



1 filing other concurrent defense motions before this court.

2 **Declaration and Waiver of Time.**

3 I, Jerry Charles Green, declare the following under penalty of perjury: I waive my speed trial rights  
4 as necessary.

5 Signed Jerry Charles Green \_\_\_\_\_ Monday, February 4, 2008

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23 **Statement of the case:**

24 I was driving a pickup pulling a trailer on which there was a rented hoisting device. A police car  
25 signaled me to stop at around 11:30 pm. I drove a mile further to a safe spot in my driveway. The officer  
26 had no probable cause to initiate a traffic stop. His pretext was illegal lane use. This was a **pretextual**  
27 **traffic stop.** He falsely accused me of fleeing and eluding.

28 He admitted facts in his report which prove that I did not commit the offense of drunk driving - or  
any crime.

**He did not write me up for that illegal lane usage - his pretext for this pretextual  
stop.**

He did not ask for any papers. I refused to give any body fluids for testing.

The police officer attempted to persuade me to sacrifice those very constitutional rights that are so  
important during a traffic stop. I declined to give testimony or evidence against myself. In retaliation for

1 my having refused to relinquish my constitutional rights, the officer arrested me. The arrest was illegal; it  
2 has been established law for many years that touching the dividing lane is insufficient probable cause to  
3 justify a traffic stop.

4 The arrest was made under false color of law and pursuant to an **unconstitutional statute**. This  
5 statute contains the irrebuttable presumptions that:

- 6 1. Those who refuse to testify against themselves must be hiding something and must be drunk; and
- 7 2. Those won't surrender their 4<sup>th</sup> amendment rights must surrender their right to drive.

8 The Supreme Court said that I don't have to give up one right to exercise another right.

9 Oregon drunk driving statutes are unconstitutional.

10 "An unconstitutional act is not law; it confers no rights; it imposes no  
11 duties; affords no protection' it creates no office; it is in legal  
12 contemplation, as inoperative as though it had never been passed." -

13 **Norton v. Shelby County**, 118 U.S. 425, Quoting from **Marbury v**  
14 **Madison** (1803) which is found at

15 <http://usinfo.state.gov/usa/infousa/facts/democrac/9.htm> Marbury holds  
16 that a void act is void ab initio.

17 This Implied consent statute defies logic. It is transparently oppressive. The supreme court ruled  
18 that such an irrebuttable presumption constitutes a denial of due process and is therefore unconstitutional.

19 Authority: **Cleveland Board of Education v La Fleur** (1974)

20 <http://www.lawyerdude.netfirms.com/5877.html> 414 US 632, 39 L Ed 2d 52, 94 S Ct 791. Also, nobody  
21 can take away my driver license without a hearing and other due process. Authority: **Bell v Burson** (1971)  
22 402 US 535, 29 L Ed 2d 90, 91 S Ct 1586 <http://www.circuitlawyer.8m.com/Burson.html> . The state gave  
23 me no opportunity to rebut prior to impoundment of my car and imposition of towing charges. I was not  
24 offered a prompt post-deprivation hearing.

25 I am entitled to ignore unconstitutional laws:

26 "And our decisions have made clear that a person faced with such an  
27 unconstitutional licensing law may ignore it and engage with impunity in  
28 the exercise of the right of free expression for which the law purports to  
29 require a license. The Constitution can hardly be thought to deny to one  
30 subjected to the restraints of such an ordinance the right to attack its  
31 constitutionality, because he has not yielded to its demands." - U.S.

32 Supreme Court in **Shuttlesworth v Birmingham** (1969)

33 <http://www.lawyerdude.8m.com/5091.html> 22 L Ed 2d 162, 394 U.S. 147  
34 at page 152, 89 S Ct 935.

35 All this the police officer did in flagrant violation of the officer's oath to support the constitution

1 which includes the supremacy clause and the due process clause. The officer was congenial and so was  
2 I. There was no personal animosity.

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

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5 **Table of U.S. Supreme Court Cases and 9<sup>th</sup> circuit federal case cited herein**

6 **Bell v Burson** (1971) 402 US 535, 29 L Ed 2d 90, 91 S Ct 1586  
7 <http://www.circuitlawyer.8m.com/Burson.html> ..... -3-

8 **Cleveland Board of Education v La Fleur** (1974) 414 US 632, 39 L Ed 2d 52, 94 S Ct 791.  
9 <http://www.lawyerdude.netfirms.com/5877.html> ..... -3-

10 **Marbury v Madison** (1803) <http://usinfo.state.gov/usa/infousa/facts/democrac/9.htm> Marbury holds that  
11 a void act is void ab initio. "An unconstitutional act is not law; it confers no rights; it imposes no duties;  
12 affords no protection' it creates no office; it is in legal contemplation, as inoperative as though it had never  
13 been passed".  
14 ..... -3-

15 **Shuttlesworth v Birmingham** (1969) <http://www.lawyerdude.8m.com/5091.html> 22 L Ed 2d 162, 394  
16 U.S. 147 at page 152, 89 S Ct 935.  
17 ..... -3-

18 **U.S. v Eric Colin** (9<sup>th</sup> circuit 2002) <http://www.fu.gq.nu/colin.html> Touching the lane divider line is legal.  
19 Touching the lane divider line is insufficient probable cause to initiate a traffic stop. Evidence stemming  
20 from such a stop must be suppressed. This case is binding precedent in the instant case. This trial court  
21 has no discretion. They must dismiss this case.  
22 <http://caselaw.lp.findlaw.com/data2/circs/9th/0150140p.pdf> ..... -5-

23 **Weeks v. United States** (1914) <http://www.lawyerdude.netfirms.com/weeks.html> 232 U.S. 383, 34 S.Ct.  
24 341, 58 L.Ed. 652, L.R.A. 1915 B 834, declared that an illegal search and seizure barred the use of such  
25 evidence in a criminal prosecution. .... -4-

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26 **Statutes cited herein:**

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

28 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) <http://www.lawyerdude.netfirms.com/weeks.html> 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>

1 circuit in the case of *U.S. v Colin* discussed below. The 9<sup>th</sup> circuit ruled that this driving pattern is  
2 insufficient to justify a traffic stop.

