County Criminal Court: CRIMINAL LAW – Traffic Stop – Trial court did not err in denying motion to suppress in DUI case. The trial court found that law enforcement had reasonable suspicion to conduct investigatory stop upon observing vehicle weaving within lane and waiting six to eight seconds before proceeding from green light, and drifting to the right and nearly hitting curb before jerking back the other way. The trial court's finding was supported by competent substantial evidence. Order denying motion to suppress affirmed. *Staggs v. State*, No. CRC13-00012APANO (Fla. 6th Cir. App. Ct. September 6, 2013).

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

HUGH ALLEN STAGGS

Appellant,

Appeal No. CRC 13-00012APANO
UCN: 522013AP000012XXXXCR

STATE OF FLORIDA

Appellee.
_____/

Opinion filed September 6, 2013.

Appeal from an Order Denying
Motion to Suppress
entered by the Pinellas County Court
County Judge James V. Pierce

Timothy F. Sullivan, Esquire
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ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Appellant, Hugh Allen Staggs' appeal from a ruling of the Pinellas County Court denying his motion to suppress. The Appellant pleaded no contest to Driving Under the Influence but reserved his right to appeal the denial of his motion to suppress. This appeal involves a traffic stop initiated in the absence of an observed traffic violation. This court has previously addressed such traffic stops.[1] We again write to address the subject. After reviewing the briefs and record, we acknowledge the issue presented was a difficult and close question and we appreciate the conscientious efforts of the trial court. We affirm.

Background

On March 24, 2012 at approximately 1:03 a.m., Sergeant Skaggs of the Pinellas County Sheriff's Office was driving an unmarked sheriff's cruiser northbound on Highland Avenue crossing Lakeview Road in Clearwater. The cruiser had no video camera. Sergeant Skaggs was in the process of "running the tag of the vehicle" immediately ahead of him. He did not remember what type vehicle that was, but did know the license plate number. As he continued north on Highland Avenue near Jeffords Street or Barry Street, Sergeant Skaggs noticed a pickup truck in front of the vehicle that was the focus of his attention. Although he could not see the pickup truck when it was directly in front of the car in front of him, Sergeant Skaggs testified he did notice it weaving within the lane. The sergeant testified the pickup truck was "on one side first and then, now the vehicle is on the complete opposite side of the lane. This was quite significant with the vehicle ahead of me." The trial court found "at 1AM Sgt. Skaggs with the PCSO observed [Appellant's] vehicle weaving at least several times within its own lane." The

[1] *See Petrick v. State*, 16 Fla. L. Weekly Supp. 154c (Fla. 6th Cir. Ct. Nov. 20, 2008); *Cook v. State*, 15 Fla. L. Weekly Supp. 239a (Fla. 6th Jud. Cir. Ct. Jan. 25, 2008); *State v. Bean*, 12 Fla. L. Weekly Supp. 610 (Fla. 6th Cir. Ct. March 9, 2005).

trial court also found that the weaving did not affect traffic and no traffic infractions were committed. The pickup truck was driven by the Appellant, Hugh Allen Staggs.

The pickup truck continued north and made an appropriate stop at the traffic signal at the intersection of Highland Avenue and Druid Road. The vehicle that had been in front of Sergeant Skaggs turned right and proceeded east on Druid Road. The sergeant stopped his sheriff's cruiser behind the pickup truck. When the traffic signal turned green, Sergeant Skaggs testified and the trial court found that the pickup truck remained at a complete stop for six to eight seconds before proceeding and "upon taking off from the green light, Sergeant Skaggs observed [Appellant's pickup truck] drift to the right and almost strike the curb before jerking his vehicle back to the left." At that point Sergeant Skaggs initiated a traffic stop because he "felt something was going on in the vehicle, whether the person was impaired, sick, whatever the case may be."

The Appellant testified that he drove a distance of "about a quarter mile" on Highland Avenue before reaching the intersection of Highland Avenue and Druid Road. That testimony did not conflict with Sergeant Skaggs' testimony. Appellant further testified that it took about a minute or two minutes to drive that distance. Appellant disputed Sergeant Skaggs testimony regarding his driving after he proceeded north from the traffic signal.

The trial court found that the conduct observed by Sergeant Skaggs could have been innocent but that based upon the totality of the circumstances Sergeant Skaggs had reasonable suspicion to make an investigatory stop. The Trial Court entered a written order making factual findings and denying the motion to suppress.

