

Model Illinois Government
Moot Court Competition

Winter 2012

R. Andrew Smith*

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**IN THE SIXTH JUDICIAL CIRCUIT COURT OF
CHAMPAIGN COUNTY, ILLINOIS**

People of the State of Illinois,

v.

Martin Vlastic,

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Case No.: 09 MIG-CR 4487

MEMORANDUM AND ORDER

After pre-trial motions and a stipulated bench trial, Defendant Martin Vlastic brings his post conviction petition pursuant to the Illinois Post Conviction Petition Act, 725 ILCS 5/122-1 et seq., asserting error in this Court’s ruling in favor of the State of Illinois on his motion to quash arrest. Essentially, Defendant asserts that this Court should have granted his motion to quash because the arresting officer lacked probable cause to affect the traffic stop that resulted in his arrest for possession of a controlled substance and because, even if the stop was appropriate, the office lacked sufficient reasonable suspicion to search the Defendant’s person incident to the arrest.

Defendant requested a written ruling presumably to perfect the issues on appeal, and per the Defendant’s request, this memorandum and order provides for the reasoning behind this Court’s dismissal of Defendant’s post conviction petition at the second stage of the post-conviction proceedings. Prior to discussing the reasoning for this Court’s decision, it is helpful to restate the stipulated facts presented during the evidentiary hearing on Defendant’s motion to quash arrest and the stipulated bench trial.

Factual Background

The genesis of the dispute at issue resulted from a traffic stop that took place at or about 6:30 PM on December 8, 2009. On that date, the Defendant, Martin Vlastic was driving his vehicle south on County Road 1 north of Champaign, Illinois, in Champaign County. Deputy Bethany Watts, a Champaign County Sheriff’s Deputy, was on traffic patrol in the area in and around Champaign

traveling northbound on County Road 1. At or about 6:30 PM, the Deputy and the Defendant were approaching one another on Road 1. Shortly after the vehicles the respective parties were driving passed one another, Deputy Watts made a u-turn and began following the Defendant.

Deputy Watts followed the Defendant for approximately one mile. At the time, the vehicles were moving at between 45 and 55 miles per hour. The posted speed limit on Road 1 is 55 miles per hour. After following the Defendant for one mile, the Deputy activated her emergency equipment and effectuated a traffic stop of the Defendant's vehicle for improper lane usage.

During the stop, the Deputy approached the vehicle, and when the Defendant's driver side window opened, cigarette smoke billowed out of the car. After checking the Defendant's license and registration, Deputy Watts and the Defendant discussed the Defendant's trip, including his point of origin, and his intended destination. While none of this information in particular sparked Deputy Watts' concern regarding any possible criminal activity, the longer the Deputy was exposed to the smell of the cigarette smoke from Defendant's vehicle, the more she began to notice an odd odor mixed with the smell of the smoking tobacco. Toward the end of the conversation, after the Deputy returned the Defendant's license and registration, and prior to indicating the Defendant was free to leave, the Deputy queried the Defendant regarding the smell in the smoke.

The Defendant stated that the cigarettes were a special kind of cigarette called Cloves that had a different smell from regular tobacco. The Defendant then showed the box for the cigarettes to the Deputy. Upon inspection, the box for the cigarettes was black and indicated the cigarettes were a product known as Kretek, an imported Indonesian form of cigarettes that include flower petals known as cloves, which supposedly gave the cigarettes their distinct smell.

Upon inspecting the cigarettes in the box, the Deputy noticed that the tobacco in the cigarettes was loosely packed, and that the black paper the cigarettes were rolled in was not well glued like normal production cigarettes. Upon further inquiry about the condition of the cigarettes, the Defendant stated he had not noticed their condition and that it was a newer pack of cigarettes the Defendant

recently opened after he had acquired from a friend the day before.

Deputy Watts, while still holding the box of cigarettes provided by the Defendant, requested the Defendant exit the vehicle. When the Defendant complied and stepped out of the vehicle, the Deputy noticed a more pronounced and recognizable smell she knew to be indicative of marijuana. Upon recognizing the smell, the Deputy made the Defendant put his hands on the roof of the vehicle and searched his person.

As a result of the search, the Deputy uncovered a small bag of green vegetable material she recognized as marijuana. At this point, the Deputy placed the Defendant under arrest and escorted him to the patrol vehicle. After the formal arrest, the vehicle was inventory searched and 5 cartons of the Cloves cigarettes were found along with approximately 10 grams of marijuana. After the arrest, the Defendant also submitted to a blood test that demonstrated he was under the influence of marijuana at the time he was driving the vehicle south on County Road 1 prior to the arrest.

The Defendant was charged with improper lane usage, driving under the influence, possession of a controlled substance, and possession of a controlled substance with the intent to distribute. After being charged, the Defendant, through counsel, filed a motion to quash arrest asserting specifically that the officer lacked the requisite reasonable suspicion necessary to effect the initial traffic stop for a purported violation of Illinois Traffic law, specifically improper lane usage codified as 625 ILCS 5/11-709(a).

At the evidentiary hearing on the motion, the Deputy recounted that Defendant was driving south on County Road 1 heading toward Champaign while she was driving north. The Deputy stated that she was driving northbound when she observed the Defendant's vehicle drift from one side of the roadway to the other and then center in the southbound lane again. The Deputy specifically stated that the Defendant did not cross either the center line or the shoulder line on the road way, though he may have briefly driven on the shoulder line prior to centering the vehicle in southbound lane. The Deputy stated that this weaving was the basis for her u-turn and initial pursuit of the Defendant's vehicle.

The Deputy testified that while she followed the Defendant's vehicle, she observed him continue to weave periodically; though the entire time the Deputy followed the Defendant the Defendant's vehicle never crossed the center line or the shoulder line on the roadway. Rather, the Deputy testified that the persistent weaving lead her to believe that the Defendant was driving in an impaired state such that she should, at the very least, effectuate a traffic stop to insure the Defendant was not a harm to himself or others.

The Deputy further testified that she has participated in drug interdiction training that included education on the smell of marijuana, its physical appearance, and the different ways in which it can be illegally transported and sold, including the process known as "dusting." This training included the common forms of the process of "dusting" and how to spot it in various different types of other legal substances. This included indicia in cigarettes that included pungent smelling smoke, loosely packed cigars or cigarettes, and seemingly store bought tobacco products that appeared to be tampered with. The deputy testified during the hearing that the Defendant exhibited all of these characteristics during the stop such that she thought it appropriate to have the Defendant exit his vehicle for a more thorough inquiry. The Defendant provided no testimony in this regard, but argued that the stop was extended beyond a reasonable amount of time when the officer did not accept his explanation for the nature and condition of the cigarettes at issue.

During the hearing, the Defendant testified that he was driving home from work and that he is very familiar with this stretch of County Road 1 north of Champaign. He also stated that the road is rough, and that it is very difficult to drive straight down this stretch of road because the condition of the road causes any car driving on the road to swerve slightly in the lane. The Defendant specifically stated that he did not cross either lane line immediately prior to the traffic stop or during the drive prior to the stop as far as he could recall.

After hearing the evidence presented by the parties, this Court found that there was a sufficient basis for the Deputy to effectuate the traffic stop for the stated traffic violation. After the denial of the

petition to quash arrest, the Court denied the Defendant's request for certification of issues and an interlocutory appeal, and the Defendant requested a stipulated bench trial. During the stipulated bench trial, the State presented evidence based on the testimony of Deputy Watts. The State further demonstrated that the Defendant was using the Clove cigarettes in a process called dusting, whereby the Defendant would disassemble the Clove cigarettes, remove about a quarter of the tobacco from the cigarette and replace it with marijuana. After completing this process, Defendant would likely sell the dusted Clove cigarettes to individuals looking to hide his or her marijuana consumption behind the stronger and unique smelling Clove cigarettes. Based on the amount of contraband on Defendant's person at the time of the arrest, the State requested aggravated charges to possession of a controlled substance to include possession with intent to distribute. Also, the State provided evidence from a blood test from the Defendant that indicated chemical markers for THC, indicating the Defendant was under the influence of a controlled substance at the time of his arrest, supporting the State's charge of driving under the influence.

After the stipulated proceedings, this Court found the Defendant guilty of the charges levied by the State, and remanded Defendant to custody pending sentencing proceedings. Prior to the completion of review by the Parole Board in advance of formal sentencing by this Court, Defendant filed his post conviction petition asserting this Court's error arising out of his petition to quash arrest based on an improper traffic stop and improper frisk search of his person resulting in Defendant's arrest for possession of a controlled substance and driving under the influence, among other included offenses. Based on the following reasoning, I find no error in my prior decisions on this case and enter and continue the matter for sentencing.

Discussion

I note at the outset that the purpose of this written decision is based upon the Defendant's request for the same and because the Defendant specifically requested a certified question pursuant to Illinois Supreme Court Rule 308 which would have permitted the Defendant to pursue an interlocutory

appeal. While I did not entertain the request for interlocutory appeal as the issues presented were not sufficiently unsettled that such an appeal was appropriate, the deluge of similar cases and the Defendant's filing of this post-conviction petition warrant a written opinion such that the issues may be adequately addressed pending any supplemental proceedings the parties intend to pursue. Moreover, the nature of the issues presented by the parties in briefing on the post-conviction petition demonstrate that the law in this area, though seemingly settled, is the subject of criticism based on police practices resulting in constitutional disputes like those raised by the Defendant.

In the instant case, it is important to note that the general standard of review of my prior decision when considering any potential error in my prior decision on this issue. Much like a motion to reconsider in the civil context, the post-conviction petition seeks to alert the court to an error in fact or in the application of law. As a trial judge, it is incumbent upon my position to fairly review the prior proceedings, regardless of the seemingly cynical nature of such a proceeding. As such, my reason for denying the petition arises not from the fact that I would otherwise refuse to reconsider a prior decision or recognize an error in my interpretation of the law, but rather because I feel the law is settled in this area such that there is no dispute concerning the application of the law to the facts presented. As such, I will approach the issues raised by the Defendant in turn: first, whether this Court erred in denying the Defendant's motion to quash arrest based on the lack of probable cause for the stop; and, second, whether the officer lacked sufficient suspicion to search the defendant incident to the arrest for the traffic violation.

I. THE OFFICE POSSESSED A SUFFICIENT BASIS TO EFFECT THE TRAFFIC STOP AT ISSUE.

As noted previously, I believe the law in this area is settled such that there is no meaningful dispute concerning the interpretation of section 11-709 of the Vehicle Code. The Illinois State Supreme Court stated in *People v. Smith* that there are two elements of the operative statute: first, that a motorist must drive a vehicle as nearly practicable in one lane, and, second, that a motorist cannot move a

vehicle from one lane of traffic to another without determining it is safe to do so. *See People v. Smith*, 665 N.E.2d 1215, 1218-1219 (Ill. 1996). Probable cause to arrest exists when a reasonable, prudent man in possession of the knowledge of the arresting officer would believe that an offense has been committed. *Id.* at 1219 (*citing People v. Robinson*, 62 Ill. 2d 273, 276 (1976)). That said, the mere misuse of a lane as observed by an officer, particularly if it dangers other motorists, would permit an officer to effect a traffic stop for a violation of the vehicle code. Moreover, *Smith* states that a motorist must use his or her lane in a manner as nearly practicable as possible. This indicates the duty of a driver to utilize a lane in a manner that would otherwise prevent excessive weaving and riding on or about the lane lines.

While the Defendant did argue that the State would not have been able to successfully prosecute a case with the facts presented solely for the violation of the vehicle code, it is important to note that the standard for proving a traffic violation and determining probable cause are sufficiently dissimilar such that an officer may possess sufficient probable cause to arrest, but the State may not be able to satisfy their burden of proof in criminal proceedings, be it beyond a reasonable doubt or by a preponderance of the evidence.

In the present case, the facts were sufficient to warrant the traffic stop. The arresting officer testified she observed the Defendant's oncoming vehicle drift from one side of the lane to the other, so much so that the Defendant was observed driving on the line separating the shoulder. The facts demonstrated that there were no lane obstructions or other problems with the roadway that would warrant an extreme shift in the Defendant's usage of the traffic lane. The Defendant's use of the lane as explained by the arresting officer very clearly demonstrates the Defendant's failure to use the traffic lane as nearly as practicable. As such, the arresting officer possessed the sufficient reasonable suspicion to effectuate the traffic stop at issue, and the Defendant's post-conviction petition will be denied on that basis.

II. The Arresting Officer Had Sufficient Basis To Conduct Further Inquiry Incident To The Arrest.

As a general principle, police are permitted to detain an individual for a temporary period in the proximity of a detention for the purpose of determining whether the individual is involved in criminal conduct provided they have a reasonable suspicion that the individual is involved in criminal conduct. *See* 725 ILCS 5/107-14. In the present circumstances, the arresting officer, after effectuating a lawful traffic stop would have been permitted to inquire of the Defendant about any potential criminal wrongdoing provided the officer could articulate a reasonable suspicion to justify the temporary detention. In the present case, the facts clearly demonstrate the officer possessed the requisite suspicion to permit further inquiry regarding a potential criminal violation.

The deputy who made the arrest did have sufficient evidence based on the facts presented to her that criminal activity could have been occurring. The Deputy's testimony was sufficiently specific to demonstrate that during the traffic stop, she noticed something odd about the smell of the smoke in the Defendant's vehicle. In addition, the Defendant voluntarily offered her a box of the cigarettes for her inspection.

The Defendant argued that once the officer extended the stop beyond how long it took for the Defendant to explain the nature of the cigarettes and the smoke that the officer detained him longer than was necessary such that the stop violated the applicable statute and the Defendant's right to be free from unreasonable search and seizure. However, this belies the testimony that was undisputed at the hearing and trial by the Defendant, specifically that the Defendant provided the Deputy with a pack of the cigarettes for her to inspect. At this point, the Defendant voluntarily submitted to the search such that he lost the ability to dispute the permissibility of the stop.

In addition, the Deputy specifically testified concerning objective indicia of possible criminal conduct based upon her prior experience and special training. Based on all of these factors, the Court sees no other alternative than to deny the Defendant's post-conviction petition because it failed to

clearly demonstrate based on the facts presented that a violation of his constitutional rights occurred during the prior proceedings.

CONCLUSION

Based on the foregoing, the Defendant's post-conviction petition is denied, and this Court's prior order is to stand.

It is so Ordered.

Judge Meredith Johnson

**IN THE ILLINOIS APPELLATE COURT,
FOURTH DISTRICT**

Case No. 10-00129

MARTIN VLASIC,)	
)	
)	Opinion and Order, December 23, 2010
Defendant/Appellant,)	
)	Matter on appeal from the decision
v.)	by Judge Meredith Johnson of the
)	Sixth Judicial Circuit Court
PEOPLE OF THE STATE OF ILLINOIS,)	
)	Case No. below: 09 MIG-CR 4487
Plaintiff/Appellee.)	
)	

MEMORANDUM AND ORDER

Opinion by Justice James Thomas, with Justice Connor Brutus concurring
Justice Bertrand Glasgow Dissenting in part

DISCUSSION

This case comes on appeal from the Defendant’s post-conviction petition after a stipulated bench trial in Champaign County, specifically the Sixth Judicial Circuit Court. For the purpose of review, this Court notes that the trial court was in the best position to determine the evidence in the proceedings below, and will not disturb the lower court’s finding of fact as a result. Rather, we incorporate the facts as stated in the record herein. We also note that we may review the application of the law below de novo as the issues presented only require we analyze how the law was applied by the trial court on Defendant’s post-conviction petition.

Based on the post-conviction petition, and briefs filed with this Court, it appears there are two issues raised by the Defendant on appeal: first, whether the traffic stop was justified at its inception, and, second, whether the officer possessed the requisite reasonable suspicion to permit the arresting officer to expand the stop to include an investigatory detention. We find that the stop was not justified based on the current status of the law, and as such, the majority need not reach the issue concerning the

permissibility of the extended investigatory detention. We note, however, that the dissent disagrees with this position, but does conclude, as this Majority would otherwise, that the investigatory detention was also not sufficiently warranted by the facts presented during the Defendant's Petition to Quash Arrest below. For the following reasons, this Court reverses and remands this case to the trial court for further proceedings not inconsistent with this ruling.

I. The Trial Court Erred In Finding Probable Cause Supporting The Traffic Stop.

This case presents an interesting, if not current issue, regarding the necessary amount of probable cause required for a police officer to effectuate a traffic stop. We reference the current nature of this case based on the recent decision by the Third District Court of Appeals. In *People v. Hackett*, the Court determined that the issue with probable cause and proper lane usage is contingent upon the potential risk of harm to other drivers and pedestrians. See *People v. Hackett*, 3-09-0396, *Slip Op.* 16-18 (3d Dist. 2010). The Third District Court went to great lengths in *Hackett* to consider the Illinois Supreme Court's Decision in *Smith* as *Smith* fundamentally lays out the operative basis for probable cause in the event of a traffic stop predicated upon improper lane usage. The trial court in this case rightly towed the line of *stare decisis* and followed the holding in the *Smith* decision. However, it may have done so at the expense of the personal liberty Article I, Section 6, of the Illinois Constitution aims to protect.

As the Third District Court stated in *Hackett*, the line is rightly drawn between the duty of the state to protect and police the roadways with the personal liberty guarantees enshrined in the various applicable State and Federal Constitutions. This case does not present the same factual basis that has confronted other Appellate Courts that have considered this issue. For example, the courts have previously pointed out the distinction and application of the standards in determining whether improper lane usage has occurred in *People v. Faletti* where the court determined that improper lane usage occurs only when a driver presents a danger to himself or others while driving. See *People v. Faletti*, 215 Ill. App. 3d 61, 63 (1991). The prior holding in cases like *Faletti* falls within the limitations prescribed by

the Illinois State Supreme Court in *Smith* because the standard in *Smith* also requires the appropriate usage of a lane by a motorist, specifically that a motorist must drive a vehicle as nearly as practicable entirely within one lane, and may not move a vehicle from a lane of traffic until the motorist has determined that the movement can be safely made. *Smith*, 172 Ill. 2d at 296-97.

This reasoning does not negate the reasoning of our prior decisions on this issue, but, rather, clarifies the necessary scope of our inquiry regarding whether a motorist is endangering himself or others. In addition, *Smith* seems to suggest that we must consider the motorist's perspective in analyzing whether a violation of the applicable prohibitions for improper lane usage has occurred. This, however, would result in an incomprehensible approach to reviewing the facts in these kinds of cases since every motorist, absent the occurrence of an automobile collision and possibly even in the face of the same, will likely assert that he or she believed their usage of the roadway did not endanger others.

The decision in *Hackett* rightly draws the line as to what the reasonable person would consider to be violative of the applicable statute. See *Hackett*, 3-09-0396, *Slip Op.* 7 (1st Dist. 2010). In the present situation, the application of an objective standard to the facts presented demonstrates clearly that there was no basis for the arresting officer to instigate the traffic stop at issue. First, testimony presented by all parties during the proceedings below clearly demonstrates that the Defendant did not cross a lane line prior to the stop. Further, while testimony suggesting the Defendant may have rode upon a lane line is insufficient for this Court to support the State's argument that the Defendant was endangering himself or others. The facts fail to demonstrate that there were any other motorists present on the roadway other than the arresting officer, or that any other drivers were forced to take any action to avoid a collision with the Defendant. As such, it would be wholly unreasonable for this Court to adopt the State's position and find that the Defendant violated the applicable statute.

On this basis, it is clear that the trial court misapplied the reasoning in *Smith* such that our *de novo* review is appropriate in this case. In reviewing the trial judge's decision, we are not reexamining

the facts as they were presented to the trial court, rather, analyzing the trial judge's application of the law on this issue as it applied to the facts presented. Our review, then, necessarily focuses on the interpretation of *Smith* as it applies to the facts presented.

Hackett demonstrates that it is not simply a matter of strict compliance with the standards as announced in *Smith*, but rather an examination of whether the facts demonstrate conduct within the reasonable ambit of the use of a roadway by a motorist while driving. If this Court were to find otherwise, as suggested by the Dissent, it would impose a rigid limitation on the application of the law for improper lane usage based upon these facts that is entirely unreasonable and otherwise humanly impossible. In addition, it would lead to absurd results in the application of the standards for this particular provision of the vehicle code such that a motorist would be required to drive consistently in the center of a single lane, regardless of what the road conditions may present to the motorist while driving. The fallible nature of humanity is such that this standard would be entirely inconsistent with a reasonable human experience of driving an automobile. Therefore, we cannot accept the arguments of the State concerning the application of the standard established in *Smith*, nor can we accept the argument presented by the dissent that suggests considering whether a driver endangers other motorists neglects or disregards the Illinois State Supreme Court's decision in *Smith*.

For these reasons we find the Trial Court erred and the decision in the lower court should be reversed and remanded for further proceedings not inconsistent with this ruling.

II. Reasonable Suspicion Is Not Applicable As The Arresting Officer Lacked A Sufficient Basis To Effect The Stop At Issue.

Based on the foregoing, it is unnecessary for this Court to reach the issue concerning whether the officer had a sufficient basis to further search the Defendant as the traffic stop was not appropriate at the outset. As such, we similarly reverse and remand to the trial court for further proceedings not inconsistent with this order.

CONCLUSION

Based on the foregoing, it is incumbent upon this Court to clarify the standard for the applicable statute regarding improper lane usage, and based on the foregoing, the arresting officer lacked the requisite cause to effect the traffic stop at issue, rendering any subsequent action by the officer a violation of the Defendant's right to privacy, search, and seizure.

It is so ordered.

SS// Justice James Thomas

SS// Justice Connor Brutus

I write separately to express my disagreement with the majority's reading of the decision in *Smith*. Oddly, though, I would also reverse the lower court's ruling on the basis of whether the arresting officer possessed the requisite reasonable suspicion to justify the continued detention of the Defendant after the officer instigated the traffic stop.

First, the Illinois State Supreme Court was very clear in rendering its decision in *Smith*. As stated by the majority, the plain language of the statute demonstrates two separate requirements: first, a motorist must use his or her lane as nearly practicable as possible, and, second, if a motorist chooses to change lanes, they must determine it is safe to do so. *See Smith, Smith*, 665 NE 2d 1215, 1218-1219. Oddly, the majority misconstrues the nature of a violation of this statute contrary to the clear meaning of the Supreme Court in *Smith*. Moreover, the decision in *Hackett* was equally misguided.

