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2018 IL App (3d) 170065

Order filed November 27, 2017  
Supplemental Order filed March 28, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellant,	)	
v.	)	Appeal Nos. 3-17-0065 and 3-17-0067 Circuit Nos. 16-CF-895 and 16-CF-896
FERNANDO M. RAMIREZ and ANTONIO A. VEGA,	)	
Defendants-Appellees.	)	Honorable Carmen Goodman, Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The cause is remanded with direction for the circuit court to clarify its finding as to whether the officer who initiated the stop testified credibly regarding the missing license plate justification for the stop.
- ¶ 2 The State appeals from the circuit court's order granting the motions to quash arrest and suppress evidence of defendants, Fernando M. Ramirez and Antonia A. Vega. The State argues that the court's ruling was erroneous. We remand with directions.



Talbot did not provide Vega's date of birth. The warrant was not admitted into evidence, and Talbot did not testify at the hearing.

¶ 7 Kurtzweil responded to Talbot's location. There, Talbot pointed out the suspect vehicle, a tan-colored Honda Civic. Kurtzweil saw four people in the vehicle that was in the drive-thru. Kurtzweil also noticed that the Honda did not have a front license plate. Kurtzweil followed the Honda as it pulled onto the roadway. The Honda stopped at a red light. When the light turned green, the Honda proceeded west through the intersection. After the intersection, the westbound lanes became Remington Boulevard and switched from a two-lane roadway to a four-lane divided roadway. Kurtzweil observed the Honda drive down the middle of the two westbound lanes of Remington Boulevard and he initiated the stop. The Honda stopped in the left lane.

¶ 8 Kurtzweil testified that he stopped the Honda for "Code violations." In his police report, Kurtzweil said "I activated my emergency lights and conducted a suspicious vehicle stop on the Honda in the area of Remington Boulevard and Bolingview Lane<sup>1</sup>[" Kurtzweil's report did not mention any Code violations, and Kurtzweil did not issue any traffic citations. Kurtzweil explained that, per Bolingbrook police department protocol, classifying the stop as a "suspicious vehicle" alerted dispatch to send additional officers to the scene. Without the "suspicious vehicle" indicator, Kurtzweil and Talbot would have been the only officers at the scene. Kurtzweil explained that a third officer was needed because there were four people in the Honda and one of the occupants was the subject of an arrest warrant. Kurtzweil clarified that he stopped the Honda because it was missing a front license plate and had committed a "lane violation." The lane violation allegedly occurred when the Honda drove from Commons Drive, a two-lane road,

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<sup>1</sup>This is the only reference to "Bolingview Lane" in the report of proceedings. Throughout the rest of the report of proceedings this roadway is called Bolingbrook Drive.

through the intersection of Bolingbrook Drive and Commons Drive, and onto the middle of the westbound lanes of Remington Boulevard.

¶ 9 When Kurtzweil stopped the Honda, Sergeant Talbot and Officer Gieser were also at the scene. Kurtzweil observed two males sitting in the front seats, one male in the rear passenger-side seat, and a female in the rear driver-side seat. The driver identified himself as Alexis Rosas. Rosas said that the Honda belonged to his uncle. Rosas explained that he and the prior driver had switched seats in the Wendy's drive-thru because the prior driver did not have a valid driver's license. Rosas's license was valid and he was not the subject of an arrest warrant.

¶ 10 While speaking with Rosas, Kurtzweil noticed a piece of rebar in the backseat.<sup>2</sup> Kurtzweil did not know whether the rebar was a weapon, but he notified Gieser of its location. Gieser ordered the male passenger in the backseat to keep his hands visible. None of the occupants attempted to pick up the rebar during the stop.

¶ 11 Kurtzweil directed Rosas to exit the Honda so they could speak at the rear of the vehicle. Kurtzweil explained that he separated the vehicle occupants so that they would speak honestly and not be influenced by their companions. At the rear of the Honda, Rosas "began manipulating his pockets." Kurtzweil ordered Rosas to place his hands on the trunk, and Rosas complied. Kurtzweil thought that Rosas appeared slightly intoxicated, but he did not ask Rosas to submit to sobriety testing. While at the rear of the Honda, Rosas gave Kurtzweil consent to search the vehicle stating "we're clean." Kurtzweil conducted a pat-down of Rosas for weapons. Each of the three passengers was patted down as they exited the Honda. Kurtzweil explained that the officers checked each passenger for weapons because they were going to be sitting behind the

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<sup>2</sup>Rebar is a construction material used to reinforce concrete or masonry structures. See generally *Wikipedia*: Rebar. <https://en.wikipedia.org/wiki/Rebar>. Rebar is often in made from steel shaped into the form of a rod. *Id.* Pieces of rebar vary in length and diameter. *Id.*

officers during the search. Kurtzweil noted that “you never know if someone might have a firearm in a holster on their ankle, and that would be legal with concealed carry, but that is information that I would like to know for my safety, and that’s something that I would find out during a pat down.” No weapons were found on any of the occupants and none of the occupants threatened the officers.

