Melanie D. Wilson, *"You Crossed the Fog Line!"—Kansas, Pretext, and the Fourth Amendment*, 58 U. Kan. L. Rev. 1179, 1180 (2010) (noting that data from Kansas indicates that Kansas police "rely on minor traffic violations as an excuse" to stop certain vehicles and noting that "[r]ecently, officers have relied on lane violations" in particular)."

[15] The court cited the following cases: *People v. Mueller*, 2018 IL App (2d) 170863, 431 Ill.Dec. 328, 127 N.E.3d 861, ¶ 28 (officer did not have reasonable suspicion that defendant had violated the statute for improper lane usage when vehicle's tires touched the fog line and yellow center line three times at night on curved road); *United States v.*

II. THERE WAS NOT SUFFICIENT REASONABLE ARTICULABLE SUSPICION FOR THE MOTOR VEHICLE STOP AS THE ONLY ARTICULATED REASON FOR THE STOP WAS ENCROACHMENT UPON, BUT NOT COMPLETELY CROSSING OVER, TRAFFIC CONTROL LINES

The Court reviews "a suppression court's findings of fact for clear error, and its legal conclusions de novo." *State v. Drewry*, 2008 ME 76, ¶ 19, 946 A.2d 981; *see State v. Fleming*, 2020 ME 120, ¶ 25, 239 A.3d 648. "Whether an officer's suspicion is objectively reasonable is a pure question of law." *State v. Sylvain*, 2003 ME 5, ¶ 11, 814 A.2d 984; *see Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996) ("[D]eterminations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal.").

"The Fourth Amendment to the United States Constitution and article I, section 5 of the Maine Constitution protect motorists from being unreasonably stopped by police." *State v. LaForge*, 2012 ME 65, ¶ 8, 43 A.3d 961. For a traffic stop to be constitutional, "a police officer must have an objectively reasonable,

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Warfield, 727 Fed.Appx. 182, 186 (6th Cir.2018) (officer lacked probable cause to stop defendant's vehicle, as merely touching a lane line is not a violation of Ohio's marked-lanes statute); *State v. Neal*, 159 Idaho 439, 447, 362 P.3d 514 (2015) (twice driving onto but not across fog line does not violate lane-use statute); *United States v. Wendfeldt*, 58 F.Supp.3d 1124, 1130 (D.Nev.2014) (a vehicle's driving onto the fog line several times did not provide officer with reasonable suspicion to justify traffic stop for improper lane usage); *United States v. Colin*, 314 F.3d 439, 444 (9th Cir.2002) (based on the " 'totality of the circumstances,' " a vehicle's touching the fog line and the solid yellow line did not provide officer with reasonable suspicion to stop defendant's vehicle); *Rowe v. State*, 363 Md. 424, 441, 769 A.2d 879 (2001) (vehicle's crossing and then touching the white line bordering the shoulder did not violate marked-lanes statute); *State v. Cerny*, 28 S.W.3d 796, 801 (Tex.App.2000) (marked-lanes statute not violated when vehicle touched the white shoulder line and wove somewhat within its own lane of traffic); *Crooks v. State*, 710 So.2d 1041, 1043 (Fla.Dist.Ct.App.1998) (vehicle's crossing fog line three times did not constitute violation of marked-lanes statute when there was no evidence that driver failed to ascertain that he could do so safely); *State v. Lafferty*, 291 Mont. 157, 1998 MT 247, 967 P.2d 363, ¶ 14, *overruled in part on other grounds*, *State v. Flynn*, 359 Mont. 376, 2011 MT 48, 251 P.3d 143, ¶ 12 (crossing fog line twice and driving on it once did not violate marked-lanes statute, which applies only to changes between marked lanes).

articulable suspicion that either criminal conduct, a civil violation, or a threat to public safety has occurred, is occurring, or is about to occur." *Sylvain*, 2003 ME 5 at ¶ 11, 814 A.2d at 987. "At a hearing on a motion to suppress evidence obtained in the course of a traffic stop, the State bears the burden of demonstrating that the officer's actions were objectively reasonable under the circumstances." *Sylvain*, 2003 ME 5 at ¶ 7, 814 A.2d at 986. "At the time of a stop, an officer must be able to articulate specific facts underlying his or her suspicion that a crime or traffic violation has occurred, that suspicion must be objectively reasonable considering the totality of the circumstances, and the officer must have 'more than a bare speculation or an unsubstantiated hunch.'" *State v. Lovejoy*, 2024 ME 42, ¶ 16, 315 A.3d 744, 750. Reasonable suspicion requires stops to be based on more than a hunch. *State v. Caron*, 534 A. 2d 978 (Me. 1987).