The facts in *Smith* support the officer's execution of the stop at issue because the officer observed the driver cross the lane line prior to effecting the stop. *Id.* at 1219. The Supreme Court did not consider whether the driver was presenting a danger to himself or others. Instead, the court supported the arresting officer's determination that a violation of 11-709 had occurred, and could stop the defendant in that case regardless of any consideration of the driver's safe use of the road. *Id.* This is precisely where the majority here and the decision in *Hackett* err. If the defendant crosses the lane line, a violation of the statute has occurred such that an officer would have cause to stop a vehicle.

The Supreme Court's decision also overrules the prior utilization of the reasonable safety standard established in other decisions such as *Faletti*. This Court's reliance on those decisions is equally as erroneous as the majority's utter disregard for the Supreme Court's decision in *Smith*. By adhering to that precedent, this Court effectively disregards the clarity the Supreme Court provided in *Smith*, and is sorely mistaken in doing so.

Further, the Supreme Court created a standard that could easily be applied to situations, like this one, that present situations where an officer effects a stop based on observing intra-lane weaving. The first requirement of the statute imposes the duty upon a driver to utilize his or her traffic lane as nearly practicable as possible. Absent the kind of roadway obstruction the majority appears to presume, there is no reason to think that improper lane usage could occur without crossing a lane line. The ability to drive reasonably within a lane is evinced on the face of the statute.

In the present case, the arresting officer had sufficient basis to effect the stop in question because the officer observed the Defendant did not use the lane as practicable as possible. The officer testified that the Defendant weaved in the lane and rode on the lane line while she observed him. Practicable use of a traffic line necessarily includes the use of a lane in such a manner that would prohibit unnecessarily or excessive weaving within the lane. Further, the addition of statutes in the vehicle code that prohibit the use of mobile telephones while driving support the legislatures expectation that drivers should drive without unnecessary distraction, and adhere to their duty to operate their automobile with the kind of reasonable care that would exclude excessive weaving within the traffic lane being used by a driver. For these reasons, I disagree with the majority's holding on this issue. However, I would still overturn the lower court's decision in this case because I do not believe the arresting officer possessed the requisite reasonable suspicion to detain and investigate the Defendant any longer than necessary to issue a citation for improper lane usage.

In its brief, the State relies on *People v. Houldridge* for their position that the arresting officer had the requisite level of suspicion to permit an extended detention of the Defendant to allay what

appeared to be little more than a hunch that illegal activity was occurring. In *Houldridge*, the arresting officer observed a car weaving, ran a license check finding the vehicle registration had expired, and during the stop smelled the scent of marijuana in the defendant's vehicle. *People v. Houldridge*, 117 Ill. App. 3d 1059 (4th Dist. 1983). In that case, the distinct smell of marijuana smoke was a sufficient basis to warrant further search of the defendants therein. A police officer may briefly detain an individual where the officer believes on the basis of articulable facts that there is a substantial possibility that that individual has committed, is committing, or is about to commit a criminal offense. *Houldridge*, 117 Ill. App. 3d at 1063 (citing *Terry v. Ohio*, 392 U.S. 1 (1968); *People v. Jones*, 102 Ill. App.3d 246 (4th Dist. 1982)).

In the present case, the facts do not support the officer had sufficient suspicion to arrest the Defendant even if the detention were appropriate. The facts below demonstrate the officer effected the stop, inquired about the cigarettes, that the Defendant complied, and it wasn't until after the Defendant exited the vehicle that she recognized the smell of marijuana though she was exposed to the smoke from the vehicle for some time after the start of the detention. When the Defendant complied with the officer's requests and provided a sufficient basis to allay the officer's concerns about criminal conduct, the officer's further detention and request for the Defendant to exit the vehicle went too far.

Once the Defendant provided reasonable explanations in response to the officer's inquiry, the officer had no reason to continue the detention. The reasonable suspicion for further search of the Defendant did not occur until after the Defendant exited his vehicle. However, the officer never should have gotten this far, as any further detention violated the Defendant's right to be free from unreasonable search and seizure. For these reasons, I disagree with the majority concerning the initial basis for the traffic stop, but would reverse the lower court's decision regarding whether the officer had sufficient reasonable suspicion to extend the traffic stop, search the Defendant, and arrest the Defendant for possession of a controlled substance.

SS// Justice Bertrand Glasgow

**SUPREME COURT OF THE
MODEL ILLINOIS GOVERNMENT**

Case No.: 11-MIG-7801

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Petitioner,)	
)	
v.)	
)	
MARTIN VLASIC,)	
)	
Respondent.)	
)	

ORDER GRANTING PETITION FOR LEAVE TO APPEAL

The Supreme Court of the Model Illinois Government hereby grants the petition for leave to appeal brought by the People of the State of Illinois from the decision of the Court of Appeals of Illinois, Fourth District. The Supreme Court certifies the following two issues for argument, rejecting all other issues submitted for appeal:

1. Whether the Trial Court erred in denying the defendant’s motion to quash arrest on the basis that the officer lacked sufficient cause to affect the traffic stop at issue based on insufficient facts to support probable cause of a traffic violation.
2. Whether the arresting officer possessed the requisite reasonable suspicion of criminal activity to perform a search of the Respondent’s person to support adequate cause to permit the Deputy to arrest Respondent for possession of cannabis.

RELEVANT AUTHORITY

Constitutional Provisions:

United States Constitution

AMENDMENT IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Illinois Constitution:

SECTION 6, SEARCHES, SEIZURES, PRIVACY AND INTERCEPTIONS: The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

Statutory Provisions:

625 ILCS 5/11-709: Driving on roadways laned for traffic. Whenever any roadway has been divided into 2 or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply.

- a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.
- b) Upon a roadway which is divided into 3 lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic control devices.
- c) Official traffic control devices may be erected directing specific traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device. On multi-lane controlled access highways with 3 or more lanes in one direction or on any multi-laned highway with 2 or more lanes in one direction, the Department may designate lanes of traffic to be used by different types of motor vehicles. Drivers must obey lane designation signing except when it is necessary to use a different lane to make a turning maneuver.
- d) Official traffic control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

725 ILCS 5/107-14: Temporary questioning without arrest. A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense as defined in Section 102--15 of this Code, and may demand the name and address of the person and an explanation of his actions. Such detention and temporary questioning will be conducted in the vicinity of where the person was stopped.

Decision(s) of the Illinois Courts:

People v. Smith, 172 Ill. 2d 289 (1996)

People v. Houldrige, 117 Ill. App. 3d 1059 (4th Dist. 1983)

People v. Loucks, 135 Ill. App. 3d 530 (5th Dist. 1985)

People v. Decker, 181 Ill. App. 3d 427 (3d Dist. 1989)

People v. Faletti, 215 Ill. App. 3d 61 (3d Dist. 1991)

People v. Diaz, 247 Ill. App. 3d 625 (2d Dist. 1993)

People v. Albright, 251 Ill. App. 3d 341 (3d Dist. 1993)

People v. Perez, 288 Ill. App. 3d 1037 (3d Dist. 1997)

People v. Manders, 317 Ill. App. 3d 337 (2d Dist. 2000)

People v. Rush, 319 Ill. App. 3d 34 (2d Dist. 2001)

People v. Hackett, 943 N.E.2d 13 (3d Dist. 2010)

The PEOPLE of the State of Illinois, Appellee,
v.
Dennis SMITH, Appellant.
No. 78918.

665 N.E.2d 1215 (1996)
172 Ill.2d 289

Supreme Court of Illinois.
March 21, 1996.
Rehearing Denied June 3, 1996.

1216*1216 Robert G. Kirchner, of Lerner &
Kirchner, Champaign, for appellant.

James E. Ryan, Attorney General, Springfield,
and John Piland, State's Attorney, Urbana
(Norbert J. Goetten, Robert J. Biderman and
Leslie Hairston, of the Office of the State's
Attorneys Appellate Prosecutor, Springfield, of
counsel), for the People.

Justice HEIPLE delivered the opinion of the
court:

Defendant, Dennis Smith, was arrested for
driving while under the influence of alcohol
(625 ILCS 5/11-501(a) (West 1994)). After
defendant refused to take a breath test,
defendant was served with notice of the
statutory summary suspension of his driving
privileges pursuant to section 11-501.1 of the
Illinois Vehicle Code (Code) (625 ILCS 5/11-
501.1 (West 1994)). Defendant filed a petition
in the circuit court of Champaign County to
rescind the summary suspension. The circuit
court granted defendant's petition. A divided
panel of the appellate court reversed. 269
Ill.App.3d 962, 207 Ill.Dec. 348, 647 N.E.2d
310. This court allowed defendant's petition for
leave to appeal (145 Ill.2d R. 315) and we
affirm.

BACKGROUND

On April 12, 1994, defendant filed a petition to
rescind the statutory summary suspension of his
driving privileges and a motion for substitution
of judge as of right (735 ILCS 5/2-1001(a)(2)

(West 1992)). Defendant also requested that the
hearing on the petition be held within 30 days
(625 ILCS 5/2-118.1(b) (West 1992)). Judge
Ford, to whom the petition and motion were
originally assigned, scheduled a hearing for
April 27 on the motion for substitution of
judge. On April 27, the motion for substitution
of judge was summarily granted without
argument by the parties or objection by the
State. The new judge scheduled the rescission
hearing for May 24. Before presenting any
evidence at the May 24 hearing, defendant
argued that the statutory summary suspension
of his driving privileges should be
automatically rescinded because the trial court
failed to conduct a hearing on the rescission
petition within 30 days of the April 12 filing of
the petition to rescind. The trial court rejected
this argument, attributing the 15-day delay
while the substitution of judge motion was
pending to the defendant.

At the rescission hearing, the following
evidence was elicited. In March of 1994,
Officer Andrew Charles of the Urbana police
1217*1217 department observed defendant
leave a tavern and enter his car. Officer Charles,
whose squad car was parked across the street
from the tavern, decided to follow defendant to
see if he would drive in compliance with the
Code. He testified that if he should witness
defendant violating the Code, he intended to
pull defendant over and also check to see if
defendant was driving under the influence of
alcohol. Officer Charles followed defendant's
vehicle northward on Cunningham Avenue,
which is a four-lane street with a fifth lane in
the center for turning. He observed defendant
driving in the left-hand lane, although
defendant claimed he was in the right-hand
lane.

As Officer Charles followed defendant, he saw
the driver's side wheels of defendant's car cross
over the lane line dividing the left lane from the
center lane by at least six inches. He stated that
defendant failed to signal a lane change and that
the car remained over the lane line for
approximately 100 to 150 yards. A short time

later, he saw defendant cross over the lane line dividing the left lane from the right lane by approximately six inches for 150 to 200 yards. Once again, defendant did not signal. After these two occurrences, Officer Charles determined that defendant had violated the Code for failing to signal a lane change and he stopped defendant. Officer Charles conceded that defendant did not endanger any other vehicles or persons when he deviated across the lane lines and that defendant never completely left the lane in which he was traveling.

Officer Charles did not write defendant a ticket for either failure to signal or improper lane usage. Rather, he gave defendant a verbal warning. While speaking with defendant, Officer Charles noticed that defendant's speech was slurred and that he had difficulty removing items from his wallet. He asked defendant to perform some field sobriety tests, from which Officer Charles concluded that defendant was driving under the influence of alcohol. Defendant was arrested and taken to the police station, where he refused to submit to further testing to determine the alcohol content of his blood. As a result, defendant was served with notice of the statutory summary suspension of his driving privileges (625 ILCS 5/11-501.1 (West 1992)).

After hearing the evidence, the trial court framed the issue as whether Officer Charles had probable cause to stop defendant for a violation of the Code other than for driving under the influence of alcohol. The trial court found Officer Charles to be a credible witness. The trial court noted that a videotape taken on the day in question corroborated Officer Charles' testimony that defendant was driving in the left-hand lane. The trial court nevertheless concluded that Officer Charles did not have probable cause to stop defendant for failure to signal or for the violation of any other traffic law. Accordingly, the trial court granted defendant's petition to rescind the statutory summary suspension of his driving privileges.

A divided panel of the appellate court reversed,

concluding that Officer Charles was justified in stopping defendant for improper lane usage in violation of section 11-709(a) of the Code (625 ILCS 5/11-709(a) (West 1992)). 269 Ill.App.3d at 968, 207 Ill.Dec. 348, 647 N.E.2d 310. The appellate court construed section 11-709(a) as containing two separate restrictions regarding lane usage: one which requires a vehicle to be driven as nearly as practicable within one lane and a second which prohibits a vehicle from being moved from a lane of traffic until the driver first ascertains that the movement can be made with safety.

Before this court defendant argues that he is entitled to rescission of the statutory summary suspension of his driving privileges because (1) he was not afforded a timely rescission hearing as required by section 2-118.1(b) of the Code and (2) that the initial stop of his vehicle was improper. Defendant has not challenged the constitutionality of Officer Charles' actions in following patrons who exited the tavern, and we do not reach this issue.

ANALYSIS

Initially, we note that a hearing on a petition to rescind the statutory summary suspension of driving privileges is a civil proceeding. *People v. Schaefer*, 154 Ill.2d 250, 257, 182 Ill.Dec. 26, 609 N.E.2d 329 (1993). The defendant has the burden of 1218*1218 proof and if the defendant establishes a prima facie case for rescission, the burden shifts to the State to come forward with evidence justifying the suspension. *People v. Orth*, 124 Ill.2d 326, 341, 125 Ill.Dec. 182, 530 N.E.2d 210 (1988). In weighing the evidence before it, the trial court is charged with passing on the credibility of the witnesses and the weight to be given their testimony. *People v. Repp*, 165 Ill.App.3d 90, 95, 116 Ill.Dec. 128, 518 N.E.2d 750 (1988). Generally, the trial court's decision will not be disturbed unless the decision is against the manifest weight of the evidence. *People v. Safiran*, 229 Ill.App.3d 639, 641, 171 Ill.Dec. 207, 593 N.E.2d 1027 (1992). However, the decision to grant a petition to rescind may be

reversed when the trial court has not applied the correct legal standard to the facts of the case. *People v. Rotkovich*, 256 Ill.App.3d 124, 128, 195 Ill.Dec. 424, 628 N.E.2d 888 (1993).

We first address defendant's contention that he was not afforded a timely rescission hearing because the hearing took place 42 days after the petition to rescind was filed, rather than within the statutorily required 30 days. Defendant claims that his due process rights were violated as a result of the untimely hearing.

A hearing on a petition to rescind must be held within 30 days of the date of filing the petition in the circuit court with venue, with service on the State (*Schaefer*, 154 Ill.2d at 261-62, 182 Ill.Dec. 26, 609 N.E.2d 329 (interpreting 625 ILCS 5/2-118.1(b) (West 1992))) or within 30 days of the date of defendant's first appearance on the driving under the influence charge (625 ILCS 5/2-118.1(b) (West 1992)). However, when any delay in holding the hearing is occasioned by the defendant, that delay extends the 30-day period. See *Schaefer*, 154 Ill.2d at 262, 182 Ill.Dec. 26, 609 N.E.2d 329; *In re Summary Suspension of Driver's License of Trainor*, 156 Ill.App.3d 918, 922, 109 Ill.Dec. 746, 510 N.E.2d 614 (1987). When a defendant requests a substitution of judge, the 30-day requirement for holding the hearing does not begin to run until the newly assigned judge has been furnished with a request for the rescission hearing. See *People v. Joiner*, 174 Ill.App.3d 927, 929, 124 Ill.Dec. 448, 529 N.E.2d 268 (1988); *Trainor*, 156 Ill.App.3d at 922, 109 Ill.Dec. 746, 510 N.E.2d 614.

In the instant case, defendant filed the motion for substitution of judge and the rescission petition on April 12. The motion for substitution of judge was granted on April 27. The rescission hearing was held on May 24, within 30 days of the date the defendant's motion for substitution of judge was granted. Although defendant contends that he did all he could to expedite the hearing on the motion for substitution of judge and that such motions are routinely granted in the circuit court of

Champaign County, the 15-day delay between April 12 and April 27 is directly attributable to defendant. We can only presume that the circuit court heard the motion for substitution of judge at the first available date, considering Judge Ford's awareness of both the petition to rescind and the request for a hearing within 30 days. Thus, defendant received a timely rescission hearing.

Next we consider defendant's argument that Officer Charles did not have probable cause to stop him. Defendant contends that he did not violate any section of the Code. Defendant argues that a violation of section 11-709(a) does not occur when a motorist momentarily crosses over a lane line, but occurs only when a motorist endangers others while moving from a lane of traffic.

Section 11-709(a) of the Code provides:

"Whenever any roadway has been divided into 2 or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply.

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." 625 ILCS 5/11-709(a) (West 1992).

The plain language of the statute establishes two separate requirements for lane usage. First, a motorist must drive a vehicle as nearly as practicable entirely within one lane. Second, a motorist may not move a vehicle from a lane of traffic until the motorist has determined that the movement can be safely made. It follows that when a motorist crosses over a lane line and is not driving as nearly as practicable within one lane, the motorist has violated the statute.

Once Officer Charles saw defendant cross over a lane line and drive in two lanes of traffic, Officer Charles had probable cause to arrest

defendant for a violation of the Code. *People v. Robinson*, 62 Ill.2d 273, 276, 342 N.E.2d 356 (1976) (probable cause to arrest exists when a reasonable, prudent man in possession of the knowledge of the arresting officer would believe that an offense has been committed). Thus, Officer Charles' stop of defendant was proper. See *People v. Johnson*, 123 Ill.App.3d 1008, 1012, 79 Ill.Dec. 323, 463 N.E.2d 877 (1984) (stop of motorist was supported by probable cause to make an arrest for a traffic violation).

In reaching the above conclusion, we note that the appellate court found that Officer Charles had "specific, articulable facts upon which to believe defendant's vehicle was in violation of the Code when he pulled it over." 269 Ill.App.3d at 968, 207 Ill.Dec. 348, 647 N.E.2d 310. An officer may make a valid investigatory stop, absent probable cause to arrest, provided the officer can reasonably infer from specific and articulable facts that the individual in question has committed or is about to commit a crime. 725 ILCS 5/107-14 (West 1992); *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968). In the instant case, Officer Charles observed a violation of the Code. Thus, Officer Charles had probable cause to arrest defendant for a violation of the Code. Given that Officer Charles had probable cause to arrest defendant, the appellate court did not need to consider his reasonable and articulable suspicions surrounding defendant's conduct.

Accordingly, the statutory summary suspension of defendant's driver's license for failing to undergo a breath test should not have been rescinded. For the foregoing reasons, the judgment of the appellate court is affirmed.

Affirmed.

HARRISON, J., took no part in the consideration or decision of this case.

Justice NICKELS, dissenting:

In my view, defendant was not afforded a

timely hearing on his rescission petition, and pursuant to *People v. Schaefer*, 154 Ill.2d 250, 182 Ill.Dec. 26, 609 N.E.2d 329 (1993), the summary suspension of his driving privileges must be rescinded. Therefore, I respectfully dissent.

The summary suspension statute provides that the suspension of driving privileges becomes effective on the forty-sixth day following the date on which the motorist was served with notice of the statutory summary suspension. 625 ILCS 5/11-501.1(g) (West 1992). In turn, the motorist is entitled upon request to a judicial hearing within a specified time frame in order to challenge the summary suspension. In *Schaefer*, this court explained the purpose of this scheme:

"The principal concern in enacting [the statutory summary suspension] legislation was to protect travelers while at the same time protecting the constitutional rights of the motorists who may be charged with driving under the influence of an intoxicating substance. Once a driver's license is issued, it is considered a property interest under protection of the due process clause of the United States and Illinois Constitutions. [Citations.] It is for this reason that the statutory summary suspension becomes effective 46 days after notice of suspension is given [citation], and the elaborate procedure is codified in order to guarantee notice and an opportunity to be heard. This satisfied the concern for the protection of the substantive and procedural due process rights of motorists as guaranteed by the United States and Illinois Constitutions." *Schaefer*, 154 Ill.2d at 261, 182 Ill.Dec. 26, 609 N.E.2d 329.

Mindful of this purpose, in *Schaefer* this court held that the 30-day period for conducting a rescission hearing commences when the motorist's petition is properly filed and served on the State. *Schaefer*, 154 Ill.2d at 261, 182 Ill.Dec. 26, 609 N.E.2d 329. This court further held that "in order to comply with due process requirements, the hearing * * * must be held

within the 30 days unless 1220*1220 delay is occasioned by the defendant, and failure to do so will require rescission of the suspension.'" (Emphasis in original.) Schaefer, 154 Ill.2d at 262, 182 Ill.Dec. 26, 609 N.E.2d 329, quoting *In re Summary Suspension of Driver's License of Trainor* (1987), 156 Ill.App.3d 918, 923, 109 Ill.Dec. 746, 510 N.E.2d 614. In the case at bar, the majority concludes that the rescission hearing held 42 days after defendant filed his petition falls within the exception for "delay occasioned by the defendant" simply because defendant invoked his absolute right (see 735 ILCS 5/2-1001(a)(2)(ii) (West 1992)) to have his petition heard by a judge other than Judge Ford, to whom such matters were normally assigned. I cannot join this conclusion.

While a motorist is responsible for delay associated with the motions he or she files, I believe the overriding due process concerns at the heart of the 30-day time limit demand that trial courts act on such motions with reasonable dispatch commensurate with the nature and complexity of the motion. If the trial court fulfills this obligation, I would wholeheartedly endorse the proposition that the motorist may be charged with delay representing the full interval during which his or her motion was pending. But when the trial court unnecessarily prolongs the pendency of the motion—through inaction or otherwise—such delay is not occasioned by the motorist in any meaningful sense. In this regard, I recognize that absent an applicable statute or court rule the trial court possesses broad discretion in matters relating to the management of its calendar, including setting the timetable for hearing and deciding motions. The conclusion that the trial court has abused its discretion should not be reached lightly. However, the record warrants that conclusion in this case.

