**2 Fla. L. Weekly Supp. 483a**

**Criminal law -- Search and seizure -- Vehicle stop -- Traffic infraction -- Totality of defendant's driving pattern was not adequate to give officer founded or reasonable suspicion of criminal activity sufficient to justify stop of vehicle -- Failure to stay in single lane is not violation of statute if movement from lane is accomplished without endangering other traffic -- Even if defendant's driving pattern constituted technical violation of statute, minor deviations from traffic law over distance of one mile do not constitute reasonable basis for stop**

THE STATE OF FLORIDA, Plaintiff, vs. JAMES DOUGLAS ALFORD, Defendant. In the County Court of the 17th Judicial Circuit in and for Broward County, Traffic Division. Case No. 94-446MM10A. September 19, 1994. Carole Taylor, Judge. Counsel: Chuck Benson, Assistant State Attorney, for the Plaintiff. Douglas J. Glaid, for the Defendant.

ORDER GRANTING MOTION TO SUPPRESS EVIDENCE

THIS CAUSE, having come on to be heard upon the Defendant's Motion to Suppress for Lack of Reasonable Suspicion, and both the State and the Defendant being given the opportunity to offer testimony, present evidence and give argument, and the Court having had the opportunity to evaluate the credibility of the witness presented by the State and having twice reviewed the carcam video tape presented by the defense, the Court makes the following findings of fact and issues the following conclusions of law:

FINDINGS OF FACT

On January 6, 1994, at approximately 9:30 p.m., Deputy James Herbert of the Broward Sheriff's office, observed the Defendant's vehicle traveling eastbound in the inside lane of Oakland Park Boulevard. Although Deputy Herbert initially testified that he first observed the Defendant's vehicle in the 1600 block of east Oakland Park Boulevard, he later testified that he first observed the vehicle in the 2200 block of east Oakland Park Boulevard. While following directly behind the Defendant's vehicle from the 1600 block of east Oakland Park Boulevard to Federal Highway, a distance of approximately three-quarters of a mile, Deputy Herbert testified that he observed the Defendant's vehicle move to its right and cross the right lane line approximately six or seven times in a ``weaving'' pattern. Deputy Herbert testified that the Defendant crossed the line on each of these occasions by several inches to one foot. This Court having twice reviewed the carcam video tape of the Defendant's driving pattern recorded by Deputy Herbert, the Court finds that the Defendant did not cross the right lane line as described by Deputy Herbert, nor did Defendant's vehicle ``weave''. Further, Deputy Herbert admitted that the Defendant's driving pattern prior to the Deputy's activation of the carcam video was no different than the driving pattern captured on video.

Deputy Herbert continued to follow the Defendant's vehicle and observed it make a left turn onto Federal Highway and proceed northbound. The Defendant properly utilized his turn signal prior to making this left turn. In addition, the Defendant properly stopped at the traffic signal located at the intersection of Oakland Park Boulevard and Federal Highway. Deputy Herbert continued to follow the Defendant's vehicle approximately one-quarter of a mile northbound on Federal Highway and observed no unusual driving pattern at this time. After Deputy Herbert activated his emergency lights, the Defendant properly indicated his left turn onto northeast 38th Street and properly obeyed the traffic signal at northeast 38th Street. The Defendant properly turned onto 38th Street where he was stopped by Deputy Herbert. Deputy Herbert testified that the sole basis for his stopping the Defendant's vehicle was an alleged violation of Section 316.089(1), Fla. Statutes. As a result, Deputy Herbert

cited the Defendant for failing to maintain a single lane under this statutory section and subsequently placed the Defendant under arrest for the offense of driving while under the influence of an alcoholic beverage.

CONCLUSIONS OF LAW

It is well established that a police officer may stop and investigate a motor vehicle only when there exists a ``founded or reasonable suspicion which requires further investigation to determine whether the car's occupant had committed, is committing, or is about to commit a crime.'' *Lower v. State*, 348 So. 2d. 410 (Fla. 2d DCA 1977), cited with approval in *Currens v. State*, 363 So. 2d. 1116, 1117 (Fla. 4 DCA 1978). *See also, Kehoe v. State*, 521 So. 2d 1094, 1095 (Fla. 1988). As our Supreme Court instructed in *Kehoe, supra*, at 1096, one must look at the ``cumulative impact of the circumstances'' perceived by the officers in determining whether a founded or reasonable suspicion of criminal activity exists.