In this case, the State failed to clear the relatively low bar of articulating an objectively reasonable suspicion that the Defendant was engaged in criminal conduct, a civil violation, or posed a threat to public safety. The sole reason articulated for stopping the Defendant's vehicle was her making contact with, but not crossing over, marked lane lines. (*see* Tr. 12, 24, 32).[16] There is no evidence of sudden, erratic steering or other unusual circumstances.[17] There is no evidence that

[16] As noted above, Trooper Bourdelais testified that there was nothing about Defendant's speed itself that was cause for a stop, that there were no equipment defects with the Defendant's vehicle, and that there was "nothing out of the ordinary" about her lane change and passing of the tractor trailer. (Tr. 19, 25, 28-29, 30).

[17] Despite describing the Defendant as "kind of swerving," the trooper acknowledged that the video showed the

Defendant's vehicle actually crossed over any traffic control line. (*see* Tr. 24). In the absence of any other factors, Trooper Bourdelais's brief observation of the Defendant's vehicle simply "riding the fog line," is insufficient justification to initiate a motor vehicle stop. (Tr. 12, 24; *see* State's Exhibit 1).

There is no precedent in Maine caselaw of a motor vehicle stop being upheld based solely on contact with traffic control lines. In the overwhelming majority of cases where this Court has upheld a motor vehicle stop, the driving conduct at issue involved a clear crossing fully **over** of traffic control lines, usually in combination with evidence of erratic operation or other unusual circumstances, none of which are present in the instant case.

For example, in *Ouellette*, the Court affirmed the lower court's finding that there was a violation of 29-A M.R.S. § 2051(1) where "the officer had witnessed Ouellette cross the center line and travel partially in the lane of oncoming traffic such that the officer had to move to the side to pass by Ouellette's vehicle safely. This observation was sufficient to generate an objectively reasonable suspicion that a civil violation or a threat to public safety had occurred." *Ouellette*, 2024 ME 29 at ¶ 21, 314 A.3d at 262. Likewise, the Court in *Porter* ruled that "[w]hen, as is the case here, an officer observes a vehicle cross the center line by more than a foot,

Defendant's vehicle moving "back and forth in that kind of consistent motion." (Tr. 11-12). This is also clear from the video which shows gradual movements within her travel lane, up to and including the paint of the lane markings. (see State's Exhibit 1).

then move across the lane to the fog line, touch that line, and then move back to the center line, touching the center line, all within a quarter mile, it is objectively reasonable for that officer to suspect that the driver may be impaired by alcohol." *State v. Porter*, 2008 ME 175, ¶ 12, 960 A.2d 321, 323–24. Another example is *LaForge*, where the officer saw the operator "drive onto the centerline twice, then later completely cross the fog line with his passenger-side tires twice, and then completely cross the centerline with his driver-side tires twice more. Accordingly, we conclude, as a matter of law based on the facts found by the motion judge, that the stop of LaForge's vehicle was justified based on an objectively reasonable articulable suspicion." *LaForge*, 2012 ME 65 at ¶ 13, 43 A.3d at 964–65; *see also State v. Morrison*, 2015 ME 153, ¶ 7, 128 A.3d 1060, 1061–62 ("the entire vehicle crossed the centerline and moved into the opposite lane, creating a safety issue."); *State v. Pelletier*, 541 A.2d 1296, 1297 (Me. 1988) ("The police officer driving behind Pelletier's car observed him cross over the center line three times and drift onto the right shoulder one time."). The Defendant's conduct in this case is clearly distinguishable from the above cases because, again, it is undisputed that the Defendant's tires did not actually cross fully **over** any traffic control line.