Defendant filed his motion for substitution of judge as of right on April 12, 1994—the same day he filed his rescission petition. Also on April 12, defendant's attorney sent a letter to the clerk of the circuit court of Champaign County, drawing her attention to the rescission petition

and the substitution motion, and requesting a hearing on the rescission petition within the 30-day statutory time period. Defendant's attorney apparently expected the substitution motion to be disposed of without a formal hearing, as the letter requested notification of the reassignment of the case. Copies of the letter were sent to Judge Ford, Judge John R. DeLa-Mar, Judge Harold L. Jensen (the presiding judge of the circuit court of Champaign County) and to the assistant State's Attorney assigned to the case. The record reflects that it was the practice of the circuit court to reassign statutory summary suspension cases to Judge DeLaMar when a party sought a substitution from Judge Ford.

Within days of filing the petition for rescission and motion for substitution of judge, defendant's attorney personally consulted with Judge Ford and asked that the case be reassigned to Judge DeLaMar. Judge Ford indicated that on April 19 he would advise defendant's attorney when the substitution motion could be scheduled for a hearing. On April 18, defendant's attorney was again in contact with Judge Ford. Defendant's attorney advised Judge Ford that defendant sought a substitution of judge as a matter of right pursuant to statute (735 ILCS 5/2-1001(a)(2) (West 1992)) and that a substantial delay in hearing the substitution motion would infringe on defendant's right to a rescission hearing within the statutory time frame. Defendant's attorney suggested that the motion could possibly be decided later that day when the attorney and the State were scheduled to appear before Judge Ford on another matter. Alternatively, defendant's attorney suggested the possibility that the substitution motion could be decided without a hearing. Judge Ford rejected both proposals and eventually set the motion for a hearing nine days later on April 27. When the parties appeared in court on that date—15 days after the substitution motion was filed—Judge Ford summarily granted the motion without objection by the State or argument by the parties, and ordered the case reassigned to Judge DeLaMar, before whom the rescission hearing was ultimately conducted.

I see no valid justification for the trial court's failure to rule on the substitution motion more promptly. The Code of Civil 1221*1221 Procedure provides that a motion for substitution of judge as of right "shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case." (Emphasis added.) 735 ILCS 5/2-1001(a)(2)(ii) (West 1992). The substitution motion presented no complicated factual or legal issues, and defendant was clearly entitled to relief since he filed his substitution motion on the same date as the petition initiating these proceedings. The State did not object to the motion, nor does it appear there is any basis upon which it could have objected in good faith. Moreover, the delay in deciding the motion clearly cannot be attributed to a lack of diligence on defendant's part. Defendant's attorney brought the motion to the attention of all persons who might be affected, and made a concerted effort to obtain a prompt ruling from the trial court.

Unlike the majority, I am not content to decide this case by means of a nimble presumption that the trial court heard the substitution motion on the first available date. The court proceeding at which the substitution motion was ultimately granted was a mere formality; the trial court announced its ruling with no discussion or argument by the parties. This pro forma proceeding on defendant's routine uncontested motion could have taken no more than two minutes, and I find it difficult to imagine that the trial court was genuinely unable to attend to this matter earlier. Even if no earlier hearing date was available, in view of the routine nature of defendant's motion and the lack of objection by the State, the trial court could have decided the motion without a formal hearing. See *Lawless v. Central Production Credit Association* (1992), 228 Ill.App.3d 500, 515, 170 Ill.Dec. 530, 592 N.E.2d 1210 (noting that the requirement of a hearing in the local court rules applicable in the circuit court of Champaign County "is not necessarily

restricted to an oral presentation by the parties and may instead refer to the court's consideration of a written presentation by the parties"). The record shows that the trial court acted with utter indifference to defendant's interest in obtaining a prompt hearing on the merits of the rescission petition. The trial court knowingly delayed ruling on a routine, uncontested motion in a manner patently unfair to defendant. The 15-day delay cannot justly be attributed to defendant.

Set against the timetable of ordinary civil litigation, 15 days may seem a relatively brief period of time. In the present setting, however, 15 days constitutes exactly one half of the total period allotted by statute for holding the rescission hearing. In enacting the 30-day time limit, the General Assembly deemed 30 days sufficient to allow the court to schedule a rescission hearing and the State to prepare for it. The General Assembly certainly did not contemplate that a motion for substitution of judge as of right would warrant increasing the statutory period by half again. Nor do I think it asks too much that trial courts handle such motions with greater diligence and dispatch than occurred here. For the foregoing reasons, I respectfully dissent.

FREEMAN, J., joins in this dissent.

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellant,

v.

MICHAEL HOULDRIDGE et al., Defendants-
Appellees.

No. 4-83-0046.

117 Ill. App.3d 1059 (1983)

454 N.E.2d 769

Illinois Appellate Court — Fourth District.
Opinion filed September 22, 1983.

1060*1060 Edward Litak, State's Attorney, of
Danville (Robert J. Biderman and Kevin T.
McClain, both of State's Attorneys Appellate
Service Commission, of counsel), for the
People.

Daniel D. Yuhas and James G. Woodward, both
of State Appellate Defender's Office, of
Springfield, for appellees.

Reversed and remanded.

JUSTICE MILLS delivered the opinion of the
court:

The detection of the odor of cannabis smoke
emitting from a motor vehicle — by a police
officer experienced in the detection of such
odors — does provide a sufficient basis for a
warrantless search of the vehicle.

We reverse and remand for trial.

FACTS

At approximately 8 p.m. on November 25,
1981, Deputy Jerry 1061*1061 Davis of the
Vermilion County sheriff's department was
parked on a rough, unpaved county road
observing traffic. His patrol car was located at
the bottom of a hill, and he observed a vehicle
which was descending the hill swerve or slide
from the north to the south side of the road. He
began following the vehicle and ran a license
plate check on it. Davis stopped the vehicle

after being advised by the radio operator that its
registration was expired.

Davis testified that as he approached the car, he
saw the person seated next to the window on
the passenger side of the front seat (defendant
Songer) drop something out of the window.
When Davis arrived at the driver's side of the
car, defendant Houldridge (the driver) rolled
down the window and Davis "smelled the odor
of burned cannabis emitting from the vehicle."

After observing some furtive movements on the
part of the defendants Straub and Songer
(seated in the middle and on the right side of
the front seat, respectively), Davis told all three
defendants to place their hands on the
dashboard, which they did. Davis then walked
around the car, opened the front door on the
passenger side, shined his flashlight into the
vehicle, and saw a plastic bag containing green
vegetable matter on the floor. He seized the
bag, field tested it, and found that it contained
approximately eight grams of cannabis. He also
found a single hand-rolled marijuana cigarette
on the ground near the passenger side of the car.

Each of the defendants was subsequently
arrested and charged with possession of
cannabis. Houldridge was not charged with an
expired registration violation because after the
arrest of defendants, Davis rubbed the sticker
area of the car's rear license plate, which was
dirty, and found that the registration sticker was
valid.

Deputy Davis stated that he had had extensive
training in the detection of the odor of cannabis
and also had frequent occasion to smell
cannabis smoke in the course of his
employment as a sheriff's deputy.

The defendants' version of events subsequent to
the stop differs markedly from that of Deputy
Davis. Houldridge testified that he exited the
car when Davis first approached it. When Davis
met Houldridge outside the car, he said that
Houldridge was under arrest "for illegal
drinking [of] alcohol and smoking [of]

marijuana." Davis then looked into the car and told the remaining two occupants to place their hands on the dashboard. He next ordered Straub out of the car and frisked him and did the same with respect to Songer. Only then did Davis search the passenger side of the car. After the search, Davis told Straub and Songer that they also were under arrest.

1062*1062 According to Houldridge, Davis inspected the vehicle's license sticker before ordering Straub and Songer out of the car. Defendant Songer denied throwing anything out of the window after Davis stopped the car, and his testimony as to this point was corroborated by defendant Houldridge.

Following a hearing, the Vermilion County circuit court granted the defendants' motion to suppress the marijuana which Deputy Davis seized, as well as all testimony related to the seizure. The circuit court provided the following reasons for its decision:

"a. * * * [T]he mere detection by an officer of an odor which he believes to be that of burning cannabis does not justify a warrantless search of the vehicle.

b. * * * [U]nder the present facts there was not sufficient basis for a reasonable belief by the officer that the law was being violated and that evidence of it was in the vehicle to be searched."

The State appeals the circuit court's suppression order.

OPINION

• 1, 2 We find no basis for holding that the initial stop of the vehicle in which defendants were traveling was illegal. Generally, a police officer may briefly detain an individual where the officer believes on the basis of articulable facts that there is a substantial possibility that that individual has committed, is committing, or is about to commit a criminal offense. (Terry

v. Ohio (1968), 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868; People v. Jones (1982), 102 Ill. App.3d 246, 429 N.E.2d 1101.) More specifically, erratic driving, such as weaving across a roadway or even weaving within the lane of traffic within which a vehicle is traveling, provides a sufficient basis for an investigatory stop of a motor vehicle. (People v. Boddie (1969), 274 Cal. App.2d 408, 80 Cal. Rptr. 83; State v. Morrison (La. 1980), 392 So.2d 1037; State v. Perry (1979), 39 Or. App. 37, 591 P.2d 379.) Furthermore, police may reasonably rely on information acquired by police radio (People v. Hall (1980), 90 Ill. App.3d 1073, 414 N.E.2d 201, cert. denied (1981), 454 U.S. 893, 70 L.Ed.2d 207, 102 S.Ct. 388; People v. Buck (1968), 92 Ill. App.2d 16, 235 N.E.2d 837), and information that the registration of a particular vehicle may be expired or invalid may provide an adequate basis for an investigatory stop of that vehicle. See People v. Ramsey (1979), 77 Ill. App.3d 294, 395 N.E.2d 973.

• 3 In the present case, the weaving of the defendants' vehicle from one side of the road to the other, coupled with the information that the vehicle's registration may have been expired which Davis obtained 1063*1063 via his police radio, was more than adequate to provide Davis with a reasonable basis for believing that the vehicle was being operated in violation of the law and was thus subject to an investigatory stop. That the information as to the expired registration ultimately proved to be false is of no consequence here. In performing their duties, the police, under the circumstances presented, may reasonably rely on information contained in official records. (People v. Bell (1977), 74 Mich. App. 270, 253 N.W.2d 726; Perry.) Also, we note that at oral argument, counsel for defendants agreed that the initial stop was valid.

• 4 The only real issue in this case is whether a police officer's smelling the odor of marijuana smoke emitting from a motor vehicle provides a sufficient basis for the officer's belief that a crime is being committed in his presence, and

hence a basis for a warrantless search under the automobile exception to the warrant requirement. (See *Carroll v. United States* (1925), 267 U.S. 132, 69 L.Ed. 543, 45 S.Ct. 280; *People v. Loe* (1973), 16 Ill. App.3d 291, 306 N.E.2d 368.) The second and fifth districts have answered this question in the affirmative. (*People v. Smith* (1978), 67 Ill. App.3d 952, 385 N.E.2d 707; *People v. Laird* (1973), 11 Ill. App.3d 414, 296 N.E.2d 864; *People v. Erb* (1970), 128 Ill. App.2d 126, 261 N.E.2d 431.) In *People v. Wombacher* (1982), 104 Ill. App.3d 812, 433 N.E.2d 374, and *People v. Argenian* (1981), 97 Ill. App.3d 592, 423 N.E.2d 289, the third district, however, has taken a contrary position, holding that the uncorroborated testimony of a police officer that he smelled the odor of cannabis emitting from a motor vehicle is insufficient to support an unlimited search of the vehicle. (Although there is not complete unanimity among the courts of other jurisdictions which have had the opportunity to consider this question, the great majority of such courts have held that the odor of marijuana smoke, standing alone, provides probable cause for a warrantless search of an automobile, at least where the officer who smells the marijuana is experienced in the detection of such odors.) *Annot.*, 5 A.L.R.4th 681, 687-95 (1981 & 1982 Supp.).

We are of the opinion that *Smith*, *Laird* and *Erb* represent the better view. Burning cannabis has a rather distinctive odor, and most police officers now receive special training in the detection of this odor, as had Deputy Davis, the officer who conducted the search in the case at bar. Furthermore, Deputy Davis' statement that he detected the odor of burning marijuana emitting from the defendants' vehicle is consistent with his testimony that he saw defendant Songer drop something from the passenger side of the car as he approached 1064*1064 it. This testimony is corroborated by Davis' discovery of a hand-rolled cannabis cigarette lying on the ground in the area where he earlier saw Songer drop something, and by his discovery of a bag containing eight grams of cannabis in the vehicle in which the defendants

were riding. Under these circumstances, Deputy Davis' detection of the odor of cannabis smoke emitting from the vehicle which he stopped provided a sufficient basis for his belief that a crime was being committed in his presence and his ensuing search of the vehicle.

- 5 Moreover, the furtive movements on the part of Straub and Songer, considered in view of the Supreme Court's recent decision in *Michigan v. Long* (1983), 463 U.S. ___, 77 L.Ed.2d 1201, 103 S.Ct. 3469, provide an additional basis for upholding the validity of the search which resulted in discovery of the marijuana. In *Long*, the court held that when a motor vehicle is subjected to an investigatory stop,

"[a] search of the passenger compartment of [the] automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on `specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons." (463 U.S. ___, ___, 77 L.Ed.2d 1201, 1220, 103 S.Ct. 3469, 3480.)

Under the facts of *Long*, it is irrelevant whether the area searched is within reach of the suspects at the time of the search. In the present case, Straub's and Songer's furtive movements reasonably warranted a belief on the part of Deputy Davis (who was outnumbered three to one) that Straub and Songer were dangerous and might have immediate access to weapons. Thus, Davis' need to provide for his own safety in itself justified a search of the vehicle for weapons.

Finally, the defendants contend that on the basis of the trial court's memorandum opinion, it is apparent that the court disbelieved Deputy Davis' testimony that he smelled cannabis smoke when he approached defendants' vehicle, and that this testimony is thus entitled to little

weight. The trial court did not, however, explicitly state that it deemed Davis' testimony incredible; rather, a reading of its memorandum opinion reveals that for purposes of its decision, the court assumed Davis' testimony to be true.

Because of our decision it is unnecessary to discuss the State's other proffered reasons for upholding the search. Since Deputy Davis had ample justification for searching the vehicle in which defendants 1065*1065 were traveling, we reverse the circuit court's suppression order and remand the cause for trial.

Reversed and remanded.

WEBBER, P.J., and MILLER, J., concur.

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellant,
v.
DANIEL LOUCKS, Defendant-Appellee.
No. 5-84-0828.

135 Ill. App.3d 530 (1985)
481 N.E.2d 1086

Illinois Appellate Court — Fifth District.
Opinion filed August 7, 1985.
Rehearing denied August 23, 1985.

531*531 John R. Clemons, State's Attorney, of
Murphysboro (Kenneth R. Boyle, Stephen E.
Norris, and John H. Benham, all of State's
Attorneys Appellate Service Commission, of
counsel), for the People.

Randy E. Blue and Patricia M. Sarter, both of
State Appellate Defender's Office, of Mt.
Vernon, for appellee.

Reversed and remanded.

PRESIDING JUSTICE JONES delivered the
opinion of the court:

This is an interlocutory appeal brought by the
State from an order of the trial court granting
the motion of the defendant, Daniel Loucks, to
quash arrest and suppress evidence. In his
motion the defendant alleged that his conduct
"immediately prior to being stopped was not
such as could be reasonably interpreted to
constitute probable cause to effectuate a traffic
stop." The State raises the single issue of
whether the trial court's granting of the
defendant's motion was against the manifest
weight of the evidence.

The record is supplemented by a statement of
facts agreed to by the parties as "substantially
the facts presented before the Court." The
parties agreed that on October 2, 1984, Officer
Cassidy, while on routine patrol in the city of
Murphysboro, observed the defendant driving
an automobile that was "weaving within his
own lane" continuously for a distance of about

two blocks. Suspecting that the driver, whom he
did not know, was intoxicated, the officer
stopped the vehicle. The officer could not
detect an odor of alcohol about the driver, who
thereafter identified himself as Daniel Loucks,
the defendant. "As a part of this traffic stop,"
the officer ran a license check on the defendant
and then arrested him for driving while his
driver's license was revoked.

• 1 The State relies on *People v. Houldridge*
(1983), 117 Ill. App.3d 1059, 1061, 454 N.E.2d
769, 770, in which a deputy sheriff had
observed a defendant's vehicle while
descending a hill "swerve or slide from the
north to the south side of the road." After
running a license plate check on the vehicle, the
deputy was advised by the radio operator that
its registration had expired. After stopping the
vehicle the deputy smelled the odor of burned
cannabis coming from the vehicle and made
other observations not pertinent here. Each of
the defendants in *Houldridge* was arrested and
charged with possession of cannabis. 532*532
The driver, defendant *Houldridge*, was not
charged with an expired registration violation
because, after the deputy had arrested the
defendants, he found that the area on the rear
number plate where the sticker was to be
applied was dirty and that the registration
sticker was valid. The court began its analysis
by stating:

"We find no basis for holding that the initial
stop of the vehicle in which defendants were
traveling was illegal. Generally, a police officer
may briefly detain an individual where the
officer believes on the basis of articulable facts
that there is a substantial possibility that that
individual has committed, is committing, or is
about to commit a criminal offense. (*Terry v.*
Ohio (1968), 392 U.S. 1, 20 L.Ed.2d 889, 88
S.Ct. 1868; *People v. Jones* (1982), 102 Ill.
App.3d 246, 429 N.E.2d 1101.) More
specifically, erratic driving, such as weaving
across a roadway or even weaving within the
lane of traffic within which a vehicle is
traveling, provides a sufficient basis for an
investigatory stop of a motor vehicle. (*People v.*

Boddie (1969), 274 Cal. App.2d 408, 80 Cal. Rptr. 83; State v. Morrison (La. 1980), 392 So.2d 1037; State v. Perry (1979), 39 Or. App. 37, 591 P.2d 379.) * * *

In the present case, the weaving of the defendants' vehicle from one side of the road to the other, coupled with the information that the vehicle's registration may have been expired which [the deputy] obtained via his police radio, was more than adequate to provide [him] with a reasonable basis for believing that the vehicle was being operated in violation of the law and was thus subject to an investigatory stop." (117 Ill. App.3d 1059, 1062-63, 454 N.E.2d 769, 771-72.)

The defendant argues in his brief that

"[t]he record here does not indicate that the trial court rejected Houldridge; it does not show that the court found that weaving within one's own lane does not provide a sufficient basis for an investigatory stop of a motor vehicle. Instead, the court found that the defendant's conduct did not establish probable cause to effectuate a traffic stop."

The defendant argues further that "'weaving' is a highly subjective judgment" and that "a determination of probable cause based on 'weaving' is one of degree" and asserts that the trial court held that the "degree" of weaving here did not constitute probable cause to believe that the defendant was operating a motor vehicle while intoxicated. However, the record does not suggest that any evidence was presented concerning the "degree" of the defendant's weaving, as for example whether the weaving was slight or pronounced. Thus, we find 533*533 the defendant's argument in this respect unpersuasive.

- 2 Weaving within the lane of traffic in which a vehicle is traveling provides a sufficient basis for an investigatory stop of a motor vehicle, and in the instant case the evidence was undisputed that the vehicle the defendant was driving was weaving within its own lane of travel

continuously for a distance of about two blocks. Such erratic driving provided Officer Cassidy with articulable facts that there was a substantial possibility that the defendant had committed, was committing, or was about to commit an offense. The undisputed evidence showed that Officer Cassidy had sufficient basis for making an investigatory stop of the defendant's motor vehicle.

The defendant maintains further that

"the officer's actions beyond those necessary to confirm or disprove his suspicion of the driver's intoxication and the request for the defendant's license were beyond the scope of the investigatory stop. Simply put, under the circumstances of this case, the officer's act of running a radio check on the defendant's driver's license violated the defendant's fourth amendment guarantee against unreasonable searches and seizures. Once the officer's suspicion that the defendant was intoxicated was disproved, the justification for any further investigation was gone. At that point, there was no longer an 'articulable suspicion' that criminal activity was about to occur or had occurred. Thus, the detention of the defendant while a license check was being made was beyond the scope of Terry and constituted an unlawful seizure."

However, the record here does not indicate whether the officer did, in fact, run the license check after he had satisfied himself that the defendant was not intoxicated or whether he had run the check, or had begun to run it, before he had so satisfied himself. The record states only that "[a]s a part of this traffic stop" the officer ran a license check. The defendant made no such assertion in his motion to quash arrest and suppress evidence or, so far as the record shows, at any time in the trial court. Therefore, we decline to consider the question.

We hold that the trial court's order quashing arrest and suppressing evidence was against the manifest weight of the evidence. Accordingly, the order is reversed and the cause remanded to

the trial court for further proceedings.

Reversed and remanded.

KASSERMAN and WELCH, JJ., concur.

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellant,
v.
WAYNE A. DECKER, Defendant-Appellee.
No. 3-88-0077.

181 Ill. App.3d 427 (1989)
537 N.E.2d 386

Illinois Appellate Court — Third District.
Opinion filed April 12, 1989.

428*428 Gordon L. Lustfeldt, State's Attorney,
of Watseka (Judith Z. Kelly, of State's Attorneys
Appellate Prosecutor's Office, of counsel), for
the People.

Ronald E. Boyer, of Boyer & Thompson, Ltd.,
of Watseka, for appellee.

Judgment affirmed.

JUSTICE HEIPLE delivered the opinion of the
court:

The defendant, Wayne A. Decker, was arrested
for driving under 429*429 the influence of
alcohol (Ill. Rev. Stat. 1987, ch. 95 1/2, par. 11-
501(a)(2)). His driver's license was summarily
suspended after a blood test revealed that his
blood-alcohol content was .168. (Ill. Rev. Stat.
1987, ch. 95 1/2, par. 11-501.1(e).) The
defendant subsequently filed a petition to
rescind the statutory suspension, alleging
among other matters that the arresting officer
had not had reasonable grounds to stop his
vehicle. The trial court granted his petition. The
State appeals.

