**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2010-KM-00900-COA**

**JOHN REYNOLDS** **APPELLANT**

**v.**

**CITY OF WATER VALLEY, MISSISSIPPI** **APPELLEE**

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| DATE OF JUDGMENT: | 05/04/2010 |
| TRIAL JUDGE: | HON. JAMES MCCLURE III |
| COURT FROM WHICH APPEALED: | YALOBUSHA COUNTY CIRCUIT COURT |
| ATTORNEY FOR APPELLANT: | TOMMY WAYNE DEFER |
| ATTORNEY FOR APPELLEE: | DANIEL M. MARTIN |
| CITY ATTORNEY: | JOHN J. CROW JR. |
| NATURE OF THE CASE: | CRIMINAL - MISDEMEANOR |
| TRIAL COURT DISPOSITION: | CONVICTED OF DRIVING UNDER THE INFLUENCE, FIRST OFFENSE, AND SENTENCED TO TWO DAYS IN JAIL WITH TWO DAYS SUSPENDED AND TO PAY A $1,000 FINE |
| DISPOSITION: | REVERSED AND RENDERED - 12/06/2011 |
| MOTION FOR REHEARING FILED: | |
| MANDATE ISSUED: | |

**BEFORE LEE, C.J., BARNES AND ROBERTS, JJ.**

**LEE, C.J., FOR THE COURT:**

PROCEDURAL HISTORY

¶1. On January 8, 2009, John Reynolds was convicted in the Water Valley Municipal Court of driving under the influence (DUI), first offense, and ordered to pay a $1,000 fine and court costs. Reynolds appealed to the Yalobusha County Circuit Court for a de novo trial. At his bench trial, Reynolds was again found guilty and ordered to pay a $1,000 fine,

court costs, complete Mississippi Alcohol and Safety Education Program (MASEP) classes, and serve forty-eight hours in jail. The jail time was suspended. Reynolds filed a motion to correct the circuit court's judgment, a motion for a judgment notwithstanding the verdict (JNOV), and a motion for a new trial. The circuit court denied all of Reynolds's post-trial motions.

¶2. Feeling aggrieved, Reynolds now appeals and raises the following two issues: (1) the circuit court erred in convicting him of DUI, first offense refused test, and (2) the circuit court erred in denying his ore tenus motion to dismiss for lack of probable cause. Finding error, we reverse and render.

FACTS

¶3. On the morning of September 6, 2008, at 4:30 a.m., Water Valley Police Officer Christopher Blair was on routine patrol in Water Valley, Mississippi. Officer Blair was stopped at a red light at the intersection of Central Street and North Court Street. While waiting for the light to change, Officer Blair noticed a car stop approximately six-car lengths behind him. When the light changed, both cars proceeded southbound on Central Street. Officer Blair then turned left into a parking lot to perform a security check on the Dollar General business, but he noticed the car continued straight on Central Street. Officer Blair noted the car was a silver Chevrolet Corvette, which he stated was a "very unique car[.]"

¶4. After checking the doors, windows, and back of the Dollar General, Officer Blair turned north onto Railroad Street and saw the Corvette driving east on North Court Street. When the Corvette passed him at the intersection of Railroad Street and North Court Street, he noted the car was traveling below the speed limit of twenty-five miles per hour. He also

saw that two males were in the Corvette and that the passenger was drinking from a white cup. The passenger pointed at Officer Blair when they drove by his car. Once the passenger pointed to the officer, the Corvette slowed from less than twenty-five miles per hour to approximately five to eight miles per hour. Officer Blair began to follow closely behind the Corvette for a "good little distance" and proceeded to call in the license plate number to dispatch. Dispatch informed Officer Blair that the car belonged to Reynolds and that there were "negative 29s, which means it's not wanted or stolen out of anywhere." From there, the two cars continued east on North Court Street to Goode Street. Goode Street is a public street that generally runs north and south. To the south, it runs through the elementary school's campus. The Corvette turned right (south) onto Goode Street toward the elementary school; Officer Blair turned left (north) which runs into Jones Street.

