

NOTICE
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2014 IL App (4th) 120975-U
NO. 4-12-0975

FILED
July 16, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
KEGAN C. DEPATIS,)	No. 11CF236
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Appleton and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Because defendant's vehicle crossed the fog line and the record establishes the police officer's actions did not reasonably cause defendant's crossing, the officer had a reasonable, articulable suspicion defendant committed the offense of improper lane usage, justifying the stop of defendant's vehicle.

(2) The record does not establish the officers had probable cause to search defendant's vehicle. While one officer was "pretty sure" he saw "shake" on defendant's gearshift, the other officer failed to confirm that observation, despite repeatedly looking into the vehicle's windows. In addition, the other officer did not believe he had a basis to search the defendant.

(3) The record is sufficient to support defendant's conviction for improper lane usage.

¶ 2 In September 2012, defendant, Kegan C. Depatis, was convicted of improper lane usage (625 ILCS 5/11-709(a) (West 2010)), unlawful possession of a controlled substance (psilocybin) (720 ILCS 570/402(c) (West 2010)), unlawful possession of drug paraphernalia

(720 ILCS 600/3.5(a) (West 2010)), and unlawful possession of cannabis (more than 2.5 grams, but not more than 10 grams) (720 ILCS 550/4(b) (West 2010)). Defendant appeals, arguing (1) the arresting police officer, due to his aggressive driving, lacked a reasonable, articulable suspicion to stop defendant's vehicle; (2) the arresting officer lacked probable cause to search defendant's vehicle; and (3) the State failed to prove him guilty of improper lane usage beyond a reasonable doubt. We affirm in part and reverse in part.

¶ 3

I. BACKGROUND

¶ 4 In August 2011, Jason Graves, a patrol officer with the Fairbury police department, stopped defendant's car for crossing the fog line on a two-lane road. During the traffic stop, Officer Graves searched defendant's vehicle without defendant's consent. As a result of the search, defendant was charged with unlawful possession of a controlled substance (psilocybin) (720 ILCS 570/402(c) (West 2010)), unlawful possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2010)), and unlawful possession of cannabis (720 ILCS 550/4(b) (West 2010)). Defendant was also charged with improper lane usage (625 ILCS 5/11-709(a) (West 2010)).

¶ 5 In October 2011, defendant filed a motion to quash arrest and suppress evidence. Defendant alleged the traffic stop was unlawful, Officer Graves lacked probable cause for the search and arrest, and the evidence found should be suppressed.

¶ 6 At the January 2012 hearing on defendant's motion, the trial court indicated it viewed the video recording of the traffic stop. The video begins as Officer Graves turns left from eastbound Route 24 onto another road and does a U-turn, resulting in his facing Route 24, a two-lane road. Defendant's white vehicle passes the squad car 14 seconds into the video. At 24

seconds, a minivan crosses the intersection, heading west in the same lane behind defendant. The squad car pulls onto westbound Route 24. At 1:10 on the video, the squad car enters the eastbound lane to pass the minivan. It then approaches defendant's vehicle. During this time, defendant's vehicle is riding near the fog line. At 1:38, the squad car slows to a position behind defendant's vehicle. Both vehicles continue moving. Around 1:40, it appears defendant's vehicle touches the fog line. At 2:02, the squad car's lights are activated. Shortly thereafter, defendant pulls into a parking lot.

¶ 7 At approximately 2:58 in the video, Officer Graves exits his squad car and arrives at defendant's window. Officer Graves states, "Afternoon, Officer Graves here. Look[,] the reason I stopped is you were driving over the fog line back there a few times. Is there a reason for that or ... ?" Defendant replies, "No." Officer Graves asks defendant for his driver's license, insurance, and registration. As defendant retrieves his documents from the glove box, Officer Graves bends down and looks more closely into defendant's driver's side window. At 4:15, Officer Graves returns to his squad car.