¶ 12 Kurtzweil patted down the individual in the front-passenger seat. While conducting the pat-down, Kurtzweil reached into the passenger’s pocket and removed a piece of paper. Kurtzweil knew the paper was not a weapon, but he removed and read it. Kurtzweil acknowledged that his removal and inspection of the paper exceeded the scope of the pat-down. Kurtzweil also asked the passenger if he had any connection to a gang because of his tattoos. Kurtzweil acknowledged that his question was unrelated to the reason for the stop. The passenger told Kurtzweil that his name was Jonathan Ibarra. Kurtzweil ran the name through the police database. There were no warrants for Ibarra; however, Ibarra had a suspended driver’s license. Based on this information, Kurtzweil placed the passenger under arrest for driving on a suspended driver’s license. After the passenger was transported to the police department, Kurtzweil learned that his name was actually Antonio Vega.

¶ 13 During the vehicle search, the officers located a .22-caliber revolver in an area inside the center console under a false bottom. Officers also found a TEC-9 pistol in the trunk of the Honda between the backseat and a speaker box. The TEC-9 pistol was accessible from the backseat via an access panel that was located behind an armrest. The TEC-9 pistol was located one or two feet away from the rear seat that Ramirez had occupied.

¶ 14 Following the discovery of the firearms, the officers transported each of the four occupants to the police department for further questioning. Kurtzweil explained that when

firearms are found in a vehicle, the vehicle occupants are questioned to determine who had knowledge of the weapons, if the weapons were used in Bolingbrook, if the weapons belonged in Bolingbrook, and whether the weapons were legally obtained. Kurtzweil said that while this part of the investigation could have been conducted at the scene, the scene was “not an ideal place to conduct an interview.” Kurtzweil testified that, at the scene, none of the occupants were free to leave, but he acknowledged that he had told the male seated in the rear passenger seat (Ramirez) that he was not under arrest and would be free to leave after he participated in the interview at the police department. After the discovery of the firearms, the occupants were transported from the scene to the police department in four separate police cars. Kurtzweil specifically testified that Ramirez was not handcuffed during the transport, but he was placed in the back of the police car, behind locked doors, and separated from the front seat by a cage. According to Kurtzweil, Ramirez was not under arrest at this time. At the police department, the occupants were placed in separate locked interview rooms. During the police interview, Ramirez made an incriminating statement and was placed under arrest.

¶ 15 During the State’s cross-examination, Kurtzweil said that he stopped the Honda because it was missing a front license plate, had committed a lane usage violation, and the individual who was initially driving in the Wendy’s drive-thru looked like the registered owner of the vehicle who was also the subject of an arrest warrant. Kurtzweil also explained that he did not issue any traffic citations because of the existence of the more serious firearm-related charges.

¶ 16 The defense played the video recording of the stop. The video showed the Honda stopped at a red light. When the light turned green the Honda drove through the intersection. On the other side of the intersection, the Honda momentarily drove with its left tires on the center stripe before its left turn signal activated. However, before the vehicle signaled, when it drove with its

left tires on the line, Kurtzweil activated the lights on his police car. The Honda then moved fully into the left lane and came to a stop.

¶ 17 Kurtzweil approached the driver-side window and two other officers approached the passenger side. Kurtzweil asked the occupants to provide identification. The occupants appear to show the officers their identification cards. Kurtzweil reviewed the driver's identification card and the front-seat passenger's identification card. Kurtzweil asked the driver who the vehicle belonged to. The driver, Rosas, responded that the Honda belonged to his uncle, Vega. Kurtzweil asked where the occupants lived and what brought them to Bolingbrook. One of the occupants said that he lived in Cicero, but the group was staying at a hotel in Bolingbrook. Kurtzweil directed Gieser's attention to a piece of rebar in the backseat. Kurtzweil then appears to relay Rosas's information to the dispatcher along with that of another individual named Jonathon Ibarra. Kurtzweil asked why one of the occupants previously got out of the Honda. One of the occupants, presumably the front-seat passenger who Kurtzweil initially identified as Ibarra, responded that his driver's license was suspended. After speaking with one of the other officers, Kurtzweil directed Rosas to exit the Honda so they could speak at the rear of the vehicle. At the back of the Honda, Rosas pulled up his pants and touched his pockets. Kurtzweil ordered Rosas to put his hands on the trunk lid. Kurtzweil then conducted a pat-down search. During the pat-down, Rosas asked why Kurtzweil stopped him, and the following conversation occurred:

“Rosas: Can I know the reason I got stopped?”