¶5. Officer Blair traveled approximately 150 feet north on Goode Street when he made the decision to turn around and initiate a traffic stop with the Corvette because he believed it suspicious that the Corvette would be going toward the school at 4:30 a.m. The Corvette had turned around in the elementary school's parking lot and was driving north on Goode Street when the two cars passed each other near the elementary school. After passing each other, Officer Blair turned around, turned on his blue lights, and initiated a traffic stop. In response to Officer Blair, the Corvette immediately pulled over and stopped. Before exiting his patrol car, Officer Blair radioed dispatch requesting additional officers. Officer Blair saw the driver, later determined to be Reynolds, exit the Corvette and hold on to the door for balance. Officer Blair noted that Reynolds had slurred speech, glazed and bloodshot eyes, and smelled of alcohol. With the aid of the two other officers that arrived at the scene,

Officer Blair advised Reynolds that he was under arrest for DUI. Reynolds was transported to the Yalobusha County Jail where Officer John Hernandez administered Reynolds an Intoxilyzer test after a twenty-minute period of observation. Reynolds blew into the Intoxilyzer machine, but he stopped blowing before an accurate breath sample could be gathered. As a result, the Intoxilyzer printed out a DUI refusal. Reynolds was taken to the sheriff's department where he was formally charged with DUI.

¶6. At the bench trial, the City of Water Valley put on two witnesses: Officers Blair and Hernandez. On cross-examination, Officer Blair admitted that at no time during his contact with the Corvette did he witness any traffic violations or improper driving. Officer Blair also admitted he saw no indication that Reynolds was driving under the influence. Further, on direct examination, Officer Blair testified that he called in the Corvette's license plate number to dispatch because:

> [t]o me, they were acting suspicious, especially when, you know, you're behind me on one street, I turn[ed] around to check a building[,] and then I [saw] that same vehicle, and then when[] the passenger pointed at me and they slowed down really slow, you know, five miles to eight miles an hour when the speed limit is [twenty-five], it just threw up red flags saying that, you know, I might just need to check to see. It's a nice car. It's a Corvette. I want to see if it might be stolen, so I ran the license plate[,] and it said – a dispatch came back who it belonged to, Mr. John Reynolds and there were negative 29s, which means it's not wanted or stolen out of anywhere.

Reynolds offered no witnesses, but he did file a motion for a directed verdict and a motion to dismiss on the ground that there was insufficient probable cause for Officer Blair to have initiated a traffic stop. The circuit judge denied both motions and found the City had provided sufficient evidence to support Officer Blair's stop of Reynolds and subsequent arrest.

## STANDARD OF REVIEW

¶7. Generally, "[t]he [appellate court] applies a mixed standard of review to Fourth-Amendment claims. Whether probable cause or reasonable suspicion exists is subject to a de novo review." *Eaddy v. State*, 63 So. 3d 1209, 1212 (¶11) (Miss. 2011) (internal citation omitted). This Court limits the de novo review of the court's determination to "historical facts reviewed under the substantial evidence and clearly erroneous standards." *Id.* (internal citations omitted).

¶8. In the current case, there is no factual dispute concerning the circumstances of the traffic stop; therefore, we do not need to address whether the circuit court's determination of the facts was based on substantial evidence. Officer Blair was the only witness presented to testify regarding the circumstances that led to the traffic stop; Reynolds did not testify or present any evidence to the contrary. We will only review the circuit court's application of the law to the undisputed facts. Thus, our standard of review for the application of the law to the facts receives a de novo review. *See Dies v. State*, 926 So. 2d 910, 917 (¶20) (Miss. 2006).