¶ 8 At approximately 6:33, Officer Henkel arrives and exits his vehicle parked in an adjacent lot. At 7:25, Officer Henkel approaches the passenger side window of defendant's vehicle and asks through the window, "What's going on, Kegan?" Defendant states he was heading to Bloomington from Donovan, which is "near the Indiana border." Officer Henkel tells defendant, "We're just out here both working 24 trying to get dope off the highway ***." After some conversation, Officer Henkel asks defendant if he may perform a quick search of the car. Defendant replies he cannot. Officer Henkel then looks in the rear passenger window. At 8:42, Officer Henkel asks defendant to step out of the car. Defendant steps out of his vehicle and

stands near the rear of it.

¶ 9 At 8:58 on the video, Officer Henkel returns to Officer Graves's squad car. Officer Henkel states something indecipherable to Officer Graves. Officer Graves states, "Dude, I think there ... didn't it look like shake on there?" Officer Henkel responds he needs "a closer look." Officer Graves states, "I was, I was pretty sure I saw shake, so. I don't know. Like right by the shifter, looks like a little piece of weed."

¶ 10 At the 9:31 mark, Officer Henkel returns to defendant's vehicle, removes his sunglasses, and begins looking through the driver's side window. He continues looking into the vehicle until the 9:50 mark and then approaches defendant. Officer Henkel asks defendant to remove his sunglasses and look up. Officer Henkel looks into defendant's eyes. Officer Henkel returns to Officer Graves's car. At 10:49, Officer Graves asks Officer Henkel, "Didn't it look like there was weed on there?" Officer Henkel's response is muffled and indecipherable. Officer Graves says, "Huh? You didn't think so?" Officer Henkel begins, "Maybe I missed ***." The rest of the sentence is not heard. Officer Graves states to Officer Henkel, "Ask him the last time he had weed in there?"

¶ 11 At 11:30 in the video, Officer Graves and Officer Henkel approach defendant. Officer Graves asks defendant, "Do you smoke weed?" Defendant responds, "No." Officer Graves states, "Why is it possible I can see weed on your shifter gear?" Defendant states, "I don't think you can." A short conversation occurs. Officer Graves then asks defendant to remove his sunglasses and look into the sky. Defendant complies and Officer Graves looks into defendant's eyes. Officer Graves tells defendant he will search the vehicle. Defendant asks the officer if he can take a look. Officer Graves says he can. Defendant, looking into the front

driver's side window, asks, "Where do you see cannabis?" Officer Graves points into the vehicle and tells defendant, "That looks like shake to me, around your steering [indecipherable.]"

Defendant moves to the front of his vehicle. Officer Henkel asks Officer Graves, "What are you looking at, Randy?" Officer Henkel then leans into the vehicle through the open driver's side door. Officer Graves says, "See that?" and some other muffled words. Officer Henkel responds, "Yeah." Then, Graves says, "That looks like shake to me?" A short, one-syllable, muffled response by Officer Henkel is heard. Officer Henkel backs away from the car, leaving Officer Graves to search the vehicle.

¶ 12 At approximately 13:39 in the video, while Officer Graves is searching inside the vehicle and Officer Henkel is standing next to the vehicle, a short conversation about searching defendant for drugs occurs:

[Officer Graves]: You might want to search [defendant].

[Officer Henkel]: Didn't you already pat him down?

[Officer Graves]: Huh?

[Officer Henkel]: Pat him down? For a weapon?

[Officer Graves]: If you see dope in plain view, search him.

[Officer Henkel]: Want to search him, search him.

[Officer Graves]: Search him or pat him down.

[Officer Henkel]: I don't care. Whatever you want to do.

[Officer Graves]: [Indecipherable] Decide. What do you want?

[Officer Henkel]: Just pat him down. We have no reason to search him."

¶ 13 Also at the hearing, both Officer Graves and defendant testified. According to

Officer Graves, on August 9, 2011, he was patrolling U.S. Route 24 in a marked car near the Fairbury city limits. When he first spotted defendant's vehicle, Officer Graves was stationary, waiting for traffic to pass. Defendant's vehicle drove past Officer Graves, heading west on Route 24. At that time, defendant was not violating a traffic law. Officer Graves pulled onto Route 24. Officer Graves testified he believed he was directly behind defendant's vehicle. He could see defendant's white vehicle. Officer Graves did not recall passing a vehicle to get behind defendant.