Kurtzweil: Cause you're. Cause you're all over the road. That's why. You can't stay in one lane. Not to mention you guys are acting like you are up to something.

Rosas: Oh no. We're clean. We're not doing anything wrong.

Kurtzweil: And being the stellar driver that you are, you decide when someone puts their lights on behind you to stop dead in the middle of the left hand lane.

Rosas: Yeah. Yeah. I know. Yeah. I know that.

Kurtzweil: I know you know that because that's where we are standing. What are you supposed to do?

Rosas: Pull over.

Kurtzweil: Anything to drink tonight.

Rosas: Nah. I didn't have no (inaudible).

Kurtzweil: Nothing? Nothing to drink?

Rosas: Nah. No drinks.

Kurtzweil: Okay. Nothing the car shouldn't have in there? Okay.

Rosas: No. Nothing.

Kurtzweil: Okay.

Rosas: You can test me anything you want. I'm sober right now.

Kurtzweil: Okay. I can check the car?

Rosas: Yeah. That's what I—

Kurtzweil: Okay. Have a seat over here for me.”

Kurtzweil then directed Gieser to ask the front-seat passenger (Vega) to exit the Honda.

Kurtzweil conducted a pat-down of the front-seat passenger and removed a piece of paper from his pocket. Kurtzweil looked at the paper and asked the passenger if he had been doing a lot of math and if people owed him money. The passenger responded that he was in school. Kurtzweil

finished the pat-down and directed the passenger to sit on the curb of the center median. While the passenger was seated, Kurtzweil asked what gang the passenger belonged to.

¶ 18 Kurtzweil next conducted a pat-down of the male who was seated in the rear passenger seat (Ramirez). During the pat-down, Kurtzweil removed an item from Ramirez's pocket, looked at it, and put it back in his pocket. Kurtzweil directed Ramirez to sit on the curb.

¶ 19 Finally, Kurtzweil directed the female passenger, who was seated behind the driver's seat to exit the vehicle. As the female exited the Honda, she placed a drink carrier that held four drinks on the roof of the vehicle. Kurtzweil patted the female down and directed her to sit on the curb. The officers then searched the vehicle.

¶ 20 Approximately 16 minutes into the recording, Kurtzweil told Talbot that he found a loaded revolver hidden in the center console. At 18 minutes and 30 seconds, Kurtzweil located a second firearm in the trunk behind a speaker box. Kurtzweil then requested two additional units.

¶ 21 Roughly 25 minutes into the recording, Kurtzweil told Ramirez that he was going to be transported to the police department and that he was not under arrest. Kurtzweil told Ramirez that he would be able to leave after the interview.

¶ 22 After the search, Kurtzweil placed the front-seat passenger, who Kurtzweil believed to be Ibarra, under arrest for driving on a suspended driver's license. Kurtzweil also arrested Rosas for unlawful possession of the two firearms. Kurtzweil explained to Rosas that only he and the front-seat passenger were under arrest, and the other two occupants were being transported to the police department.

¶ 23 The court made the following oral ruling, which we quote in its entirety to give context to our analysis and holding.

“You have four individuals going to Wendy’s—and matter of fact, at one point in time—and this is to Mr. Ramirez. At one point in time, they get the female passenger out of the vehicle and she comes with four—what looks like pops, rather big ones. They see them at Wendy’s. I’m very familiar with Remington Road. Extremely familiar with Remington Road. Officer gets a—not a dispatch, but he gets—an officer sometimes, if they want to communicate, that has not been established that that is not appropriate for police officers in Bolingbrook to contact each other by their cell phones. Sounds a little unusual because you know you got four people in the vehicle. Driving while license suspended, even though we’re not here on that charge, but that is part of the basis of the officer’s inquiries or investigation or further investigation, that they think that the person that they are talking to—and I’m still having a hard time without a driver’s license how they would know by the identifiers only that the person’s driving privileges was suspended. They wouldn’t have had enough for anything because they—it’s not suspicious when they get the phone call, the personal phone call. It’s simply too innocent or we’re going to be having too many people in custody, people just switching, swapping. They were not in the middle. They were at Wendy’s in the—in the line to get their food does not in and of itself make that activity suspicious.

Now four young people because we got the ages here: 19, 19, 15—they look young. And maybe they ran the license plate already and knew that the license plate did not come back to anybody in the City of Bolingbrook. I’m not

quite sure what they found. And they are just observing and surveilling late at night, early in the morning—although 11:10 at night is really not all that late.