Defendant's case is likewise distinguishable from the line of cases were there was other indicia of impaired operation besides brief contact with lane markings. For example, in *Lafond* this Court upheld a denial of a motion to

suppress where, in addition to evidence that the vehicle's tires "totally" crossed over the righthand fog line, there was an anonymous tip of a possible intoxicated driver and the officer observed a vehicle matching the description in the tip. *State v. Lafond*, 2002 ME 124, ¶ 4, 802 A.2d 425, 427. The Court contrasted that case with the "single straddle observed in *Caron*, which we held did not give rise to an objectively reasonable suspicion that criminal activity was involved," noting that "[h]ere we have a straddle plus an anonymous tip with sufficient specificity that the vehicle could be located." *Lafond*, 2002 ME 124 at ¶ 13, 802 A.2d at 430 (internal citations and quotations omitted). In the instant case, there is neither 'straddle' nor 'plus,' as there is no other indicia of impaired operation besides brief contact with lane markings.

The present case is also distinguishable from the line of cases where vehicle speed or the time of the stop, again usually when considered in combination with other factors such as fully crossing over a lane line, can give rise to reasonable articulable suspicion. For example, in *Brown*, the Court, due to a combination of factors, including the vehicle "crossing the center line, striking the fog line, and the vehicle's speed." *State v. Brown*, 675 A.2d 504, 505 (Me. 1996). Specifically, the officer observed the suspect vehicle to be "twice traveling as much as 15 mph below the 25 mph speed limit before speeding up." *Brown*, 675 A.2d at 504–05 (Me. 1996); see *State v. Cusack*, 649 A.2d 16, 17–19 (Me. 1994) (investigatory

stop justified based on early morning hour, the vehicle's traveling below the speed limit, and repeated drifting); *State v. Burnham*, 610 A.2d 733, 734–35 (Me.1992) (stop warranted on the basis of the lateness of the hour, the vehicle's traveling below the speed limit, and unexplained weaving). There was no evidence introduced about the Defendant's specific speed, besides Trooper Bourdelais testifying that he was driving withing the speed limit tailing the Defendant and that "there was not" anything "alarming" about her speed. (Tr. 19).

The closest this Court has come to upholding a traffic stop where a vehicle makes contact with, but does not completely go over, a traffic control line is *Carnevale*, however there was still evidence of improper speed. *State v. Carnevale*, 598 A.2d 746 (Me. 1991). In that case, at the motion to suppress hearing, in response to the question whether he ever saw the car's wheels cross the center line, the arresting officer stated "[t]he wheels never crossed. No. But [t]hey covered the line." *Carnevale*, 598 A.2d at 747. However, in addition to the contact being with the center lane line, as opposed to the righthand fog line, the straddling of the line prolonged and repeated, with the officer testifying that:

> "[w]hile I was behind the vehicle ... the vehicle would travel over onto the yellow line, putting both tires onto the yellow line, and stay there for a distance of about 100 feet or so. And then the vehicle would travel back off ... away from the yellow line about three feet and then come back over onto the yellow line again. This occurred twice in that two-lane section [and once again within a mile].... It was a slow weave onto the line and back off.

Carnevale, 598 A.2d at 747. Critically however, the officer also testified that "the other thing I made note of was that the speed was constantly fluctuating between 35 and 40 miles an hour, and this is a 45 mile-an-hour zone." *Id*. Again the instant case is clearly distinguishable because Trooper Bourdelais testified that there was nothing besides the intra lane operation that concerned him at the time of the stop, and specifically testified that "there was not" anything "alarming" about her speed. (Tr. 19, 24, 32).