Standard of Review

An appellate court employs a mixed standard of review in considering a trial court's ruling on a motion to suppress. The trial court's determination of historical facts enjoys a

presumption of correctness and is subject to reversal only if it is not supported by *competent substantial evidence* in the record.

> "Competent substantial evidence" has been described as follows:
> The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence but refers to the existence of some evidence (quantity) as to each essential element and as to the legality and admissibility of that evidence. Competency of evidence refers to its admissibility under legal rules of evidence. "Substantial" requires that there be some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, "tending to prove") as to each essential element of the offense charged.

Joseph v. State, 103 So.3d 227, 229 -230 (Fla. 4th DCA 2012). When reviewing a motion to suppress a circuit court sitting in its appellate capacity may not reweigh the evidence or make credibility determinations. *Duke v. State,* 82 So3d 1155, 1157 (Fla. 2nd DCA 2012). However, the trial court's determinations on mixed questions of law and fact and its legal conclusions are subject to de novo review. *See 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, 608 (Fla.2001); *State v. Hendrex,* 865 So.2d 531, 533 (Fla. 2d DCA 2003), *review denied,* 879 So.2d 621 (Fla.2004). *State v. Marrero,* 890 So.2d 1278, 1281 (Fla. 2nd DCA 2005). All evidence and reasonable inferences therefrom must be construed in a manner most favorable to upholding the trial court's ruling. *Newkirk v. State,* 964 So2d 861, 863 (Fla. 2nd DCA 2007).

Traffic Stops Generally

It is well established that the prohibition against unreasonable searches and seizures contained in the Fourth Amendment of the United States Constitution applies to investigatory stops of automobiles. *United States v. Cortez,* 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). An examination of the validity of a traffic stop under the Fourth Amendment thus requires courts to determine whether the stop was reasonable. *Terry v. Ohio,* 392 U.S. 1, 9, 88

S.Ct. 1868, 20 L.Ed.2d 889 (1968). The constitutional reasonableness of a traffic stop under the Fourth Amendment does not depend on the actual, subjective motivations of the individual officers involved in conducting the stop, but rather it depends on the validity of the basis asserted by the officers involved in the stop. *Whren v. United States,* 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). The Florida Supreme Court has adopted this objective test. *Holland v. State,* 696 So2d 757 (Fla. 1997). The correct test to be applied is whether the particular officer who initiated the traffic stop had an objectively reasonable basis for making the stop. *Dobrin v. Department of Highway Safety & Motor Vehicles*, 874 So2d 1171 (Fla. 2004).

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 (2nd DCA Fla. 1992); *Randall v. State*, 600 So2d 553 (Fla. 2nd DCA 1992). In order for a traffic stop for an infraction or a crime to be proper, the police must have a *reasonable suspicion* of criminal activity, or *probable caus*e to believe a traffic infraction has been committed. *Jones v. State*, 842 So2d 889 (Fla. 2nd DCA 2003) (emphasis added).

Traffic Stops in the Absence of an Observed Traffic Violation

"[A traffic] stop is permitted even without a traffic violation, so long as the stop is supported by a *reasonable suspicion*[2] of impairment, unfitness or vehicle defects. *Esteen v. State*, 503 So.2d 356 (Fla. 5th DCA 1987); *State v. Davidson*, 744 So.2d 1180 (Fla. 2d DCA 1999) (evidence of abnormal driving, albeit not amounting to a traffic violation, justified stop based on

[2] A founded or reasonable suspicion necessary to support an investigatory stop is a suspicion that would warrant a [person] of reasonable caution to believe that a stop was appropriate. Probable cause and reasonable suspicion are two different standards. *Department of Highway Safety and Motor Vehicles v. Ivey*, 73 So. 3d 877, 880 (Fla. 5th DCA 2011). A "founded 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. *State v. Stevens*, 354 So.2d 1244, 1247 (Fla. 4th DCA 1978). The officer's suspicion is "founded" upon an objective foundation which reasonably supports his assessment of the particular circumstances. *Carter v. State*, 454 So.2d 739, 741 -742 (Fla. 2nd DCA 1984).

