



weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)). On July 28, 2011, the defendant filed a motion to suppress evidence. A hearing on the motion was held on November 21, 2011, at which the following evidence was adduced. On direct examination during the defendant's case in chief, Detective Timothy Lay of the Belleville police department testified that he pulled over the defendant's vehicle because the defendant had driven "from the right lane to the left lane" without first using his turn signal to show his intent to turn. He conceded, however, that he did not issue a warning ticket for failure to signal, but instead issued one for improper lane usage. He also testified on direct examination that following the stop of the defendant and an alert on the defendant's vehicle by a drug-sniffing police dog, he searched the defendant's vehicle and found a .25-caliber cartridge on the floorboard between the driver's door and the driver's seat. It was the discovery of the cartridge that led to the present charge against the defendant.

¶ 5 On cross-examination, Detective Lay testified that after filing his first incident report regarding the traffic stop and subsequent arrest of the defendant, in which he mentioned the offense of improper lane usage, a superior called his attention to the fact that the violation he had observed was actually "no turn signal" rather than improper lane usage. He reiterated, unequivocally, that the violation he had observed was the defendant's failure to signal, despite the fact that on the warning ticket he had incorrectly labeled the violation as improper lane usage.

¶ 6 The defendant testified that Detective Lay told him, at the time of the traffic stop, that the reason for the stop was improper lane usage. The defendant could not recall if Detective Lay mentioned the defendant's alleged failure to use his turn signal. On cross-examination, the defendant stated that he believed he used his turn signal before changing lanes, but was not certain that he did so.

¶ 7 During the State's case in chief, Detective Jeff Jensen testified that he was with

Detective Lay in Detective Lay's police vehicle when the traffic stop was initiated. Detective Jensen testified unequivocally that he "[w]atched the defendant's vehicle move from the right lane to the left without using his turn signal," and that it was that behavior on the part of the defendant that led to the stop.

¶ 8 On November 22, 2011, the trial judge issued a written order in which he found "no fault with the procedure used to have a police dog sniff the vehicle or to the time it took." He also found, however, "the probable cause the officer stated on the ticket written and on the police report supporting that ticket is not sufficient for probable cause to stop." Accordingly, the trial judge concluded that the cartridge found in the defendant's vehicle must be excluded as evidence. The State then filed a notice of appeal and a certificate of impairment, and this timely appeal followed. The defendant does not challenge the propriety of the trial judge's finding that the traffic stop was not unnecessarily prolonged by the police dog sniff. Accordingly, we summarily affirm that finding on the part of the trial judge.

¶ 9 ANALYSIS

¶ 10 We begin by noting our standard of review. With regard to a trial judge's ruling on a motion to suppress evidence, courts of review accord "great deference" to factual findings of the trial judge and will reverse such findings "only if they are against the manifest weight of the evidence." *People v. Gipson*, 203 Ill. 2d 298, 303 (2003). "However, we review *de novo* the ultimate legal question of whether suppression is warranted." *Id.* at 304.

¶ 11 On appeal, the State contends that in the case at bar, suppression was not warranted because the stop of the defendant was properly based upon the observation by Detectives Lay and Jensen of a traffic violation committed by the defendant. We agree. When a police officer observes a motorist turn or change lanes without first using a turn signal to show the intent to turn or change lanes, that observation provides probable cause for the officer to initiate a traffic stop of the motorist. *People v. Shepherd*, 242 Ill. App. 3d 24, 29 (1993). As

long as specific, articulable facts regarding the violation support the stop, it is irrelevant whether the officer "held some other furtive or pretextual reason for the stop." *Id.* at 30. In the case at bar, Detective Lay and Detective Jensen each testified that they observed the defendant change lanes without signaling. The defendant could not testify with certainty as to whether he signaled before changing lanes. Accordingly, to the extent the trial judge believed that no probable cause existed, as a matter of law, for the initial stop of the defendant, he was incorrect.

¶ 12 Although the defendant makes much of the fact that, as he puts it, "there is simply no evidence that [he] committed the offense of improper lane usage," he misses the point. As *Shepherd* instructs, if an officer observes a traffic violation, there is probable cause to initiate a traffic stop. We do not believe it matters whether the officer mistakenly thinks that changing lanes without signaling constitutes the offense of improper lane usage; the undeniable fact remains that changing lanes without signaling is a traffic violation, whether deemed "no turn signal" or "improper lane usage." A traffic violation was observed by the officers; as a result, probable cause existed to stop the defendant. If the defendant were challenging on appeal whether he could be convicted of the offense of improper lane usage when he merely failed to signal before turning, there might be some merit to his argument; however, his argument is irrelevant to the question of whether probable cause existed to initiate the traffic stop.

¶ 13 In the alternative, the defendant contends that because we generally presume that a trial judge knows and correctly applies the law, the trial judge's ruling in this case must not have been based upon a mistake of law regarding what must be observed by a police officer for probable cause to initiate a traffic stop to exist. Instead, the defendant argues the trial judge's ruling must have been based upon an implied finding of fact by the judge that the testimony of the defendant that he believed, but was not certain, that he used his turn signal

was more credible than the testimony of the two officers that they observed the defendant change lanes without signaling. The defendant contends such a finding of fact would not be against the manifest weight of the evidence, and that therefore we should defer to it. We do not agree. This court has held that if a trial judge finds a witness to lack credibility to the extent that the trial judge is going to entirely disregard that witness's testimony, "this must somehow be reflected in the record." *People v. Roos*, 181 Ill. App. 3d 682, 685 (1989). That is because we " 'will not presume that there were aspects of such a witness's testimony and demeanor not apparent from the cold type of the record which justified the trial court in entirely disregarding the testimony.' " *Id.* (quoting *People v. Gunsaulus*, 72 Ill. App. 3d 440, 443 (1979)). Where, as in the case at bar, "there is absolutely no indication of any kind that the circuit court found any lack of credibility on the part of" the witness in question, we will find a circuit court's decision to completely disregard the testimony to be error and will reverse it. *Id.* at 686.

¶ 14 The defendant attempts to distinguish *Roos* by claiming that although there were no credibility issues with the officer who testified in that case, "there is ample evidence at the case at bar which would call into question the credibility of Detectives Lay and Jensen." The "ample evidence" cited by the defendant, however, amounts only to evidence that Detective Lay mistakenly believed that the defendant's failure to use his turn signal constituted the offense of improper lane usage; there is no evidence to contradict the sworn testimony of both Lay and Jensen that they observed the defendant change lanes without signaling. Thus, if it is true, as the defendant contends, that the trial judge disregarded the uncontradicted testimony of these two witnesses in favor of the equivocal testimony of the defendant, his decision was against the manifest weight of the evidence and must be reversed.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, the trial court erred when granting the defendant's motion

to suppress evidence. Accordingly, we affirm the portion of the trial court's order that found the dog sniff did not unnecessarily prolong the traffic stop, but reverse the trial court's ruling that no probable cause existed to stop the defendant and that therefore the subsequently found evidence must be excluded. We remand for further criminal proceedings against the defendant.

¶ 17 Affirmed in part and reversed in part; cause remanded for further proceedings.