

**Criminal law -- Search and seizure -- Investigatory stop -- Founded suspicion -- Where officer observed defendant's vehicle cross line dividing inside lane from center turn lane, drift into center turn lane by approximately one foot, and make slow correction to return to his original lane, evidence fails to support conclusion that defendant's driving was erratic to point of being sufficient to establish founded suspicion to validate stop by officer for suspected DUI -- Absent other objective facts, officer simply acted on bare suspicion or hunch that defendant might possibly be impaired -- Error to deny motion to suppress**

ADAM NOORIGAN, Appellant, vs. STATE OF FLORIDA, Appellee. Circuit Court, 4th Judicial Circuit (Appellate) in and for Duval County. Case No. 99-78 AP, Division CR-A. Filed February 23, 2000. Appeal of County Court's Order Denying Appellant's Motion to Suppress, Brent Shore, Judge. Counsel: William White and Cheryl Batton, Assistant Public Defenders, Attorneys for Appellant. Shannon MacGillis, Assistant State Attorney, Attorney for Appellee.

### OPINION

(ARNOLD, C., J.) This cause came to be heard upon the Notice of Appeal filed by Appellant, Adam Noorigan, on July 9, 1999. Appellant seeks review of an Order entered by the County Court denying Appellant's Motion to Suppress. This Court has jurisdiction over the instant Appeal pursuant to Florida Rule of Appellate Procedure 9.030(c)(1).

On March 19, 1999, at 12:00 a.m., Officer Steve Mullen of the Jacksonville Sheriff's Office was traveling behind the Defendant's vehicle on Mayport Road in Duval County, Florida. As Officer Mullen followed the Defendant, he observed the Defendant's vehicle cross the line dividing the inside lane from the center turn lane and drift into the center turn lane by approximately one foot. Thereafter, Defendant made a slow correction to return to his original lane. Although there were other vehicles on the road, no other vehicle took evasive action. Based upon this observation, Officer Mullen determined that the driving pattern was indicative of a possible impairment and he turned on his flashing lights.

In response to Officer Mullen's flashing lights, Defendant safely exited the road and turned into a parking lot. After a DUI investigation was conducted, Defendant was subsequently arrested for driving under the influence and cited for failure to carry a driver's license. Furthermore, based upon statements made by the Defendant, Officer Mullen also cited Defendant for careless driving.

On April 20, 1999, Appellant filed a Motion to Suppress and the trial court conducted a hearing on Appellant's Motion on May 26, 1999. After hearing the testimony of officer Mullen and the argument of counsel, the court denied Appellant's Motion. Appellant entered a plea of nolo contendere to the charge of DUI and reserved the right to appeal the denial of the Motion to Suppress.

A trial court's determination of reasonable suspicion to conduct an investigatory stop is subject to de novo review. *DeLeon v. State*, 700 So.2d 718 (Fla. 2d DCA 1997) (citing *Ornelas v. United States*, 517 U.S. 690 (1996)). Although Florida law holds that an individual's driving behavior need not reach the level of a traffic violation in order to justify a DUI stop, this Court finds that the evidence in this case fails to support the conclusion that Defendant's driving was erratic to the point of being sufficient to establish a founded suspicion to validate a stop by Officer Mullen of Defendant for suspected DUI.

To justify a stop, the officer must have a "founded suspicion" that a person "has committed, is committing, or is about to commit a violation of criminal laws or ordinances." *State v. Stevens*, 354 So.2d 1244, 1247 (Fla. 4th DCA 1978). 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. 'Mere' or 'bare' suspicion, on the other hand, cannot support detention. Mere suspicion is no better than random selection . . . or hunch, and has no objective justification." *Id.*

At the hearing on the motion to suppress, Officer Mullen testified that based on his training and previous experiences, coupled with the time of night, he believed the momentary drift into the other lane by Defendant was a possible indicator of an impaired driver. Without any other objective facts, this Court finds that the officer simply acted on a bare suspicion or a hunch that Defendant might possibly be impaired.

While there is no clear test as to what driving behavior is sufficient to establish a founded suspicion of DUI, a review of the applicable case law suggests that more is needed than the isolated incident in the instant case. In *Roberts v. State*, 732 So.2d 1127 (Fla. 4th DCA 1999) the court denied Defendant's petition for writ of certiorari in that the court found Defendant's "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." *Id.* at 1128. (emphasis added.) See also *State v. Carrillo*, 506 So.2d 495 (Fla. 5th DCA 1987) (officer observation of Defendant's vehicle move to the extreme right-hand side of the road and then to the extreme left-hand side of his lane and observed Defendant continue this pattern for approximately one-quarter of a mile, doing the weaving pattern several times); *Esteen v. State*, 503 So.2d 356 (Fla. 5th DCA 1987) (officer's observation of vehicle weaving within its lane while traveling at a speed of 45 m.p.h. justified stop.); and *State, Dept. of Highway Safety and Motor Vehicles v. Deshong*, 603 So.2d 1349 (Fla. 2d DCA 1992) (observation of officer that driver seemingly used the lane markers to position his vehicle and for no apparent reason, the driver abruptly slowed from 55 to 30 miles per hour and then accelerated rapidly justified stop). In the instant case, given the isolated incident without any other objective facts, this Court is unable to hold that the driving pattern of Appellant was sufficient to establish founded suspicion of impairment.

Accordingly, it is

ORDERED AND ADJUDGED that the County Court's Order Denying Appellant's Motion to Suppress is hereby REVERSED.

\* \* \*