reasonable suspicion of impairment)." *Hurd v. State*, 958 So.2d 600, 603 (Fla. 4th DCA 2007) (emphasis added). "Because of the dangers inherent to our vehicular mode of life, there may be justification for the stopping of a vehicle by a patrolman to determine the reason for its *unusual operation*." *Bailey v. State*, 319 So.2d 22, 26 (Fla.1975) (emphasis added). What *unusual operation*, absent a traffic violation, is sufficient to create a *reasonable suspicion* supporting an investigatory stop must necessarily be determined on a case by case basis. The most notable, relevant appellate cases and their essential facts are summarized in the endnote of this opinion. [i] While not in complete harmony, those cases suggest that "although there may be times when a single instance of erratic driving would be sufficient to justify a stop[3], typically something approaching a pattern of unusual driving is required. To establish a pattern the police must generally observe the driver for more than just a short period of time. See *Nicholas v. State*, 857 So.2d 980 (Fla. 4th DCA 2003)." *State v. Bean*, 12 Fla. L. Weekly Supp. 610, 613 (Fla. 6th Jud. Cir. App. Ct. March 9, 2005). The cases summarized in the endnote are also clearly conflicting on some points. Most relevant to the present case; weaving, or failure to maintain a single lane may or may not establish reasonable suspicion for a traffic stop.[4]

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[3] *Finizio v. State*, 800 So.2d 347, 348 (Fla. 4th DCA 2001).

[4] *Crooks v. State*, 710 So.2d 1041 (Fla. 2d DCA 1998) (failure to maintain a single lane alone cannot establish a violation where evidence showed driving did not place any other vehicles in danger); *State v. Davidson*, 744 So.2d 1180 (Fla. 2d DCA 1999) (There was reasonable suspicion of impairment where the deputy noticed a vehicle proceeding at a speed of between 40 and 48 m.p.h. on a highway with a maximum speed limit of 70 m.p.h. and a minimum speed limit of 40 m.p.h. The vehicle continually drifted across the line and then jerked back in the opposite direction in a correcting manner. The deputy initiated a stop because these actions are characteristic of an impaired driver and because he knew something was wrong because people do not normally drive like that) (The court distinguished *Crooks* stating "the deputy [in *Crooks*] did not think that Crooks was intoxicated or otherwise impaired" and "from the facts described in *Crooks*, it appears that some or all of Crooks' drifting over the line was caused by the actions of the law enforcement personnel involved"); *Roberts v. State*, 732 So.2d 1127, 1128 (Fla. 4th DCA 1999) (weaving several times within a single lane held sufficient to justify a stop where there was no evidence to show endangerment to others and where no traffic violation had occurred); *State v. Carrillo*, 506 So2d 495 (Fla. 5th DCA 1987) (The officer at 2:00 A.M. observed a vehicle move to the extreme right-hand side of the road and then to the extreme left-hand side of the lane of travel. The vehicle's tires touched the lane boundaries, but did not leave the lane. This pattern continued for approximately one-quarter of a mile, doing the weaving pattern in excess of five times. Based on Carrillo's driving, the officer believed the driver was intoxicated. There was a founded suspicion for the stop); *Jordan v. State*, 831 So.2d 1241 (Fla. 5th DCA 2002) (Traffic stop held improper where

The court determines the stop's legitimacy by considering the totality of the circumstances surrounding the stop. *Tamer v. State,* 484 So.2d 583, 584 (Fla.1986) (quoting from *United States v. Cortez,* 449 U.S. 411, 417, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, 629 (1981)). Even when none of the facts standing alone would give rise to a reasonable suspicion, when taken together as viewed by an experienced deputy … they can provide clear justification for a brief detention. *Finizio v. State*, 800 So.2d 347, 349 (Fla. 4th DCA 2001).

The Present Case.

The issue of erratic driving by distracted or intoxicated drivers is of particular, current concern. It might be assumed, although not easily verified, that incidents of erratic or unusual driving caused by distracted drivers have increased significantly in recent years due to the availability and widespread use of cellular telephones and texting devices by motorists. Without doubt the danger presented by distracted or intoxicated drivers is a real concern. That said, it remains difficult to balance the rights of citizens to be left alone when there has been no traffic violation with "the legitimate concern for the safety of the motoring public" presented by people driving vehicles erratically for whatever reason. The primary place these issues are confronted and resolved is in the trial courts on a case by case basis. Our role in an appellate capacity is limited. We do not reweigh evidence or make credibility determinations. We did not see the witnesses or parties or hear testimony. We are simply assigned the task of making sure the trial

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officer observed that vehicle failed to maintain a single lane of traffic, there was no evidence that the vehicular movements created any danger to defendant or other traffic, and there was no testimony indicating that defendant was intoxicated or otherwise impaired, nor was any erratic driving pattern established); *Yanes v. State*, 877 So.2d 25, 26–27 (Fla. 5th DCA 2004) (An officer observed a driver cross the white line on the right side of the road three times within a mile, each time crossing the line by approximately one-half of the vehicle's width. That was sufficient evidence to stop the vehicle for a violation of section 316.089).

court's factual findings are supported by competent substantial evidence in the record and that the trial court's application of law to those factual findings was correct.