¶ 14 Officer Graves testified he stopped defendant's vehicle because it drove over the fog line once. When Officer Graves initiated the stop, defendant pulled his vehicle into the parking lot of a veterinary clinic. Officer Graves did not recall activating his emergency lights before he entered the westbound lane of Route 24. Defendant's vehicle did not weave or cross the fog line repeatedly.

¶ 15 According to Officer Graves, he stopped the vehicle and defendant was the only person inside. The entire stop was videotaped. At some point, Officer Henkel assisted. The two searched the vehicle. Defendant did not consent to the search. The officers found a Baggie containing green, plantlike material. The officers also found psilocybin.

¶ 16 Officer Graves stated he pulled over defendant's vehicle for improper lane usage. After the stop, based on his observations of defendant, Officer Graves believed defendant was under the influence of alcohol or a controlled substance. Defendant had glassy, bloodshot eyes.

¶ 17 On cross-examination, Officer Graves testified defendant drove on top of the fog line. The vehicle did not go onto the shoulder of the road. Officer Graves did not observe any obstructions in the road that would cause a vehicle to travel on the fog line.

¶ 18 Officer Graves stated, once his lights were activated, the video camera saved the information starting two minutes before. Officer Henkel told Officer Graves he, too, observed bloodshot, glassy eyes.

¶ 19 Defendant testified he was heading west on Route 24 when he saw a police car make a U-turn from eastbound Route 24 to westbound Route 24. Defendant believed there was one vehicle between him and the squad car. He then saw the squad car a second time after it passed the vehicle that was between them. The police car was going at an above-average speed—"fast enough that [defendant] scooted to the side of the road thinking that he was trying, he was doing something." Defendant moved over to give the police car room to get around him. The police car did not have its emergency lights on. After the police car's lights were activated, defendant pulled into a parking lot. During the stop, defendant had a conversation with Officer Henkel, who informed defendant they were "[m]aking routine stops to get dope off the roads."

¶ 20 On cross-examination, defendant testified he drove "[a]t least on" the fog line.

¶ 21 The trial court denied defendant's motion to suppress. The court found a reasonable, articulable suspicion to allow the stop as defendant passed onto the fog line enough to allow the officer to inquire further. The court found probable cause to search defendant's vehicle because "the police officers both thought that they saw shake in the car."

¶ 22 A stipulated bench trial was held in September 2012. The evidence included the video of defendant's stop and arrest. The parties stipulated Officer Graves would testify he observed the right front and back passenger tires cross the white fog line and he, during the stop, noticed a green, plantlike material he believed to be cannabis "shake" near the center console area of defendant's vehicle. According to the stipulation, "[i]n the center console again the green

plant material cannabis was found." A clear plastic bag that smelled of raw cannabis and cannabis were found under the driver's seat. Cannabis stems were found in the center dash. Several mushrooms, or psilocybin, were found in a brown paper bag inside a backpack in the car. A glass pipe was also found.

¶ 23 The trial court found defendant guilty beyond a reasonable doubt for unlawful possession of psilocybin, unlawful possession of drug paraphernalia, unlawful possession of cannabis, and improper lane usage.

¶ 24 In October 2012, the trial court sentenced defendant to 30 months' probation and 180 days in jail, with credit for 2 days served and the balance held in abeyance.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 A. Motion To Suppress Standard of Review

¶ 28 When reviewing a ruling on a motion to suppress, appellate courts are confronted with mixed questions of law and fact. *People v. Lee*, 214 Ill. 2d 476, 483, 828 N.E.2d 237, 244 (2005). When addressing questions of fact, courts of review will not disturb a trial court's findings unless they are against the manifest weight of the evidence. *Id.* Trial courts are entitled to such deference on this matter as they sit in a superior position for observing witness demeanor, determining and weighing witness credibility, and resolving conflicts in testimony. *People v. Gherna*, 203 Ill. 2d 165, 175, 784 N.E.2d 799, 805 (2003) (quoting *People v. Gonzalez*, 184 Ill. 2d 402, 412, 704 N.E.2d 375, 380 (1998)). If a court of review accepts the factual findings of a trial court, it must then review *de novo* whether suppression of the evidence is warranted under those facts. *Id.* Courts of review are thus free to assess the facts in relation to

the presented issues and draw their own conclusions when determining the appropriate relief.
Lee, 214 Ill. 2d at 484, 8282 N.E.2d at 244.

