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2012 IL App (3d) 110464-U

Order filed February 10, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court
	) of the 14th Judicial Circuit,
	) Whiteside County, Illinois,
Plaintiff-Appellant,	)
	) Appeal No. 3-11-0464
v.	) Circuit Nos. 11-CF-42 and 11-TR-684
	)
DUSTIN BENDER,	) Honorable
	) John L. Hauptman,
Defendant-Appellee.	) Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices Carter and O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The police officer that stopped defendant had reasonable suspicion to believe that defendant was violating section 11-501(a) of the Illinois Vehicle Code; therefore, defendant's motion to suppress evidence and quash his arrest should not have been granted.
- ¶ 2 Defendant, Dustin Bender, was charged with unlawful possession of cannabis (720 ILCS 550/4(a) (West 2010)) and three counts of aggravated driving under the influence of drugs (625 ILCS 5/11-501(a) (West 2010)). Defendant filed a motion to suppress evidence and quash arrest. The

circuit court granted defendant's motion. The State appeals, arguing that defendant's motion should not have been granted because the police officer who stopped defendant had sufficient reasonable suspicion to make the stop. We reverse the trial court's ruling and remand the cause for further proceedings.

¶ 3

### FACTS

¶ 4 On August 29, 2010, defendant was stopped by Sergeant Michael Bauer of the Whiteside County sheriff's office while driving his vehicle in Sterling, Illinois. Following the stop, defendant was charged with unlawful possession of cannabis (720 ILCS 550/4(a) (West 2010)) and three counts of aggravated driving under the influence of drugs (625 ILCS 5/11-501(a) (West 2010)). Defendant filed a motion to suppress evidence and quash arrest.

¶ 5 During a hearing on the motion, Bauer testified that he first spotted defendant while Bauer was stopped at an intersection at approximately 3:10 a.m. on August 29, 2010. When defendant spotted Bauer's police car, he quickly turned his head away and drove through the intersection. As he passed through, Bauer attempted to read the license plate on defendant's vehicle; however, he was unable to due to the fact that the rear license plate light appeared to be inoperable. Bauer followed defendant for approximately two miles. During that time, Bauer witnessed defendant's vehicle swerve to the right and then continue along towards the fog line, and then swerve to the left. This weaving occurred approximately six different times. Bauer also noticed that defendant's speed was inconsistent, ranging between 40 and 50 miles per hour. However, at no time did Bauer witness defendant's vehicle leave its lane or travel over the posted speed limit.

¶ 6 Bauer, believing defendant was driving under the influence of alcohol or drugs in violation of section 11-501(a) of the Illinois Vehicle Code (Code), initiated a traffic stop. He advised

defendant that he stopped him because his speed was inconsistent, he was weaving within his lane, and his registration light was not working. Defendant subsequently failed a field sobriety test, and a later urine analysis determined that he had been under the influence of drugs when he was pulled over.

¶ 7 Following the stop, Bauer made out a sworn report indicating why he thought defendant had been guilty of violating section 11-501(a) of the Code when he initiated the traffic stop. The report only stated that defendant was pulled over for weaving within his lane; however, Bauer testified that he had considered the totality of all the facts before him, including defendant's weaving within his lane and his inconsistent speed, before concluding that defendant may be in violation of section 11-501(a).

¶ 8 Bauer further testified that he had received training in driving under the influence (DUI) investigation through the police academy as well as at field training seminars. He was a licensed breath test operator, which had required him to receive additional training relating to DUI investigations. During the training, Bauer had learned that weaving within a lane of traffic and inconsistent speed are indications that a driver is impaired. Further, Bauer had previously made approximately 75 DUI arrests prior to stopping defendant, some of which included weaving within the lane and inconsistent speed.

¶ 9 Following Bauer's testimony, defendant called Kaitlyn Jolene Kelly, defendant's girlfriend and the owner of the vehicle defendant was driving when he was pulled over. Kelly testified that the rear registration light was operable when she picked up her vehicle following defendant's arrest. She stated that she did not change the light and that it was operable up until the engine went out in December of 2010.

¶ 10 The trial court ruled in defendant's favor, granting his motion to suppress evidence and quash arrest. In ruling for defendant, the court noted that it found both Bauer and Kelly credible; however, it did not place much emphasis on the rear registration light because Bauer had not issued a ticket for it or mentioned it in the form he filled out after the arrest. The court also determined that defendant's inconsistent speed should not have factored into Bauer's reasonable suspicion, because defendant had not exceeded the speed limit, and the court further found that weaving within one's own lane of traffic did not create reasonable suspicion of a violation of section 11-501(a). The State appeals.

¶ 11 ANALYSIS

¶ 12 The State argues that the trial court erred in determining that the officer lacked sufficient reasonable suspicion to justify the stop of defendant's vehicle. We review a trial court's ruling on a motion to suppress evidence pursuant to a two-part test. *People v. Absher*, 242 Ill. 2d 77 (2011). First, we will review the court's factual findings to determine whether they are against the manifest weight of the evidence. *Id.* We then assess the established facts in relation to the issues presented. *Id.* We review the ultimate legal question of whether suppression is warranted *de novo*. *Id.*

¶ 13 Initially, we note that we do not find the trial court's factual findings to be against the manifest weight of the evidence. Therefore, we must determine whether the trial court correctly concluded that the officer lacked sufficient reasonable suspicion to stop defendant's vehicle. When an officer observes possible criminal behavior, the officer may make an investigatory stop without probable cause. *Terry v. Ohio*, 392 U.S. 1 (1968). However, a police officer must have reasonable suspicion to believe that a driver is violating the Code in order to stop a vehicle. *People v. Mott*, 389 Ill. App. 3d 539 (2009). Reasonable suspicion exists when an officer possesses specific, articulable

facts that, when combined with rational inferences derived from those facts, give rise to a belief that the driver is committing a traffic violation. *Id.* Driving under the influence of alcohol or other drugs is a violation of section 11-501(a) of the Code. 625 ILCS 5/11-501(a) (West 2010).

¶ 14 Here, we find that the officer possessed sufficient facts to reasonably suspect that defendant was violating section 11-501(a) of the Code, and therefore the trial court erred in granting defendant's motion to suppress. Bauer testified that he witnessed defendant's vehicle swerve within his lane approximately six times. Erratic driving, including weaving within a single lane, is sufficient to justify a traffic stop. See *People v. Greco*, 336 Ill. App. 3d 253 (2003). Because he testified that defendant had swerved several times within his lane, Bauer possessed specific, articulable facts that gave rise to a belief that defendant had violated section 11-501(a) of the Code. Thus, Bauer had sufficient reasonable suspicion to stop defendant, and the trial court erred when it found otherwise and granted defendant's motion to suppress.

¶ 15

#### CONCLUSION

¶ 16 The judgment of the circuit court of Whiteside County is reversed, and the cause is remanded for further proceedings consistent with this decision.

¶ 17 Reversed and remanded.