## DISCUSSION

¶9. This case requires that we closely analyze whether a police officer's investigatory stop was the result of reasonable suspicion based upon specific and articulable facts, which, if taken together with rational inferences from those facts, would result in the conclusion that criminal activity has occurred or is imminent. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968); *McCray v. State*, 486 So. 2d 1247, 1249-50 (Miss. 1986). If it is determined the police officer did not have the requisite reasonable suspicion, then evidence obtained during the

investigatory stop, in this case evidence of DUI, is deemed fruit of the poisonous tree and is inadmissable. *See Haddox v. State*, 636 So. 2d 1229, 1233 (Miss. 1994). After close review of the record in this case, we conclude the investigatory stop was not based on specific and articulable facts that a crime had occurred or was imminent.

I. REASONABLE SUSPICION

¶10. Reynolds argues his conviction should be reversed because Officer Blair did not have probable cause to conduct the traffic stop that led to his arrest and DUI conviction. He asserts that Officer Blair failed to articulate any illegal activity or traffic violation that gave Officer Blair sufficient probable cause or reasonable suspicion to initiate a traffic stop. We agree.

¶11. When he pulled over Reynolds, Officer Blair initiated an investigatory stop pursuant to *Terry*, 392 U.S. at 8. An officer may initiate an investigatory stop pursuant to *Terry* as long as the officer has an "objective manifestation that the person stopped is, or is about to be, engaged in criminal activity[.]" *McCray*, 486 So. 2d at 1249-50 (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). In *Gonzales v. State*, 963 So. 2d 1138, 1142 (¶14) (Miss. 2007), the Mississippi Supreme Court stated:

> To determine whether the search and seizure were unreasonable, the inquiry is two-fold: (1) whether the officer's action was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place. *Terry*, 392 U.S. at 19-20, 88 S. Ct. 1868. *In order to satisfy the first prong, the law enforcement officer must be able to point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Id.* at 21, 88 S. Ct. 1868.

(Emphasis added). Further, in this Court's decision in *Qualls v. State*, 947 So. 2d 365, 371

(¶16) (Miss. Ct. App. 2007) (quoting *Anderson v. State*, 864 So. 2d 948, 951 (¶13) (Miss. Ct. App. 2003)), we held "'mere hunches' or 'looking suspicious' [are] insufficient to establish reasonable suspicion for an investigatory stop."

¶12. At the bench trial, Officer Blair testified that Reynolds's behavior was suspicious and initiated an investigatory stop based upon the following events:

1. Reynolds stopped six-car lengths behind him at the stop light;
2. The car slowed its speed dramatically upon seeing the officer; and
3. The car, although on a public street, was driving toward the elementary school at 4:30 a.m.

The traffic stop ultimately led to Reynolds's arrest and conviction of DUI. Based on this evidence alone, we find Officer Blair did not have reasonable suspicion sufficient to initiate an investigatory stop under the *Terry* standard. At the bench trial, Officer Blair testified: Reynolds did not violate any traffic laws; the car had not been reported stolen; and there was not any other suspicious behavior beyond what was previously described. Further, Officer Blair testified that Reynolds did not exhibit any of the usual signs of DUI, such as swerving, failing to dim headlights, or abrupt stopping and starting. He also testified that one reason he was suspicious of the Corvette and decided to initiate the stop was based on the fact that the Corvette was driving toward the elementary school. He testified there "had [been] some break-ins both at the school, high school, [and] other businesses, that's why I was checking Dollar General, so I wanted to turn around and see why they were at the elementary school." It is unclear from the record whether the elementary school or the high school had been broken into in the past, when the alleged break-in had occurred, and whether the suspects of the break-in had been apprehended. For example, had the suspects already been

