NOTICE
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2012 IL App (4th) 120084-U

Filed 9/5/12

NO. 4-12-0084

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. LENORA J. PERRY, Defendant-Appellee.	)	Appeal from the Circuit Court of Adams County No. 11CF461 Honorable William O. Mays, Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's driving on the fog line without any apparent reason for doing so gave the police officer a reasonable, articulable suspicion that she had violated section 11-709(a) of the Illinois Vehicle Code (625 ILCS 5/11-709(a) (West 2010)), making the ensuing traffic stop reasonable.

¶ 2 The State charged defendant, Lenora J. Perry, with driving while her driver's license was suspended, a Class 4 felony (625 ILCS 5/6-303(c-3) (West 2010)). Defendant moved to suppress the evidence against her on the ground that it was the fruit of an unreasonable traffic stop. The trial court granted the motion, and the State appeals pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. July 1, 2006). We reverse the trial court's judgment because the court made a factual finding that indicated an apparent violation of section 11-709(a) of the Illinois Vehicle Code (625 ILCS 5/11-709(a) (West 2010)) and if a police officer sees a driver violate the Illinois Vehicle Code, or at least has a reasonable, articulable suspicion that the driver has done so, the officer has legal

justification to pull the driver over.

¶ 3 I. BACKGROUND

¶ 4 In the hearing on the motion for suppression of evidence, an Illinois state trooper, Roy Atwater, testified that on May 20, 2011, at about 11:14 p.m., he was driving east on United States Highway 24, behind a Chevrolet Suburban. He noticed that this vehicle ahead of him was weaving to and fro in the eastbound lane, from the centerline to the fog line. Then he watched the vehicle's passenger tires go onto the fog line for about three seconds. He saw no potholes or animals in the road; nothing about the road appeared to necessitate driving on the fog line. Therefore, he pulled the vehicle over.

¶ 5 At Atwater's request, the driver, defendant, gave him her name and date of birth. He ran this information through dispatch and through the computer in his squad car and learned that defendant's Illinois driver's license was suspended. He arrested her for driving with a suspended license. He also gave her a written warning for improper lane usage and for objects obstructing the windshield.

¶ 6 The video of the traffic stop, defendant's exhibit No. 1, was played for the trial court while Atwater narrated. He noted that, in the video, defendant's vehicle was using the entire eastbound lane at times, driving nearly on top of the fog line and then going back over, right up to the centerline. A few seconds later, the vehicle went to and fro again in the same manner, staying, however, within the eastbound lane. Then, as he put it, the vehicle "completely [drove] onto the fog line, if not crossing it," whereupon he pulled the vehicle over.

¶ 7 After taking the matter under advisement, the trial court issued a written order. In its order, the court said it had reviewed its notes and had watched the video several times. The court

found as follows:

> "In our case, the officer testified and the video from his vehicle shows the defendant's vehicle proceeding along Highway 24. The tires of the defendant's vehicle, in the terms used by the state's attorney, 'kiss' the white fog line located on the outside of the lane. This arguabl[y] happens twice, although the first time is difficult to see. At no time does the defendant's vehicle cross or even touch the centerline and at no time does the defendant's vehicle leave the roadway on the right hand side. To make the statement that defendant was 'weaving' would appear to be stretching the issue.
>
> Based on the facts of this case and comparing them to the facts and reasoning of [*People v. Smith*, 172 Ill. 2d 289 (1996), and *People v. Hackett*, 406 Ill. App. 3d 209 (2010),] the court would find that the officer did not have specific, articulable facts upon which to make a stop of the defendant's vehicle."

Therefore, the court granted defendant's motion for suppression of evidence. (After the filing of this appeal, the supreme court reversed the appellate court's decision in *Hackett*. *People v. Hackett*, 2012 IL 111781.)

¶ 8 II. ANALYSIS

¶ 9 The fourth amendment (U.S. Const., amend. IV) forbids the police to unreasonably stop vehicles. *Hackett*, 2012 IL 111781, ¶ 20. A traffic stop is reasonable if the police officer has probable cause to believe that the driver has violated a traffic law. *Id.* Also, something less than

probable cause will justify a "brief, investigatory stop" of a vehicle: a "reasonable, articulable suspicion" that the driver has violated a traffic law. (Internal quotation marks omitted.) *Id.* Under this less demanding standard, the police officer must be able to "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." *Id.*

¶ 10 There is both a factual aspect and a legal aspect to the question of suppression. We defer to the trial court's factual findings, gainsaying them only if they are against the manifest weight of the evidence. *People v. Lampitok*, 207 Ill. 2d 231, 240 (2003). As to the ultimate issue, however, of whether those facts call for the suppression of evidence, we decide that legal issue *de novo*. *Id.*

¶ 11 Thus, if we accept the trial court's factual findings—if we do not find them to be against the manifest weight of the evidence—we merely decide *de novo* whether those facts legally warrant the suppression of evidence. *Id.* In this case, the trial court made a factual finding that defendant was not driving erratically enough that she could be said to be " 'weaving' " within her lane. As the court put it, "[t]o make the statement that defendant was 'weaving' would appear to be stretching the issue."