At the hearing on the petition, Iroquois County
sheriff's deputy Robert Williams testified that
on October 31, 1987, at approximately 1:50
a.m., he was proceeding westbound on Route
24 between Watseka and Crescent City when he
first observed the defendant's vehicle. Williams
stated that he followed the vehicle for three
miles but was not close enough to observe the
defendant's driving until he reached Crescent
City, where he observed the vehicle

consistently weaving within its lane. He further
testified that the vehicle crossed the center line
at one point and that it twice crossed the white
line on the right edge of the road. Williams
admitted that there was no other traffic on the
two-lane highway when he made his
observations.

The defendant testified that he had not crossed
the center line or gone off the road at any time
during his drive from Watseka to Crescent City.
He also testified that he had not exceeded the
speed limit or violated any other law during his
trip.

In granting the defendant's petition to rescind,
the trial court noted that crossing the center line
did not constitute an illegal act without a
showing that the defendant created a hazard.
The trial court also noted that Deputy Williams
had not mentioned on the summary suspension
form that the defendant was weaving.

On appeal, the State argues that the trial court
erred in granting the defendant's petition to
rescind. The State contends that the trial court
erroneously applied a "probable cause"
standard instead of a "reasonable grounds"
standard in assessing the validity of the stop.
The State further argues that the trial court
erroneously based its decision on the fact that
the defendant's conduct did not constitute
illegal lane usage.

• 1-3 In an action for rescission of a summary
suspension in which a motorist is challenging
the suspension based on an illegal stop, the
burden of proof is on the motorist. (See *People
v. Orth* (1988), 124 Ill.2d 326, 530 N.E.2d 210;
People v. Truman (1986), 144 Ill. App.3d 498,
494 N.E.2d 1210.) The correct standard to be
applied in ascertaining whether an investigative
stop is justified is not 430*430 probable cause
to arrest or search, but rather a less exacting
standard. (*People v. Repp* (1988), 165 Ill.
App.3d 90, 518 N.E.2d 750.) To stop an
automobile, a police officer must have an
articulable and reasonable suspicion that the
motorist is unlicensed, that the automobile is

not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of a law. (*Delaware v. Prouse* (1979), 440 U.S. 648, 59 L.Ed.2d 660, 99 S.Ct. 1391.) This is the "reasonable grounds" test. (*People v. Collins* (1987), 154 Ill. App.3d 149, 506 N.E.2d 963.) Erratic driving, such as weaving across a roadway or even weaving within a lane, may provide a sufficient basis for an investigative stop of a motor vehicle. *People v. Loucks* (1985), 135 Ill. App.3d 530, 481 N.E.2d 1086.

• 4-6 The instant defendant testified at his hearing that he did not go out of his lane or violate any traffic laws at the time in question. The trial judge noted that although Deputy Williams testified that the defendant was weaving, there was nothing to indicate that this was his observation at the time of the incident. It appears from the record that the trial judge believed and relied on the defendant's testimony and disbelieved and discounted the officer's testimony. The trial court was not bound to believe any allegations regarding the alleged weaving incident not listed by the deputy on the summary suspension form. (*Village of Park Forest v. Angel* (1976), 37 Ill. App.3d 746, 347 N.E.2d 278.) Further, it was the trial court's function as the trier of fact to determine the credibility of the witnesses, the weight to be accorded their testimony, and the inferences to be drawn from the evidence. (*People v. Jackson* (1987), 161 Ill. App.3d 573, 515 N.E.2d 219.) Whether the defendant met his burden of proof was a question of fact to be determined by the trial judge. (*People v. Griffith* (1987), 153 Ill. App.3d 856, 506 N.E.2d 430.) A reviewing court will not disturb the trial court's finding on a petition to rescind unless that finding was manifestly erroneous. *People v. Repp* (1988), 165 Ill. App.3d 90, 518 N.E.2d 750.

The instant trial judge could have properly concluded from the evidence that the defendant's nonhazardous, momentary crossing of the center line was not reasonable grounds for a stop. Motorists often prudently cross into the oncoming lane to avoid obstacles in their

lane. Further, it is insignificant that the court mistakenly used the term "probable cause" in its oral pronouncement granting the defendant's petition, since it is clear from the record that the court actually applied the proper "reasonable grounds" test. In view of the fact that the trial court had the responsibility of weighing the testimony and assessing the credibility of the witnesses, we cannot say 431*431 that its finding was manifestly erroneous based on the record before us.

Accordingly, we affirm the judgment of the circuit court of Iroquois County.

Affirmed.

WOMBACHER, P.J., and SCOTT, J., concur.

PEOPLE of the State of Illinois, Plaintiff-Appellant,

v.

Robert D. FALETTI, Defendant-Appellee.
No. 3-90-0645.

573 N.E.2d 867 (1991)
215 Ill. App.3d 61

Appellate Court of Illinois, Third District.
June 12, 1991.
Rehearing Denied July 15, 1991.

868*868 Terry A. Mertel, State's Attys.
Appellate Prosecutor, argued and Joseph
Navarro, State's Atty., Ottawa, for the People.

Gary L. Peterlin, argued, Perona Law Offices,
Peru, for Robert D. Faletti.

Justice HAASE delivered the opinion of the
Court.

The defendant, Robert D. Faletti, was charged with the offense of driving under the influence of alcohol. (Ill.Rev.Stat., 1989, ch. 95½, par. 11-501.) Prior to trial, the defendant filed motions to quash the arrest and suppress evidence. He claimed that the police lacked reasonable grounds to stop his auto. Following a hearing, the trial court granted the defendant's motion to suppress. The State appeals. We affirm.

At the hearing on the defendant's motion, Oglesby Police Officer Russel Lemmer testified that on May 19, 1989, he made a traffic stop on Route 351 in LaSalle County, Illinois, when he noticed a car heading for the rear of his squad car. At that time, the officer and the driver of the stopped vehicle, John Gordan, were standing in front of the officer's squad car. When the officer saw the approaching auto, it was about 1½ car lengths away from the rear of his squad car. The officer then grabbed Gordan and pulled him some six feet away from the roadway, towards a drainage ditch that ran along the roadway. The officer noted that he took this action to prevent either himself or

Gordan from getting pinned between the squad car and Gordan's auto.

Officer Lemmer further testified that he observed the oncoming auto almost strike the rear of his auto, then go off the roadway and over the centerline. The officer then returned to his squad car and took after the vehicle. As he followed the auto, he noticed it cross the centerline. The officer then stopped the vehicle and placed the defendant, who was the driver, under arrest for driving under the influence of alcohol.

On cross-examination, officer Lemmer admitted that he could not accurately gauge the speed of the defendant's auto when it approached, but he opined that it did not slow down. The officer also admitted that he heard no squealing of tires and that he had made up his mind to stop the vehicle after it passed his squad car.

John Gordan testified that he had been stopped by officer Lemmer on May 19, 1989. Gordan stated that he was speaking with the officer at approximately 11:30 p.m. when the officer grabbed him, told him to get down, and pulled him some six feet off the roadway. Gordan related that he immediately looked back toward the road and observed an automobile almost strike his automobile. The auto then went off the roadway and over the centerline. Officer Lemmer thereafter took off after the vehicle.

David Ernat, an employee of L.T.V. Steel and a police commissioner for the City of Oglesby, testified that he was on his way to work at approximately 11:20 p.m. on May 19, 1989 when he came upon officer Lemmer's squad car. Ernat stated that 869*869 the officer's squad car was parked partially on the road with its emergency lights activated. Ernat noted that in order to safely pass the officer's vehicle, it was necessary to cross the center line that divided the two lanes of traffic.

The defendant testified the squad car was partially blocking his lane of traffic and that he

drove his car momentarily over the center line so as to avoid the auto. He denied that he narrowly missed the squad car. He stated that the officer and Gordan were not around their vehicles when he passed them, but were in the field that abuts the roadway.

Robert Faletti, the defendant's son, also testified. Robert stated that he was driving behind his father and that his father did not narrowly miss the squad car. Robert related that the officer's squad car was parked partially on the roadway and his father safely crossed the center line so as to avoid the officer's auto. Robert did not believe his father was driving under the influence of alcohol.

Following the presentation of evidence, the trial court found that: (1) the officer's squad car was parked in such a manner that vehicles approaching from the south would have to cross into the northbound lane of traffic to safely pass the officer's auto; (2) the officer believed that he was going to be struck by the defendant's automobile and jumped out of the way; (3) the defendant's auto did not appear to slow as it approached the officer's car; and, (4) there was no evidence presented as to the speed of the defendant's vehicle and no evidence of the squealing of tires.

The trial court further found that although some testimony was presented that the defendant crossed the center lane of traffic while the officer was following his vehicle, this evidence should not be considered because the officer had already made up his mind to stop the vehicle. The court concluded that the officer lacked reasonable grounds to stop the defendant's vehicle and ordered all evidence obtained after the stop suppressed.

The issue presented on appeal is whether the trial court's determination that the officer lacked reasonable grounds to stop the defendant's vehicle was against the manifest weight of the evidence.

The correct standard to be applied in

ascertaining whether an investigative stop is justified is not probable cause to arrest or search, but rather a less exacting standard. (People v. Repp (1988), 165 Ill. App.3d 90, 116 Ill.Dec. 128, 518 N.E.2d 750.) To stop an automobile, a police officer must have an articulable and reasonable suspicion that the motorist is unlicensed, that the automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of a law. (Delaware v. Prouse (1979), 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660.) This is the "reasonable grounds" test. (People v. Collins (1987), 154 Ill.App.3d 149, 107 Ill.Dec. 72, 506 N.E.2d 963.) Erratic driving, such as weaving across a roadway or even weaving within a lane, may provide a sufficient basis for an investigative stop of a motor vehicle. (People v. Loucks (1985), 135 Ill. App.3d 530, 90 Ill.Dec. 286, 481 N.E.2d 1086.) However, an automobile's single, momentary crossing of the centerline, without more, does not necessarily provide a sufficient basis for an investigatory stop. (People v. Collins (1987), 154 Ill.App.3d 149, 107 Ill.Dec. 72, 506 N.E.2d 963.)

The State argues that the officer possessed a reasonable and articulable reason for stopping the defendant's auto. It also argues that the trial court erred in failing to consider the officer's observations during the time he was following the defendant.

A trial court's decision regarding a motion to suppress will not be disturbed unless it is determined to be manifestly erroneous. (People v. Lillig (1988), 174 Ill. App.3d 647, 124 Ill.Dec. 436, 529 N.E.2d 256. Initially, we note that the important question is the correctness of the trial court's ruling and not the correctness of its reasoning in reaching that result. (Scott v. Ass'n for Childbirth at Home (1980), 85 Ill.App.3d 311, 40 Ill.Dec. 840, 407 N.E.2d 71; Hickey v. Ill. Central R.R. Co. (1964), 870*870 30 Ill.2d 163, 195 N.E.2d 716.) Although the trial court should have factored into its decision the later observed crossing of the center line, we nevertheless find that, under the circumstances, the court's decision was not

manifestly erroneous.

Here, both the defendant and his son testified that the defendant safely passed the officer's squad car and posed no danger to either the officer or his vehicle. Although Gordan and the officer testified differently, it is the trial court's function, as the trier of fact, to determine the credibility of the witnesses, the weight to be accorded their testimony, and the inferences to be drawn from the evidence. (People v. Jackson (1987), 161 Ill.App.3d 573, 113 Ill. Dec. 410, 515 N.E.2d 219.)

Based on the record before us, we cannot say that the trial court's finding was manifestly erroneous. The court simply resolved a conflict in the evidence in favor of the defendant. Accordingly, the judgment of the Circuit Court of LaSalle County is affirmed.

Affirmed.

GORMAN and SLATER, JJ., concur.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,
v.
Eustacio DIAZ, Defendant-Appellant.
No. 2-92-0391.

617 N.E.2d 848 (1993)
247 Ill. App.3d 625

Appellate Court of Illinois, Second District.
July 29, 1993.

849*849 Donald J. Ramsell, Ramsell & Associates, Wheaton, Ricardo J. Bird, Wheaton, David Sotomayor, Sotomayor & Bird, P.C., Wheaton, for Eustacio Diaz.

James E. Ryan, DuPage County State's Atty., Wheaton, William L. Browsers, Deputy Director, State's Attys. Appellate Prosecutor, Mary Beth Burns, State's Attys. Appellate Service Com'n, Elgin, for the People.

Justice McLAREN delivered the opinion of the court:

Defendant, Eustacio Diaz, appeals the order of the circuit court of Du Page County confirming the statutory summary suspension of his driver's license. Defendant contends that the court erred in finding that the arresting officer had reasonable grounds to stop defendant's car and in finding that the breath test defendant took complied with the 20-minute waiting period required by the Department of Public Health (Department) standards. We affirm.

Defendant was arrested and charged with driving under the influence of alcohol (Ill.Rev.Stat.1991, ch. 95½, par. 11-501 (now 625 ILCS 5/11-501 (West 1992))) and was given notice of the statutory summary suspension of his driver's license. Defendant 850*850 filed a petition to revoke the summary suspension, raising two issues: whether the officer had reasonable grounds to stop defendant's car and whether defendant's breath test complied with the Department standards.

On March 9, 1992, the court conducted a hearing on defendant's petition. The only witnesses at the hearing were officers Donald Yates and Dominic Bellini of the Glen Ellyn police department.

Yates testified that on December 5, 1991, he made a traffic stop on Main Street just south of Geneva Road. As he finished the traffic stop, an unknown citizen pulled up behind him and said that a man "had just come from the White Hen * * * had been getting rowdy, was intoxicated and smelled of alcohol." The informant said that the suspect got in a car and drove north on Main Street, describing the vehicle as a brown car, possibly an Oldsmobile.

Yates drove north on Main Street and looked left down Geneva, where he saw a cluster of vehicles. Among those vehicles he observed a "small brown car * * * swerving all over the curb side roadway." Yates pulled over the brown car, which defendant was driving. Yates eventually arrested defendant for driving under the influence of alcohol.

On cross-examination, after refreshing his recollection with his report of the incident, Yates stated that the informant told him only that the suspect "appeared to be intoxicated." Yates also testified that he observed the brown Oldsmobile cross the white line into the adjacent lane. However, on his report, Yates stated only that the car was weaving within its own lane.

Officer Bellini testified that he administered a breathalyzer test to defendant at 6:24 a.m. on December 5. Prior to this test, he had observed defendant for 20 minutes. However, defendant failed to blow enough air into the machine to produce a reading. Bellini administered a second test at 6:35 a.m. which did produce a valid result.

At the close of the evidence, the court granted the State's motion for a directed finding. The court found that Officer Yates had reasonable grounds to make the initial stop, although "he

did not document it very well, if at all." The court also found that the breathalyzer test comported with the Department's standards, as required by law. Defendant filed a timely notice of appeal.

Defendant's first contention on appeal is that the court's finding that the officer had reasonable grounds to effectuate the traffic stop was manifestly erroneous. Defendant contends that the officer did nothing to verify the reliability of the anonymous informant's tip and was thoroughly impeached concerning his observations of defendant's erratic driving. Defendant contends that the discrepancies between Yates' trial testimony and his police report render his testimony highly suspect.

A summary suspension rescission hearing is a civil proceeding in which the motorist bears the burden of proof to establish a prima facie case for rescission. (People v. Orth (1988), 124 Ill.2d 326, 337-38, 125 Ill.Dec. 182, 530 N.E.2d 210.) The trial court's determination in a rescission proceeding will be overturned only if the finding is against the manifest weight of the evidence. (Orth, 124 Ill.2d at 341, 125 Ill.Dec. 182, 530 N.E.2d 210.) This court will not disturb the trial court's determinations regarding the credibility of the witnesses or the weight to be given their testimony. People v. Strickland (1992), 154 Ill.2d 489, 521, 182 Ill.Dec. 551, 609 N.E.2d 1366.

A police officer may make an investigatory stop, even though probable cause for an arrest is lacking, where the officer's decision is based on specific and articulable facts which reasonably warrant the investigative intrusion. A mere suspicion or hunch is insufficient. City of Lake Forest v. Dugan (1990), 206 Ill.App.3d 552, 555, 151 Ill.Dec. 474, 564 N.E.2d 929; People v. Thomas (1990), 200 Ill.App.3d 268, 280, 146 Ill.Dec. 693, 558 N.E.2d 656.

851*851 While reasonable grounds for an investigatory stop may be based on an informant's tip, some indicia of reliability must be present to justify the stop. (Dugan, 206

Ill.App.3d at 555, 151 Ill.Dec. 474, 564 N.E.2d 929; Village of Gurnee v. Gross (1988), 174 Ill.App.3d 66, 69-70, 123 Ill.Dec. 866, 528 N.E.2d 411.) However, the officer's own observations may corroborate the tip or may provide an independent basis for the stop. Specifically, an observation of erratic driving, such as weaving between lanes, is sufficient to justify a traffic stop. (People v. Alvarez (1993), 243 Ill.App.3d 933, 184 Ill.Dec. 263, 613 N.E.2d 290.) Even weaving within a single lane is sufficient to justify the stop. People v. Decker (1989), 181 Ill.App.3d 427, 430, 130 Ill.Dec. 319, 537 N.E.2d 386; People v. Loucks (1985), 135 Ill.App.3d 530, 532-33, 90 Ill.Dec. 286, 481 N.E.2d 1086.

In the instant case, the trial court's determination that Officer Yates had reasonable grounds to make the traffic stop is not against the manifest weight of the evidence. The reliability of the informant's tip is immaterial, because the officer's own observation of defendant's erratic driving provided a sufficient basis for the stop. This is true regardless of whether defendant crossed the white line or stayed within the same lane, since weaving within a lane is sufficient grounds for a stop. The discrepancies between the officer's police report and trial testimony went only to the credibility and the weight of the evidence, a matter which the trial court properly resolved.

The cases defendant cites are distinguishable. In Dugan (206 Ill.App.3d 552, 151 Ill.Dec. 474, 564 N.E.2d 929), an informant told the officer that the driver of a white Honda was intoxicated, but offered no details to support that conclusion. The officer spotted the Honda and immediately pulled it over. The officer did not personally observe any erratic driving, and the driver stopped the car immediately upon the officer's request. This court held that the unverified tip, devoid of specific facts, was insufficient to support the stop. Dugan, 206 Ill.App.3d at 555-56, 151 Ill.Dec. 474, 564 N.E.2d 929.

In Gross (174 Ill.App.3d 66, 123 Ill.Dec. 866,

528 N.E.2d 411), which defendant attempts to distinguish, this court upheld the validity of the stop. In that case, the officer received a tip concerning reckless driving. The officer confirmed the tip by observing a car matching the description given by the informant in the immediate vicinity. Moreover, the driver failed to pull over immediately when requested to do so. (Gross, 174 Ill.App.3d at 70, 123 Ill.Dec. 866, 528 N.E.2d 411.) Defendant contends that Gross is distinguishable because in this case the description of the car was extremely vague and defendant did not delay in pulling over when requested to do so.

Contrary to defendant's assertion, the instant case is even stronger than Gross. Officer Yates not only saw a car matching the general description given him by the informant, but observed it being driven erratically. Even discounting the value of the tip, the officer's independent observations provided a valid basis for the stop.

Defendant's second appellate issue is that the breathalyzer test administered to him failed to comply with the Department standards where the interval between the first and second tests was 11 minutes. Defendant contends that this interval failed to comply with the 20-minute waiting period mandated by the Department. The State responds that the 20-minute period was complied with.

Evidence of a breath test is admissible in a proceeding arising out of an arrest for driving under the influence of alcohol, but only if the operator complies with standards promulgated by the Department. (Ill.Rev.Stat.1991, ch. 95½, par. 11-501.2(a)(1) (now 625 ILCS 5/11-501.2(a)(1) (West 1992)); People v. Hamilton (1987), 118 Ill.2d 153, 160, 113 Ill.Dec. 53, 514 N.E.2d 965.) The regulations provide that, prior to a test being given, the officer must observe the defendant for a continuous period 852*852 of at least 20 minutes, during which the subject must not have ingested any alcohol, food or drink, regurgitated, vomited or smoked. 77 Ill.Adm.Code § 510.60 (1985); Orth, 124 Ill.2d

at 340, 125 Ill.Dec. 182, 530 N.E.2d 210.

Here, Officer Bellini observed defendant for 20 minutes before administering the abortive first test. He apparently continued to observe him for 11 minutes until the second test. Thus, he complied with the observation period. Defendant does not contend that he engaged in one of the prohibited activities during this period. The only arguable basis for triggering a new 20-minute period was the ineffectual first test. However, as the State notes, the Department's regulations only prohibit the subject from smoking, regurgitating or drinking during the observation period. "Blowing air into a machine is not one of the prohibited activities." The mere attempt at taking the first test was not a prohibited activity and did not require a new observation period.

For the foregoing reasons, the order of the circuit court of Du Page County confirming the statutory summary suspension is affirmed.

Affirmed.

INGLIS, P.J., and GEIGER, J., concur.

PEOPLE of the State of Illinois, Plaintiff-
Appellee,
v.
Bradford ALBRIGHT, Defendant-Appellant.
No. 3-92-0977.

622 N.E.2d 60 (1993)
251 Ill. App.3d 341

Appellate Court of Illinois, Third District.
October 7, 1993.

61*61 Kenneth A. Grnacek (argued), Kallan &
Grnacek, Joliet, for Bradford Albright.

John X. Breslin, Deputy Director, State's Attys.
Appellate Prosecutor, Ottawa, James Glasgow,
Will County State's Atty., Joliet, Terry A. Mertel
(argued), State's Attys. Appellate Prosecutor,
Ottawa, for the People.

Justice LYTTON delivered the opinion of the
court:

Defendant Bradford Albright appeals from an
order of the circuit court of Will County
denying his petition to rescind a summary
suspension of his driver's license arising out of
his arrest for driving under the influence of
alcohol. We affirm.

In the early morning hours of October 2, 1992,
after an evening out with a friend, defendant
was returning home via Route 53 and West
River Road near Wilmington, Illinois. A police
officer driving behind defendant saw
defendant's vehicle weaving within his lane and
saw the car cross the solid white line on the
right side of the lane. Although defendant's
vehicle did not leave the pavement or cross the
center line, it did cross the line on the right side
by at least a tire width three times. The officer
stopped defendant because of improper lane
usage, and after smelling alcohol on his breath
and noticing bloodshot eyes, he gave defendant
some field sobriety tests which defendant
failed. Defendant was arrested for two traffic
violations: improper lane usage and driving
under the influence of alcohol.

