8 Fla. L. Weekly Supp. 594a

Criminal law -- Driving under influence -- Search and seizure -- Vehicle -- Traffic stop -- Officer's initial observation of defendant's weaving within own lane without more was insufficient basis for the reasonable suspicion required for valid traffic stop -- Error to deny motion to suppress

ROBERT ANTHONY DELAFE, Appellant, vs. THE STATE OF FLORIDA, Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 00-360. L.C. Case No. 455587W. July 24, 2001. An Appeal from the County Court for Miami-Dade County, Teretha Lundy-Thomas, Judge. Counsel: H. Frank Rubio, for Appellant. Katherine Fernandez Rundle, State Attorney, Helen T. L. Page, for Appellee.

(PINEIRO, J.) This case arises from the trial court's denial of appellant's Motion to Suppress entered on September 25, 2000. Because there was no objective basis for a finding of the reasonable suspicion required before a traffic stop may be validly effectuated, the Motion to Suppress should have been granted. Accordingly, the trial court's denial of the Motion to Suppress is reversed and the case is remanded for further proceedings consistent with this opinion.

The facts giving rise to the instant case are as follows. On June 14, 2000, an officer of the Hialeah Police Department initially observed Appellant's car weaving within its lane of traffic at midnight at Palm Avenue and 25th Street. The officer followed Appellant's car for a total of approximately 10½ blocks, as the car proceeded south to 17th Street, turned left, and proceeded for an additional 2½ blocks to Appellant's residence. Following the stop in front of his home, Appellant was subsequently charged with DUI. The officer claimed that he ultimately stopped Appellant for weaving within his lane because the officer felt for the safety of Appellant and other vehicles on the road, and, in response to a leading question by the prosecutor, a possible DUI. Throughout the officer's tailing of Appellant, the officer's car was approximately one and a half car lengths behind Appellant's car. Throughout the officer's tailing of Appellant, Appellant drove his car at a medium to slow speed and did not violate any traffic laws.

On September 25, 2000, an evidentiary hearing was held on Appellant's Motion to Suppress. The trial court denied the Motion. Afterwards, Appellant entered a plea of no contest but specifically reserved the right to appeal the denial of the Motion. Final Judgment was entered that day, and on October 10, 2000, Appellant timely filed a Notice of Appeal.

In order to effectuate a valid stop for DUI, an officer need only have a ``founded suspicion'' of criminal activity probable cause is not necessary. *See State v. Davidson*, 744 So. 2d 1180 (Fla. 2d DCA 1999); *State Department of Highway Safety and Motor Vehicles v. DeShong,* 603 So. 2d 1349 (Fla. 2d 1992). Subsequent to a valid stop based on reasonable suspicion, the probable cause necessary for an arrest or license suspension may be based upon evidence obtained during the standard procedures following such a valid stop. *See id.* at 1352. A person's behavior does not have to reach the level of a traffic infraction in order to justify a valid DUI stop. *See DeShong, supra*, at 1352; *Brown v. State*, 595 So. 2d 270 (Fla. 2d DCA 1992) (stating that the absence of a traffic offense does not establish the absence of a valid objective basis for a stop); *Roberts v. State,* 732 So. 2d 1127, 1128 (Fla. 4th DCA 1999) (noting that an officer ``can stop a driver based on a founded suspicion that the driver is under the influence, even where the driver is not committing a separate traffic offense''). There must, however, be sufficient objective evidence in the record to establish the standard necessary for a valid traffic stop. *See Bender v. State,* 737 So. 2d 1181 (Fla. 1st DCA 1999).

In the instant case, the sole basis for the officer's stop of Appellant was the officer's initial observation of

Appellant weaving within a single lane without touching either side lane. The only fact provided in the record regarding Appellant's weaving within his own lane is that he was weaving within his own lane at the time the officer first observed him. The record does not elucidate the degree, severity, or duration of the intra-lane weaving during the 10½ block journey in which Appellant was followed. An officer's initial observation of intra-lane weaving without more is an insufficient basis for the reasonable suspicion required before a traffic stop may be validly effectuated. *See Crooks v. State,* 710 So. 2d 1041 (Fla. 2d DCA 1998) (concluding that mere evidence of weaving, without more, is insufficient to justify a traffic stop). *See also Commonwealth v. Baumgardner,* 767 A.2d 1065, 1068 (Pa. Super. Ct. 2001) (``a single instance of swerving or weaving, without more, does not constitute sufficient facts for an officer to articulate a reasonable suspicion that a driver is under the influence of alcohol'').

All of the cases in which a traffic stop for weaving within one's lane was found to be valid were backed up by objective facts, particularly unusual or erratic driving speeds, which supported the necessary standard for a valid stop. *See, e.g., Brown v. State,* 91 So. 2d 175 (Fla. 1956) (defendant's vehicle weaved within its own lane but also twice veered off the pavement); *Bailey v. State,* 319 So. 2d 22 (Fla. 1976) (defendant's car was weaving within its lane while going 45 mph on the Florida Turnpike); *DeShong, supra* (defendant's car weaved within its lane and had slowed down from 55 mph to 30 mph before accelerating rapidly); *Brown v. State,* 595 So. 2d 270 (Fla. 2d DCA 1992) (defendant's car weaved within its lane and also repeatedly slowed down to 45 mph before accelerating back up to 55 mph); *Roberts, supra* (defendant's intra-lane weaving was observed to be significant and continuous); *State v. Carillo,* 506 So. 2d 495 (Fla. 5th DCA 1987) (officer observed defendant weave from one extreme side of his lane to the other in excess of five times). In contrast, there is no record testimony in the instant case as to the nature, severity, or duration of Defendant's intra-lane weaving. Accordingly, the Motion to Suppress should have been granted. The trial court's decision is reversed and the case is remanded for proceedings consistent with this opinion. (GLICK, FERRER, JJ., concur.)

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