County Criminal Court: CRIMINAL LAW—Search and Seizure—Evidence. The trial court properly denied the motion to suppress. The record demonstrates that the investigatory stop in this case was reasonable. Affirmed. *Robert Zvonchenko v. State of Florida*, No. 14-CF-5610-WS (Fla. 6th Cir. App. Ct. September 2, 2015).

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 PASCO COUNTY
APPELLATE DIVISION

ROBERT ZVONCHENKO,
Appellant,

v.

STATE OF FLORIDA,
Appellee.
_____/

UCN: 512014CF005610A000WS
Appeal No: CRC1405610CFAWS
L.T. No: 13-4139-MM-WS

On appeal from County Court,

Honorable Anne Wansboro,

Matthew W. Kindel, Esq.,
for Appellant,

Andrew C. Parker, Esq.,
Office of the State Attorney,
for Appellee.

ORDER AND OPINION

The trial court did not err by denying Appellant's motion to suppress. The evidence in the record that Appellant was driving below the speed limit and swerved outside the lane of traffic at least once is sufficient to support the traffic stop in this case. AFFIRMED.

STATEMENT OF THE CASE AND FACTS

This matter is before the court on appeal of the trial court's order denying a motion to suppress. Appellant was stopped by an officer after the officer observed that Appellant was driving below the speed limit and swerved outside of his lane of traffic.

During the stop, the officer observed Appellant to be under the influence of alcohol, and called another officer to conduct a DUI investigation, after which Appellant was arrested for driving under the influence. Appellant entered a plea of no contest to the charges, but reserved the right to appeal the denial of the motion to suppress.

STANDARD OF REVIEW

"Appellate review of a motion to suppress involves questions of both law and fact." *Rosenquist v. State*, 769 So. 2d 1051, 1052 (Fla. 2d DCA 2000). We review the trial court's application of the law to the facts of the case pursuant to a de novo standard. *Id. See Ornelas v. U.S.*, 517 U.S. 690, 698 (1996); *State v. Petion*, 992 So. 2d 889, 894 (Fla. 2d DCA 2008). Findings of fact by the trial court are reviewed for "clear error," and we will give deference to inferences drawn from those facts by the trial court and law enforcement officers. *See Ornelas*, 517 U.S. at 699; *Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002).

LAW AND ANALYSIS

Appellant contends it was error to deny the motion to suppress because the traffic stop was illegal, and that any evidence obtained as a result of the illegal stop must be suppressed. *See Hollinger v. State*, 620 So. 2d 1242 (Fla. 1993); *State v. Anderson*, 591 So. 2d 611 (Fla. 1991). Appellant claims the officer's testimony as to his usual practices when conducting a traffic stop is insufficient evidence of specific factors which created the reasonable suspicion necessary for the officer to conduct Appellant's traffic stop. Appellant further contends the officer's testimony that Appellant was driving approximately 25 to 30 miles per hour in a 50 mile per hour speed limit zone is insufficient alone to justify a traffic stop. *See Faunce v. State*, 884 So. 2d 504, 506 (Fla. 1st DCA 2004); *Foss v. State*, 355 So. 2d 225, 226 (Fla. 2d DCA 1978).

In *Agreda v. State*, 152 So. 3d 114, 116-17 (Fla. 2d DCA 2014), the Court recognized that a "legitimate concern for the safety of the motoring public can warrant a brief investigatory stop to determine whether a driver is ill, tired, or driving under the influence in situations less suspicious than that required for other types of criminal behavior." In *Agreda*, however, the officer "denied that he stopped the car for these

reasons," and the lower "court's reliance on this basis was, therefore, not supported by competent, substantial evidence." *Id.* at 116. The Court additionally noted the officer's concern as to the driver's low rate of speed "was based in part on his observation that people generally drove over the speed limit, not under it," and did not constitute a sufficient basis for the traffic stop in that case. *See id.* at 116-17.

Appellant claims the evidence is insufficient to support the stop because the officer could not say how many times Appellant swerved outside the lane of traffic, or how far Appellant swerved outside the lane. The officer testified he could not remember the exact number of times Appellant swerved, but that generally he did not conduct a traffic stop unless a driver swerved out of his or her lane more than twice. The reasonableness of a stop depends on "the validity of the basis asserted by the officer involved in the stop." *Dobrin v. Florida Dep't of Highway Safety and Motor Vehicles*, 874 So. 2d 1171, 1173 (Fla. 2004). The question is "whether the officer who stopped the vehicle had an objective basis to do so, not whether it would be standard police practice to stop the vehicle." *Id.* at 1174-75.

The officer testified Appellant was traveling approximately 25-30 miles per hour in a 50 mile per hour zone, that the officer observed Appellant for one-half to one mile, and observed Appellant swerve outside the lane of traffic at least once. The officer testified that it was his practice not to conduct a stop for failure to maintain a single lane unless the driver swerved outside of the lane "an excessive amount of times" or "where it may endanger somebody else." In addition to testifying as to usual practices when conducting a traffic stop, the officer testified as to specific reasons for conducting the traffic stop in this case. The officer specifically testified Appellant's driving pattern raised concerns Appellant may have been sick, tired or in need of assistance, and that based on experience the officer suspected Appellant may have been "falling asleep" or in need of help. The trial court found the officer was justified in stopping Appellant based on these concerns, which were reasonable considering Appellant's speed and failure to maintain a single lane. The record demonstrates sufficient evidence to conduct a traffic stop based on the officer's observations in this case. The officer testified as to objective indicators which support the reasonable suspicion that Appellant was sick, tired, or

impaired. *See State v. DeShong*, 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992). And, it is not necessary that an officer observe a traffic violation in order to conduct a brief investigatory stop when there is a legitimate concern for the safety of the driver or other persons. *See Bailey v. State*, 319 So. 2d 22, 26 (Fla. 1975); *State v. Davidson*, 744 So. 2d 1180 (Fla. 2d DCA 1999); *DeShong*, 603 So. 2d at 1352.

CONCLUSION

We find no error with the trial court's denial of the motion to suppress. The officer's testimony of specific observations of Appellant's driving and specific reasons for conducting the stop are sufficient to support the stop in this case. The trial court is hereby AFFIRMED.

It is ORDERED AND ADJUDGED that the trial court is hereby AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 2nd day of September, 2015.

Original order entered on September 2, 2015, by Circuit Judges Linda Babb, Susan Barthle and Daniel D. Diskey.