

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

CHRISTINA SALVATORE ALLEN

Appellant,

Appeal No. CRC 11-00048APANO  
UCN 522011AP000048XXXXCR

vs.

STATE OF FLORIDA

Appellee.

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Opinion filed January 23, 2012.

Appeal from an Order Denying  
Motion to Suppress  
entered by the Pinellas County Court  
County Judge Dorothy L. Vaccaro

Marc N. Pelletier, Esquire  
Attorney for Appellant

Courtney A. Tew, Esquire  
Office of the State Attorney  
Attorney for Appellee

**ORDER AND OPINION**

PETERS, Judge.

THIS MATTER is before the Court on Appellant, Christina Salvatore Allen's appeal from an order of the Pinellas County Court denying her Motion to Suppress. After reviewing the briefs and record, this Court affirms the order of the trial court.

*Factual Background and Trial Court Proceedings*

Appellant, Christina Salvatore Allen, was charged by Uniform Traffic Citation with Driving Under the Influence of Alcoholic Beverages. Ms. Allen filed a Motion to Suppress. After hearing, the trial court denied the motion making the following factual findings and reaching the following conclusions of law:

On April 27, 2010 at approximately 1:51 a.m. in Palm Harbor, FL, Deputy Diebold observed a vehicle pull into a parking lot and park in front of the Eagle Landing Restaurant. Deputy Diebold observed that no one exited the vehicle for approximately twenty minutes. At that time, Deputy Diebold made contact with the vehicle and upon approaching, observed a female, later identified as the Defendant, Christina Allen, sleeping in the front seat with the driver's seat reclined. The keys to the vehicle were in Defendant's lap and the Defendant was rubbing her stomach. Deputy Diebold knocked on the window and Defendant did not move. Deputy Diebold knocked again this time louder with his flashlight and, at that time, Defendant woke up, looked around, ignored him and went back to sleep. Deputy Diebold knocked again with his flashlight on the window and Defendant woke up again and opened the driver's door. Deputy Diebold asked if Defendant was okay. During the conversation with the Defendant, Deputy Diebold smelled a strong odor of alcohol coming from Defendant's breath and observed Defendant had bloodshot eyes and slurred speech. Upon making these observations, Deputy Diebold asked Defendant to step out of the vehicle. Based on the signs of impairment observed, Deputy Diebold then contacted another deputy who arrived on scene to conduct a DUI investigation.

The Court finds that the investigatory stop was justified. No criminal activity was necessary to first make contact with the Defendant since this was nothing more than a citizen encounter. Once Deputy Diebold made contact with the Defendant, he developed concern for the well-being of the Defendant and suspected Defendant may be ill or impaired based on her behavior in the vehicle. When Deputy Diebold knocked on the door, this was not enough to show authority but was done in an effort to wake up the Defendant. Once Defendant woke up, she voluntarily opened the door of the vehicle. Deputy Diebold's concern for the Defendant's well-being is evident by the fact that the first thing he asked Defendant when she opened the door was if she was okay. After Defendant voluntarily opened the door, Deputy Diebold was provided with the reasonable suspicion necessary to ask Defendant to step out of the vehicle and conduct a DUI investigation. This is because upon Defendant opening the door, Deputy

Diebold observed multiple signs of impairment, including the odor of alcohol, slurred speech and bloodshot eyes.

Ms. Allen entered a change of plea agreement reserving her right to appeal the trial court's denial of her Motion to Suppress. This appeal was timely filed.

#### *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. All evidence and reasonable inferences therefrom must be construed in a manner most favorable to upholding the trial court's ruling. 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); *Newkirk v. State*, 964 So2d 861, 863 (Fla. 2<sup>nd</sup> DCA 2007).

#### *Involved Points of Law*

1. *Consensual Encounters*. The first level of police-citizen encounters is considered a consensual encounter and involves only minimal police contact. During a consensual encounter a citizen may either voluntarily comply with a police officer's requests or choose to ignore them. Because the citizen is free to leave during a consensual encounter, constitutional safeguards are not invoked. *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980); *Popple vs. State*, 626 So2d 185 (Fla. 1993); *Greider v. State*, 977 So2d 789 (2<sup>nd</sup> DCA 2008).

An officer does not need a founded suspicion of criminal activity to approach and talk to someone. *Terry v. Ohio*, 392 U.S. 1, 34, 88 S.Ct. 1868, 1886, 20 L.Ed.2d 889, 913