So they see this vehicle and people swapping, unless—sometimes you have officers who know that a person that they are looking at driver's license is suspended and they swap. See, that is a different story, but that's not here, This is people they don't know, they haven't encountered, and swapping in and of itself, I don't care, in anybody's world, it's just not suspicious. It's an innocent action. Now we can assume—but that is an assumption that I can't take into consideration that when Mr. Vega swapped from the driver's seat to the passenger front seat, that he—he knew that the officer was right there observing him, and that he was seen—he probably was driving on a public highway, but there are a litany of case law, a litany of case law in this—in driving while license suspended to even sustain that charge, that you have to see somebody actually driving on a public highway, but the only time he saw Mr. Vega or Jonathan Ibarra is when he was at the Wendy's getting some food, not on a public highway, so he wouldn't have sustained, so this is why I think the officers continued to follow.

Now they said another reason that gave them suspicion was this not having a front license plate, and if I didn't know that particular Wendy's, I wouldn't say it was a difficult—the way they had to go and position themselves—to see that the license plate—was stopped. At least they can wait until they pulled out of the parking lot and ask a few questions, but they didn't do that. They waited and I know the proximity from where they were stopped and the Wendy's is not that far, but they followed them in a short distance and they don't turn on

their lights, and we know there is a delay. They don't turn on their lights until almost they are ready to stop the vehicle, so they say improper lane usage. Saying improper lane usage does not necessarily make it an improper lane usage, and they indicated how they were in two different lanes and all of that and really kind of described erratic driving.

Well, what I saw was a car move over from the right-hand side to the left-hand side of a road I'm very, very familiar with right there off of 53 with the lights on—I mean, with the—signaling because even when they are out the car, the car is still going on and being—there was a signal, and that's appropriate to go over to the left-hand side because anybody that knows that area, and they say they were going to a hotel, all those hotels, Holiday Inn, a few of them, are all on that left-hand side, so what I saw was a proper movement from the right to the left given where they were coming from, so I didn't see any improper lane usage, see because the law says, no matter what it is—it could—often times is what is sought to be suppressed evidence is usually illegal in nature or we wouldn't be here.

So the gun in and of itself is—that is important, and it's serious, but the law says that they must have articulable suspicion of criminal activity. It is very clear with Mr. Ramirez, they just didn't have that. A gun in the back of a vehicle, that is a bad thing. Guns, young people, close proximity, late at night, bad recipe, but I think even if you were to go to and read voluntary possession of something reads somewhat like this: Let me see—I had it here. Well, I can't put my hand on it right now, but I just had it a minute ago. Voluntary possession.

Now to the two people in the back that what he could have done is not articulable suspicion of criminal activity. There was no furtive movement that would have got them in the car, and then even when they went to go pat them down, officer safety, and usually you have cases where it's one officer, it's late at night on a road, and that type of thing, and there's a whole lot of other individuals in the car. Here we know that one individual at least was not that much of a threat because they had the pop and the holder for the pop, you know, four big pops, so that wasn't a threat, and so something that was—the bar that was on the floor, nobody went towards it. Could have been used for a weapon. There was nothing else—when they went, they saw no alcohol. They smelled no cannabis. They saw nothing, absolutely nothing in plain view, and Mr. Ramirez was not free to leave. They made that clear. He was put in the back of a car and then went over to the police station. He was not free to leave. They had nothing at that particular point. He wasn't driving the vehicle. He made no furtive movements. So it's just a hunch that—and I'm going to back up and I'm going to tell you how much of a hunch it was. I watched the officer search the vehicle go back and forth between the front passenger—from the driver's side to the—and he went in the trunk twice, and at one point in time said what they have, so if they—and there was a lot of stuff in that back trunk, so now without anything more at the scene, nothing more at the scene to even get him out the car and take him to the police station, and then interrogate him there, that is why we couldn't get into what was said, what statements and such. That is a different motion for a different time, but as it pertains to the evidence of that vehicle, it's too much of a jump, so as to Mr.

Ramirez, I'm finding the—I'm granting the motion to quash arrest and suppress evidence, and everything that flows from that is the fruit of the poisonous tree is out for the purposes of trial.

\* \* \*

Well, there was—there was—there was a question mark there, and if they—if the officers can't clean it up, I'm not going to clean it up. They—they put down—they indicated that their procedure at that particular time was that—or their method of keeping track of this—because it was multiple defendants, just were put in a fail safe, but I mean, this is why it's important, so that to be fair, is that people know exactly when people are arrested—approximately. The approximate time. He made it close because at the same time he did put him in custody even though he didn't put him in handcuffs, and he said he wasn't arrested, and I'm trying to figure out arrested for what? Nobody made—they could have separated—I'm not telling him how to do their job, but they could have separated and they often do separate people on the scene. One go in one corner; one go another corner and discuss before they took them to the police department, but again, the reason I'm not getting too deep into that and saying exactly—because now you are talking about any statements based on motion to suppress statements are—were they in custody. I'm not making a ruling on that. Put aside—usually if you—even if you didn't have them in handcuffs, if they are not free to leave and anything that you ask before *Miranda* and all of that might be a different story, I'm not getting into that. Just what happened on the scene and the time. He was basically saying the time he was arrested was something—some