apprehended, it might not have been reasonable for Officer Blair to be suspicious of a car driving toward the elementary school. Further, once he turned around, Officer Blair saw that the Corvette had not stopped at the elementary school, nor was it doing anything suspicious at the school, yet he still proceeded to initiate the traffic stop. It was not until after Reynolds had exited the car that Officer Blair began to suspect Reynolds might have been drinking and driving. The supreme court has held that if the seizure was an unlawful exercise of the officer's authority, then any evidence that results from the unlawful seizure, in this case evidence of a DUI, is considered fruit of the poisonous tree and should be suppressed. *Haddox*, 636 So. 2d at 1233. Considered as a whole, these acts of "suspicious behavior" do not demonstrate Reynolds had committed any criminal act or that one was imminent. Officer Blair might have been correct under the circumstances in concluding that the Corvette looked suspicious at 4:30 a.m.; however, merely looking suspicious is not sufficient to justify a *Terry* investigative stop. There was simply no evidence Reynolds had committed any criminal offense or was about to engage in criminal activity. Since Officer Blair lacked the proper reasonable suspicion to initiate a *Terry* stop, any evidence he found as a result of that stop is considered fruit of the poisonous tree and should have been suppressed at the hearing.

¶13. We find that the circuit court erred in finding that reasonable suspicion existed to uphold Officer Blair's investigatory stop of Reynolds. An investigatory stop based solely on a hunch or looking suspicious is not authorized. Since all of the incriminating evidence against Reynolds was discovered solely as a consequence of the unlawful traffic stop, arrest, and detention, we reverse and render Reynolds's conviction.

II. DUI REFUSAL

¶14. As we have found Reynolds's DUI conviction was not proper, this issue is moot.

**¶15. THE JUDGMENT OF THE CIRCUIT COURT OF YALOBUSHA COUNTY IS REVERSED AND RENDERED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.**

**IRVING AND GRIFFIS, P.JJ., BARNES, ISHEE, ROBERTS, MAXWELL AND RUSSELL, JJ., CONCUR. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION. MYERS, J., NOT PARTICIPATING.**

**CARLTON, J., DISSENTING:**

¶16. I respectfully dissent. I would affirm John Reynolds's conviction and sentence.

¶17. As stated by the majority, the Yalobusha County Circuit Court found Reynolds guilty of driving under the influence (DUI), first offense. On appeal from the municipal court, the circuit court, after a trial de novo, sentenced Reynolds to pay a $1,000 fine, court costs, complete Mississippi Alcohol and Safety Education Program classes, and serve forty-eight hours in jail.

¶18. Now, on appeal to this Court, Reynolds claims the circuit court erred in convicting him of DUI, first offense refused test, and he also asserts the court erred in denying his ore tenus motion to dismiss the case for lack of probable cause. Before evaluating Reynolds's alleged error, I must first address the proper standard of review to apply on appeal to his claim of error in the denial of his ore tenus motion to dismiss. A review of the record reflects Reynolds failed to file any motion to suppress based upon a lack of probable cause or to suppress based upon any ground. I further note a review of the record shows that Reynolds raised the issue in his motion before the circuit court for a judgment notwithstanding the verdict (JNOV), or, in the alternative, for a new trial, wherein he claimed error in the circuit judge's denial of his ore tenus motion to dismiss for lack of probable cause. When a

reviewing a trial court's denial of a motion to suppress for lack of probable cause or lack of reasonable suspicion, the determination of issues involves a mixed question of law and fact, and the appellate court employs a de novo standard of review. *Spurlock v. State*, 67 So. 3d 811, 813 (¶7) (Miss. Ct. App. 2011) (citing *Dies v. State,* 926 So. 2d 910, 917 (¶20) (Miss. 2006)). However, when reviewing the trial court's decision to admit or exclude evidence in the absence of a motion to suppress, such as the case before us, then we employ an abuse-of-discretion standard of review on appeal. *Id.* (citing *Chamberlin v. State*, 989 So. 2d 320, 336 (¶52) (Miss. 2008)).

¶19. As to a claim of insufficiency of evidence, we apply the following standard:

> When determining whether a verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict. Reversal is warranted only when we are convinced that the circuit court has abused its discretion and that allowing the verdict to stand would sanction an unconscionable injustice.