¶ 29 B. Reasonable, Articulate Suspicion for the Traffic Stop

¶ 30 Defendant argues his motion to suppress should have been granted because Officer Graves lacked a reasonable, articulable suspicion to perform the traffic stop. Defendant contends Officer Graves's aggressive driving, by passing a vehicle and approaching him at a high rate of speed, led defendant to believe Officer Graves needed to pass him. Defendant thus moved to the right, to provide Officer Graves additional room to pass, and touched the fog line. Because of Officer Graves's conduct, according to defendant, he lacked a reasonable, articulable suspicion to initiate the traffic stop. In support, defendant relies on *People v. Hackett*, 2012 IL 111781, 971 N.E.2d 1058; *People v. Leyendecker*, 337 Ill. App. 3d 678, 787 N.E.2d 358 (2003); and *People v. Phillips*, 328 Ill. App. 3d 999, 767 N.E.2d 842 (2002).

¶ 31 A motion to suppress should be granted when a traffic stop is deemed illegal. See, e.g., *Leyendecker*, 337 Ill. App. 3d at 683-84, 787 N.E.2d at 362. A traffic stop is proper when a police "officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." *Hackett*, 2012 IL 111781, ¶ 20, 971 N.E.2d 1058. This standard requires "more than an inarticulate hunch," but less than "probable cause." *People v. Close*, 238 Ill. 2d 497, 505, 939 N.E.2d 463, 467 (2010).

¶ 32 In this case, Officer Graves initiated the traffic stop based on defendant's alleged violation of section 11-709(a) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-709(a) (West 2010)). Section 11-709(a) mandates the following: "A vehicle shall be driven as nearly as practicable entirely within a single lane." *Id.* A motorist violates this section by not driving "as

nearly as practicable entirely within one lane." *People v. Smith*, 172 Ill. 2d 289, 297, 665 N.E.2d 1215, 1218 (1996).

¶ 33 Officer Graves informed defendant he was stopped for crossing the fog line. After observing the testimony at the hearing and the video, the trial court found Officer Graves's testimony credible. The record does not establish this factual finding is manifestly erroneous. We therefore accept it.

¶ 34 Defendant, however, contends the investigatory stop is improper under *Hackett*. Defendant points to *Hackett's* mandate an investigatory stop for a violation of section 11-709(a) is proper when there is "no obvious reason" for the lane deviation. In *Hackett*, the two relevant sentences are as follows: "Where, as here, a police officer observes multiple lane deviations, for no obvious reason, an investigatory stop is proper. For probable cause and conviction, there must be something more: *affirmative* testimony that defendant deviated from his proper lane of travel *and* that no road conditions necessitated the movement." (Emphasis in original.) *Hackett*, 2012 IL 111781, ¶ 28, 971 N.E.2d 1058. Defendant contends Officer Graves's driving was an "obvious reason" for the lane deviation and, thus, he lacked a reasonable articulable suspicion defendant violated section 11-709(a).

¶ 35 Defendant then relies on *Leyendecker* as an example of when an "obvious reason" for a lane deviation negates the reasonable, articulable suspicion section 11-709(a) was violated. In *Leyendecker*, an officer initiated a traffic stop for violation of section 11-709(a) after the defendant momentarily crossed a "fog line as she maneuvered her vehicle through a left-hand curve on a hilly road with poor visibility." *Leyendecker*, 337 Ill. App. 3d at 683, 787 N.E.2d at 362. The testimony in *Leyendecker* also established the speed limit in this area was 65 miles per

hour and the officer followed defendant for approximately two miles and observed no other incidents of improper driving. *Id.* at 682, 787 N.E.2d at 361. The Second District concluded the "momentary one-foot crossing of the fog line" in such circumstances "would not cause a reasonable person to suspect that defendant" failed to drive as nearly as practicable within her lane. *Id.* at 683, 787 N.E.2d at 362.

