

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

MARTHA DENEEN COTTEN,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

CASE NO. CJAP 09-AP-39

County Court Case No.48-2008-CT-1698-E

Appeal from the County Court
of Orange County, Florida

Honorable Maureen Bell,
County Court Judge

Tad A. Yates, Esquire, and
William R. Ponall, Esquire,
for Appellant

No appearance
for Appellee

Before Powell, Rodriguez, and Bronson, J. J.

FINAL ORDER AFFIRMING LOWER COURT

Appellant Cotten appeals from an order denying her motion to suppress. She argues that appellee failed to establish that the arresting officer had reasonable suspicion that she was engaged in criminal activity at the time the officer stopped her vehicle. We dispense with oral argument pursuant to *Florida Rule of Appellate Procedure 9.320*. We affirm

As appellant notes, the facts are largely undisputed. At approximately 10:12 one evening, Winter Park Officer Suepat was on routine patrol when she was radio-dispatched to a

call in reference to a possible drunk driver in the area. She was given a description of the vehicle and the female driver. She was also advised by dispatch that it had been called in by the woman's husband, and that his wife was going to be heading towards the area of Lakemont and Aloma at the local Walgreen's liquor store.

When Officer Suepat pulled into the parking area of the Walgreen's liquor store, she observed the described vehicle parked there unoccupied. Officer Suepat parked her patrol vehicle approximately 15 feet away and remained in her vehicle. She knew what appellant looked like since she had met her several days earlier. She saw appellant exit the store with a brown paper bag and car keys in her hand, walk up to the driver's side of her vehicle, and operate her key remote. The trunk opened and appellant walked to the trunk but did not put anything inside, closed the trunk, and returned to the driver's side door and got in. Officer Suepat testified that while going to and from the trunk, appellant walked slowly "holding on to the side of the vehicle as if for balance." When appellant started her vehicle and turned on her headlights, Officer Suepat pulled her patrol vehicle behind appellant with her headlights and emergency flashing lights to block appellant's way.

After direct, cross, and re-direct examination of Officer Supat as to the stop was completed, appellant's attorney advised the court that he was challenging only the legality of the stop and that the prosecutor need not present any further evidence. After hearing argument, the trial judge denied the motion to suppress.

In the very recent case of *State v. Quinn*, ___So. 3d___, 2010 WL 3056599 (Fla. 5th DCA August 6, 2010), the Fifth District Court summarized the current state of the law relating to investigatory stops as follows:

A trial court's ruling on a motion to suppress comes to the appellate court with a presumption of correctness, and the reviewing court

must interpret the evidence in the light most favorable to sustaining the trial court's ruling. When reviewing a motion to suppress, the standard of review applied to the trial court's findings of fact is whether competent, substantial evidence supports the findings. However, the appellate court reviews *de novo* the trial court's application of the law to the facts.

To justify an investigatory stop, the police must have a reasonable suspicion that a crime has occurred or is about to occur, based on the totality of the circumstances. Although an amorphous legal concept, courts have defined the reasonable suspicion standard as "more than a 'mere hunch,' but 'considerably less' than a preponderance of the evidence." A reasonable suspicion exists when an officer can "point to specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant [the investigatory stop or seizure]." Factors that aid the police in determining whether a reasonable suspicion exists to make an investigatory stop include: "[t]he time; the day of the week; the location; the physical appearance of the suspect; the behavior of the suspect; the appearance and manner of operation of any vehicle involved; [and] anything incongruous or unusual in the situation as interpreted in the light of the officer's knowledge." Standing alone, an anonymous tip does not justify an investigatory stop. The officers themselves must observe evidence corroborating or supplementing an anonymous tip. The officer must base the reasonable suspicion solely on the circumstances that existed at the time of the investigatory stop and the facts known to the officer before the stop.

(citations omitted.)

We find and conclude that given the contents of the tip from the citizen informant husband coupled with Officer Suepat's personal observations, Officer Suepat had reasonable suspicion that appellant was engaging in criminal activity, namely, being in control of and/or operating a motor vehicle while her faculties were impaired by the use of alcohol. For a case squarely on point factually, see *Foy v. State*, 717 So. 2d 184 (Fla. 5th DCA 1998) (citizen-informant caller identifying herself as defendant's mother said son was driving a car while intoxicated and gave description of him, his car, and his whereabouts).

Consequently, we affirm the order appealed from and remand the case for further proceedings consistent with this opinion.

AFFIRMED and REMANDED.

DONE and ORDERED at Orlando, Florida this 19th day of August, 2010.

/S/ _____
Rom W. Powell, Senior Judge

/S/ _____
Jose R. Rodriguez, Circuit Court Judge

/S/ _____
Theotis Bronson, Circuit Court Judge

CERTIFICATE OF SERVICE

I hereby certify that copy hereof has been furnished to Tad A. Yates, Esquire, and William R. Ponall, Esquire, attorneys for appellant, P.O. Box 2728, Winter Park, Florida 32709-2728, and to Lawson L. Lamar, State Attorney, 415 N. Orange Avenue, Orlando, Florida 32801, by mail, this 19th day of August, 2010.

/S/ _____
Judicial Assistant