*Jones v. State*, 958 So. 2d 840, 843 (¶6) (Miss. Ct. App. 2007) (citing *Herring v. State*, 691 So. 2d 948, 957 (Miss. 1997)).

¶20. In turning to Reynolds's argument, I submit the law clearly allows an investigatory stop based upon reasonable suspicion.[1] In *Spurlock*, 67 So. 3d 811, 813 (¶9), this Court recognized "the constitutional requirements for an investigative stop are less stringent than those for a full arrest." (citing *Dies*, 926 So. 2d at 918 (¶ 22)). The Mississippi Supreme Court has found investigative stops permissible, provided that an officer possessed

[1] I note that Reynolds only raised and complained of a lack of probable cause to stop his car, but Reynolds's argument fails to raise the issue that Officer Christopher Blair lacked reasonable suspicion sufficient to justify the *Terry* investigatory stop.

"reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a felony or as long as the officers have *some objective manifestation that the person stopped is, or is about to be*[,] *engaged in criminal activity.*" *Id.* at 814 (¶9) (quoting *Floyd v. City of Crystal Springs,* 749 So. 2d 110, 114 (¶16) (Miss. 1999)) (emphasis added). In *Eaddy v. State,* 63 So. 3d 1209, 1213 (¶14) (Miss. 2011), when distinguishing investigatory stops based upon reasonable suspicion, the Mississippi Supreme Court relied upon the cases of *Terry v. Ohio*, 392 US 1 (1968); *Walker v. State*, 881 So. 2d 820, 826 (¶10) (Miss. 2004);; and *Haddox v. State*, 636 So. 2d 1229, 1234 (Miss. 1994).[2] Despite changes to the *Terry*-investigatory-stop doctrine, the Mississippi Supreme Court recognized that no bright-line rule exists for determining whether an investigatory stop is unreasonable. *Gonzales v. State*, 963 So. 2d 1138, 1141-42 (¶13) (Miss. 2007). Such determination must be made on a case-by-case basis. *Floyd,* 749 So. 2d at 115 (¶18).

¶21. The law required Officer Christopher Blair to possess reasonable suspicion, not probable cause, to conduct the investigatory stop. *See id.* However, an investigatory stop may evolve into a seizure, thus, requiring probable cause. In *Eadd*y, the supreme court explained that the scope of a search or seizure conducted for investigatory purposes, based upon reasonable suspicion, must be limited to the initial circumstances of that called for by the initial police action in conducting the investigatory stop. *Eaddy*, 63 So. 3d at 1213-14 (¶16). The court stated: "[W]hen police detention exceeds the scope of the stop, the stop

[2] *See also Whren v. United States*, 517 U.S. 806, 810 (1996) ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.").

becomes a 'seizure,' and the State must show probable cause." *Id.* at 1214 (¶16) (citations omitted).

¶22. In applying this precedent to the case before us, I find no abuse of discretion in the circuit judge's finding to introduce evidence of the stop and finding that sufficient reasonable suspicion existed in this case supporting Officer Blair's investigatory *Terry*[3] stop of Reynolds. A review of the record shows that Officer Blair's testimony provides sufficient reasonable suspicion, grounded in specific and articulable facts showing objective manifestations that Reynolds was suspected of engaging or suspected of about to be engaged in criminal activity. *See Spurlock*, 67 So. 3d at 813 (¶9).

¶23. Officer Blair testified that he noticed Reynolds's vehicle stopped an inappropriately long distance behind his patrol vehicle at a traffic light at 4:30 a.m. Officer Blair next stopped to check the Dollar General store due to recent break-ins, and then he proceeded north up Railroad Street to the intersection of North Court Street, where he stopped. While stopped, Officer Blair saw Reynolds's vehicle again as the vehicles passed in the opposite lane. The passenger in Reynolds's vehicle pointed at Officer Blair as the cars passed each other, and Officer Blair could see the passenger drinking out of a white foam cup. At this point, the speed of Reynolds's car oddly dropped from the speed limit of twenty-five miles per hour to five to eight miles per hour, and no roadway necessity existed to warrant such a dramatic drop in speed as the cars passed.[4] *See Byrd v. F-S Prestress, Inc*, 464 So. 2d 63, 67

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[3] *Terry*, 392 U.S. at 30-31.