In viewing the totality of the Defendant's driving pattern in the instant case, this Court concludes that the ``cumulative impact of the circumstances'' was not adequate to constitute a founded or reasonable suspicion of criminal activity sufficient to justify the stop of the Defendant's vehicle. Deputy Herbert testified that the driving pattern he observed was captured on the carcam video he recorded. More significantly, Deputy Herbert admitted that the Defendant's driving pattern was no different prior to the time the deputy activated his carcam video recorder. Having twice viewed this video tape, the Court concludes that Deputy Herbert did not have the requisite founded or reasonable suspicion that the Defendant had committed a violation of Section 316.089(1), Fla. Statutes -- the admitted sole basis for the stop. There was no evidence adduced at the suppression hearing which showed that the Defendant's driving interfered with or endangered any other vehicular or pedestrian traffic on east Oakland Park Boulevard or Federal Highway. Indeed, the carcam video does not show any such endangerment. As such, this Court finds that there was no violation of 316.089(1), Fla. Statutes. It is clear from the language contained in 316.089(1) that failure to stay within a single lane is a violation *only* when coupled with the fact that the driver has not first ascertained that changing lanes can be done without endangering any other traffic. It appears that if a driver's movement from a lane can be accomplished without such endangerment, then there is no violation of this statutory section. *See State v. Riley*, 638 So. 2d, 507, 508 (Fla. 1994) (since defendant driver did not violate statute governing use of turn signals when he failed to use turn signal, stop of his vehicle was improper, and evidence seized during stop properly suppressed); *State v. Clark*, 511 So. 2d, 726 (Fla. 1st DCA 1987) (since defendant did not violate §316.238(1), Florida Statutes, by using his headlights as he did, the stop of defendant's vehicle by officer was not authorized, and evidence seized during stop was thus inadmissible); *State v. Wolcoff*, 514 So. 2d 394 (Fla. 4 DCA 1987) (since defendant did not obstruct traffic in violation of §316.2045(1), Florida Statutes, the stop of the defendant and resulting search were improper).

Even if the Defendant technically committed a violation of §316.089(1), this Court concludes that the totality of the Defendant's driving pattern, i.e., which encompassed a distance of at least one mile, did not constitute a reasonable basis for stopping the Defendant's vehicle. Indeed, several analogous cases instruct that, in order to justify the stopping of an automobile, more than minor deviations from the traffic law must exist. For example, in *Collins v. State*, 65 So. 2d 61 (Fla. 1953), the Florida Supreme Court held that a defendant who drove on the wrong side of the road on three occasions in the course of a mile by driving one foot over the center line of the highway was insufficient to justify the police officer's stop of the defendant. In *United States v. Smith*, 799 F. 2d 704 (11th Cir. 1986), the court held that a state trooper who followed a car for about a mile and a half and observed the car's right wheels cross over white line about six inches into emergency lane *and* observed ``weaving'' within a single lane of the highway did not have sufficient cause to stop the car for violating Section 316.089(1), Fla. Statutes, *inter alia*. Similarly, in *State v. Lagree*, 595 So. 2d 1029 (Fla. 1st DCA 1992), the

First District held that the fact that the defendant drove one half block before putting on her headlights did not constitute a reasonable basis for stopping the defendant. In affirming the trial court, the appellate court stated:

> We agree with the trial court's conclusion that pulling out of a parking lot and driving one half of a small city block before putting headlights on is not such a circumstance that it can be assumed, without proof, that a reasonable officer would make the stop, when there was no proof that the area was not well-lit, and no proof that the brief period of driving without lights on caused any danger."

Finally, in the extremely analogous case of *State v. Vaughn*, 448 So. 2d 915 (La. App. 3rd Cir. 1984), the court held that the mere fact that the defendant may have swayed somewhat in his own lane and at one point crossed over the center line over a distance of one and one half block was insufficient to provide the requisite reasonable cause to stop the defendant. In holding that no reasonable cause existed to stop the Defendant in the instant case, this Court agrees with the view of the appellate court in the *Vaughn* case:

> The consequences of a DWI conviction, under present law, are so grave that reasonable cause to stop a motorist should consist of more than minor deviations, such as in this case, observe for a distance of one and one half city blocks." *Id*. at 916.

*See also, Kehoe v. State, supra*, 521 So. 2d at 1097 (``It is difficult to operate a vehicle without committing some trivial violation ....").

Accordingly, the Defendant's Motion to Suppress Evidence for Lack of Reasonable Suspicion is hereby GRANTED.

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