place else, so there's a lot of case law—let me back up for a second too, so I'm not going to really say. I was just saying that he said he arrested him later, but he clearly detained him. And was the detention prolonged by the purpose of the stop. That's a little bit different too because the officers did not give a reason while they're on the video and audio for the purpose of the stop. They gave it to us here. They gave several. And the improper lane usage was not corroborated at all. The driving while license is suspended, I can't ignore the law, wouldn't have been enough. And they could have even corroborated that it had no front plate. Easy. Because they had one video—one car we know had a video. Now think that if someone who had been an officer not that long, their sergeant, if they had a video-equipped, sergeant would probably have it too, and there was at least a third officer that was on the scene. What I saw was Mr. Ramirez being very cooperative with the police officers. No nervousness. No nothing. And no statements that I knew about a gun. None. Nothing. Nobody asked anything. So given did they have articulable—specific facts taken together with rational inference to even detain because even in a detention, you can't prolong it past the purpose of the stop before you even get to the consent part. You cannot prolong it past the detention of the stop, so as to the timing of when he arrested—I don't think we have to get that far. I don't say that officer is not telling the truth. He put one thing down and all he had to do—these reports are important. You don't put every little thing down, but the time of the arrest does make a difference for a number of reasons and in these type of issues, but I'm not saying that his

system—maybe they changed the system because they had the problem, but you could have easily amended that because they do it all the time.

So as to Mr. Ramirez and the motion to quash the arrest as it relates to I guess what's in the back seat that he could have gotten or anybody could have gotten if he—this would have been a different story—I'm just—it would just be a hunch that he knew if it was even back there that he validly possessed it in the first place, and enough probable cause at that stage for to put him under arrest with nothing more, the motion to quash the arrest and suppress evidence as of to Mr. Romero [*sic*] is granted, and we're going to need another date for further pretrial on that.

Now Mr. Vega, I'm going to be honest. I just don't like people that don't tell the police the truth about their name.

Why? What do you have to hide? Apparently there was some type of warrant, and it's not quite clear, but it seems at one point in time they found out it was a warrant out for his arrest, and I know in *People v. Harris*, I know that very clearly, that there was some—some issues. As a matter of fact, *People v. Harris* changed the nature of how officers are able to ask a little bit—they should be in a position where they can investigate at least, but at the time they stopped him, we can assume that he was driving. And he gave a name of somebody that apparently the officer said that they were able to ascertain without the driver's license and everything, just a name and a date of birth. They were able to ascertain—and that is possible. Ascertain that the person did not have a valid driver's license. And they're assuming that Mr. Vega was—or at that time who they thought was Mr.

Ibarra probably and was arrested, they said for driving without a license. That's a big leap when they never saw him driving at all.

Again, I'm not—I'm not saying Mr. Vega should have told—that's a different thing for a different time. Should have said his name was somebody else. We don't want to encourage that, but we have to know that based on reasonable, articulable suspicion of criminal activity, swapping seats is not it. That's the case, there's a whole lot of people that will be sitting in jail as we speak. People do it for so many different reasons. With nothing more. We have a stop and detention of someone and you are asking the passenger that you don't see at that time—people can say whoever they want to say. They can run, skip, and jump from the police. I wouldn't encourage them to do that unless there is some articulable—reasonable, articulable suspicion of a criminal activity, so here what did officer know? They saw a swap. They—and they claim—the officer who testified claimed that the license plate was out even though he didn't put anything in his report or whatever, but we'll take his word for it. No furtive movement. Nothing in plain view. And then they started taking people one-by-one out and asking them questions, and searching the vehicle, and asking consent. This consent must be valid. And if they are asking consent, who are they—because they don't know that Antonio Vega is not really Mr.—this other gentleman, but they know that it's registered to an Antonio Vega. Now they can ask for a consent of a driver of the vehicle and they got consent from the driver of the vehicle, but before we even get there, to search what? Because every time an officer encounters people on the road, sometimes they give warnings for speeding or something of that nature.

Don't necessarily have to take people out and search them for their safety if they see nothing because that is a violation of the Fourth Amendment. Unreasonable searches and seizures. Even though I don't want to give Mr. Vega credit for giving a false name at that particular point in time based on what the officer said, they gave no reason—and I'm not going to speculate and guess what it was—for the true basis other than what is in their police report, it would seem to me you would put the more serious [*sic*] reason, not suspicious vehicle. I think they meant exactly what they say. Suspicious vehicle. Not in the neighborhood. What are these people doing here? Are you gang members? All of that. We got to be very, very careful with that going down a slippery slope. SO as of Antonio Vega, the motion to quash arrest and suppress evidence is granted. Everything that flows from there is suppressed, flows from the fruit of the poisonous tree[.]

