

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING  
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

STATE OF FLORIDA

Appellant,

vs.

Appeal No. CRC 10-00064APANO

~~UCN 522009CT116626XXXXXX~~

~~UCN 522009CT117209XXXXXX~~

~~UCN 522009CT117211XXXXXX~~

~~UCN 522009CT117210XXXXXX~~

UCN 522010AP000064XXXXCR

DELON BERNARD WALTON

Appellee.

\_\_\_\_\_ /

Opinion filed \_\_\_\_\_.

Appeal from an Order Granting  
Motion to Suppress  
entered by the Pinellas County Court  
County Judge William H. Overton

Benjamin J. Kanoski, Esquire  
Office of the State Attorney  
Attorney for Appellant

Benjamin G. DeBerg, Esquire  
Attorney for Appellee

**ORDER AND OPINION**

PETERS, Judge.

THIS MATTER is before the Court on Appellant, State of Florida's appeal from an order of the Pinellas County Court granting Appellee's Motion to Suppress. After reviewing the briefs and record, this Court reverses the order of the trial court.

*Factual Background and Trial Court Proceedings*

On October 14, 2009, at 4:01 a.m., Officer Andrew Viehmann of the St. Petersburg Police Department was dispatched to investigate a suspicious vehicle located at 2300 Grove Street South. It was reported to the police that a vehicle was parked on the east side of Grove Street with the engine running. Officer Viehmann and Officer Kanoski arrived on scene, which is a residential area, and observed a gray Dodge pickup truck parked half on and half off the roadway, facing south on the east side of Grove Street South, with the engine running and the lights illuminated. The orientation of the vehicle was in the opposite direction of the traffic flow on that side of Grove Street. Upon approaching the vehicle, the officers observed the Appellee, Delon Walton, slumped over in the driver's seat of the vehicle. He appeared to be asleep in the driver's seat. The officers knocked on the door or window on the driver's side several times for approximately five minutes in an attempt to get Mr. Walton's attention. The trial court found that the officers opened the door of the vehicle. Mr. Walton appeared "very, very confused. Odor of alcoholic beverage came from the car, on his breath, as well as, watery, glassy eyes. When he actually exited the vehicle, he swayed and had to use the vehicle as support to not fall over." The officers had asked Mr. Walton to step out of the vehicle. The trial court found that the vehicle was illegally parked but there is no "indication that there was any concern for the health, safety, or welfare of individuals." The trial court granted the motion to suppress and the State of Florida filed this appeal.

### *Standard of Review*

Our review of a trial court's ruling on a motion to suppress evidence involves a mixed question of law and fact. We accord a presumption of correctness with regard to the trial court's determination of facts where the trial court's factual findings are supported by competent, substantial evidence. However, we review the trial court's application of the law to those facts de novo. *Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); *Connor v. State*, 803 So.2d 598 (Fla.2001); *State v. Pruitt*, 967So2d 1021 (Fla. 2<sup>nd</sup> DCA 2007).

### *Investigatory Stops.*

To justify an investigatory stop, the officer must have a *reasonable suspicion* that the person detained committed, is committing, or is about to commit a crime. § 901.151(2) Fla. Stat. (2006); *Popple v. State*, 626 So2d 185 (Fla. 1993); *Dept. of Highway Safety & Motor Vehicles v. DeShong*, 603 So2d 1349 (2<sup>nd</sup> DCA Fla. 1992); *Randall v. State*, 600 So2d 553 (Fla. 2<sup>nd</sup> DCA 1992). A *reasonable suspicion* is "a suspicion which has some factual foundation in the circumstances observed by the officer, when those circumstances are interpreted in the light of the officer's knowledge." *McMaster v. State*, 780 So2d 1026 (5<sup>th</sup> DCA Fla. 2001). While "*reasonable suspicion*" is a less demanding standard than *probable cause* and requires a showing considerably less than a *preponderance of the evidence*, the Fourth Amendment requires at least a minimal level of objective justification for making the stop. The officer must be able to articulate more than an "inchoate and unparticularized suspicion or 'hunch' " of criminal activity. *Illinois v. Wardlow*, 528 U.S. 119, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). "Mere" or "bare" suspicion, on the other hand, cannot support detention. *State v. Stevens*, 354 So2d

1244 (4<sup>th</sup> DCA Fla.1978); *Coleman v. State*, 333 So.2d 503 (Fla. 4th DCA 1976). Mere suspicion is no better than random selection, sheer guesswork, or hunch, and has no objective justification. See *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and *Thomas v. State*, 250 So.2d 15 (Fla.1st DCA 1971).

The court determines the stop's legitimacy by considering the totality of the circumstances surrounding the stop. *McMaster*, 780 So.2d at 1029. An officer must be able to “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant” the stop. *Terry*, 392 U.S. at 21. In assessing the reasonableness of the stop, we must look at the facts available to the officer at the moment of the stop and determine whether they “ ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate.” *Id.* at 21-22, 88 S.Ct. 1868 (quoting *Carroll v. United States*, 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543 (1925)). Further, in determining whether an officer acted reasonably, “due weight must be given ... to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.” *Id.* at 27, 88 S.Ct. 1868. See *Ellis v. State*, 935 So.2d 29, 32 (Fla. 2<sup>nd</sup> DCA 2006). “A determination that reasonable suspicion exists ... need not rule out the possibility of innocent conduct.” *United States v. Arvizu*, 534 U.S. 266, 277, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002).