Defendant refused a chemical test to determine
his blood alcohol level, and as a consequence
was served with an immediate notice of
summary suspension of his driving privileges
pursuant to section 11-501.1 of the Motor
Vehicle Code (Ill.Rev.Stat. 1991, c. 95½, par.
11-501.1). Defendant petitioned to rescind the
suspension on the ground that the officer lacked
reasonable grounds for the stop of his vehicle
and lacked probable cause to arrest defendant
for driving under the influence of alcohol or
any other offense. At the hearing, the arresting
officer testified that he stopped defendant only
because he believed defendant was committing
improper lane usage. The trial judge found
insufficient facts to support a charge of
improper lane usage, but held that the stop was
proper because the officer did have grounds for
a reasonable, articulable suspicion that
defendant was driving under the influence of
alcohol. Accordingly, the petition to rescind the
suspension was denied, and this appeal
followed.

This court has held that improper lane usage
does not occur unless the defendant endangers
himself, pedestrians, or other vehicles when he
moves out of his lane of traffic. (People v.
Halsall (1989), 178 Ill. App.3d 617, 619, 127
Ill.Dec. 663, 664, 533 N.E.2d 535, 536.) On
appeal defendant contends that the trial court
was correct in its ruling that no improper lane
usage violation occurred but that the court erred
in using an objective test in determining that the
investigative stop was proper because the
officer had grounds to reasonably and
articulably suspect that defendant was driving
while intoxicated. He insists that a subjective
test is the only appropriate test for judging an
investigatory stop and that the trial court should
only consider what 62*62 the officer actually
believed at the time, not what he could have
believed. Furthermore, he argues that the trial
court should not be allowed to articulate a
suspicion for the officer which the officer did
not entertain at the time.

Defendant relies upon People v. Faletti (1991),

215 Ill.App.3d 61, 63, 158 Ill.Dec. 54, 56, 573 N.E.2d 867, 869, where this court held that, in order to justify an investigatory stop of an automobile, an officer must have an articulable and reasonable suspicion that the motorist is in violation of the law. In Faletti the trial court had held that a single, momentary crossing of the center line was not alone a sufficient basis for an investigatory stop, and we affirmed. Here defendant argues that since he did not leave his lane of traffic and did not endanger himself or others, the officer could not have had a reasonable belief that defendant was committing the offense of improper lane usage.

An investigatory stop can be made without probable cause to make an arrest. (*People v. Glisan* (1992), 233 Ill. App.3d 469, 471, 175 Ill.Dec. 323, 324, 599 N.E.2d 1337, 1338.) Furthermore, erratic driving, even weaving within the lane of traffic in which the vehicle is traveling, has been held to provide sufficient basis for an investigatory stop of a motor vehicle. (*People v. Loucks* (1985), 135 Ill.App.3d 530, 533, 90 Ill.Dec. 286, 287, 481 N.E.2d 1086, 1087; *People v. Houldridge* (1983), 117 Ill.App.3d 1059, 1062, 73 Ill.Dec. 672, 674-75, 454 N.E.2d 769, 771-72.) Thus, although defendant's conduct may not have provided sufficient cause for an arrest for improper lane usage, we hold that it was sufficient to justify an investigatory stop.

In a factually similar case, *People v. Repp* (1988), 165 Ill.App.3d 90, 116 Ill.Dec. 128, 518 N.E.2d 750, where the defendant was stopped for illegal lane usage and ultimately charged with driving while under the influence of alcohol, the court noted that the correct standard for an investigatory stop is not the "probable cause" requirement for arrest or search but "the less exacting test of whether the police had a reasonable, articulable suspicion of criminal activity to warrant the stop." (165 Ill.App.3d at 94, 116 Ill.Dec. at 132, 518 N.E.2d at 754.) The court also stated:

"Lastly, the fact that Officer Rust did not charge the defendant with improper lane usage

is insignificant for purposes of our analysis because, as we have stated previously, an officer 'need not charge a minor violation when, after a stop, he discovers a serious one.' *People v. Patterson*, (1980), 88 Ill.App.3d 144, 146 [43 Ill.Dec. 223, 224], 410 N.E.2d 223, 224." 165 Ill.App.3d at 96, 116 Ill.Dec. at 133, 518 N.E.2d at 755.

In the case at bar, the officer did charge defendant with improper lane usage but the facts were found by the trial court to be insufficient to support that charge. The validity of the suspected improper lane usage violation was immaterial once a more serious violation was discovered. See *People v. Repp*.

Another case where an investigatory stop resulted in a charge of driving under the influence of alcohol is *People v. Houlihan* (1988), 167 Ill.App.3d 638, 118 Ill.Dec. 209, 521 N.E.2d 277. There an officer stopped the defendant's truck because it was making a loud noise like a snowplow on a bare street. The officer discovered a garbage can jammed under the truck, and after field sobriety tests were administered, charged the defendant with driving while intoxicated. The officer testified that he did not observe defendant violate any laws in his presence, and the trial court suppressed the State's evidence on the ground that there was no reasonable basis for the stop. The appellate court reversed, noting that the stop was appropriate because there was reason to believe the defendant was violating traffic laws requiring safe vehicles and vehicles that do not make excessive or unusual noise. The court cited many cases holding that a traffic violation provides a sufficient basis for a stop and held:

"It was entirely reasonable for [the officer] to pursue and stop the vehicle even though he did not observe a crime being committed where the State was able to specify statutes which were possibly violated 63*63 by defendant's conduct." 167 Ill. App.3d at 645, 118 Ill.Dec. at 214, 521 N.E.2d at 282.

The decision in *People v. Houlihan* supports our view that the officer making an investigatory stop need not state the precise criminal violation prompting the stop as long as the State can specify the statute which was possibly violated by defendant's conduct. The test is whether the officer had a reasonable and articulable suspicion that defendant had committed a crime, not whether he correctly articulated the probable violation. Here, as in *Houlihan*, the facts disclose reasonable grounds warranting an investigative intrusion.

Both parties agree that the standard of review is whether the trial court's decision on the petition to rescind was manifestly erroneous. In this case, the officer's investigatory stop of defendant's vehicle was justified; thus, we conclude that the trial court's refusal to rescind the summary suspension of defendant's driving privileges was not erroneous.

The judgment of the circuit court of Will County is affirmed.

Affirmed.

SLATER and STODER, JJ., concur.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Miguel PEREZ, Defendant-Appellant. The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Carlos J. DIAZ, Defendant-Appellant.
Nos. 3-96-0673, 3-96-0674.

681 N.E.2d 173 (1997)
288 Ill. App.3d 1037

Appellate Court of Illinois, Third District.

June 16, 1997.

Rehearing Denied July 14, 1997.

175*175 Joseph J. Cavanaugh (argued),
Chicago, for Miguel Perez.

Carl M. Walsh (argued), Chicago, for Carlos J. Diaz.

John X. Breslin, Deputy Director, State's Attorneys Appellate Prosecutor, Ottawa, Marc Bernabei, State's Attorney, Princeton, Terry A. Mertel (argued), State's Attorneys Appellate Prosecutor, Judith Kelly (argued), Ottawa, for the People.

Justice McCUSKEY delivered the opinion of the court:

Following a stipulated bench trial, the defendants, Miguel Perez and Carlos J. Diaz, were convicted of controlled substance trafficking (720 ILCS 570/401.1 (West 1994)). Pursuant to an agreement, both defendants were sentenced to a term of 40 years in the Department of Corrections. The defendants each filed a timely notice of appeal. The appeals were consolidated by this court.

On appeal, both defendants argue that the trial court erred when it found: (1) the initial stop of Perez's truck was lawful; (2) the police officer did not illegally detain the defendants; and (3) that Perez gave a valid oral consent to search and dismantle the truck. In addition, Diaz

argues: (1) the trial court erred when it found Diaz did not have standing to challenge the search; and (2) that his sentence is excessive. Following our careful review of the record, we affirm the trial court's judgment in both cases.

FACTS

At 8:13 a.m. on February 19, 1996, John Balma, a sergeant with the Illinois State police, stopped a Chevy truck on 1-80 near Princeton. Perez was driving the truck, and Diaz was a passenger in the vehicle. At the suppression hearing, Trooper Balma testified that he saw the truck move partially over the center line from the right lane into the left lane. Balma stated that this happened several times and, at one point, almost half of the truck was in the left lane. Balma said the truck did not signal a lane change. At the time of the stop, Balma activated the video camera installed in his State police car. He was also wearing a battery operated microphone which transmitted the sound to the camera. The videotape (tape) of the stop was played at the suppression hearing. The tape clearly shows Balma approached the truck and told Perez that he saw him weave over the center line several times.

Balma testified that, when he pulled in behind the vehicle to effect a stop, he noticed the spare tire underneath the truck was much lower than usual. Balma was very familiar with trucks because of his experience as a State trooper for eight years. In addition, he said that he worked as a trucker for 15 years before he joined the Illinois State police. Based upon his experience and knowledge, Balma believed that the rear portion of the truck had been modified in some way.

176*176 Balma said he asked both Perez and Diaz for a driver's license. Perez told Balma that he had a temporary registration for the vehicle. Balma thought this response was odd because the truck had license plates. At 8:15 a.m., Perez went with Balma to the squad car and sat in the passenger seat. Balma radioed in a request for a driver's license check on both

licenses. He also requested a criminal history background check and a warrant check. Balma talked continually to Perez while he was seated in the squad car. Most of the conversation can be clearly heard on the tape. It appears from the tape that Perez did not understand some of Balma's questions. However, when the questions were rephrased, Perez gave responsive answers. Perez told Balma that he was an auto mechanic in New York and had driven to California to purchase auto parts. Balma said he was checking the ownership papers on the vehicle while he talked to Perez.

At about 8:19 a.m., Balma started writing a written warning. He finished the warning at about 8:21 a.m. Balma then opened the door of his squad car, intending to go back to the truck to return Diaz's driver's license and check the temporary registration. At that point, a radio report came in which said that Perez's license was valid and he had no warrants or criminal history. The report on Diaz said that he had a 1985 controlled substance conviction in Pennsylvania. However, Diaz was 22 years old at the time of the stop and would have been only 11 years old in 1985. In fact, Diaz was later found to have no prior convictions.

At 8:22 a.m., Balma called in to request a canine unit. Balma then walked to the truck, spoke to Diaz and gave him his driver's license. Balma also checked and found the temporary registration on the window of the truck matched the vehicle identification number.

At 8:25 a.m., Balma returned to his squad car. He asked Perez to sign the warning, which Perez did. Balma testified that he then gave Perez his driver's license and a copy of the warning. At 8:26 a.m., Balma stated, "that's all there is to the stop and you're free to go." After a very brief pause, Balma asked Perez if he had anything illegal in the truck. Perez said, "[n]o." Balma responded, "okay if I look?" and Perez clearly answered, "[y]eah." Balma said, "[i]s it okay?" and Perez again answered, "[y]eah." Balma then prepared a consent to search form which was written in Spanish. At 8:27 a.m.,

Perez signed the form. Testimony was presented at the suppression hearing which indicated that the Spanish form was not written in the clearest language. Also, it appears from the record that Perez did not read the form when it was presented to him.

Balma then went to the truck with Perez and had Perez remove the tarp from the back of the vehicle. Balma looked at the items in the bed of the truck, which did include some auto parts. At 8:29 a.m., Balma looked closely at the underside of the vehicle. He testified that this look confirmed his suspicion that a compartment was built onto the underside of the truck. He told Perez that he was waiting for the other officer to arrive. At no time did Perez object to the length of his detention or tell Balma to stop searching the vehicle.

At 8:38 a.m., Trooper Craig Graham finally arrived with his dog. The parties stipulated that the State would not present any evidence regarding the actions of the dog in order to establish probable cause for the search. In fact, the tape shows no discernable alert by Graham's dog. At 8:41 a.m., Graham looked underneath the truck. Balma told him that the bumper had previously been removed. At 8:42 a.m., Graham did a patdown search of Diaz for weapons, and Balma conducted a patdown search of Perez. At 8:45 a.m., Graham began removing the truck's bumper. At 8:48 a.m., Graham could see packages in an enclosed area under the truck that, in his experience, were "common packaging for narcotics." At that point, both defendants were placed under arrest. At 8:51 a.m., Graham drilled into the sheet metal bottom of the compartment. Balma field tested the white powder on the drill, and it tested positive for cocaine.

The truck was then towed to State police headquarters in La Salle. A search there revealed an enclosed area between the frame rails of the truck with a sheet metal bottom. Inside the compartment were twenty large 177*177 packages, each of which held five smaller packages of white powder. Testing

showed that the packages held 250.3 pounds of 93.7% pure cocaine. The cocaine which was seized at the State police headquarters had a street value of over \$37 million.

Perez testified that he did not understand English very well. He also said he did not understand Balma when Balma told him "that's all there is to the stop and you're free to go." However, Perez admitted that he answered, "yeah," when Balma asked him if it was okay to look in the truck. Moreover, Perez did not testify that he had any difficulty understanding Balma's question. Perez said he thought Balma only wanted to look at the auto parts. However, he did acknowledge that he never told Balma to stop searching the vehicle. Both Perez and Diaz testified that, throughout the stop, Balma was "polite" and "kind."

On June 21, 1996, the trial judge denied the defendants' motions to suppress. Prior to his ruling, the judge watched the tape in its entirety twice. The judge stated that he was satisfied with Balma's description of Perez's driving. Consequently, the judge found the initial stop was valid. Also, he found the written consent form meant absolutely nothing in this case. However, the judge did find Perez gave a valid oral consent to the search of the truck. The judge said the tape confirmed that Balma did not use any threats or put any pressure on Perez to gain the consent to search. The tape also confirmed that Balma was polite and helpful throughout the stop. Finally, the tape showed, and Perez testified, that he agreed to the search and at no time did he tell Balma to stop searching the truck.

On August 1, 1996, both defendants signed a written jury waiver and a stipulated bench trial took place. After reviewing the stipulated evidence, the trial court found both defendants guilty. The prosecutor and both defendants informed the court that they had agreed on a sentence of 40 years' imprisonment. Both defendants waived the preparation of a presentence investigation report. As part of the agreement, the State waived the mandatory

street value fine and costs. Pursuant to the agreement, the court imposed the 40-year sentence. Following sentencing, Diaz's attorney filed a motion to reduce the sentence. The trial court denied this motion. Thereafter, both defendants filed a timely notice of appeal.

ANALYSIS

I. SUPPRESSION OF EVIDENCE

The defendants both argue that the trial court should have granted their motions to suppress because: (1) the initial stop was not lawful; (2) they were detained an unreasonable length of time; and (3) no valid consent was given to the search. Following our careful consideration of these arguments, we disagree with the defendants' claims.

A. STANDARD OF REVIEW

[1—3] The trial court's ultimate determination regarding the reasonableness of a warrantless search is subject to de novo review. *Ornelas v. United States*, 517 U.S. ___, ___, 116 S.Ct. 1657, 1162-63, 134 L.Ed.2d 911, 920 (1996); see also *People v. Kidd*, 175 Ill.2d 1, 25-26, 221 Ill.Dec. 486, 498, 675 N.E.2d 910, 922 (1996). However, the trial court's determination concerning factual matters, including the reasonable inferences to be drawn from the witnesses' testimony, is entitled to deference by a reviewing court. *People v. Moore*, 286 Ill. App.3d 649, 652, 221 Ill.Dec. 897, 900, 676 N.E.2d 700, 703 (1997); see also *Ornelas*, 517 U.S. at ___ - ___ 116 S.Ct. at 1662-63, 134 L.Ed.2d at 920-21. In this case, the trial court made specific factual and credibility findings. A reviewing court will not reverse a trial judge's factual findings unless they are found to be manifestly erroneous. *Moore*, 286 Ill.App.3d at 652, 221 Ill.Dec. at 900, 676 N.E.2d at 703.

B. INITIAL STOP

It is well-established law that a traffic violation generally provides a sufficient basis for a police officer to stop the offending vehicle. *Whren v.*

United States, 517 U.S. ___, ___, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89, 95-96 (1996); *People v. Hood*, 265 Ill. App.3d 232, 241, 202 Ill.Dec. 618, 625, 638 N.E.2d 264, 271 (1994). Accordingly, a motorist 178*178 may properly be stopped when his vehicle crosses over a lane line and the vehicle is not driven as nearly as possible within one lane of the highway. *People v. Smith*, 172 Ill.2d 289, 297, 216 Ill.Dec. 658, 662, 665 N.E.2d 1215, 1219 (1996).

In this case, Balma said he saw Perez's truck cross over the center line several times. Balma's testimony was consistent with his comments to Perez immediately after he stopped the vehicle. The trial judge found Trooper Balma's testimony to be credible. Also, the judge specifically said that he was satisfied with Balma's explanation for the stop. From our review, we conclude that the trial judge's factual finding on this issue is supported by the record and is not manifestly erroneous. Accordingly, because the record firmly supports the trial judge's determination that a traffic violation occurred, we will not disturb the trial court's finding that the stop was proper.

C. LENGTH OF DETENTION

The defendants next contend that the scope and length of the detention were unreasonable under the fourth amendment of the United States Constitution. They argue that Balma improperly ordered Perez out of his truck and improperly extended the detention.

Initially, we must note that the United States Supreme Court has recently repeated its earlier holding that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." *Ohio v. Robinette*, 519 U.S. ___, ___, 117 S.Ct. 417, 421, 136 L.Ed.2d 347, 354, (1996), quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6, 98 S.Ct. 330, 333 n. 6, 54 L.Ed.2d 331, 337 n. 6 (1977). Accordingly, Balma did not act improperly

when he asked Perez to get out of the truck and directed Perez to accompany him to the squad car.

Next, we will review whether the defendants were detained an unreasonable length of time. It is well established that, when a police officer stops a vehicle for a minor traffic violation, the officer may briefly detain the driver to request a driver's license and make some initial inquiries. *People v. Easley*, 288 Ill.App.3d 487, 491, 223 Ill.Dec. 826, 830, 680 N.E.2d 776, 780 (1997); *People v. Koutsakis*, 272 Ill.App.3d 159, 163, 208 Ill.Dec. 549, 552, 649 N.E.2d 605, 608 (1995). If no further suspicion is aroused in the officer following these initial inquiries, the traffic stop may not go further, and the individuals involved should no longer be detained. *Easley*, 288 Ill.App.3d at 491, 223 Ill.Dec. at 830, 680 N.E.2d at 780; *Koutsakis*, 272 Ill.App.3d at 163, 208 Ill.Dec. at 552, 649 N.E.2d at 608. Accordingly, in *Koutsakis*, this court affirmed the trial court's finding that a detention of 14 minutes or longer to write a warning ticket is "too long." *Koutsakis*, 272 Ill.App.3d at 164-65, 208 Ill.Dec. at 553, 649 N.E.2d at 609.

Here, in this case, we find that Balma completed the written warning at 8:21 a.m., eight minutes after the stop. The eightminute detention to write the warning ticket is shorter than the time period found to be too lengthy in *Koutsakis*. Moreover, where a police officer's suspicion is aroused during his initial inquiries, further detention may be warranted. *United States v. Finke*, 85 F.3d 1275, 1280 (7th Cir.1996); *Easley*, 288 Ill. App.3d at 491, 223 Ill.Dec. at 830, 680 N.E.2d at 780. In deciding whether reasonable suspicion exists to justify the detention, we must consider the totality of the circumstances or the "whole picture" in each case. *Easley*, 288 Ill.App.3d at 491, 223 Ill.Dec. at 830, 680 N.E.2d at 780; *People v. Anaya*, 279 Ill.App.3d 940, 945-46, 216 Ill.Dec. 465, 469, 665 N.E.2d 525, 529 (1996). Even where there may be an innocent explanation for each individual factor considered separately, the factors viewed in

combination may constitute enough reasonable suspicion to warrant further detention in a given case. *Finke*, 85 F.3d at 1280; *Easley*, 288 Ill.App.3d at 491-492, 223 Ill.Dec. at 830, 680 N.E.2d at 780.

In the instant case, when Balma completed the written warning, he believed there might be a compartment under the vehicle based upon his extensive knowledge of trucks. Further, Balma thought it was suspicious that the truck had a temporary registration sticker as well as license plates. Also, Perez gave a patently implausible explanation for the trip to California. In addition, Balma received information that Diaz had a prior drug conviction. All of these factors in combination 179*179 raised reasonable suspicions in Balma that the truck may contain drugs. As a result, Balma requested the canine unit at 8:22 a.m. We are cognizant of the fact that the prior drug conviction information later proved to be false. However, we conclude that, based upon all the information available to Balma, he had sufficient reasonable suspicion to detain the defendants for a few additional minutes to allow the drug-sniffing dog to arrive. See *Finke*, 85 F.3d at 1281; *Easley*, 288 Ill.App.3d at 492, 223 Ill.Dec. at 830, 680 N.E.2d at 780. From our review of all the circumstances, we conclude that the defendants were not detained an unreasonable length of time when Perez consented to the search four minutes later, at 8:26 a.m. We additionally note, just as we did in *Easley*, that the record is clear that the defendants never objected to the short additional detention. Moreover, the tape confirms that Balma never used any form of coercion to cause the defendants to stay after the warning ticket was issued. See *Easley*, 288 Ill.App.3d at 492, 223 Ill.Dec. at 830, 680 N.E.2d at 780.

D. CONSENT TO SEARCH

The defendants next contend that the trial court erred when it found Perez gave a valid oral consent to search the truck. Again, we disagree with the defendant's claim.

A search which is conducted pursuant to consent is one of the specifically established exceptions to the fourth amendment requirements of both a warrant and probable cause. *People v. Cardenas*, 237 Ill.App.3d 584, 587, 178 Ill.Dec. 430, 432, 604 N.E.2d 953, 955 (1992). The fourth amendment test for a valid consent to search is the requirement that consent be voluntary. *Robinette*, 519 U.S. at ___, 117 S.Ct. at 421, 136 L.Ed.2d at 355; *Cardenas*, 237 Ill.App.3d at 587, 178 Ill.Dec. at 432, 604 N.E.2d at 955. Voluntariness is a question of fact to be determined from the totality of the circumstances. *Robinette*, 519 U.S. at ___, 117 S.Ct. at 421, 136 L.Ed.2d at 355; *People v. Graf*, 265 Ill.App.3d 746, 750, 203 Ill.Dec. 55, 58, 638 N.E.2d 1181, 1184 (1994). Consent is not voluntary where it is the result of official coercion, intimidation or deception. *Graf*, 265 Ill.App.3d at 750, 203 Ill.Dec. at 58, 638 N.E.2d at 1184.