¶ 24 The State filed a motion to reconsider the court's ruling. In its ruling, the court first addressed Ramirez's case. The court restated that there was no furtive movement or articulable facts to suggest that Ramirez had knowledge of the TEC-9 pistol. The court denied the motion to reconsider regarding Ramirez and then addressed the motion as it related to Vega. The court noted that Vega's case was a different story "because of the name that he gave," and the fact that the false name was connected to an individual with a suspended driver's license. The court reasserted that Vega's act of switching seats in the Wendy's drive-thru was not articulable suspicion to justify the stop, it was "a hunch." The court briefly noted that the officers "indicate[d] something about a front license—a front plate," and stated that the officers were "looking for probable cause." The court also did not find, based on its familiarity of the area

where the stop occurred, that a lane violation justified the stop. The court denied the State's motion to reconsider regarding Vega.

¶ 25 The State filed certificates of impairment and notices of appeal in both cases. In this court, the State filed a motion to consolidate the cases. We granted the State's motion.

¶ 26 ANALYSIS

¶ 27 The State argues that the court erred in granting defendants' motions to quash arrest and suppress evidence. In its oral ruling, the court appears to cite three independent grounds for granting defendants' motions to quash arrest and suppress evidence: (1) the vehicle stop was not justified by reasonable suspicion that a crime had occurred or was about to occur, (2) the stop was unlawfully prolonged, and (3) Ramirez was subject to an unlawful detention. The second and third bases for the court's ruling have no relevance unless the stop was justified. Therefore, we begin our analysis by reviewing the justifications for the stop.

¶ 28 Defendants specifically argue that the court did not err because the court rejected each of the three justifications proffered by the State for the vehicle stop: (1) license plate violation, (2) lane violation, and (3) potential arrest warrant for one of the occupants. We analyze each of the justifications in turn, but begin with an overview of the appropriate standard of review and general body of law concerning vehicle stops.

¶ 29 Standard of Review

¶ 30 In evaluating the court's grant of a motion to quash arrest and suppress evidence, we review the court's findings of historical fact for clear error. *People v. Hackett*, 2012 IL 111781, ¶ 18. In doing so, we give due weight to any inferences drawn from those facts by the fact finder. *Id.* In other words, the court's factual findings are entitled to great deference. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Reversal is warranted only when the court's findings

are against the manifest weight of the evidence. *Hackett*, 2012 IL 111781, ¶ 18. We are free, however, to undertake our own assessment of the facts as they relate to the issues presented and may draw our own conclusions on the relief to be granted. *Id.* The court’s ultimate legal ruling regarding whether suppression is warranted is subject to *de novo* review. *Id.*

¶ 31 Requirements for a Vehicle Stop

¶ 32 “A vehicle stop is subject to the fourth amendment’s requirement of reasonableness (citations), which we analyze under the principles set forth in *Terry v. Ohio*, 392 U.S. 1 (1968).” *People v. Henderson*, 2013 IL 114040, ¶ 25. “ [T]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.’ ” *People v. McDonough*, 239 Ill. 2d 260, 267 (2010) (quoting from *Whren v. United States*, 517 U.S. 806, 810 (1996), and citing *People v. Gonzalez*, 204 Ill. 2d 220, 227-28 (2003), *overruled on other grounds by People v. Harris*, 228 Ill. 2d 222, 244 (2008)). A traffic stop may, however, be justified by less than probable cause “where the officer reasonably believes that the person has committed, or is about to, commit a crime.” *People v. Close*, 238 Ill. 2d 497, 505 (2010) (citing *Terry*, 392 U.S. at 22). To support this investigatory stop, the officer must be able to point to “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.” *Hackett*, 2012 IL 111781, ¶ 20. The officer’s belief may be less than the level of suspicion required for probable cause. *Id.* However, an officer may not use a routine traffic stop as a subterfuge to obtain other evidence based on a mere hunch or unparticularized suspicion. *Illinois v. Caballes*, 543 U.S. 405, 507 (2005).

¶ 33 Justifications for the Stop Proffered by the State

¶ 34 1. Front License Plate

¶ 35 In its appellant’s brief, the State argues that the Honda was lawfully stopped for a violation of section 413(a) of the Code, a missing front license plate. 625 ILCS 5/3-413(a) (West 2016). In support, the State argues that the court’s statement that “the officer who testified claimed that the license plate was out even though he didn’t put anything in his report or whatever, *but we’ll take his word for it,*” (emphasis added) establishes that the court found Kurtzweil’s testimony on this justification to be credible. Defendants argue that the State misconstrues the court’s statement. According to defendants, viewed in context, the court’s statement was a “ ‘for the sake of argument’ style rhetorical device, a form of light sarcasm allowing the trial court to find against Kurtzweil’s credibility without making an ugly accusation of lying.”