#### *Investigatory Stops & Lawfully Parked Vehicles.*

“Legally parked cars do not give police officers a basis for detaining or searching persons therein. *Sites v. State*, 582 So.2d 813 (Fla. 4th DCA 1991).” *Alvarez v. State*, 695 So.2d 1263, 1263 -1264 (Fla. 2nd DCA 1997); See *State v. Baez*, 894 So.2d 115, 123 -125 (Fla. 2004). “It is well-settled that merely observing an individual in a legally

parked car is insufficient to raise a well-founded suspicion of criminal activity sufficient to support a stop.FN6”

FN6. First District: *State v. Holloman*, 824 So.2d 901 (Fla. 1st DCA 2002)(suppression order affirmed where officers ordered defendant out of legally parked car); *Harrelson v. State*, 662 So.2d 400 (Fla. 1st DCA 1995)(quashing affirmance of order denying suppression motion where trooper ordered defendant out of legally parked car); Second District: *Parsons v. State*, 825 So.2d 406 (Fla. 2d DCA 2002)(reversing denial of suppression motion where police only observe legally parked car in parking lot at 1:40 a.m.); *Hrezo v. State*, 780 So.2d 194 (Fla. 2d DCA 2001)(reversing denial of suppression motion where police only observe car legally parked); *Shaw v. State*, 778 So.2d 389 (Fla. 2d DCA 2001)(same); *Brown v. State*, 744 So.2d 1149 (Fla. 2d DCA 1999)(same); *Danielewicz v. State*, 730 So.2d 363 (Fla. 2d DCA 1999)(reversing denial of suppression motion where police only observe car legally parked in parking lot at 1:30 a.m.); *Allen v. State*, 703 So.2d 1162 (Fla. 2d DCA 1997)(reversing denial of suppression motion where police only observe legally parked car in parking lot); *Alvarez v. State*, 695 So.2d 1263 (Fla. 2d DCA 1997) (reversing denial of suppression motion where police observe legally parked car in parking lot at 4:00 a.m.); *Horton v. State*, 660 So.2d 755 (Fla. 2d DCA 1995)(reversing denial of suppression motion where police only observe car legally parked); Fourth District: *Miranda v. State*, 816 So.2d 132 (Fla. 4th DCA 2002)(reversing denial of suppression motion where police observe legally parked car in parking lot at 5:00 a.m.); *Ippolito v. State*, 789 So.2d 423 (Fla. 4th DCA 2001)(reversing denial of suppression motion where police observe legally parked car at gas station at 3:00 a.m.); *Currens v. State*, 363 So.2d 1116 (Fla. 4th DCA 1978) (reversing denial of suppression motion where police observe legally parked car in parking lot at 1:40 a.m.); Fifth District: *Young v. State*, 803 So.2d 880 (Fla. 5th DCA 2002)(reversing denial of suppression motion where police only observe car drive into parking lot and legally park at 12:25 a.m.); *Baker v. State*, 754 So.2d 154 (Fla. 5th DCA 2000)(reversing denial of suppression motion because police only observe legally parked van at 3:00 a.m.); *Bowen v. State*, 685 So.2d 942 (Fla. 5th DCA 1996) (reversing denial of suppression motion where police observe legally parked car in parking lot at 1:20 a.m.). Compare *Mendez v. State*, 678 So.2d 388 (Fla. 4th DCA 1996)(affirming denial of suppression motion where car was observed illegally stopped in middle of street); *J.E. v. State*, 731 So.2d 788 (Fla. 5th DCA 1999)(affirming denial of suppression motion where car observed in park closed to cars without boats); *State v. Roux*, 702 So.2d 240 (Fla. 5th DCA 1997)(reversing suppression because, although police could not detain defendant based solely on observing defendant in legally parked car, defendant exited vehicle and committed battery on a law enforcement officer).

*State v. Taylor*, 826 So.2d 399, 403 -404 (Fla. 3<sup>rd</sup> DCA 2002).

*The Present Case*

In the present case, Mr. Walton's vehicle was not legally parked. At 4:01 a.m. the vehicle was parked half on and half off the roadway, facing the wrong direction with the engine running, the lights illuminated and Mr. Walton slumped over in the driver's seat. The vehicle had been there long enough for the police to be summoned and respond to the scene. The officers knocked on the door or window on the driver's side of the vehicle several times for approximately five minutes in an unsuccessful attempt to get Mr. Walton's attention. Considering the totality of the circumstances, there was a *reasonable suspicion* that Mr. Walton may have been impaired and the investigatory stop was justified. *See State v. Jimoh*, --- So3d ----, 2010 WL 4365960, 35 Fla. L. Weekly D2469 (Fla. 2<sup>nd</sup> DCA 2010), (motion for rehearing en banc denied on January 21, 2011).

*Conclusion*

The order of the trial court granting Appellee's Motion to Suppress should be reversed.

IT IS THEREFORE ORDERED that the order of the trial court granting Appellee's Motion to Suppress is reversed.

ORDERED at Clearwater, Florida this 4<sup>th</sup> day of March, 2011.

Original order entered on March 4, 2011 by Circuit Judges Michael F. Andrews, Raymond O. Gross, and R. Timothy Peters.

cc: Honorable William H. Overton  
Office of the State Attorney  
Benjamin G. DeBerg, Esquire