Here, in the case at hand, the trial court specifically found that Balma did not use any threats or put any pressure on Perez to consent to the search. From our review, we find the trial court's factual determinations are clearly supported by the record.

From the tape, it is clear that Perez sometimes had difficulty understanding Balma's questions. However, the tape also shows that Perez was capable of understanding English and gave responsive answers to most of Balma's questions, albeit after the questions were rephrased. Most importantly, the tape shows that Perez answered affirmatively when Balma twice asked him whether it was okay for the officer to look in the truck. At the suppression hearing, Perez did not say he had any difficulty understanding Balma's questions. In fact, Perez did testify that, after he told Balma he could look in the truck, he never changed his mind. Also, Perez admitted he never told Balma to stop searching the vehicle. From our review of the tape and Perez's testimony at the suppression hearing, we find the trial court correctly determined that Perez voluntarily consented to the search of the vehicle.

II. DIAZ'S ADDITIONAL ARGUMENTS

A. STANDING

Because we have found the stop and search of Perez's truck to be proper, there is no need for this court to review Diaz's argument that the trial court erred when it determined Diaz lacked standing to challenge the search of the vehicle.

B. EXCESSIVE SENTENCE

The record clearly shows the State and the defendants presented a sentencing agreement to the court. As part of the agreement, the State gave up its right to impose a mandatory street value fine. Also, as part of the agreement, the defendants waived the preparation of a presentence investigation report.

Section 5-3-1 of the Unified Code of Corrections (Code) provides that a "defendant shall not be sentenced for a felony before a written presentence report of investigation 180*180 is presented to and considered by the court." 730 ILCS 5/5-3-1 (West 1994). However, the statute also provides that the trial court may dispense with this statutory requirement when both parties agree to the imposition of a specific sentence and a finding is made for the record regarding the defendant's criminal history. 730 ILCS 5/5-3-1 (West 1994); *People v. Harris*, 105 Ill.2d 290, 300, 85 Ill.Dec. 486, 491, 473 N.E.2d 1291, 1296 (1985). By its very terms, section 5-3-1 applies whenever a defendant is sentenced for a felony, whether it follows a guilty plea or is after a trial. See *Harris*, 105 Ill.2d at 299, 85 Ill.Dec. at 490, 473 N.E.2d at 1295.

Here, we find that Diaz waived the preparation of a presentence investigation report and agreed to a specific sentence. Also, the record reveals the trial court was informed that Diaz had no prior criminal record. As long as the trial court is aware of the defendant's criminal history, it has complied with the statutory requirements and may accept the parties' sentencing

agreement. Cf. *People v. Olivarez*, 279 Ill.App.3d 90, 100, 215 Ill.Dec. 759, 765-66, 664 N.E.2d 156, 162-63 (1996); *People v. Evans*, 273 Ill.App.3d 252, 255-56, 209 Ill.Dec. 695, 697-98, 651 N.E.2d 1143, 1145-46 (1994).

We hold that, where the trial court complies with the requirements of section 5-3-1 of the Code and imposes the exact sentence the defendant has agreed to accept, the defendant cannot challenge the sentence as being excessive. See *People v. Evans*, 174 Ill.2d 320, 327, 220 Ill.Dec. 332, 336, 673 N.E.2d 244, 248 (1996) (a defendant's effort to unilaterally reduce his sentence while holding the State to its part of the bargain cannot be condoned); *People v. Catron*, 285 Ill.App.3d 36, 37, 220 Ill.Dec. 870, 871, 674 N.E.2d 141, 142 (1996) (by entering into a sentencing agreement, a defendant implicitly agrees that the agreed-upon sentence cannot be excessive); *People v. Wendt*, 283 Ill. App.3d 947, 951-52, 219 Ill.Dec. 342, 345, 670 N.E.2d 1230, 1233 (1996) (a defendant may not challenge an agreed sentence where the trial court exercised no discretion in imposing sentence).

For the reasons stated, the judgment of the circuit court of Bureau County is affirmed in both cases.

Affirmed.

LYTTON, P.J., and SLATER, J., concur.

The PEOPLE of the State of Illinois, Plaintiff-Appellant,

v.

Nicole A. MANDERS, Defendant-Appellee.
No. 2-99-0839.

740 N.E.2d 64 (2000)
317 Ill. App.3d 337

Appellate Court of Illinois, Second District.
November 30, 2000.

65*65 Douglas P. Floski, State's Attorney,
Oregon (Martin P. Moltz and Gregory L.
Slovacek, both of State's Attorneys Appellate
Prosecutor's Office, of counsel), for the People.

Alan W. Cargerman, of Fearer, Nye, Ahlberg &
Chadwick, Oregon, for appellee.

Justice GALASSO delivered the opinion of the
court:

On January 26, 1999, defendant, Nicole A. Manders, was charged with driving under the influence (DUI), in violation of section 11-501(a)(4) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(a)(4) (West 1998)). Subsequently, defendant filed a petition to rescind the statutory summary suspension of driving privileges (petition) and a motion to suppress evidence. On July 19, 1999, after an evidentiary hearing on both matters, the trial court granted both defendant's petition and her motion to suppress evidence. On the same date, two separate orders granting the petition and the motion to suppress were filed. On July 21, 1999, the State filed a notice of appeal, and it subsequently filed an amended notice of appeal on November 22, 1999. The certificate of impairment was filed contemporaneously with the State's brief.

On appeal, the State raises three issues: (1) whether the trial court erred in granting defendant's petition; (2) whether this court may exercise its appellate jurisdiction over the issue of whether the trial court erred in granting defendant's motion to suppress; and (3) whether

the trial court erred in granting defendant's motion to suppress.

66*66 The following facts are taken from the record on appeal. At the hearing on the petition and the motion to suppress, defendant testified that on the evening of January 26, 1999, she was driving a 1992 Grand Am through Polo, Illinois. She was alone in the car. Defendant drove through Polo's downtown and was heading eastbound on Pines Road. She stated that she was vaguely familiar with that route. According to defendant the road surface was dry and consisted of two lanes, with a marked center line. The weather was "extremely windy, cold." She was driving at 55 miles per hour.

At approximately 9:13 p.m., defendant was located about five to eight miles east of Polo. (Defendant's testimony as to the time of the subject incident conflicts with that of the arresting officer, who stated that it occurred at 7:13 p.m.) Farmland was on each side of the road. She drove up behind a semi-trailer truck (truck) that, in her estimation, was traveling at 50 miles per hour. Defendant stated that she slowed down and "weaved" over several times to look around the truck in preparation to pass it. She saw the overhead lights of a police vehicle and pulled over on the shoulder. The arresting officer told her that he pulled her over because she was following too close to the truck. She estimated that she had maintained a distance of two to three car lengths behind the truck. On cross-examination, defendant denied that, if she were a "good distance back" of the truck, she would be able to look around the truck without having to pull over to the edge of the lane. Defendant further denied ever driving to the right side of the lane to look around the truck. She further stated that she did not have her turn signal on because she was not ready to pass the truck. Defendant reiterated that she "went to the left part of [her] lane on three separate occasions." She testified that she was not sure whether the portion of the road in which she was traveling behind the truck was a no-passing zone. Further, defendant thought that she had told the arresting officer that she

was intending to pass the truck.

Kevin Culloton testified that he was a deputy sheriff in the Ogle County sheriff's department. He stated that at approximately 7:13 p.m. on the evening of January 26, 1999, he was on duty and traveling westbound on Pines Road. Deputy Culloton passed the subject truck and the defendant's car going in the opposite (eastbound) direction. He thought defendant's car was "way too close" to the rear bumper of the truck. He estimated the distance to be 20 feet. Deputy Culloton turned his vehicle around and, traveling eastbound on Pines Road, drove up behind defendant. He did not immediately activate the overhead lights. Rather, he observed defendant's car and saw it "weave back and forth within its own lane." Deputy Culloton estimated that defendant's vehicle came within three to six inches of the center line and the "fog line" on the right side of the lane. He further estimated that it was traveling at between 50 and 55 miles an hour. According to Deputy Culloton, the area in which the three vehicles were traveling was a no-passing zone. During this time, he observed no turn signal on defendant's vehicle. Shortly thereafter, Deputy Culloton activated his overhead lights, and defendant pulled over. According to Deputy Culloton, the stop occurred at a point at which a passing zone began. He testified that at no time during the traffic stop did defendant indicate to him that she was attempting to pass the truck.

In ruling for defendant, the trial court stated:

"I think in this particular case the defendant's arguments are well-taken. I think 11-703 and 11-705 dictate that Miss Manders has to do what she was doing. She didn't begin a pass in a no-passing zone. I'll find that there was no probable cause as to make this stop as in this particular fact situation and grant the motion to suppress and the petition to rescind."

We first address the arguments related to the order granting defendant's 67*67 petition. Initially, the State maintains that the trial court commingled the question of whether defendant

was properly preparing to pass the truck with the "real issue at hand," namely, whether defendant was traveling too closely behind the truck. The State further argues that, based on Deputy Culloton's observations, he would have been remiss in his duties had he not further investigated "what appeared to represent a traffic violation." In response, defendant contends that the order granting the petition was not against the manifest weight of the evidence and should be affirmed.

The determination of the witnesses' credibility, of the weight to be given the witnesses' testimony, and of the reasonable inferences to be drawn from the evidence is the responsibility of the trial court, as is the resolution of conflicts in the evidence. See *People v. Fortney*, 297 Ill.App.3d 79, 85-86, 231 Ill.Dec. 720, 697 N.E.2d 1 (1998). A reviewing court should not disturb a trial court's decision regarding a petition unless the decision is against the manifest weight of the evidence. *People v. Smith*, 172 Ill.2d 289, 294-95, 216 Ill.Dec. 658, 665 N.E.2d 1215 (1996).

Initially, we note that the vast majority of the testimony at the hearing dealt with the allegations that defendant was weaving in her lane. Specifically, Deputy Culloton stated that, when traveling in the opposite direction of defendant's vehicle and the truck, he noticed that defendant appeared to be traveling too close to the truck. He then testified that he turned around and followed the two vehicles. Subsequently, Deputy Culloton's testimony only relates to the alleged weaving of defendant's vehicle. With no more evidence regarding the allegations of following too close, we determine that the trial court properly concluded that the evidence did not support an investigatory stop by Deputy Culloton based on defendant's following the truck too closely.

We next address the allegation that defendant's vehicle was weaving prior to the stop. During Deputy Culloton's testimony, he characterized defendant's driving within her lane of traffic as "weaving." Section 11-709(a) of the Code (625

ILCS 5/11-709(a) (West 1998)) recognizes that a vehicle cannot be driven in a perfectly straight line. It states, "A vehicle shall be driven as nearly as practicable entirely within a single lane * * *." (Emphasis added.) 625 ILCS 5/11-709(a) (West 1998).

Moreover, "weaving" has been defined as "the action of a vehicle that alternately diverges from and merges into traffic flows moving in the same direction, shifting from one lane to another, and repeatedly crossing the paths of other vehicles." (Emphasis added.) Webster's Third New International Dictionary 2591 (1986). Deputy Culloton clearly testified that defendant's vehicle did not cross the yellow line on her left or the white line on her right. Given the definition above, such conduct cannot be termed weaving and cannot be the basis of a valid investigatory stop.

We find that there was no valid basis for Deputy Culloton's stop of defendant's vehicle. Accordingly, we conclude that the trial court's granting of the petition was not against the manifest weight of the evidence.

Next, we address the State's contention that the trial court erred in granting defendant's motion to suppress evidence. The State essentially reiterates the arguments made regarding the granting of the petition. It then adds that this court may exercise its jurisdiction over the issue of the suppression of evidence, despite the fact that the State's initial notice of appeal only stated that it was appealing the granting of the petition. In response, defendant first maintains that this court does not have jurisdiction over the suppression-of-evidence issue. She then argues that the evidence clearly supports the 68*68 trial court's decision to grant the motion to suppress.

Regarding the issue of jurisdiction, the State specifically argues that the record and the "actions of the parties" clearly demonstrate that both motions were meant to be addressed by this court. The State further maintains that its failure to include the issue of the granting of the

motion to suppress was merely a clerical error and that it would place form over substance to find that this court does not have jurisdiction over this issue. The State also argues that the case law holds that notices of appeal are to be liberally construed and that an unspecified judgment is reviewable if it is a step in the procedural progression leading to the judgment specified in the notice of appeal. Additionally, the State contends that the petition and the motion to suppress are so "intertwined" that this court should accept jurisdiction. In response, defendant contends that the petition and the motion to suppress arose in separate proceedings, civil and criminal, respectively, and that these require differing analyses of appellate jurisdiction. Defendant argues that, while the State had the right to take an interlocutory appeal from the granting of the motion to suppress, it did not file the required notice of appeal within 30 days of the order's entry. Defendant also asserts that the State failed to move this court for leave to file a late notice of appeal, pursuant to Supreme Court Rule 606 (134 Ill.2d R. 606).

The record contains the following facts. The orders granting both the petition and the motion to suppress evidence were filed on July 19, 1999. On July 21, 1999, the State filed a notice of appeal that stated in pertinent part, "If appeal is not from a conviction, nature of order appealed from: Order rescinding statutory summary suspension." On November 22, 1999, the State filed a motion to amend the notice of appeal, wherein the State acknowledged that "[t]he previous notice of appeal does not indicate that the appeal also is taken from the order granting the defendant's motion to suppress and such omission was in error." Accordingly, the amended notice of appeal listed both the order rescinding statutory summary suspension and the order granting the motion to suppress as orders from which the State was appealing.

In *People v. O'Connor*, 313 Ill.App.3d 134, 245 Ill.Dec. 818, 728 N.E.2d 1175 (2000), this court faced a similar circumstance. The defendant,

Richard O'Connor, was charged with driving under the influence of alcohol and improper lane usage. He filed a petition, arguing that the breathalyzer used to measure his blood-alcohol concentration was improperly certified. The trial court denied both the petition and a subsequent motion to suppress the breathalyzer evidence. After a stipulated bench trial, the defendant was apparently convicted of both charges and sentenced to one year's conditional discharge. The defendant's notice of appeal indicated that he was appealing the December 28, 1998, order that resulted in convictions of improper lane usage and DUI. In the defendant's brief before this court, he raised issues only related to the denial of his petition. The State argued that this court lacked jurisdiction over the appeal because the defendant did not challenge the order denying his petition in his notice of appeal.

Noting that this issue was one of first impression in Illinois, the O'Connor court looked for guidance to an Ohio opinion, *Ohio Bureau of Motor Vehicles v. Williams*, 97 Ohio App.3d 779, 647 N.E.2d 562 (1994). In *Williams*, the defendant's driver's license was suspended because he refused to take a chemical test to determine his blood-alcohol level. The defendant appealed the administrative suspension to the trial court, arguing that his license should not have been suspended for refusing to take a chemical test to determine his blood-alcohol level. The trial court denied his appeal of the suspension, and the defendant did not file a notice of appeal within 30 days of this decision. Later, 69*69 the defendant was found not guilty of DUI by a jury. Thirty days after the not guilty verdict, the defendant filed a notice of appeal challenging the trial court's denial of his appeal of the administrative license suspension. The *Williams* court found, inter alia, that the administrative suspension of a driver's license affected a substantial right and that the review of an administrative license suspension is an independent judicial proceeding separate from the criminal charge of DUI. *Williams*, 97 Ohio App.3d at 781, 647 N.E.2d at 563. Further, the

Williams court determined that the order denying the appeal of the license suspension was a final and appealable order. The *Williams* court concluded that the defendant's failure to file a notice of appeal within 30 days of the denial of the appeal of the license suspension removed the defendant's appeal from its jurisdiction.

The O'Connor court found the analysis in *Williams* applicable to analogous provisions of Illinois appellate procedure. The O'Connor court concluded that the trial court's order denying a petition is a final order that disposes of a separate and distinct proceeding from the criminal action arising from the DUI and must be appealed within the 30-day time limit of Supreme Court Rule 303(a)(1) (155 Ill.2d R. 303(a)(1)). The O'Connor court, noting that the notice of appeal was filed well outside the 30-day time limit, found that it lacked jurisdiction to consider the trial court's denial of the petition. O'Connor, 313 Ill.App.3d at 136, 245 Ill.Dec. 818, 728 N.E.2d 1175.

O'Connor establishes that the civil action involving a petition and the action related to a criminal charge of DUI are separate actions that are governed by separate rules of appellate procedure. Regarding the appeal of a denial of a petition, O'Connor holds that, pursuant to Supreme Court Rule 303(a)(1) (155 Ill.2d R. 303(a)(1)), the notice of appeal has to be filed within the 30-day period following entry of the order. O'Connor, 313 Ill. App.3d at 136, 245 Ill.Dec. 818, 728 N.E.2d 1175.

O'Connor is silent regarding the applicable procedure in the appeal of an order granting a motion to suppress. Generally, an order suppressing evidence is an appealable order. *People v. Neziroski*, 102 Ill.App.3d 720, 723, 58 Ill.Dec. 323, 430 N.E.2d 265 (1981). If the order is not appealed, the doctrine of collateral estoppel bars relitigation before another judge in the same or another trial absent a showing of peculiar circumstances or some additional evidence to be presented. *Neziroski*, 102 Ill.App.3d at 723, 58 Ill.Dec. 323, 430 N.E.2d

265. Further, Supreme Court Rule 606 (134 Ill.2d R. 606) requires that a notice of appeal in criminal cases must be filed within 30 days from the entry of the judgment or order appealed from. *Neziroski*, 102 Ill.App.3d at 722, 58 Ill.Dec. 323, 430 N.E.2d 265. Thus, following the entry of an order granting a motion to suppress, the State has to file a notice of appeal within 30 days of the entry of the order.

Here, the record demonstrates that the State failed to make a timely appeal from the granting of the motion to suppress, which had to be filed within the 30-day period following the July 19, 1999, order. Instead, the State filed an amended notice of appeal approximately 120 days after the order's entry. The State's argument that the failure to file within the 30-day period was merely a clerical error is not well taken. The record contains no indication that the failure to include the issue of the granting of the motion to suppress was indeed a clerical error. Moreover, we are unpersuaded by the State's assertion that the pertinent supreme court rules should be liberally construed and that a failure to do so would place form over substance. The "substance" of Supreme Court Rule 606 is very clear, i.e., to perfect an appeal from an order granting a motion to suppress, the State has to file a notice of appeal within the 30-day period following entry of the order. 134 Ill.2d R. 606. Further, contrary to the State's position, 70*70 the subject actions were not so intertwined that there was no need for a separate notice of appeal. Rather, as O'Connor establishes, these are separate actions that are governed by different appellate rules. Finally, the only case cited by the State in support of its argument is *In re Adoption of S.J.M.*, 245 Ill.App.3d 277, 184 Ill.Dec. 459, 613 N.E.2d 776 (1993). Pursuant to a court order entered November 9, 1993, however, the opinion was withdrawn and was then filed as a nonprecedential Rule 23 order. 245 Ill.App.3d 277, 184 Ill.Dec. 459, 613 N.E.2d 776 (1993).

We conclude that the State's failure to file a timely notice of appeal specifically stating that

it was appealing the granting of the motion to suppress deprives this court of jurisdiction over that portion of the appeal at bar.

For the reasons stated above, we affirm the judgment of the circuit court of Ogle County granting the petition to rescind the statutory summary suspension and dismiss for lack of jurisdiction that part of the appeal dealing with the granting of the motion to suppress.

Affirmed in part and dismissed in part.

HUTCHINSON, J., concurs.

Presiding Justice BOWMAN, dissenting:

I respectfully dissent from the majority's decision that Deputy Culloton was not justified in making an investigatory stop of defendant.

A police officer may make an investigatory stop if, based on all the facts and circumstances, he has a reasonable and articulable suspicion that the suspect is committing, has committed, or is about to commit a crime. *People v. Lockett*, 311 Ill.App.3d 661, 667, 244 Ill.Dec. 232, 725 N.E.2d 27 (2000). To justify such detention, an officer must be able to point to specific articulable facts that, when taken together with natural inferences, make the intrusion reasonable—such as when the officer observes unusual conduct that leads him reasonably to conclude in the light of his experience that criminal activity may be afoot. *People v. Ertl*, 292 Ill.App.3d 863, 868, 226 Ill.Dec. 955, 686 N.E.2d 738 (1997).

Deputy Culloton, a three-year veteran of the Ogle County sheriff's department, testified that he first observed defendant's car following a semi-trailer truck "way too close" to the rear bumper of the truck. When the officer drove up behind defendant's car, he saw it "weave back and forth within its own lane." Defendant was traveling within a no-passing zone at the time and had not activated her turn signal. The officer estimated defendant's speed at between 50 and 55 miles per hour. The officer pulled

over the defendant.

The majority relies on a dictionary definition of "weaving" to determine that defendant's conduct of driving back and forth within three to six inches of the center line and the "fog line," as testified to by the officer, did not constitute weaving. According to the majority's definition, weaving only occurs if a vehicle shifts from one lane to another. As defendant's vehicle did not cross out of her lane, the majority concludes that she was not weaving.

The majority also relies on the language of section 11-709(a) of the Illinois Vehicle Code (625 ILCS 5/11-709(a) (West 1998)) as support for its conclusion that defendant's conduct did not constitute weaving. Section 11-709(a) states that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane." 625 ILCS 5/11-709(a) (West 1998). According to the majority, this section recognizes that a "vehicle cannot be driven in a perfectly straight line." 317 Ill.App.3d at 341, 251 Ill.Dec. at 237, 740 N.E.2d at 67. Apparently, the majority is implying that, although defendant was not driving in a straight line at the time she was observed by the officer, she was driving "as nearly as practicable" within her lane.