¶ 36 The parties’ arguments encapsulate the contradiction that is inherent in the court’s ruling. Generally, we afford the court’s credibility finding “great deference.” *Luedemann*, 222 Ill. 2d at 542. The court has “a superior vantage point, which cannot be reproduced from the cold record, to observe and judge the witnesses’ demeanor and credibility.” *Racky v. Belfor USA Group, Inc.*, 2017 IL App (1st) 153446, ¶ 107. However, it is impossible to afford the credibility finding in this case any deference as it directly contradicts with the court’s ruling.

¶ 37 In this case, the evidence of the license plate violation was derived solely from Kurtzweil’s testimony. Kurtzweil testified that he observed the license plate violation when he drove past the Honda as it was stopped in the Wendy’s drive-thru. Kurtzweil testified that he did not document this violation in his incident report. The video recording of the stop does not show the front of the Honda. Kurtzweil also did not mention the license plate violation during his video-recorded interactions with Rosas and the other occupants. Thus, the determination of

whether this ground for the stop was valid turned entirely on the court's determination of Kurtzweil's credibility.

¶ 38 While reviewing the evidence in relation to Vega's motion, the court said "the officer who testified claimed that the license plate was out even though he didn't put anything in his report or whatever, but we'll take his word for it." We cannot tell from the cold record whether these statements were rhetoric or sarcasm, or actual findings of credibility. We note that at other points in the court's oral ruling it speaks in the negative with regard to Kurtzweil's testimony and also notes that Kurtzweil never documented or said anything about the license plate during the stop. Moreover, we also note that a finding of credibility with regard to Kurtzweil's testimony directly contradicts the court's ultimate finding that a license plate violation *did not* occur.

¶ 39 Further clouding our analysis is the court's reference to its own knowledge of the Wendy's location. While the court is not allowed to rely on information outside of the record in making its ruling, the court's comments suggest that it rejected Kurtzweil's testimony that he observed the missing license plate while the Honda was stopped in the Wendy's drive-thru. The court's improper consideration of its personal knowledge of the location and apparent rejection of Kurtzweil's testimony further illustrate the lack of clarity in the court's ruling on this issue.

¶ 40 From our review of the cold record, we are unable to reconcile the court's oral statements with its finding that a license plate violation did not justify the vehicle stop. Because we are unsure whether the court actually found Kurtzweil credible with regard to the front license plate, we are unable to apply the appropriate deferential standard of review. Thus, we are left with the inescapable conclusion that we must remand the cause with directions for the court to clarify its credibility determination. See, *e.g.*, *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 660 (2009); *People v. Clifton*, 342 Ill. App. 3d 696, 715 (2003). In doing so, the court should

expressly state whether it found Kurtzweil’s testimony regarding the license plate violation to be credible. If it does believe Kurtzweil’s testimony that the vehicle was missing its front license plate, even though Kurtzweil did not mention it in his police report and said that the reason he stopped defendants was because the driver was “all over the road,” then the stop would be valid on this ground. If, however, the court does not believe Kurtzweil, the stop is invalid as no other evidence was presented on this matter other than Kurtzweil’s independent testimony.

¶ 41

## 2. Lane Usage Violation

¶ 42

While we found the first justification for the traffic stop requires the court’s clarification, the remaining two justifications are readily reviewable based on the present record. Defendants argue that Kurtzweil also justified the stop because he observed a lane usage violation. While the State does not directly argue this basis, we note that it was considered by the court, and we review it as an alternative justification for the stop.

¶ 43

Section 11-709(a) of the Code requires a vehicle to “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 2016). “[T]o establish probable cause that a violation of section 11-709(a) has occurred, the officer must point to facts which support a reasonable belief that defendant has deviated from his established lane of travel *and* that it was ‘practicable’ for him to have remained constant in his proper lane.” (Emphasis in original.) *Hackett*, 2012 IL 111781, ¶ 27. An officer may effectuate an investigatory stop where the officer “observes multiple lane deviations, for no obvious reason.” *Id.* ¶ 28. For example, in *Hackett*, our supreme court found that an officer’s observation that a vehicle crossed “*over*” the striped line with both right tires justified an investigatory stop. (Emphasis added.) *Id.* ¶¶ 9, 29.

¶ 44 In this case, Kurtzweil testified that he stopped the Honda, in part, for a lane usage violation. Kurtzweil testified that the Honda initially stopped for the red light at the intersection of Commons Drive and Bolingbrook Drive. The vehicle was stopped in the straight lane of Commons Drive. At that location, Commons Drive was a two-lane roadway with a left-turn lane. After the intersection, Commons Drive became Remington Boulevard, a divided four-lane roadway. When the light turned green, the vehicle proceeded west through the intersection and onto Remington Boulevard. In the process, Kurtzweil observed the vehicle drive over the lane divider and into the left lane of Remington Boulevard without first activating its turn signal.