[4] *See* Miss. Code Ann. § 63-3-509(1) (Rev. 2004). Mississippi Code Annotated section 63-3-509(1) provides that in the event of apparent willful disobedience and refusal to comply with minimum speed limits, the continued slow operation by a driver shall be a

(Miss. 1985) (The supreme court recognized that driving less than thirty miles an hour on federal-designated Highway 49 constituted negligence on the road, giving rise to civil liability, if no hazard exists that requires such a reduced speed.). Officer Blair checked the vehicle's plate number because of the suspicious behavior. Reynolds's vehicle then turned at an intersection toward the elementary school. Officer Blair questioned the suspicious behavior of driving towards the elementary school in the middle of the night, particularly in light of the previous break-ins at that school, the high school, and other businesses. Reynolds's vehicle turned around, and Officer Blair testified that he then conducted an investigatory *Terry* stop based upon the foregoing facts giving rise to his reasonable suspicion. As stated, precedent recognizes that reasonable suspicion provides a sufficient basis to support an investigatory stop. *Whren*, 517 U.S. at 810; *Terry*, 392 U.S. at 30-31; *Rainer v. State*, 944 So. 2d 115, 118 (¶6) (Miss. Ct. App. 2006). Once Officer Blair conducted the investigatory stop, probable cause arose from the facts herein, under the totality of the circumstances.

¶24. Officer Blair testified that once stopped, Reynolds stepped out of his vehicle and grabbed the door for balance. Officer Blair noticed that Reynolds's speech was slurred to the point that the officer could not understand what Reynolds was saying. Officer Blair also

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misdemeanor. *See also Netterville v. Crawford*, 233 Miss. 562, 103 So. 2d 1 (1958); Miss. Code Ann. § 63-3-511 (Rev. 2004) (Local authorities may modify speeds on any street, county road, or any portion thereof for safety but no speed limit shall be fixed by any such local authorities at less than fifteen miles per hour.). *See also* Miss. Att'y Gen. Op. 2001-0574, 2001 WL 1229375, *Gordon* (Sept. 21, 2001) (Careless driving is not dependant upon whether other cars are present but rather based upon all of the combined factors listed in the statute.).

testified that he could smell the strong odor of intoxicating alcohol emanating from Reynolds from three feet away. Officer Blair explained that Reynolds's glazed-over eyes were also blood shot, and he continued to show unsteadiness. Officer Blair testified that Reynolds showed the characteristics of being highly intoxicated as evidenced by the aforegoing unsteadiness, odor of alcohol, blood shot and glazed eyes, and slurred speech. Moreover, Officer Blair testified that he had known Reynolds for many years and that Reynolds's speech was normally different than the slurred speech he displayed on that morning at 4:30 a.m. The passenger, meanwhile, threw his cup on the ground. The passenger also admitted to Officer Blair that he had been drinking whiskey from the cup and that he and Reynolds had both been drinking whiskey all night.

¶25. In *Shelton v. State*, 45 So. 3d 1203, 1208-09 (¶13) (Miss. Ct. App. 2010), this Court upheld a defendant's conviction for possession of more than five kilograms of marijuana. The Court reasoned that under Mississippi Code Annotated section 63-3-1213 (Rev. 2004), the defendant's vehicle was seen driving in a careless or imprudent manner; therefore, the deputy possessed the authority to stop them. *Id*. The Court in *Shelton* found that when the defendant acted nervously, then the deputy's retrieval of a drug detecting dog was appropriate. *Id*. at 1209 (¶¶14-15). The drug-detecting dog's positive alerts then created probable cause for the deputy to search the trunk of the rental car. *Id*.