In the present case the trial court was presented with testimony of two witnesses; the involved law enforcement officer and the motorist, the Appellant, Mr. Staggs. Their testimony presented different, conflicting accounts of the events in dispute. The factual findings contained in the trial court's written order were supported by competent substantial evidence. The trial court's ruling that, based upon those findings, Sergeant Skaggs had reasonable suspicion to make the investigatory stop was not error. *See Duke v. State*, 82 So. 3d 1155, 1158 (Fla. 2d DCA 2012); *State v. Davidson*, 744 So.2d 1180 (Fla. 2d DCA 1999); *Hurd v. State*, 958 So. 2d 600 (Fla. 4th DCA 2007); *Roberts v. State*, 732 So.2d 1127, 1128 (Fla. 4th DCA 1999); *State v. Carrillo*, 506 So2d 495 (Fla. 5th DCA 1987).

Conclusion

This court concludes that the order of the trial court denying Appellant's Motion to Suppress should be affirmed.

IT IS THEREFORE ORDERED that the order of the trial court denying Appellant's Motion to Suppress is affirmed.

ORDERED at Clearwater, Pinellas County, Florida this 6th day of September, 2013.

Original Order Entered on September 6, 2013 by Circuit Judges R. Timothy Peters, Michael F. Andrews, and Raymond O. Gross.

cc: Honorable James V. Pierce
Timothy F. Sullivan, Esquire
Office of the State Attorney

[i] *Bailey v. State*, 319 So. 2d 22, 26 (Fla. 1975) (upholding stop to determine reason for driver's "unusual operation" of vehicle at slow speed and weaving within lane, even where court stated that no circumstances reasonably would have led the officer to believe criminal activity was taking place).

Dep't of Highway Safety & Motor Vehicles v. DeShong, 603 So. 2d 1349 (Fla. 2nd DCA 1992) (Stop was proper where driver seemed to be using the lane markers to position his car, slowed abruptly from 55 to 30 m.p.h., and then sped up rapidly. The deputy stopped the car because he thought that the driver was either impaired or the vehicle was malfunctioning).

Crooks v. State, 710 So.2d 1041 (Fla. 2d DCA 1998) (failure to maintain a single lane alone cannot establish a violation where evidence showed driving did not place any other vehicles in danger).

State v. Davidson, 744 So.2d 1180 (Fla. 2d DCA 1999) (There was reasonable suspicion of impairment where the deputy noticed a vehicle proceeding at a speed of between 40 and 48 m.p.h. on a highway with a maximum speed limit of 70 m.p.h. and a minimum speed limit of 40 m.p.h. The vehicle continually drifted across the line and then jerked back in the opposite direction in a correcting manner. The deputy initiated a stop because these actions are characteristic of an impaired driver and because he knew something was wrong because people do not normally drive like that. The court distinguished *Crooks* stating "the deputy [in *Crooks*] did not think that Crooks was intoxicated or otherwise impaired" and "from the facts described in *Crooks*, it appears that some or all of Crooks' drifting over the line was caused by the actions of the law enforcement personnel involved").

Duke v. State, 82 So. 3d 1155, 1158 (Fla. 2d DCA 2012) ("A driver's continual drifting across the line and erratic driving can establish reasonable suspicion for an investigatory stop based on an officer's legitimate concern for the safety of the motoring public, such as where the officer believes the person may be impaired, sick, or tired.")

Roberts v. State, 732 So.2d 1127, 1128 (Fla. 4th DCA 1999) (A police officer can stop a driver based on a founded suspicion that the driver is under the influence, even where the driver is not committing a separate traffic offense. In the instant case, Roberts' continuous weaving, even if only within her lane, during the time that she was being followed presented an objective basis for suspecting that she was under the influence. Thus, the objective facts supported the stop.

