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

LINDA HELEN PETRICK

Appellant,

Appeal No. CRC 08-00028APANO
UCN: 522007CT070968XXXXXX

STATE OF FLORIDA

Appellee.
_________________________________/

Opinion filed ____________________.

Appeal from an Order Denying
Motion to Suppress
entered by the Pinellas County Court
County Judge Robert Dittmer

Curtis M. Crider, Esquire
Attorney for Appellant

James Peterson, Esquire
Attorney for Appellee

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Appellant, Linda Helen Petrick's appeal from a ruling of the Pinellas County Court denying her motion to suppress. The Appellant pleaded no contest to Driving Under the Influence but reserved her right to

appeal the denial of her motion to suppress. After reviewing the briefs and record, this Court reverses the trial court's denial of Appellant's Motion to Suppress.

Factual Background and Trial Court Proceedings

On Thursday night, May 17, 2007 or the early hours of May 18, 2007 at approximately 12:06 a.m., Officer Anthony Citrano of the Largo Police Department was parked across the street from Sassy's Martini Bar which is located at 14450 Walsingham Road, Largo, Florida. The officer testified he was doing paperwork and watching the parking lot of the bar. Officer Citrano observed the Appellant driving her vehicle slowly in the parking lot and then slowly pulling out of the parking lot onto to Walsingham Road. Officer Citrano pulled his marked police cruiser onto to the road to follow and pace Appellant's vehicle. A van occupied by Appellant's sister and several of her friends from Michigan had pulled put of the parking lot after Appellant and followed her vehicle. Officer Citrano paced the Appellant's vehicle for two-tenths of a mile and determined that she was driving fifteen (15) miles per hour. The speed limit is forty-five (45) miles per hour. After traveling two-tenths of a mile Appellant pulled her vehicle into the parking lot of a restaurant and bar known as Goose's. Appellant testified she and the others were going to the restaurant and bar to get something to eat. She was driving slowly so that her sister and her friends, who did not know the way, could follow.

Officer Citrano followed Appellant into the parking lot and initiated a traffic stop. The officer testified, based on his training and experience, that his pacing the Appellant and her slow driving for two-tenths of a mile was enough to establish a pattern of driving. Further, he testified "(a)nd to add to that, the driving was in a manner where I felt it needed immediate attention to determine what was going on, whether it be impairment or

as I said something that needed further assistance to investigate, and that drew me to hopefully stop that vehicle." The officer never observed the Appellant's vehicle weave in her lane. Appellant's driving was not affecting other traffic and did not interfere with the normal and reasonable movement of traffic. The only unusual driving the officer observed was Appellant driving fifteen miles an hour for two-tenths of a mile.

The officer cited Appellant for driving too slow even though her driving was not affecting other traffic as required by the involved statue, § 316.183 Fla. Stat. (2006). When the officer made contact with Appellant he noted signs of impairment which eventually resulted in the Appellant's arrest for DUI. The Appellant filed a motion to suppress asserting that there was no lawful basis for the traffic stop. The Trial Court found that there was not probable cause to stop Appellant's vehicle because of its slow operation, but there was sufficient basis to stop the vehicle to determine the reason for its unusual operation. The Trial Court entered a detailed written order denying the motion to suppress. The Appellant reserved the right to appeal.

Standard of Review

A trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling. *Pagan v. State,* 830 So.2d 792 (Fla.2002). However, a defendant is entitled to a de novo review of whether the application of the law to the facts establishes an adequate basis for the trial court's finding of probable cause. *Donaldson v. State,* 803 So.2d 856 (Fla. 4th DCA 2002). *See also 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. 2nd DCA 2007).

Analysis

1. *Stops for Traffic Infractions or Suspected Crimes.* 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). Specifically, in the *Whren* case, the United States Supreme Court held that the temporary detention of a motorist is reasonable when an officer has probable cause to believe that the motorist has committed a traffic infraction.

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). 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 (5th DCA Fla. 2001). While "reasonable suspicion" is a less demanding standard than probable cause and requires a showing considerably less than 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 (4th 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. 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 cause to believe a traffic infraction has been committed. *Jones v. State,* 842 So2d 889 (Fla. 2nd DCA 2003).

2. *Traffic Stops Based Upon Erratic Driving.* Florida courts have 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. *Bailey v. State,* 319 So.2d 22 (Fla.1975); *State of Florida, Department of Highway Safety and Motor Vehicles v. DeShong*, 603 So.2d 1349 (Fla. 2nd DCA 1992); *State v. Bean*, 12 Fla. L. Weekly Supp. 610 (Fla. 6th Jud. Cir. App. Ct. March 9, 2005). "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,* 319 So.2d at 26. For such a stop to be lawful, when there is no apparent traffic infraction or crime, there must be a reasonable suspicion of erratic driving. *DeShong*, 603 So.2d at 1352. The driving must have been observed for a sufficient period of time to support the conclusion of the police that the driving was not just an isolated incident but was approaching a pattern of unusual driving. *Bean,* 12 Fla. L. Weekly Supp at 613. The court determines the stop's legitimacy by considering the totality of the circumstances surrounding the stop.

Florida cases involving erratic driving address two situations. First, if the driving is sufficiently unusual, the police may make a stop to determine if the driver is ill or tired, or to see if there is a problem with the vehicle. *Bailey,* 319 So.2d at 26; *DeShong*, 603 So.2d at 1352. Second are cases that involve erratic driving that is consistent with someone who is DUI. In these cases, if the law enforcement officer, based upon his or her training and experience, testifies that the involved driving is consistent with someone who is DUI, then a stop may be justified. *State v. Davidson*, 744 So2d 1180 (Fla 2nd DCA 1999); *Hurd v. State,* 958 So2d 600 (Fla. 4th DCA 2007); *Nicholas v. State,* 857 So2d 980 (Fla. 4th DCA 2003); *Roberts v. State*, 732 So2d 1127 (Fla. 4th DCA 1999);

Yanes v. State, 877 So2d 25 (Fla. 5th DCA 2004); *Ndow v. State,* 864 So2d 1248 (Fla. 5th DCA 2004); *State v. Carrillo*, 506 So2d 495 (Fla. 5th DCA 1987).

3. *The Present Case.* In the present case, the Appellant, Linda Helen Petrick, drove her vehicle slowly for two-tenths of a mile. There is no evidence that she was weaving in her lane. She did not interfere with the normal and reasonable movement of other traffic. There was no unusual driving except the slow driving. The Trial Court was unquestionably correct in its ruling that there was no probable cause to stop Appellant's vehicle because of this slow operation. However the Trial Court erred in ruling that there was sufficient basis to stop the vehicle to determine the reason for its unusual operation and its finding that the stop was reasonable. The present case simply does not involve driving that is sufficiently erratic, in light of the case law cited immediately above, to give rise to a reasonable suspicion of impairment. There was no lawful basis for Officer Citrano to conduct a traffic stop of Appellant, Linda Helen Petrick.

Conclusion

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

IT IS THEREFORE ORDERED that the order of the trial court denying Appellant's Motion to Suppress is reversed and this case is remanded to the trial court for further action.

ORDERED at Clearwater, Pinellas County, Florida this 20th day of November, 2008.

Original opinion entered by Circuit Judges Michael F. Andrews, Raymond O. Gross, and R. Timothy Peters.