

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

JUAN DIAZ,

Petitioner,
vs.

CASE NO.: 2010-CA-25581
WRIT NO.: 10-103

**STATE OF FLORIDA,
DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,**

Respondent.
_____ /

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles,
Mary Varnadore, Hearing Officer.

Stuart I. Hyman, Esq.,
for Petitioner.

Kimberly A. Gibbs, Assistant General Counsel,
for Respondent.

Before POWELL, TURNER, and LATIMORE, J.J.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner Diaz appeals by way of petition for writ of certiorari a hearing officer's order sustaining the suspension of his driver's license after he was arrested for DUI. We have carefully considered his Petition, the Department's Response, the cases cited and other applicable case law, and have read the transcript of the formal review hearing. We deny the Petition for the reasons set forth below.

The testimony of Deputy Marinoni, the only witness, and his arrest report placed in the record and admitted without objection disclose the following facts. Early one morning at 1:57 a.m., while stationary in his vehicle on a grass shoulder dividing a four lane highway, the deputy

observed a lone vehicle approaching him. He first saw it when it was approximately 1,500 yards away. He visually estimated the vehicle's speed at 85 mph in the 55 mph posted zone. He activated his laser radar which yielded a reading of 82 mph. When the vehicle passed him, he pulled out and followed it for approximately half mile before turning on his lights and siren. When the vehicle stopped, he identified the driver as the petitioner Diaz.

Petitioner's sole argument is that there existed no probable cause to stop Petitioner's vehicle for speeding. He claims that the deputy's visual estimate of speed could not rise to probable cause and that the results of his speed measuring device were inadmissible in evidence. The only case he cites is *Dep't Highway Safety & Motor Vehicles v. Roberts*, 938 So. 2d 513 (Fla. 5th DCA 2006) which is factually distinguishable. In *Roberts*, the officer was moving in heavy traffic and was not using a speed measuring device.

In a formal license suspension hearing, it is not necessary that an officer have probable cause to believe a motorist is speeding in order to make a lawful stop. All that is necessary is that the officer have a *reasonable suspicion* that the motorist is speeding. *Whren v. United States*, 517 U.S. 806 (1996); *Brown v. State*, 719 So. 2d 1243 (Fla. 5th DCA 1998); *Kolb v. State*, 15 Fla. L. Weekly Supp. 422a (Fla. 9th Cir. Ct. Feb. 5, 2008). Verification by a speed measuring device is not necessary. *State v. Allen*, 978 So. 2d 254 (Fla. 2d DCA 2008); *State v. Joy*, 637 So.2d 946 (Fla. 3d DCA 1994).

Reasonable suspicion is defined as something more than a mere hunch, but is less demanding than probable cause. *Johnson v. State*, 696 So. 2d 1271 (Fla. 5th DCA 1997); *Brown*, 719 So. 2d 1243. A mere hunch is a bare suspicion based on intuition alone without supporting facts. *Brown*, 719 So. 2d 1243. The factors which a court may take into consideration in determining whether reasonable suspicion exists include time of day, day of week, manner of

operation of the car involved, and anything unusual in the situation as interpreted in light of the officer's knowledge, training and experience. *Id.* Each case must be evaluated on its own particular facts, and in light of the totality of the circumstances as shown by the evidence. *Reynolds v. State*, 592 So. 2d 1082 (Fla. 1992); *Id.*

We disagree with petitioner's second argument that evidence of the results of the deputy's laser radar reading could not be considered by the hearing officer because the admissibility requirements had not been met. This Court has twice before rejected a similar argument, and held that since actual speed need not be determined in a case like this, speed measuring device results alone without other evidence is in itself legally sufficient to establish reasonable suspicion for a stop for speeding. *See Paras v. Dep't Highway Safety & Motor Vehicles*, 7 Fla. L. Weekly Supp. 490a (Fla. 9th Cir. Ct. Mar. 22, 2000); *Leach v. Dep't Highway Safety & Motor Vehicles*, 2 Fla. L. Weekly Supp. 355b (Fla. 9th Cir. Ct. July 14, 1994).

For the foregoing reasons, we conclude that there was sufficient competent evidence to support the Hearing officer's decision that Deputy Marinoni had reasonable suspicion to make a lawful stop of petitioner for speeding.

Consequently, the petition for writ of certiorari is **DENIED**.

DONE AND ORDERED at Orlando, Florida this 6th day of January, 2012.

/S/

ROM W. POWELL
Senior Judge

/S/

THOMAS W. TURNER
Circuit Judge

/S/

ALICIA L. LATIMORE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Stuart I. Hyman, Esq.**, 1520 E. Amelia Street, Orlando, Florida 32803; and **Kimberly A. Gibbs, Assistant General Counsel**, P.O. Box 570066, Orlando, Florida 32857, by mail, this 6th day of January, 2012.

/S/ _____
Judicial Assistant