Finizio v. State, 800 So.2d 347, 348 (Fla. 4th DCA 2001) (A deputy assigned to DUI enforcement observed appellant pull his pick-up truck into a service station and in doing so the front and back tires on the driver's side appeared to strike a raised curb. The truck lifted on the driver's side only, and there were no obstructions, speed bumps or anything else at the end of the driveway. The driveway leading to the market was anywhere from 25 to 30 feet wide, there was no other traffic at the time, and no obstructions in the driveway. The truck then "sped up quite rapidly" to the pay phone area and came to a "quick stop." Based upon these observations, the deputy initiated a stop. The court ruled there was reasonable suspicion to make an investigatory stop).

Nicholas v. State 857 So.2d 980, 981 (Fla. 4th DCA 2003) (Deputy noticed vehicle make a left hand turn without signaling from a right hand lane. The deputy observed the driver for a very short period of time and the turn did not interfere with any traffic. This did not amount to erratic driving and the deputy did not have a founded suspicion to conduct the stop. The court also recognized "there is no statutory definition of *erratic driving* and it is necessarily determined on a case by case basis.").

Hurd v. State, 958 So. 2d 600 (Fla. 4th DCA 2007) (Moving from the far left-hand lane without warning over a solid white line into the right lane without a turn signal, speeding up and then driving slowly, was insufficient for a stop where no other vehicles were endangered).

Weiss v. State, 965 So.2d 842, 843 (Fla. 4th DCA 2007) (Driver observed at 3:00 a.m. weaving from one lane to another; there was no one else on the road. The officer stopped driver because the driving pattern indicated the driver could possibly be under the influence, could be sick or other things could be going on. The trial court ruling that there was no reasonable suspicion for the stop was upheld on appeal because it was based on competent substantial evidence).

State v. Carrillo, 506 So2d 495 (Fla. 5th DCA 1987) (The officer at 2:00 A.M. observed a vehicle move to the extreme right-hand side of the road and then to the extreme left-hand side of the lane of travel. The vehicle's tires touched the lane boundaries, but did not leave the lane. This pattern continued for approximately one-quarter of a

mile, doing the weaving pattern in excess of five times. Based on Carrillo's driving, the officer believed the driver was intoxicated. There was a founded suspicion for the stop).

Jordan v. State, 831 So.2d 1241 (Fla. 5th DCA 2002) (Traffic stop held improper where officer observed that vehicle failed to maintain a single lane of traffic, there was no evidence that the vehicular movements created any danger to defendant or other traffic, and there was no testimony indicating that defendant was intoxicated or otherwise impaired, nor was any erratic driving pattern established).

Yanes v. State, 877 So.2d 25, 26–27 (Fla. 5th DCA 2004) (An officer observed a driver cross the white line on the right side of the road three times within a mile, each time crossing the line by approximately one-half of the vehicle's width. That was sufficient evidence to stop the vehicle for a violation of section 316.089).

Department of Highway Safety and Motor Vehicles v. Ivey, 73 So. 3d 877, 878-79 (Fla. 5th DCA 2011) (An investigative stop was warranted when Police responded to a dispatch call of a possibly impaired person attempting to drive away from the convenience store. A customer was exiting the store when he was approached by a woman who asked him to guide her to her home and she would follow him in her Range Rover. She stated that she had been drinking and was lost. After explaining to her that he could not let her drive her car, the customer called his friend for help, as he was concerned for the woman's safety. The customer gave the friend a description of the woman and her vehicle. The friend drove to the store, en route he called 911 stating that his friend was there at the store where a female was attempting to leave the parking lot in a black Land Rover SUV and gave the tag number. The woman was still present when the police and the friend arrived).

Petrick v. State, 16 Fla. L. Weekly Supp. 154 (Fla. 6th Cir. Ct. Nov. 20, 2008) (Driving 15 m.p.h. in a 45 m.p.h. zone for 2/10th of a mile did not establish reasonable suspicion of impairment).

Griffin v. Dep't of Highway Safety & Motor Vehicles, 11 Fla. L. Weekly Supp. 17 (Fla. 17th Cir. Ct. Nov. 4, 2003) (Sitting at a railroad crossing for 10 seconds where no train was passing and officer didn't know whether a train had just gone through did not justify an investigatory stop).

Jones v. State, 8 Fla. L. Weekly Supp. 689 (Fla. 11th Cir. Ct. Aug. 9, 2001) (Sitting at a flashing red light for 41 seconds followed by driving safely through an intersection did not create a reasonable safety concern under Bailey.)