It is well established that weaving in the lane of traffic within which a vehicle is traveling provides a sufficient basis for an 71*71 investigatory stop of the vehicle. See, e.g., *People v. Albright*, 251 Ill.App.3d 341, 343, 190 Ill.Dec. 650, 622 N.E.2d 60 (1993); *People v. Diaz*, 247 Ill.App.3d 625, 627, 187 Ill.Dec. 391, 617 N.E.2d 848 (1993); *People v. Loucks*, 135 Ill.App.3d 530, 533, 90 Ill. Dec. 286, 481 N.E.2d 1086 (1985). Here, the evidence was undisputed that defendant was weaving in her lane. Deputy Culloton testified that he observed defendant's vehicle weave back and forth within its lane, and defendant admitted that she weaved to the left part of her lane on three separate occasions. The evidence was also undisputed that defendant did not have her turn signal on at the time. Thus, defendant's vehicle as observed by Deputy Culloton was not being

driven "as nearly as practicable" within a single lane because it was weaving within the lane and, as noted above, weaving within a single lane is sufficient to justify a stop. Defendant's erratic driving provided Deputy Culloton with articulable facts that showed there was a substantial possibility that defendant was committing a traffic violation. As there was a valid basis for the officer's stop of defendant's vehicle, I would reverse the trial court's order granting defendant's petition for rescission of the statutory summary suspension of her driving privileges.

745 N.E.2d 157 (2001)
319 Ill. App.3d 34
253 Ill.Dec. 383

The PEOPLE of the State of Illinois, Plaintiff-
Appellant,

v.

Mark C. RUSH III, Defendant-Appellee.
No. 2-00-0105.

Appellate Court of Illinois, Second District.
March 2, 2001.

158*158 Douglas P. Floski, Ogle County State's
Attorney, Oregon, Martin P. Moltz, Deputy
Director, Gregory L. Slovacek, State's
Attorneys Appellate Prosecutor, Elgin, for the
People of the State of Illinois.

Robert T. Hanson, Moehle, Smith, Nieman,
Hanson & Hahn, PC, Oregon, for Mark C.
Rush III.

Justice RAPP delivered the opinion of the
court:

Defendant, Mark C. Rush III, was arrested and
charged with driving under the influence of
alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West
1998)) and driving with an 159*159 alcohol
concentration of 0.08 or more (625 ILCS 5/11-
501(a)(1) (West 1998)). In addition, he was
given notice that his driving privileges would
be summarily suspended. See 625 ILCS 5/11-
501.1 (West 1998). He moved to suppress the
State's evidence, arguing that he was stopped
and arrested in violation of the fourth
amendment (U.S. Const., amend. IV). He also
petitioned to rescind the summary suspension,
contending that the arresting officer lacked
"reasonable grounds" to believe that he was
driving under the influence of alcohol. See 625
ILCS 5/2-118.1(b) (West 1998). The trial court
granted both the motion and the petition, and
the State appeals, asserting that the stop and
arrest were valid. We reverse and remand.

Following a traffic stop, Brian Ketter, an Ogle
County deputy sheriff, arrested defendant for
DUI. He ticketed defendant for DUI,

transporting alcohol illegally (625 ILCS 5/11-
502(a) (West 1998)), and driving in the wrong
lane (625 ILCS 5/11-701(a) (West 1998)).
Defendant submitted to a chemical test that
revealed an alcohol concentration of 0.11. As a
result, he received the notice of summary
suspension. Ketter stated on the notice that he
had "reasonable grounds" to arrest defendant
for DUI. Ketter explained:

"Rush was observed crossing center line
once and fog line once. Rush had bloodshot
eyes, slurred speech, strong odor of alcohol and
admitted consuming alcohol. Rush failed all
field sobriety tests."

At a hearing, the trial court first took up
defendant's motion to suppress. Defendant
testified that, on October 24, 1999, about 1:30
a.m., he was driving alone in his Dodge pickup
truck. He noticed that a vehicle was following
him "very closely." The vehicle "made [him] a
little nervous so [he] kept an eye on it." After
following him for about 4½ miles, the vehicle
activated its emergency lights, revealing that it
was a police car. Defendant pulled over and
was ultimately arrested. He never saw a warrant
for his arrest.

On cross-examination, defendant testified that
he admitted to the officer that he had consumed
"five to six beers" since the previous evening.
He added later that he had consumed "a couple"
of beers with his dinner. Defendant did not
believe that he had committed any traffic
violation.

The court found that the burden on the motion
had shifted to the State. The State called Ketter,
who testified as follows. On October 24, he was
driving his vehicle behind a Dodge. He saw the
Dodge "cross the yellow center line twice" and
"cross the white fog line." He stopped the
Dodge and spoke with defendant, the driver and
sole occupant of the vehicle. Ketter told
defendant why he had stopped him. Ketter
noticed that defendant "had slurred speech" and
emitted "a strong odor of alcohol." Defendant
admitted that he had consumed "five to six

beers" since the previous evening. Defendant also said that "an open can of beer" was "on the passenger's seat."

Ketter asked defendant to exit the vehicle so that he could perform some field sobriety tests. Defendant complied, telling Ketter that no disabilities prevented him from standing, walking, or counting. Ketter directed defendant to a "nice, level area," where he performed the tests.

First, Ketter asked defendant to put his arms at his sides, stand on one leg, and count to 30. Ketter demonstrated the test, and defendant said that he understood. Because defendant "raised his arms" and "dropped his foot to the ground five * * * times," he failed the test.

Second, Ketter asked defendant to take nine steps, heel to toe, back and forth along the white fog line. Ketter demonstrated 160*160 the test, and defendant had no questions. Because defendant stepped off the line "several times," failed "to touch heel to toe," and "raised his hands" for balance, he failed the test.

Third, Ketter asked defendant to close his eyes, tip his head back, and touch his nose with a finger on each hand. Although defendant's movements were "slow and deliberate," he passed the test.

Fourth, Ketter administered a horizontal gaze nystagmus (HGN) test. He noticed that, as defendant's eyes were following a pen, they "did not follow the pen smoothly back and forth, they were jerking." Defendant also "had an onset of nystagmus prior to 45 degrees."

Finally, Ketter administered a portable breath test (PBT), which indicated an alcohol level of 0.07. Based on his tests, Ketter believed that defendant was under the influence of alcohol. Defendant then told Ketter that he had consumed "seven or eight beers" since the previous afternoon.

On cross-examination, Ketter testified that he

followed defendant's vehicle for about four miles. He was "three to four car lengths" behind defendant's vehicle. Defendant did not exceed the speed limit, disregard any traffic control devices, or impede any other vehicles. Ketter acknowledged that, on the notice of summary suspension, he wrote that defendant had crossed the center line only once. Ketter maintained that defendant actually crossed it twice.

After Ketter followed defendant for about two miles, defendant's left tires crossed the center line entirely "for a matter of seconds." Next, his right tires "rode the white fog line for a matter of several seconds." Finally, less than a minute after he first crossed the center line, his left tires "touched and rode the center line." Ketter effected the stop because he believed that defendant may have been intoxicated. When Ketter activated his emergency lights, defendant pulled over promptly and properly.

Ketter asked defendant for his driver's license, which he produced without difficulty. Ketter did not ask defendant to count backward from 80 to 60 while still in the vehicle. Defendant exited the vehicle without difficulty. His clothes were not disheveled. His speech, though slurred, was understandable. On the walk-and-turn test, he timely started and stopped, he took the required number of steps, and he made a proper turn. Because defendant passed the finger-to-nose test, Ketter erred in writing on the notice of summary suspension that defendant had failed all the tests. In general, defendant's balance was good, and he was very cooperative.

In rebuttal, defendant testified that he did not cross any line or commit any traffic violation. Nevertheless, when Ketter stopped him, Ketter told him that he had crossed the lines. Ketter did ask him to count backward from 80 to 60, and defendant complied without difficulty. Defendant was not athletic or coordinated and was unable to stand on one leg for 30 seconds. However, on the walk-and-turn test, he stayed on the line and walked heel to toe.

After arguing the motion to suppress, the parties stipulated that the evidence on the petition to rescind would be the same. In a written order, the trial court stated as follows:

"1. That the Defendant * * * was stopped * * * and the officer did not have an arrest warrant * * *.

2. The officer testified that * * * the Defendant crossed the centerline twice and the fog line once and in the officer's warning to motorist wrote that the Defendant crossed the center line once and the fog line once.

161*161 3. The officer did not indicate any other erratic driving and did not indicate any weaving by the Defendant other than the momentary crossing of the center line.

IT IS THEREFORE ORDERED that the Defendant's Motion to * * * Suppress Evidence is granted and the Defendant's Petition to Rescind Statutory Summary Suspension is granted for no reasonable grounds."

The State appealed.

Initially, we note that defendant's motion and petition raised overlapping issues. In his motion to suppress, defendant argued that Ketter lacked reasonable suspicion to stop him and probable cause to arrest him. In his petition to rescind, he claimed that Ketter lacked "reasonable grounds" to arrest him. See 625 ILCS 5/2-118.1(b) (West 1998). In this context, "reasonable grounds" is synonymous with "probable cause." *People v. Fortney*, 297 Ill.App.3d 79, 87, 231 Ill.Dec. 720, 697 N.E.2d 1 (1998). Therefore, as the trial court did, we shall consider the motion and the petition together.

In general, a ruling on a motion to suppress or a petition to rescind will be reversed only if it is manifestly erroneous. *People v. Scott*, 249 Ill.App.3d 597, 601, 189 Ill.Dec. 108, 619 N.E.2d 809 (1993). However, because

defendant's motion and petition turned on questions of reasonable suspicion and probable cause, we must apply a different standard of review. In *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996), the Supreme Court stated:

"[D]eterminations of reasonable suspicion and probable cause should be reviewed de novo on appeal. * * * [However,] a reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers." *Ornelas*, 517 U.S. at 699, 116 S.Ct. at 1663, 134 L.Ed.2d at 920.

See *People v. Wardlow*, 183 Ill.2d 306, 311, 233 Ill.Dec. 634, 701 N.E.2d 484 (1998), rev'd on other grounds, 528 U.S. 119, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000) (following *Ornelas*).

Thus our review will consist of two steps. First, we will reverse the trial court's factual findings only if they are against the manifest weight of the evidence. Second, we will review de novo the ultimate questions whether reasonable suspicion justified the stop and whether probable cause (or "reasonable grounds") justified the arrest. See *In re G.O.*, 191 Ill.2d 37, 50, 245 Ill.Dec. 269, 727 N.E.2d 1003 (2000) (applying *Ornelas* to ultimate question whether confession was voluntary).

Although the trial court's ruling was terse and did not set forth specific findings of fact, it clearly was based on the determination that "the momentary crossing of the center line" was insufficient to support the stop. Therefore, we surmise that the court must have believed Deputy Ketter, at least to the extent necessary to find that the officer observed defendant cross the center line and the fog line. Because that finding is not against the manifest weight of the evidence, we must determine whether that "momentary crossing" supported the stop.

A traffic stop requires reasonable suspicion that the vehicle or an occupant is subject to seizure

for a violation of law. *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 1401, 59 L.Ed.2d 660, 673 (1979); *People v. Brodack*, 296 Ill. App.3d 71, 74, 230 Ill.Dec. 540, 693 N.E.2d 1291 (1998). Reasonable suspicion must be based on specific and articulable facts; a mere hunch is insufficient. *Brodack*, 296 Ill. App.3d at 74, 230 Ill.Dec. 540, 693 N.E.2d 1291. Here we point out that the language in the trial court's ruling suggests that it found "no reasonable grounds" for the stop. If that was the court's conclusion, the court invoked the wrong standard. Again, "reasonable grounds" means "probable cause," and a stop requires not probable cause but only reasonable suspicion. We note that even the appellate court has confused "reasonable grounds" with "reasonable suspicion." See, e.g., *People v. Decker*, 181 Ill.App.3d 427, 430, 130 Ill.Dec. 319, 537 N.E.2d 386 (1989) (affirming ruling that there were no "reasonable grounds for a stop"). In this context, however, the terms are distinctly different.

Districts of the appellate court have split over whether reasonable suspicion may stem from a defendant's brief crossing of the center line. The Third District has at least implied that a "nonhazardous, momentary crossing of the center line," standing alone, does not support a valid stop. *Decker*, 181 Ill.App.3d at 430, 130 Ill.Dec. 319, 537 N.E.2d 386; see also *People v. Faletti*, 215 Ill.App.3d 61, 64, 158 Ill.Dec. 54, 573 N.E.2d 867 (1991) (a "single, momentary crossing of the center line, without more, does not necessarily provide a sufficient basis for an investigatory stop"); *People v. Collins*, 154 Ill.App.3d 149, 151, 107 Ill.Dec. 72, 506 N.E.2d 963 (1987) (stop invalid where "defendant gave an unrefuted, reasonable explanation for his safe usage of the oncoming lane").

This court, however, has disagreed. In *Village of Lincolnshire v. DiSpirito*, 195 Ill.App.3d 859, 864, 142 Ill.Dec. 497, 552 N.E.2d 1238 (1990), the defendant "cross[ed] over the center line for a brief moment." An officer stopped him and ultimately arrested him for DUI. The

defendant moved to suppress the State's evidence, arguing that the stop was invalid. The trial court denied the motion, the defendant was convicted of DUI, and he appealed.

We noted that, in general, a driver is required by law to stay to the right of the center line. See 625 ILCS 5/11-701(a) (West 1998). The law contains some exceptions, however, and the defendant claimed that he legally made a nonhazardous crossing to avoid an obstruction. See 625 ILCS 5/11-701(a) (West 1998). Nevertheless, the officer did not see any obstruction, and the validity of a stop depends only on the facts that are available to the officer. Because the officer "merely saw the defendant's car drive out of the proper lane," his knowledge "provided [him] with sufficiently specific and articulable facts from which a reasonable person might conclude that a law was being broken." *DiSpirito*, 195 Ill.App.3d at 864, 142 Ill.Dec. 497, 552 N.E.2d 1238. On that basis, we validated the stop.

Thus, contrary to the Third District's implication, a driver's single, momentary crossing of the center line, without more, is a sufficient basis for a stop. The stop is invalid only if the officer knows additional facts that make it reasonably apparent that the crossing is legal. See also *People v. Gerwick*, 235 Ill.App.3d 691, 696, 176 Ill.Dec. 786, 602 N.E.2d 93 (1992) (Fourth District follows *DiSpirito*); *People v. Goestenkors*, 278 Ill.App.3d 144, 149, 214 Ill.Dec. 1008, 662 N.E.2d 574 (1996) (Fifth District holds that "[e]rratic driving, such as crossing the center line, is sufficient to justify an investigatory stop").

Here, defendant presented no evidence to suggest that his crossing was legal. He suggested that, if he did cross, he made a nonhazardous crossing that stemmed from the closeness of Ketter's pursuit. However, the law does not permit a driver to cross the center line merely because he is being closely followed. See 625 ILCS 5/11-701(a) (West 1998). Therefore, it is clear that Ketter knew no

facts to indicate that defendant's crossing was legal. Ketter had a reasonable suspicion that defendant had committed an offense, and his stop of defendant was valid.

We now address the validity of defendant's arrest for DUI. A warrantless arrest requires probable cause, which is equivalent to "reasonable grounds." *People v. Sims*, 192 Ill.2d 592, 614, 249 Ill.Dec. 610, 736 N.E.2d 1048 (2000); *Fortney*, 297 Ill.App.3d at 87, 231 Ill.Dec. 720, 697 N.E.2d 1. Probable cause exists if an officer knows facts that would lead a reasonable person to believe that the arrestee has committed an offense. Although probable cause does not require proof beyond a reasonable doubt, it requires more than mere suspicion. *Sims*, 192 Ill.2d at 614-15, 249 Ill.Dec. 610, 736 N.E.2d 1048.

We observe that the trial court expressed no findings about what occurred after the stop. However, defendant presented no evidence to dispute the following of Ketter's assertions: (1) defendant's speech, though understandable, was slurred; (2) defendant smelled strongly of alcohol; (3) defendant admitted that he had consumed several beers since the previous evening; (4) defendant had an open beer in his vehicle; (5) defendant failed the one-legged-stand test; (6) the HGN test revealed that defendant's eyes were "jerking"; and (7) the PBT indicated an alcohol concentration of 0.07. These uncontested facts leave no doubt that Ketter had probable cause to arrest defendant for DUI. Cf. *People v. Crocker*, 267 Ill.App.3d 343, 346, 204 Ill.Dec. 618, 641 N.E.2d 1237 (1994) (officer "clearly" had probable cause where defendant had a bloody face and slurred speech, smelled strongly of alcohol, admitted that he had been drinking, and failed two field sobriety tests).

In sum, we determine that Ketter had a reasonable suspicion to stop defendant and probable cause (or "reasonable grounds") to arrest him. Therefore, we reverse the trial court's grant of defendant's motion to suppress and petition to rescind, and we remand the

cause.

The judgment of the circuit court of Ogle County is reversed, and the cause is remanded for further proceedings.

Reversed and remanded.

GROMETER and CALLUM, JJ., concur.

943 N.E.2d 13 (2010)

The PEOPLE of the State of Illinois, Plaintiff-Appellant,

v.

Dennis A. HACKETT, Defendant-Appellee.
No. 3-09-0396.

Appellate Court of Illinois, Third District.
December 21, 2010.

14*14 Terry A. Mertel, Deputy Director, Nadia L. Chaudhry, State's Attorneys Appellate Prosecutor, Ottawa, James Glasgow, State's Attorney, Joliet, for the People.

Ryan Kosztya, Law Offices of Ryan Kosztya, Dennis A. Hackett, Joliet, for Dennis A. Hackett.

OPINION

Justice McDADE delivered the judgment of the court, with opinion.

The State charged defendant, Dennis A. Hackett, with aggravated driving under the influence and aggravated driving while license revoked. The circuit court of Will County granted defendant's motion to quash arrest and to suppress evidence on the grounds police lacked probable cause to stop defendant's vehicle. For the following reasons, we affirm.

BACKGROUND

At the hearing on defendant's motion to quash arrest and suppress evidence, Deputy Michael Blouin of the Will County sheriff's police testified that he was driving his unmarked police vehicle northbound on Briggs Street near Maple in Will County when he observed defendant's vehicle traveling north on Briggs directly in front of him. Blouin described Briggs as a straight, four-lane roadway with two lanes of northbound traffic and two lanes of southbound traffic. The north and south lanes are marked by a divider and the two northbound lanes of traffic are divided by black and white stripes. Blouin first observed defendant's

vehicle in the right-hand northbound lane of traffic. Defendant crossed into the left-hand northbound lane and Blouin maneuvered his vehicle to follow behind defendant.

Blouin testified that after entering the left-hand northbound lane, he observed defendant's vehicle move to the right. Blouin testified that defendant's vehicle's right-side tires crossed the black-and-white-striped lane divider between the two northbound lanes of traffic on Briggs. Defendant's vehicle then moved back into the left-hand lane. Blouin testified that five seconds later, defendant's right-side tires again crossed the black-and-white-striped lane divider. Blouin could not recall how far defendant's vehicle crossed into the right-hand lane of northbound traffic on Briggs. Blouin stated that defendant's tires "slightly" crossed the lane divider. Blouin testified that both times, defendant's vehicle "barely" went over the 15*15 black-and-white-striped lane divider and that both times, defendant's tires crossed the line for a matter of seconds.

Based on his observations of defendant's vehicle crossing the lane divider between the two northbound lanes of traffic on Briggs, Deputy Blouin decided to stop defendant's vehicle for a traffic violation. Blouin testified that he did not stop defendant's vehicle after the first time he observed defendant's vehicle cross the lane divider but that he did decide to stop defendant after defendant "swerved a second time" because, in his opinion, if a vehicle "swerves" twice there is usually a problem with the driving. Blouin did not, however, stop defendant immediately after he "swerved a second time." Rather, he followed him. While Blouin did not specifically recall Hackett's turn indicators flashing or his stopping for lights, he testified that had he seen violations, he would have ticketed defendant for them. Thus the evidence supports finding that after defendant's two momentary swerves Blouin continued to follow him while defendant, without committing any traffic violation, negotiated (1) the move into the left turn lane, (2) two left turns, and (3) compliance with the laws

concerning lane usage, speed limit, turn signals, and traffic signals.

ANALYSIS

Following the hearing on the motion, the trial court granted defendant's motion to quash arrest and suppress evidence.

"On appeal, a trial court's factual findings concerning a motion to suppress will be upheld unless they are against the manifest weight of the evidence. [Citation.] The ultimate decision, however, concerning whether the evidence should have been suppressed is a question of law, which we review de novo. [Citation.]

A peace officer may conduct a lawful traffic stop based on probable cause that the driver of the vehicle has committed a traffic violation. [Citation.]" *People v. Matous*, 381 Ill.App.3d 918, 921-22, 320 Ill.Dec. 209, 886 N.E.2d 1278 (2008), citing *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005).

The State argues that Blouin had probable cause to believe that defendant violated section 11-709(a) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-709(a) (West 2006)).

"Whenever any roadway has been divided into 2 or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply.

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." 625 ILCS 5/11-709(a) (West 2006).

Defendant argues, based on his testimony, that in the area he was driving, Briggs is in poor condition and that he may have been taking evasive action to avoid potholes. The State argues that Blouin testified that he did not see any potholes or obstructions that would cause a driver to deviate from a lane of traffic. The

State argues that absent obstructions that would cause a driver to deviate from a lane of traffic, an officer's observation of a vehicle crossing the lane divider provides the officer with grounds for a traffic stop based on a violation of section 11-709(a).

In *People v. Halsall*, 178 Ill.App.3d 617, 618, 127 Ill.Dec. 663, 533 N.E.2d 535 (1989), the officer testified that he observed the defendant's vehicle traveling on the left-hand side of the road. The car 16*16 slowly drifted into the right lane. The defendant in that case drove his vehicle once across the center line and, after increasing his speed to an estimated 70 miles per hour, crossed the center line two more times. The testimony in that case was that when the defendant crossed the center line, approximately one-half of his car was over the line. *Halsall*, 178 Ill.App.3d at 618, 127 Ill.Dec. 663, 533 N.E.2d 535.