Therefore in the absence of other factors, the most comparable case is *Caron*. In that case, the Court agreed with the Defendant and ruled that the state trooper lacked an articulable suspicion sufficient to justify the stop where the stop was based solely on the officer's observation that the vehicle "straddle[d] the center line of the road for 25 to 50 yards and then steer[ed] back into the proper lane of travel. There was no oncoming traffic nor vehicles passing Caron at the time of the straddling, nor any other operation that was in any way erratic or unusual." *Caron*, 534 A.2d at 979. The Court ruled it was clear error to deny Defendant's motion to suppress when the officer's suspicion of impaired operation "was based solely on the single, brief straddling of the center line of the undivided highway, with no oncoming traffic in sight and no vehicles passing on the left, not constituting a violation of any traffic law. The observation, even when taken with all rational inferences that can be drawn from it, did not give rise to an objectively

reasonable suspicion that criminal activity was involved." *Id*. The Court ruled that "a vehicle's brief, one time straddling of the center line of an undivided highway is a common occurrence and, in the absence of oncoming or passing traffic, without erratic operation or other unusual circumstances, does not justify an intrusive stop by a police officer. Otherwise, we would sanction stops on mere hunch or speculation. The Fourth AWmendment to the United States Constitution and article I, section 5 of the Maine Constitution require more." *Id*. (internal citations omitted). Here, briefly riding a fog line, especially when being tailed by another vehicle from the passing lane without being passed, is a common occurrence and there was nothing 'more' to justify the intrusion on the Defendant's right to be free from excessive restraint. It is also key that the Defendant was "riding the fog line," away from oncoming or overtaking vehicles, as opposed to straddling the center line, so there is no risk to public safety as justified stops in other cases. (Tr. 12).

Several other states have addressed the issue of whether intra-lane movement, including momentary contact with traffic control lines, and concluded that, in the absence of other evidence, such operation fails to justifies a traffic stop. *see e.g. State v. Binette*, 33 S.W.3d 215, 219 (Tenn.2000); *Neal v. Commonwealth*, 27 Va.App. at 239, 498 S.E.2d at 425; *Salter v. North Dakota Department of Transportation*, 505 N.W.2d 111, 113 (N.D.1993). "Where other factors are not present, courts have been particularly careful to examine closely the nature of the

intra-lane movement, declining in some cases to find reasonable suspicion when the movement was neither pronounced nor unusually repetitive." *State v. Pratt*, 2007 VT 68, ¶¶ 12-14, 932 A.2d 1039, 1043–44 (2007) (Johnson, J., *dissenting*).[18]

CONCLUSION

WHEREFORE, for the reasons set forth above, Appellant respectfully requests the Court overturn the lower court's decision denying the motion to suppress and issue an order that law enforcement lacked a reasonable and articulable suspicion to stop her vehicle and grant the motion to suppress. Where the sole reason articulated for the stop is brief contact with lane markings and nothing more, it is clear that the State failed to meet its admittedly low burden to justify the stop of Defendant's vehicle.

[18] *Citing* *State v. Binette*, 33 S.W.3d 215 (Tenn.2000) (Tenneses Supreme Court overturned stop of a vehicle which was observed weaving back and forth within its lane several times but no evidence of unusual or exaggerated movements by the vehicle within its lane); *State v. Post*, 2007 WI 60, 733 N.W.2d 634 (Wisconsin Supreme Court held that weaving within a single lane of traffic does not alone give rise to the reasonable suspicion necessary to conduct an investigative stop of a vehicle); *United States v. Lyons*, 7 F.3d 973, 976 (10th Cir.1993) (finding evidence that vehicle weaved three or four times within its lane over the course of two miles was insufficient standing alone to uphold investigative detention), *overruled on other grounds by United States v. Botero–Ospina*, 71 F.3d 783, 786–87 (10th Cir.1995); *Warrick v. Comm'r of Pub. Safety*, 374 N.W.2d 585, 585–86 (Minn.Ct.App.1985) (finding "subtle" weaving within lane over course of five miles did not justify investigatory detention); *Salter v. North Dakota Dep't of Transp.*, 505 N.W.2d 111, 113 (N.D.1993) (invalidating stop premised on movement of vehicle within its own lane where there was "no evidence of erratic movement, sharp veering, or any of the other factors noted in prior cases").

Respectfully submitted, dated at Brunswick, Maine this 19th day of March, 2025.

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CERTIFICATE OF SERVICE

I, Andrew D. Emerson, certify that I served two copies of this Brief of Appellant upon the other parties in this matter by regular U.S. mail, postage paid, with a copy by email, at the addresses below:

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