¶ 36 Defendant next relies on *Phillips* as an example of an officer's conduct causing a traffic violation and, as a result, negating the reasonable-and-articulable-suspicion requirement. In *Phillips*, the state trooper initiated a traffic stop, believing the defendant followed another vehicle more closely than reasonable and prudent, in violation of section 11-710(a) of the Code (625 ILCS 5/11-710(a) (West 2000)). *Phillips*, 328 Ill. App. 3d at 1002, 767 N.E.2d at 844. At the hearing on the motion to suppress, the testimony established the trooper was stationary between eastbound and westbound lanes on Interstate 88 when a semi and then the defendant's vehicle passed. The trooper observed the defendant's vehicle had a faded "registration applied for" sticker and wanted to investigate. *Id.* at 1001, 767 N.E.2d at 843. The trooper entered the left of the two eastbound lanes and accelerated to better examine the sticker. At that point, defendant was in the left lane, as he was passing a truck. When the defendant saw the trooper's vehicle rapidly approaching, the defendant, who was beginning to catch up to a second truck, moved into the right lane between the two trucks to allow the trooper to pass. *Id.* The trooper then pulled up in the left lane to get a closer view of the defendant's sticker; at this point, the trooper acknowledged, it would have been unsafe for the defendant to enter the left lane. *Id.* at 1001-02, 767 N.E.2d at 843-44. The defendant's vehicle, according to the trooper, was within two car lengths behind the truck, a distance the trooper believed unsafe given the speed of the

vehicles. *Id.* at 1002, 767 N.E.2d at 844. According to the defendant, the truck ahead of him slowed as the trooper approached. The defendant also slowed and the trooper moved between the defendant's vehicle and the rear truck. The defendant, at this point, turned on his left signal and began to move into the left lane. The trooper initiated the traffic stop, believing the defendant should have slowed to avoid following the truck too closely. *Id.*

¶ 37 The trial court in *Phillips* granted the motion to suppress. The court concluded the maneuver of the trooper caused the defendant's conduct. The court found no violation would have occurred "except for the actions of the trooper," who "effectively trapp[ed] the defendant in the right lane." *Id.* at 1003-04, 767 N.E.2d at 845. The *Phillips* court affirmed. The court found, "[u]nder the facts of this case, it was not against the manifest weight of the evidence for the judge to have concluded that any noncompliance with the traffic laws resulted from the actions of the officer." *Id.* at 1005, 767 N.E.2d at 846.

¶ 38 We find Officer Graves had a reasonable, articulable suspicion that justified his stop of defendant. The record does not reveal an "obvious reason" for the lane deviation, such as in *Leyendecker*. When Officer Graves passed the minivan and approached defendant, it took him approximately 20 seconds to position himself behind defendant. Officer Graves did not "tailgate" defendant. Officer Graves did not signal as needing to pass on the left. His emergency lights were not activated. Defendant, who had been driving close to the fog line on a straight length of road during the time he was recorded, briefly touched the line and did not go further onto the shoulder. Such driving is not indicative of giving another driver room to pass. Instead, it is sufficient to create a reasonable, articulable suspicion defendant did not drive "as nearly as practicable entirely within a single lane." 625 ILCS 5/11-709(a) (West 2010).

¶ 39 *Phillips* is distinguishable. In *Phillips*, the officer pinned the driver between two trucks and the squad car, with no place to go when the forward truck slowed. See *Phillips*, 328 Ill. App. 3d at 1003-04, 767 N.E.2d at 845. This is not a similar situation. Given the circumstances, Officer Graves's driving did not force defendant to drive over the fog line.

¶ 40 Defendant, in support of his argument Officer Graves lacked a reasonable, articulable suspicion for the stop, admitted he touched or crossed the fog line but did so in order to give Officer Graves room to pass. The State notes Officer Graves, when he first spoke to defendant, asked defendant if he had any reason for crossing the fog line. Defendant replied he did not. The relevant test is whether an officer has a reasonable, articulable suspicion based on the circumstances leading to the traffic stop, and not whether the driver had a subjective belief negating that suspicion.