¶ 12 Driving erratically to and fro, though within the same lane, can justify an investigative stop. *People v. Diaz*, 247 Ill. App. 3d 625, 627-28 (1993); *People v. Loucks*, 135 Ill. App. 3d 530, 533 (1985). Nevertheless, vehicles do not proceed precisely down the middle of the lane with unvarying geometric exactitude. Whether the irregularities in the vehicle's movement amount to "weaving" is a question of degree. The video of the traffic stop is in the record, and, in the video, defendant's vehicle is sometimes near the centerline and sometimes near the fog line. Because reasonable minds could differ on whether her driving was erratic enough to meet the description of

"weaving," we defer to the court's finding that she was not "weaving."

¶ 13 The trial court further found that the tires of defendant's vehicle " 'kissed' " the fog line. That finding is not against the manifest weight of the evidence, either. The video appears to bear out that finding, and we accept it. In the video, the passenger tires of defendant's vehicle go onto the fog line, but the passenger tires do not go so far to the right as to leave the fog line and go entirely onto the shoulder of the road.

¶ 14 The question, then, is whether touching the fog line created a "reasonable, articulable suspicion" of a violation of a traffic law. (Internal quotation marks omitted.) *Hackett*, 2012 IL 111781, ¶ 20. If the answer is yes, the traffic stop was reasonable, and we should reverse the trial court's judgment. See *id.* If the answer is no, we should affirm the judgment, because it was through the traffic stop that the police officer discovered the suspension of defendant's driver's license and "courts are precluded from admitting evidence that is gathered by government officers in violation of the fourth amendment." *Lampitok*, 207 Ill. 2d at 241. (The State does not appear to dispute that, absent a reasonable, articulable suspicion of a traffic offense, the evidence of defendant's driving with a suspended driver's license should be suppressed. Compare *United States v. Guzman-Bruno*, 27 F.3d 420, 422 (9th Cir. 1994) (the exclusionary rule requires no sanction when a fourth-amendment violation leads only to the discovery of the defendant's identity, leading in turn to a consultation of governmental records), with *United States v. Guevara-Martinez*, 262 F.3d 751, 753-54 (8th Cir. 2001) (disagreeing with *Guzman-Bruno*).)

¶ 15 Section 11-709(a) of the Illinois Vehicle Code (625 ILCS 5/11-709(a) (West 2010)) provides as follows:

"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."

¶ 16 The Illinois Vehicle Code does not define the word "lane." Therefore, we give the word its ordinary meaning. See *Wahlman v. C. Becker Milling Co.*, 279 Ill. 612, 622 (1917) (words in a statute should be given their ordinary meaning unless the statute specially defines them); *Gekas v. Williamson*, 393 Ill. App. 3d 573, 579 (2009) (same). A dictionary is a good place in which to find the ordinary meaning of words. *People v. Cardamone*, 232 Ill. 2d 504, 513 (2009). According to the New Oxford American Dictionary, a "lane" is "a division of a road marked off with painted lines and intended to separate single lines of traffic according to speed or direction." New Oxford American Dictionary 951 (2d ed. 2005). The fog line is one of these painted lines. The fog line, located between the lane and the shoulder of the highway, is itself neither the lane nor the shoulder; rather, it separates the lane from the shoulder and hence is in between the two. It follows that when one drives on the fog line, one does not drive "*entirely* within a single lane" as section 11-709(a) requires one to do whenever it is "practicable" to do so. (Emphasis added.) 625 ILCS 5/11-709(a) (West 2010). Atwater testified he saw no obstruction in the road that would have necessitated defendant's driving on the fog line. The video seems to reveal no obstruction. *Ergo*, Atwater had, at minimum, a reasonable, articulable suspicion that defendant had violated section 11-709(a) of the

Illinois Vehicle Code (625 ILCS 5/11-709(a) (West 2010)), and the investigatory stop was reasonable. See *Hackett*, 2012 IL 111781, ¶ 20.

¶ 17 III. CONCLUSION

¶ 18 For the foregoing reasons, we reverse the trial court's judgment and remand this case for further proceedings.

¶ 19 Reversed and remanded.