¶26. Similarly, in the case of *Adams v. City of Booneville*, 910 So. 2d 720, 724 (¶15) (Miss. Ct. App. 2005), this Court determined the officer therein possessed an objective reasonable suspicion that the defendant driver drove carelessly, even though the driver was ultimately acquitted of the careless-driving charge. The opinion in *Adams* provides insight relevant to

the issues before us now. In *Adams,* this Court found probable cause for the stop because the time of night, 2:30 a.m., was very late; it was New Year's Eve, when persons were widely known to celebrate with alcohol; and the vehicle was traveling without due regard to speed laws. *Id.* I note in *Adams*, this Court found probable cause existed to support the stop. *Id*. Similarly, in the case before us now, Officer Blair conducted a *Terry* investigatory stop based on reasonable suspicion, and probable cause to arrest Reynolds arose when the officer engaged Reynolds for the brief investigatory stop based on reasonable suspicion.

¶27. Jurisprudence recognizes that law-enforcement officers rely upon their expertise and knowledge of the area in determining whether reasonable suspicion exists. Additionally, the officer must be able to articulate specific facts which, when taken together with rational inferences from those facts reasonably warrant the investigatory stop. *Gonzalez*, 963 So. 2d at 1142 (¶14). As stated, in this case, Officer Blair certainly articulated specific facts giving rise to his reasonable suspicion, and the circuit judge appropriately considered these specific facts supporting the officer's reasonable suspicion along with the rational inference flowing therefrom.

¶28. As shown by the record, and utilizing an abuse-of-discretion standard of review, the evidence shows that Officer Blair possessed reasonable suspicion for an investigatory stop. Once stopped for the investigatory detention based on Officer Blair's reasonable suspicion, Reynolds's behavior provided ample evidence under the totality of the circumstances in support of probable cause for his arrest. *United States v. Arvizu*, 534 U.S. 266, 273-77 (2002) (Defendant's deceleration, as vehicle approached officer, should be assessed by officer in light of his specialized training and familiarity with the area; the court applied the

totality-of-circumstance test, with due weight to officer's factual inferences, to determine whether reasonable suspicion existed to believe the defendant was engaged in illegal activity.).

¶29. Thus, I respectfully disagree with the majority's conclusion that based on this evidence alone, Officer Blair failed to possess reasonable suspicion sufficient to initiate an investigatory stop under *Terry*. *See* Miss. Code Ann. § 63-3-1213 (Rev. 2004) (careless-driving statute). Instead, as stated, I concur with the circuit judge's finding that this evidence indeed provided not only reasonable suspicion sufficient for an investigatory stop, but also sufficient probable cause for the arrest upon conducting the *Terry* stop.[5]

¶30. After reviewing the record, I find no reversible error by the circuit court. Thus, in keeping with our standard of review, I must respectfully dissent.[6]

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[5] *See United States v. Escalante*, 239 F.3d 678, 680-81 (5th Cir. 2001) (The United States Court of Appeals for the Fifth Circuit held that although a traffic stop for careless driving may be pretextual, the stop does not violate the Fourth Amendment where the officer has probable cause); *Martin v. State*, 43 So. 3d 533, 534-35 (¶¶6, 11) (Miss. Ct. App. 2010) (Officer had probable cause to execute traffic stop for careless driving; officer testified that the defendant was "bumping" the fog line on the highway.); *Adams*, 910 So. 2d at 725 (¶17) (Sufficient probable cause to make stop existed based on careless driving, even though the defendant was later acquitted of the careless-driving charge in the municipal court); *Varvaris v. City of Pearl*, 723 So. 2d 1215, 1216-17 (¶¶5-7) (Miss. Ct. App. 1998) (Uncorroborated testimony of arresting officer alone was sufficient to support defendant's conviction of careless driving.).

[6] *See Crowder v. State*, 850 So. 2d 199, 200 (¶5) (Miss. Ct. App. 2003).