¶ 41 C. Probable Cause To Search Defendant's Vehicle

¶ 42 Defendant next argues the officers lacked probable cause to search his vehicle and his motion to suppress should have been granted. Defendant contends the credibility of Officer Graves was called into question because the video reveals Officer Henkel questioned the existence of cannabis "shake," and Officer Henkel did not testify at the suppression hearing. Defendant disputes the trial court's conclusion both officers observed "shake" in defendant's vehicle.

¶ 43 The fact that a traffic stop is initiated does not, by itself, justify a general search of the stopped vehicle. *People v. Smith*, 315 Ill. App. 3d 772, 776, 734 N.E.2d 1039, 1042 (2000). During a traffic stop, if the officer sees items in plain view that would lead a reasonable person to believe the car contained contraband, probable cause would exist to search the rest of the car.

Id. Probable cause means the evidence must be sufficient to justify the reasonable belief the defendant committed or is committing a crime. *People v. Jones*, 215 Ill. 2d 261, 277, 830 N.E.2d 541, 553 (2005). Probable cause, however, does not require the law-enforcement officer to know certain items are contraband or evidence of a crime. *Id.* It does not require proof the belief is correct or more likely true than false. *Id.* (quoting *Texas v. Brown*, 460 U.S. 730, 741-42 (1983)).

¶ 44 On a motion to suppress based upon an alleged illegal search, the defendant bears the burden of proof. *People v. Lampitok*, 207 Ill. 2d 231, 239, 798 N.E.2d 91, 98 (2003). Once the defendant makes a *prima facie* showing the evidence was obtained as a result of an illegal search, the burden shifts to the State to counter the defendant's case. *People v. Gipson*, 203 Ill. 2d 298, 306-07, 786 N.E.2d 540, 545 (2003).

¶ 45 In this case, although "shake" is referred to throughout the video, neither the State nor defendant defines the term. Recently the Seventh Circuit noted " 'Shake' refers to the loose leaves, seeds, and stems at the bottom of a bag of marijuana." *Huff v. Reichert*, 744 F.3d 999, 1003 (7th Cir. 2014). Courts have also referred to "shake" as "marijuana residue" (*People v. Zadrán*, 314 P.3d 830, 832 (Colo. 2013)), "small pieces of marijuana" (*Piercy v. Commonwealth*, 303 S.W.3d 492, 494 n.1 (Ky. App. 2010)), and "discarded portions of harvested marijuana plants" (*United States v. Jiminez*, 564 F.3d 1280, 1283 (Fla. 2009)). Officer Graves, when seeking Officer Henkel's confirmation of what he observed, stated he was "pretty sure" he saw "shake" and described it as looking "like a little piece of weed."

¶ 46 We find defendant satisfied his burden of proof. Throughout this case, the State maintained the officers had probable cause to search defendant's vehicle based on the presence of

"shake" in the vehicle, which was seen by both officers. Officer Graves, however, described the "shake" as "a little piece of weed." This "little piece of weed" was so small Officer Henkel could not see it (1) when he first spoke to defendant through the front passenger side window, and (2) upon being told by Officer Graves to look near the gear shifter and, after removing his sunglasses, he looked closely through the driver's side window for almost 20 seconds. Notably, while Officer Graves searched for the "little piece of weed" from the driver's side, defendant was out of the vehicle. It is also clear from the conversation occurring between the officers beginning at 10:49 in the video, after Officer Henkel's two attempts to spot the "shake," Officer Henkel could not see what Officer Graves was describing. Officer Graves continued to seek confirmation, but Officer Henkel did not provide it.

¶ 47 We disagree with the State the video shows Officer Henkel confirmed he saw the "shake" at any point in the video. Once the search began, Officer Henkel asked Officer Graves to show him what he was looking at. At this point in time, Officer Graves was inside the vehicle, sitting with his back to the steering wheel. Officer Henkel leaned into the vehicle, over the driver's seat. After Officer Graves sought confirmation, a muffled, one-syllable response from Officer Henkel can be heard. The State asserts Officer Henkel said, "yeah." We find there was no basis for the trial court to find Officer Henkel affirmed Officer Graves's observation. Officer Henkel did not testify, and the record shows he did not agree with his fellow officer.