This court found that there was no evidence that when the defendant in *Halsall* moved outside of his lane he endangered himself, pedestrians, or other vehicles. Based on that finding, this court held that "the State failed to prove that when the defendant moved outside of his lane he did so without first determining that the movement could be made safely" (*Halsall*, 178 Ill.App.3d at 619, 127 Ill.Dec. 663, 533 N.E.2d 535) and reversed the judgment of conviction for improper lane usage (*Halsall*, 178 Ill.App.3d at 620, 127 Ill.Dec. 663, 533 N.E.2d 535). See also *People v. Albright*, 251 Ill.App.3d 341, 343, 190 Ill.Dec. 650, 622 N.E.2d 60 (1993) ("This court has held that improper lane usage does not occur unless the defendant endangers himself, pedestrians, or other vehicles when he moves out of his lane of traffic").

The driving in both *Halsall* and *Albright* was potentially more dangerous than defendant's driving in the case before us now. Blouin provided no testimony concerning other vehicles or pedestrians on Briggs at the time he observed defendant's driving. Blouin could not testify how far defendant's tires crossed the dividing line. By contrast, in *Albright*, the

defendant crossed the line on the right side by at least a tire width on three separate occasions. *Albright*, 251 Ill.App.3d at 342, 190 Ill.Dec. 650, 622 N.E.2d 60. Even were we to assume the presence of vehicles or pedestrians, Blouin admitted that defendant's encroachment into another lane of traffic was slight and brief, lasting a total of mere seconds. Thus, under *Halsall* and *Albright*, we would affirm the trial court's judgment that Blouin did not have probable cause to believe that defendant had committed a traffic violation and affirm the order granting defendant's motion to quash arrest. The questions we are confronted with are (1) whether our decisions in those cases remain valid following the supreme court's decision in *People v. Smith*, 172 Ill.2d 289, 297, 216 Ill.Dec. 658, 665 N.E.2d 1215 (1996), and (2) whether *Smith* requires reversal of the trial court in the instant case.

In *Smith*, the defendant was observed by a police officer leaving a tavern, getting in his car and driving away. The officer, suspecting impairment, followed defendant as he drove on a four-lane, two-way street with a fifth lane in the center northbound and southbound for turning. The officer observed the driver's side wheels of the defendant's car cross over the lane line dividing the left lane from the center turn lane by at least six inches and remain over the lane line for approximately 100 to 150 yards—the length of 1 to 1 1/2 football fields. A short time later, the defendant crossed over the lane line dividing the left lane from the right lane by approximately six inches for 150 to 200 yards. *Smith*, 172 Ill.2d at 293, 216 Ill.Dec. 658, 665 N.E.2d 1215. Thus, the defendant in *Smith* was driving significant distances in all three lanes of traffic—sometimes with his vehicle in the left and right lanes and sometimes in the left and center turn lanes. The police officer testified that the defendant did not endanger any other vehicles or persons when he deviated across the lane lines and verified that the defendant never completely left the center lane in which he was traveling. *Smith*, 172 Ill.2d at 293, 216 Ill.Dec. 658, 665 N.E.2d 1215.

17*17 The defendant in *Smith* argued that a violation of section 11-709(a) does not occur when a motorist momentarily crosses over a lane line, but occurs only when a motorist endangers others while moving from a lane of traffic. *Smith*, 172 Ill.2d at 296, 216 Ill.Dec. 658, 665 N.E.2d 1215. Our supreme court held that "[t]he plain language of the statute establishes two separate requirements for lane usage. First, a motorist must drive a vehicle as nearly as practicable entirely within one lane. Second, a motorist may not move a vehicle from a lane of traffic until the motorist has determined that the movement can be safely made." (Emphasis added.) *Smith*, 172 Ill.2d at 296-97, 216 Ill.Dec. 658, 665 N.E.2d 1215. The court concluded that "[i]t follows that when a motorist crosses over a lane line and is not driving as nearly as practicable within one lane, the motorist has violated the statute." (Emphasis added.) *Smith*, 172 Ill.2d at 297, 216 Ill.Dec. 658, 665 N.E.2d 1215.

In light of this language in *Smith*, it seems clear that our earlier decisions in *Halsall* and *Albright* would no longer be valid. In both of those cases, the drivers had encroached significantly into a second lane and had proceeded an appreciable distance in two lanes.

Turning to the question of whether *Smith* requires reversal of the trial court in the instant case, we do not read *Smith* as holding that any time a motorist veers momentarily and minimally over a lane line he or she is driving in more than one lane of traffic. There are too many innocent circumstances that might cause a motorist to momentarily and inadvertently inch across a lane divider to find that such action, without more creates probable cause to arrest.

Based on the evidence in the instant record we cannot find that any police officer in Blouin's position could have reasonably believed that defendant was driving in more than one lane within the meaning of the statute and therefore committed the traffic violation for which he

was stopped.

"Where a traffic stop is based upon a mistake of law, it is unconstitutional. However, this may not resolve the issue. An otherwise improper stop based on a mistake of law may be found reasonable and constitutional if 'the facts known to [the officer] raised a reasonable suspicion that the defendant was in fact violating the law as written.' [Citation.] A police officer may stop a vehicle where he has reasonable suspicion to believe a driver is violating the Vehicle Code. [Citation.] Reasonable suspicion exists where an officer possesses specific, articulable facts that, when combined with rational inferences derived from those facts, give rise to a belief the driver is committing a traffic violation." *People v. Mott*, 389 Ill.App.3d 539, 543-44, 329 Ill.Dec. 314, 906 N.E.2d 159 (2009).

First, Blouin provided no testimony from which to find that an officer in his position could reasonably believe that defendant engaged in improper lane usage. We fully accept and apply the supreme court's finding that section 11-709(a) creates "two separate requirements for lane usage" including the independent requirement that "a motorist must drive * * * as nearly as practicable entirely within one lane." *Smith*, 172 Ill.2d at 296-97, 216 Ill.Dec. 658, 665 N.E.2d 1215. We construe *Smith*, we believe properly and consistently with the supreme court's intent, to apply to situations like the one presented to the court in that case, where the driver of the vehicle actually drives for some reasonably appreciable distance in more than one lane of traffic.

18*18 Our reading of *Smith* is supported by the supreme court's own language. It specifically held that "[o]nce [the officer] saw [the] defendant cross over a lane line and drive in two lanes of traffic, [he] had probable cause to arrest [the] defendant for a violation of the Code." (Emphasis added.) *Smith*, 172 Ill.2d at 297, 216 Ill. Dec. 658, 665 N.E.2d 1215. We do recognize and take note that the supreme court did not specify how far a vehicle must encroach

a second lane of traffic or how long a vehicle must travel in two lanes of traffic to establish probable cause to arrest the driver for a violation of the Code. To answer that question, we turn to the holding in *Smith*—again, in an effort simply to be consistent with the language the supreme court chose in its judgment. Based entirely on what we reasonably believe the supreme court intended by its own language in its judgment in *Smith*, we must find that the court would hold that probable cause exists to find that a driver has failed to drive "as nearly as practicable entirely within one lane" when "a reasonable, prudent man in possession of the knowledge of the arresting officer would believe that [the] offense has been committed." *Smith*, 172 Ill.2d at 297, 216 Ill.Dec. 658, 665 N.E.2d 1215, citing *People v. Robinson*, 62 Ill.2d 273, 276, 342 N.E.2d 356 (1976).

In this case, by Blouin's own admission, defendant's tires only slightly crossed the lane divider for mere seconds before defendant continued to operate his vehicle entirely in the left-hand lane of traffic. Instructive and in stark contrast is *Smith*, where the defendant drove with his wheels straddling the lane dividers by six inches on opposite sides of the street on two separate occasions, effectively driving in three lanes of traffic for approximately 150 yards each time. With regard to the second requirement of the statute, nothing in Blouin's testimony provides any bases to find that if defendant did change from the left lane of traffic to the right, however briefly, he did not do so without first determining that it was safe. The evidence does not provide grounds upon which to find that defendant's driving endangered himself, pedestrians, or other vehicles at any time.

Thus, we conclude that Officer Blouin lacked probable cause to stop defendant for a violation of section 11-709(a). "An officer may conduct a Terry traffic stop if the officer has a reasonable, articulable suspicion that * * * (3) the vehicle * * * is subject to seizure for violation of a law." *People v. Matous*, 381 Ill.App.3d 918, 922, 320 Ill.Dec. 209, 886 N.E.2d 1278 (2008). The

violation of law for which Blouin stopped defendant did not occur, and no police officer in Blouin's position could have reasonably believed that the violation occurred.

Accordingly, we would also find that the facts and circumstances surrounding the traffic stop did not provide a reasonable, articulable suspicion to stop defendant based on Blouin's stated reason of a violation of section 11-709(a).

We find that Smith does not compel a different result. In so holding, we acknowledge that Hackett was drunk and the confirmation of his ¹[1] asserts that "[c]learly, the officer had probable cause to stop the defendant for improper lane usage." Slip dissent at 9. We acknowledge the attractiveness of the dissent's legal "conclusion" given that, literally, when one's left tires are in the left lane and right tires are in the right lane, however slightly or briefly, one is not entirely in a single lane of traffic. However, we disagree with the dissent's conclusion that Smith held that merely permitting one's tires to briefly cross the center line is a per se violation of the statute because one is not driving "as nearly as practicable entirely within one lane" or that such action constitutes driving in two lanes of traffic within the meaning of the improper lane usage statute.

Thus, we clarify that our finding is not that Blouin provided no testimony from which to find that all parts of defendant's vehicle were not at all times physically within a single lane of traffic, but rather that Blouin provided no testimony from which to find that an officer in his position could reasonably believe that defendant was actually driving in two lanes and was therefore engaged in improper lane usage in violation of the statute. Based on Blouin's

¹ The dissent, typically and predictably, resorts to ridicule, hyperbole, personal anecdotes and observations, assaults on positions not taken by the majority, quotes taken out of context, and facts outside the record to attack a legal analysis with which he does not agree. If the majority decision is indeed wrong, it should be possible to demonstrate that error in a mature and professional counteranalysis.

inebriation was the basis for his Motion to Suppress which the trial court granted. That fact should not, however, drive our construction of the statute. Accordingly, we hold that the trial court properly granted defendant's motion to quash arrest and suppress evidence.

Contrary to the dissent's implication, our decision is not based on whether or not defendant swerved to avoid a pothole. Our decision is based on our finding that Blouin was mistaken in his belief that defendant's 19*19 driving violated the law in question. The dissent testimony and consistent with Smith, we hold that the trial court properly granted defendant's motion to quash arrest and suppress evidence.

CONCLUSION

The circuit court of Will County's order is affirmed.

Affirmed.

Justice O'BRIEN concurred in the judgment and opinion.

Justice SCHMIDT dissented, with opinion.

Justice SCHMIDT, dissenting:

This case should have been resolved by a summary order reversing the trial court and remanding for further proceedings. Smith and the plain language of the statute control. A police officer stopped defendant after watching defendant swerve twice across a lane divider line. The roadway was flat and straight. The second swerve took place approximately five seconds after the first. Each time defendant swerved, both right tires crossed the lane divider line. The officer could see space between the lane divider line and defendant's right tires. Defendant was ticketed for improper lane usage and ultimately charged with aggravated DUI (625 ILCS 5/11-501(a)(2) (West 2008)), and aggravated driving while license revoked (625 ILCS 5/6-303(d) (West

2008)). After a suppression hearing, the trial court found no probable cause for the traffic stop. The majority affirms.

The majority finds comfort in the fact that the officer noted no other violations concerning lane usage, speed limit, turn signals and traffic signals. These observations by the majority are totally irrelevant to the issue of whether the police officer had probable cause to stop the defendant for improper lane usage after the incidents he described.

The majority also states, "Thus the evidence supports finding that after defendant's two momentary swerves Blouin continued to follow him while defendant, 20*20 without committing any traffic violation, negotiated (1) the move into the left turn, (2) two left turns, and (3) compliance with the laws concerning lane usage, speed limit, turn signals, and traffic signals." Op. 347 Ill.Dec. at 725, 943 N.E.2d at 15. I am not sure of the import of the majority's observation here. It seems to be suggesting that the probable cause created by the two swerves over the lane divider somehow evaporated when defendant was able to make several other maneuvers without the officer observing any additional traffic violations. This is some interesting new law with no support in the existing law. The majority should explain how many legal maneuvers or how far a driver must drive after committing a traffic violation without committing another violation before the probable cause disappears. Police officers and prosecutors will undoubtedly want to know this. The fact is, from a legal standpoint, the officer's failure to note any additional traffic violations after the first two (or first one for that matter) is totally irrelevant to whether the officer had probable cause to stop the defendant for improper lane usage. I will add an experience-based observation that is undoubtedly just as irrelevant as the majority's observation. Once a police officer has made a determination to stop someone for whatever violation, the officer generally is not looking for other small violations, but is instead watching the driver and also watching and

looking for an appropriate place to conduct the traffic stop. He or she is usually not intent upon seeing how many minor traffic violations can be racked up before the stop is effected. Once a decision to stop is made, officers start thinking about their own safety as well as the safety of the public in determining where or how to make the stop.

The majority states, "Defendant argues, based on his testimony, that in the area he was driving, Briggs is in poor condition and that he may have been taking evasive action to avoid potholes." Op. 347 Ill.Dec. at 725, 943 N.E.2d at 15. During defendant's direct examination by his own attorney, defendant testified as follows:

"Q. Can you describe the road conditions on Briggs street as you're heading northbound from that gas station to Second?

A. There are two lanes north, two lanes south in need of repair like many other roads in the Joliet area or probably most of Illinois.

Q. Did you notice potholes as you were proceeding northbound on Briggs?

A. There were several of them.

Q. Did you have to take any evasive action in your pickup truck to avoid driving straight into potholes?

A. There is a possibility, yes."

On cross-examination, the defendant was asked whether his tires could have touched or crossed over the centerline a second time. He said he did not believe so, but he thought one time was possible.

"Q. Is it possible that it happened twice?

A. I don't believe so.

Q. But one time it is possible?

A. Well, with the potholes and different

things, I—I would imagine that I probably did move towards the center of the road."

Even when coached by his own attorney during direct examination, defendant did not say that he swerved to avoid a pothole. His strongest testimony was that there was a possibility that he swerved to avoid a pothole. The police officer testified that he saw no potholes, did not hit any potholes, and did not need to take evasive action to avoid any potholes while driving behind defendant on Briggs Street. However, even ignoring the officer's testimony, 21*21 we have no testimony from defendant that he had to swerve to avoid a pothole or any other obstruction. At best, this testimony by defendant goes to his guilt or innocence of the charge, not to probable cause.

The officer testified that when defendant swerved across the lane marker the second time, he decided to stop defendant for improper lane usage. While he was not as concerned with the first swerve, he felt the second swerve indicated a problem with defendant's ability to drive. This was an absolutely flawless exercise of judgment on the officer's part. Police officers do not stop every car for every minor traffic violation they see. This is common knowledge. However, the officer decided since defendant swerved partially into the right-hand lane twice within a very short period of time, that there was a problem.

In reaching its decision, the majority discusses two pre-Smith cases: *People v. Halsall*, 178 Ill.App.3d 617, 127 Ill.Dec. 663, 533 N.E.2d 535 (1989), and *People v. Albright*, 251 Ill.App.3d 341, 190 Ill.Dec. 650, 622 N.E.2d 60 (1993). As the majority points out, these cases stood for the proposition that improper lane usage does not occur unless defendant endangers himself, pedestrians, or other vehicles when he makes a move out of his lane of traffic. Op. 347 Ill.Dec. at 725-26, 943 N.E.2d at 15-16. The majority concedes that *Halsall* and *Albright* are no longer good law in light of *Smith*. Nonetheless, it states, "The driving in both *Halsall* and *Albright* was

potentially more dangerous than defendant's driving in the case before us now." Op. at 347 Ill.Dec. at 726, 943 N.E.2d at 16. Of what possible relevance is a comparison to the defendant's driving here and the driving of the *Halsall* and *Albright* defendants?

In *Smith*, the supreme court specifically rejected defendant's argument "that a violation of section 11-709(a) does not occur when a motorist momentarily crosses over a lane line, but occurs only when a motorist endangers others while moving from a lane of traffic." (Emphasis added.) *Smith*, 172 Ill.2d at 296, 216 Ill.Dec. 658, 665 N.E.2d 1215. Our supreme court held that "Once [the officer] saw defendant cross over a lane line and drive in two lanes of traffic, [the officer] had probable cause to arrest defendant for a violation of the Code." *Smith*, 172 Ill.2d at 297, 216 Ill.Dec. 658, 665 N.E.2d 1215. Nonetheless, the majority "[does] not read *Smith* as holding that any time a motorist veers momentarily and minimally over a lane line he or she is driving in more than one lane of traffic." Op. 347 Ill.Dec. at 727, 943 N.E.2d at 17. Again, notwithstanding the clear language in *Smith*, the majority holds "[t]here are too many innocent circumstances that might cause a motorist to momentarily and inadvertently inch across a lane divider to find that such action, without more creates probable cause to arrest." Op. at 347 Ill.Dec. at 727, 943 N.E.2d at 17. I could write a book about that sentence alone without touching the rest of the majority's result-orientated decision. We are not talking about murder or treason here, we are talking about violations of the traffic code in which the driver's good intentions and/or inadvertence are irrelevant. The legislature chose for a reason not to make intent an element of a traffic offense. It recognized the obvious: inadvertence kills.

The majority then makes an amusing run at distinguishing the case before us from *Smith*. Op. 347 Ill.Dec. at 726-28, 943 N.E.2d at 16-18. The *Smith* defendant wandered across lane lines twice. The supreme court spoke in terms

of distance, rather than time. The first time across the lane line, defendant Smith's tires were at least six inches across the lane divider for a distance of 100 to 150 22*22 yards. Smith, 172 Ill.2d at 293, 216 Ill. Dec. 658, 665 N.E.2d 1215. On the second incident, the supreme court simply states that the officer saw the defendant cross over the lane line dividing the left lane from the right lane by approximately six inches for 150 to 200 yards. Smith, 172 Ill.2d at 293, 216 Ill. Dec. 658, 665 N.E.2d 1215. We do not know what the speed limit was on the highway being traversed by Smith. Therefore, we cannot be sure how long Smith had his tires across the lane line. Nonetheless, the majority finds that these were "significant" distances. Op. at 347 Ill. Dec. at 726-27, 943 N.E.2d at 16-17.

The majority then goes on to state, "In this case, by Blouin's own admission, defendant's tires only slightly crossed the lane divider for mere seconds before defendant continued to operate his vehicle entirely in the left-hand lane of traffic. Instructive and in stark contrast is Smith, where the defendant drove with his wheels straddling the lane dividers by six inches on opposite sides of the street on two separate occasions, effectively driving in three lanes of traffic for approximately 150 yards each time." Op. 347 Ill. Dec. at 728, 943 N.E.2d at 18. First of all, with respect to the lateral intrusion into the neighboring lane, the Smith tire was six inches over the line. I have no idea how wide the majority thinks a truck tire is, but the officer in this case said he saw a space between the lane divider line and the vehicle's tire. He did not elaborate as to how much space he saw. Nor did he need to. It would be an unusual tire that was not at least six inches wide itself. Of course, in any normal vehicle, parts of the vehicle body extend beyond the outside of the tire. Clearly, parts of the defendant's vehicle had to have been well over six inches beyond the line. This would be true had the defendant been riding a motorcycle, let alone a motor vehicle. In fact, the testimony was that defendant was driving a pickup truck.

Secondly, with respect to the distance traveled forward while straddling the lane line, the majority points out that defendant here was over the line for "mere seconds" each time he crossed the lane divider. Op. 347 Ill. Dec. at 727-28, 943 N.E.2d at 17-18. In a mere second, a vehicle traveling 30 miles per hour travels approximately 45 feet, one traveling 40 miles per hour travels approximately 60 feet, and one traveling 60 miles per hour travels approximately 90 feet. If the vehicle is across the lane divider for a mere four seconds and traveling at 40 miles per hour, the vehicle has traveled 240 feet or 80 yards. This is simple arithmetic, not quantum physics or rocket science. Where would the majority draw the line?

In another unbelievable sentence, the majority states, "We construe Smith, we believe properly and consistently with the supreme court's intent, to apply the situations like the one presented to the court in that case, where the driver of the vehicle actually drives for some reasonably appreciable distance in more than one lane of traffic." (Emphasis in original and added.) Op. 347 Ill. Dec. at 727, 943 N.E.2d at 17. I hate to be flip, but the majority invites it. This opinion would not stand up to a Vinny Gambini cross-examination. I can only think of that renowned trial lawyer's cross-examination of witness Mr. Tipton regarding the time it took to cook grits on Tipton's stove. Vinny Gambini would undoubtedly ask whether the law of physics cease to exist on highways in the Third District allowing a vehicle to travel for four seconds with its tires in two separate lanes and yet not be "actually driving in more than one lane of traffic." Was this a magic pickup truck? Did the defendant buy his truck from the same guy that sold Jack his beanstalk beans? If the defendant was not actually driving in more than 23*23 one lane of traffic, what was he "actually" doing? Just what is a reasonably appreciable distance? How does an officer decide? The majority leaves no workable rule.

I could write a four-volume dissent on this case, picking apart one silly sentence after another in

the majority opinion. However, I will stop here. The thrust of the majority opinion is that the majority believes that police should not be able to stop people for minor traffic violations. I suppose we all feel that way when we are stopped for one. This is the appellate court; we do not get to rewrite the law based upon our feelings about it. The supreme court and the legislature have that power. We do not. Clearly, the officer had probable cause to stop the defendant for improper lane usage. The supreme court's decision in Smith is not ambiguous. Whether the defendant inadvertently or intentionally swerved twice across the lane divider lane is irrelevant. The majority opinion stands the law on its head and creates a totally unworkable scheme for traffic law enforcement. Do we apply the same analysis to speeding? Must one speed for a "reasonably appreciable distance" to violate speed laws?

Illinois has five appellate courts and one supreme court. Our supreme court does not have the resources to correct every wrongly decided appellate decision. The majority undoubtedly is banking on the fact that the court will have more pressing matters before it and not grant a petition for leave to appeal on this matter. With all due respect, the majority opinion is nonsense, plain and simple. Even worse, it endangers the lives of the motoring public by limiting the ability of police officers to stop erratic drivers. I dissent.