¶ 45 The video recording of the stop fails to clearly show a lane usage violation. As the Honda drove through the intersection, it crossed over a curved dashed line which appears to direct traffic that is turning from Bolingbrook Drive into the left lane of Remington Boulevard. Once on Remington Boulevard, the left tires of the Honda drove on the white striped dividing line. The left tires do not appear to drive over the dividing line before Kurtzweil initiated the stop. Under *Hackett*, the placement of the left tires of the Honda *on* the dividing line would not justify the stop as the Honda did not cross “*over*” the line before Kurtzweil initiated the stop. (Emphasis added.) *Id.*

¶ 46 Even if driving with the left tires on the dividing line provided reasonable suspicion to justify an investigatory stop, Kurtzweil’s actions following the stop erode this justification. After initiating the stop, Kurtzweil asked for Rosas’s identification and an explanation for why Rosas and Vega had switched seats in the Wendy’s drive-thru. Notably, Kurtzweil did not tell Rosas that he initiated the stop because Rosas had committed a lane violation. Instead, Kurtzweil directed Rosas to exit the Honda and submit to a pat-down search. During the pat-down, Rosas asked why Kurtzweil had stopped his vehicle. Kurtzweil responded that Rosas was “all over the

road.” Kurtzweil did not ask Rosas why he had deviated from his lane or otherwise investigate the alleged lane violation. Kurtzweil’s post-stop actions thus give the reasonable appearance that the purported lane violation was little more than a pretense to stop a vehicle that Talbot had deemed to be suspicious. In light of this record, we find that the court did not err in concluding that the stop was not justified by a lane usage violation.

¶ 47

### 3. Warrant

¶ 48

During the State’s cross-examination, Kurtzweil proffered a third justification for the stop—one of the occupants might be the subject of an arrest warrant. More specifically, according to Talbot, the front-seat passenger looked like Vega and there was a warrant for Vega’s arrest. Talbot did not provide Kurtzweil with Vega’s date of birth or any other specific identifying factors. The arrest warrant was not admitted into evidence and Talbot did not testify.

¶ 49

The officers’ interactions with Vega refute Kurtzweil’s testimony that a potential arrest warrant justified the stop. During the stop, the officers, including Talbot and Kurtzweil, did not attempt to determine if the front-seat passenger was Vega despite Talbot’s earlier suggestion that the passenger looked like Vega. Even with this information, Kurtzweil believed that Vega was Jonathan Ibarra, and arrested “Ibarra” for driving on a suspended license. The video appears to show Kurtzweil tell Talbot that the identification provided by the front-seat passenger stated that his name was Ibarra. Notably, Talbot did not question the identification, and the warrant is not audibly mentioned during the recording. Kurtzweil learned Vega’s true identity at the police department. Therefore, the record also does not support this justification for the stop.

¶ 50

### CONCLUSION

¶ 51

Due to the conflict in the record regarding the missing license plate justification for the vehicle stop, we are unable to address the merits of this appeal. Furthermore, it is premature to

analyze the length of the stop or lawfulness of Ramirez’s arrest because these issues presuppose that the stop was lawfully initiated. Therefore, we remand the case with directions for the court to clarify its finding on whether Kurtzweil’s testimony that the Honda did not have a front license plate was credible. In doing so, we retain jurisdiction to rule on the merits of the appeal following the court’s clarification. See, e.g., *People v. Stevens*, 297 Ill. App. 3d 408, 414 (1998).

¶ 52 Remanded with directions.

¶ 53 SUPPLEMENTAL ORDER

¶ 54 The matter comes before this court following a limited remand for the circuit court to clarify its ruling on whether it found Kurtzweil’s testimony that the Honda did not have a front license plate to be credible. The circuit court filed in each defendant’s underlying criminal case the following written order: “[t]he officer who initiated the stop failed to testify credibly regarding the missing license plate to justify the stop. Whereas, this Court finds that the defendant’s arrest is without probable cause.” We defer to the circuit court’s credibility finding as it had a superior vantage point from which it could judge Kurtzweil’s testimony. See *Luedemann*, 222 Ill. 2d at 542. Therefore, because the circuit court found Kurtzweil’s testimony incredible, his statement that the Honda was missing a front license plate did not justify the stop. See *supra* ¶¶ 8, 40.

¶ 55 Having previously determined that the stop of defendants was not justified by a lane usage violation or arrest warrant for one of the occupants (*supra* ¶¶ 46, 49), and now finding that the purported license plate violation did not justify the stop (*supra* ¶ 54), we affirm the judgment of the circuit court of Will County granting defendants’ motions to quash arrest and suppress evidence.

¶ 56 Affirmed.