

Criminal law -- Search and seizure -- Vehicle stop -- Neither patrol car video nor probable cause affidavit, which alleged that defendant was weaving, indicated that defendant was driving in such a manner that would warrant a lawful stop

MIGUEL DEJESUS, Appellant, v. STATE OF FLORIDA, Appellee. Circuit Court, 15th Judicial Circuit (Appellate) in and for Palm Beach County, Criminal Division. Case No. 97-88 AC A02. Opinion filed April 4, 2000. Appeal from Robert Schwartz, J., County Court in and for Palm Beach County. Counsel: Edward Kone, Boca Raton, for Appellant. Barry Krischer, State Attorney, and Judith Levine, Assistant State Attorney, West Palm Beach, for Appellee.

(PER CURIAM.) Appellant argues that the trial court erred by denying a motion to suppress all evidence as a result of an unlawful stop, detention, arrest and seizure. In support of the contrary, the State relied on the arresting officer's probable cause affidavit in addition to a video of Appellant's driving pattern taken from the patrol car. The probable cause affidavit alleges that Appellant was weaving, however it does not indicate how many times or to what degree. Further, the patrol car video of Appellant's driving does not indicate that Appellant was driving in such a manner that would warrant a lawful stop.

A police officer can gain the requisite founded suspicion to stop a vehicle in two ways: 1) violation of a statute; and 2) objective founded suspicion that driver is impaired, sick, tired or having mechanical problems. *See Crooks v. State*, 710 So. 2d 1041, 1043 (Fla. 2nd DCA 1998); *Roberts v. State*, 732 So. 2d 1127, 1128 (Fla. 4th DCA 1999).

Here, the Appellee presented insufficient evidence to prove that Appellant violated the applicable weaving statute¹, and failed to present sufficient evidence to prove that the arresting officer had an objective founded suspicion that Appellant was impaired.

REVERSED & REMANDED. (OFTEDAL, MARRA AND WENNET, JJ., concur.)

¹Florida Statute § 316.089(1) states that "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." § 316.089(1), Fla. Stat. (1999).

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