

5 Fla. L. Weekly Supp. 556a

Criminal law -- Driving under the influence -- Search and seizure -- Vehicle stop -- Failure to maintain single lane -- Stop of defendant was improper where there was no testimony or evidence that officer made stop because he believed defendant might be driving while impaired, and no violation of statute requiring driver to maintain single lane occurred in light of testimony that there was no traffic on the road and that no other vehicles were affected by defendant's driving -- All observations, statements, breath test results, and other evidence flowing from unlawful stop suppressed

THE STATE OF FLORIDA, Plaintiff, v. ANGEL DE JESUS LABRA, Defendant. County Court of the 11th Judicial Circuit in and for Dade County. Case No. 431775-X. April 15, 1998. Kevin Emas, Judge. Counsel: Chad Lackey, for the State. Richard Hersch, for Defendant.

ORDER GRANTING DEFENDANT'SMOTION TO SUPPRESS

THIS CAUSE, having come before this Court on March 30, 1998 on the Defendant's Motion to Suppress Evidence, and having heard argument, taken testimony, having observed the demeanor of the witnesses while testifying, and being fully advised in the premises, makes the following findings, and makes all credibility findings consistent with this Order:

At approximately 5:10 a.m. on February 4, 1995, while traveling south on Southwest 67th Avenue Officer Corzo testified he observed the Defendant's vehicle southbound on 67th Avenue. The street is a five-lane road, with two northbound lanes, two southbound lanes, and a common turn lane in the middle. The officer testified that he observed the Defendant's vehicle swerving from lane to lane, straddling the line between the lanes, zig-zagging and swerving into the common turn lane. Officer Corzo testified that the defendant did not strike the curb of any lane. Officer Corzo also testified that there was no other traffic affected by the Defendant's driving, and that there was no traffic in the area at the time. Officer Corzo states he activated his emergency lights at 12th Street and the Defendant drove in a normal manner, pulling over just past 16th Street.

The Officer's sworn arrest affidavit, although detailing the driving pattern, failed to mention that the vehicle had traveled into the common turn lane. Officer Corzo acknowledged that he had no written documentation, notes or reports which included such observations. Further, although Corzo testified that he first observed the Defendant's vehicle just south of 8th Street, he was impeached with inconsistent statements made both to defense counsel and to the Assistant State Attorney, just prior to the hearing, that he (Officer Corzo) had first noticed the Defendant's vehicle at 12th Street.

Yolanda Llorente testified that she spent the evening with the Defendant and ate dinner with him at the La Palma restaurant at 8th Street and 61st Avenue. Leaving the restaurant in separate cars, she drove behind the Defendant until 67th Avenue, at which point the Defendant turned left. She observed no police officers in the area and testified that the Defendant's driving was normal.

The Defendant testified that he had no difficulty maintaining a single lane after leaving the restaurant and that he first encountered the officer at 15th Street. He testified that the officer was parked in a dark area with his lights out and as the Defendant passed the police car, Corzo entered onto 67th Avenue with his emergency lights activated. Believing the officer to be responding to a call, the Defendant pulled his vehicle to the right to allow the

officer to pass. Officer Corzo then pulled in behind the Defendant and initiated the investigation.

There is no testimony or evidence that Officer Corzo stopped the Defendant because he believed the Defendant might be driving while impaired. Nor is there any evidence to support such a finding. Rather, the officer stated that the purpose of the stop was for the traffic infraction, failure to maintain a single lane. In light of the testimony that there was no traffic on the road and that no other vehicles were affected by the driving of the Defendant (even absent the factual inconsistencies in the testimony of the witnesses), this Court finds that no violation of *Fla. Stat.* §316.089(1) occurred. *See, e.g., State v. Slattery*, 4 Fla. L. Weekly Supp. 871 (County Court, Dade County) (June 13, 1997); *State v. Wainwright*, 4 Fla. L. Weekly Supp. 600 (County Court, Dade County) (January 24, 1997); *State v. Gianchinta*, 3 Fla. L. Weekly Supp. 700 (County Court, Broward County) (December 26, 1995); *State v. Stahr*, 4 Fla. L. Weekly Supp. 225 (County Court, Clay County) (July 16, 1996); *State v. Alford*, 2 Fla. L. Weekly Supp. 483 (County Court, Broward County)(September 19, 1994).

Therefore, this Court finds that the Defendant's Motion is well-taken, and that the stop of the Defendant constituted a violation of his rights guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 12 of the Florida Constitution. The Motion to Suppress is granted, and this Court suppresses all observations, statements, breath test results, and other evidence which flowed from the unlawful stop.

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