¶ 48 Officer Henkel did not agree he saw "shake." Consider the conversation between the officers starting at 13:39 in the video. Officer Graves told Officer Henkel if dope was found, defendant could be searched. Officer Henkel, who by this point in time had been in the vehicle and had an up-close view of what Officer Graves was looking at, stated, "We have no reason to

search him."

¶ 49 The State argues Officer Graves's belief is sufficient to justify the search. While Officer Graves's belief alone may have been enough, it cannot be considered in a vacuum. The State did not ask Officer Graves to testify about what he saw or why he believed a "little piece" of plant—so small the other officer could not see it—was marijuana. The State did not call Officer Henkel to confirm Officer Graves's observation or explain his conduct on the digital video disc (DVD). We are left with what the DVD shows: Officer Graves was "pretty sure" he saw a "little piece of weed"; Officer Henkel did not confirm Officer Graves's sighting and effectively rejected it. Officer Henkel believed, after having been in the vehicle, a search of defendant was unwarranted. Defendant met his burden of proving a *prima facie* case the search was illegal, and the State failed to provide evidence to counter it. The trial court's finding that both officers observed "shake" is against the manifest weight of the evidence.

¶ 50 We note defendant, in his brief, calls into question Officer Graves's credibility. We are not questioning Officer Graves's credibility. Instead, we conclude the totality of the evidence is not sufficient to demonstrate probable cause. The weight of the evidence does not establish both officers observed "shake" or cannabis, yet the trial court based its finding of probable cause on that assumption.

¶ 51 D. Sufficiency of the Evidence To Sustain Improper Lane Usage Conviction

¶ 52 Defendant next argues the evidence is insufficient to support his conviction for improper lane usage. Defendant maintains the State failed to prove beyond a reasonable doubt he did not drive "as nearly as practicable entirely within a single lane" (625 ILCS 5/11-709(a) (West 2010)). Defendant argues he moved from his lane to allow Officer Graves to pass and

thus he drove within his lane "as nearly as practicable."

¶ 53 When a defendant raises an insufficient-evidence argument, the court of review views the evidence in the light most favorable to the prosecution to determine whether any rational fact finder could have found the essential elements of the offense beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007). We will not reverse a conviction on grounds of insufficient evidence absent a showing the proof is so improbable or unsatisfactory a reasonable doubt of defendant's guilt exists. *People v. Magette*, 195 Ill. 2d 336, 353, 747 N.E.2d 339, 349 (2001). In this case, a driver is guilty of improper lane usage if his or her vehicle is not "driven as nearly as practicable entirely within a single lane." 625 ILCS 5/11-709(a) (West 2010).

¶ 54 As we found above, Officer Graves's driving did not cause defendant to cross the fog line. We need not restate those facts. The video shows Officer Graves, upon stopping defendant, asked him if he had any reason for crossing the fog line. Defendant responded he did not. We affirm defendant's conviction for improper lane usage.

¶ 55 III. CONCLUSION

¶ 56 We affirm defendant's conviction and sentence for improper lane usage. We reverse the trial court's ruling denying defendant's motion to suppress. In doing so, we note this court has explained the error in denominating such motions as a "motion to quash arrest." These motions are properly titled "motion to suppress evidence." *People v. Ramirez*, 2013 IL App (4th) 121153, ¶¶ 53-68, 996 N.E.2d 1227; *People v. Hansen*, 2012 IL App (4th) 110603, ¶¶ 62-63, 968 N.E.2d 164.

¶ 57 Because the State cannot prevail on remand without the evidence that should have

been suppressed, we reverse the convictions and sentences for unlawful possession of a controlled substance (psilocybin), unlawful possession of drug paraphernalia, and unlawful possession of cannabis (more than 2.5 grams, but not more than 10 grams). As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 58 Affirmed in part and reversed in part.