3 The officer whose name is illegible on the ticket had no lawful basis for arresting me or testing  
4 me.

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

5 The facts are nearly identical to the statement of the officer in the case of *U.S. v Eric Colin* (9<sup>th</sup>  
6 circuit 2002) <http://www.fu.gq.nu/colin.html> <http://caselaw.lp.findlaw.com/data2/circs/9th/0150140p.pdf>

7 Jerry Charles Green's driving pattern is less culpable than the driving pattern reported in the 9<sup>th</sup>  
8 circuit case of *U.S. v Colin*. Here is the report of the Colin driving pattern with was held insufficient to  
9 justify a traffic stop:

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

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

18 "Estrada-Nava and Colin's car touched for approximately ten seconds,  
19 but did not cross, the fog line and the solid yellow-painted line. The  
20 district court concluded on the basis of these facts that Carmichael had  
21 reasonable suspicion to stop Estrada-Nava and Colin for lane straddling  
22 because "[a] common sense definition of lane straddling . . . includes a  
23 situation in which a vehicle's wheels rest on the marking  
24 line." We disagree, and conclude that based on the "totality of the  
25 circumstances," Carmichael lacked the requisite reasonable suspicion to  
26 stop Estrada-Nava and Colin for lane straddling. [7] As the district court  
27 pointed out, neither section 21658(a) nor California case law specifies  
28 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.

1 Courts in other states, however, that have interpreted statutes similar to,  
2 if not the same as, section 21658(a) have held that **touching the line**  
3 **is not enough to constitute lane straddling**. See, e.g., United  
4 States v. Gregory, 79 F.3d 973, 978 (10th Cir. 1996) (holding that an  
5 isolated incident of a vehicle crossing into the emergency lane of a  
6 roadway does not violate state statute's requirement that vehicles remain  
7 entirely in a single lane "as nearly as practical"); United States v.  
8 Guevara-Martinez, 2000 WL 33593291, at \*2 (D. Neb. May 26, 2000)  
9 (interpreting a similar Nebraska statute and concluding that touching, but  
10 not crossing, the broken line between two southbound lanes twice in a  
11 half mile did not violate the statute's "near as practicable" requirement),  
12 aff'd, 262 F.3d 751 (8th Cir. 2001); Rowe v. State of Maryland, 769 A.2d  
13 879, 889 (Md. 2001) (concluding that "momentary crossing of the edge  
14 line of the roadway and later touching of that line" was not reasonable  
15 suspicion to justify traffic stop); State v. Caron, 534 A.2d 978, 979 (Me.  
16 1987) (holding that there was not reasonable suspicion to justify a stop  
17 because a vehicle's "one time straddling of the center line of an undivided  
18 highway is a common occurrence"); " - the 9<sup>th</sup> circuit in the case of **U.S. v**  
19 **Colin** (2002)

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

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

22 The rule of **U.S. v Colin** was established law long before the Colin opinion of 2002 and long before the  
23 illegal search and seizure upon the body and automobile of Jerry Charles Green on April Fool's day in  
24 2004.

25 We demand that the evidence be suppressed and case dismissed.

26 Signed \_\_\_\_\_ Jerry Charles Green Date: Monday, February 4, 2008

27 **Declaration of Traffic Expert: Attorney Douglas Palaschak**

28 I, Douglas Palaschak, declare the following under penalty of perjury: I have been a licensed  
lawyer for a quarter century. I specialize in constitutional law, bankruptcy, and traffic tickets. I know Jerry  
Charles Green personally. When he told me about his case I immediately recalled the 9<sup>th</sup> circuit case of  
**U.S. v Colin** because it is square on point and binding precedent. This case must be dismissed. I publish  
the case on my website. Signed by Green with specific permission of Palaschak:

Attorney Douglas Palaschak \_\_\_\_\_ Monday, February 4, 2008

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**Proof of Service**

1 I , Jerry Charles Green, hereby declare the following under penalty of perjury:  
2 Today I served this document #9054 upon the prosecutor in this case by personal delivery to his office.  
3 Signed: Jerry Charles Green \_\_\_\_\_ Monday, February 4, 2008

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**Proposed Order**

**Lane County Circuit Court of Oregon**  
125 East 8th Avenue, Eugene, Oregon 97401

State of Oregon v Jerry Charles Green	Case Number: <b>Order after hearing on motion to suppress evidence.</b>
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**Order after Hearing on Motion to Suppress Evidence**

I have considered the arguments of the parties. I hereby rule that touching the divider stripe is not sufficient probable cause to justify a traffic stop. I find that touching the divider line twice was the only 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, Lane County, Oregon

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