

4 Fla. L. Weekly Supp. 225a**Criminal law -- Search and seizure -- Vehicle stop -- Drifting and weaving within single lane and crossing another lane do not constitute founded suspicion justifying stop of vehicle unless another motor vehicle is endangered -- Motion to suppress evidence obtained subsequent to illegal detention is granted**

STATE OF FLORIDA vs. TIMOTHY ALAN STAHR, Defendant. In the County Court in and for Clay County. Case No. 96-2186-MM D. July 16, 1996. Richard R. Townsend, Judge. Counsel: Cathleen Arnold, Assistant State Attorney. Mitchell A. Stone, Jacksonville, for Defendant.

ORDER GRANTING MOTION TO SUPPRESS

This cause came on to be heard upon the Defendant's Motion to Suppress for Lack of Reasonable Suspicion, and the Court having considered the testimony of the arresting officer, the Defendant's Memorandum of Law, and the argument of Counsel, makes the following findings of fact and conclusion of law:

A. At approximately 0150 hours on April 7, 1996, the Defendant was driving Southbound on Park Avenue in Orange Park, Florida. The Defendant was stopped and detained by Sgt. J. R. Carver in the town limits of Orange Park and was subsequently arrested for driving under the influence of alcoholic beverages.

B. Sgt. Carver testified that he followed the Defendant who was driving in the middle lane of three lanes on Park Avenue. The Defendant's right wheels crossed the right line of the middle lane on three different occasions and went approximately one foot into the right lane. The Defendant then drifted back to the left where his left tires touched the left line of the middle lane.

C. Sgt. Carver testified that no other traffic was affected by the Defendant's driving pattern and that no other traffic was required to take any evasive action as a result of the Defendant's driving pattern.

D. The officer testified that he stopped the Defendant because he was "drifting and weaving" within a single lane. The officer believed, based upon his past experience, that the Defendant's driving pattern was indicative of an impaired driver. The Defendant was not cited for failure to maintain a single lane.

E. Police may stop and investigate a motor vehicle when there is "founded suspicion" of criminal activity in the mind of the police officer. "Founded suspicion" has some factual foundation in the circumstances observed by the officer, when those circumstances are interpreted in the light of the officer's knowledge. *Kehoe v. State*, 521 So.2d 1094 (Fla. 1988) and *State v. Stevens*, 354 So. 2d 1244 (4th DCA 1978). In this case the arresting officer had substantial experience in detecting and arresting drivers who had been under the influence of alcoholic beverages. The officer's past experience led him to believe that the pattern of driving by the Defendant was indicative of an impaired driver. Therefore the *Kehoe* test appears to have been met.

F. Unfortunately, this analysis is not dispositive of the Defendant's Motion. Other cases of the Supreme Court, District Court of Appeal, and sister County Courts have consistently held that observations of this nature are not classified as reasonable or founded suspicion and do not justify a detention of the Defendant.

G. The State suggests that the Defendant violated §316.089(1), Florida Statutes, and thus the officer was justified in stopping the Defendant for failure to maintain a single lane. However, that Statute states that traffic may move out of its lane when it is safe to do so. Since there was no evidence that no other traffic was required

to take evasive action nor that other traffic was affected by the Defendant's driving pattern, it appears that there was no violation of this Statute and thus no civil infraction. *State v. Riley*, 638 So. 2d 507 (Fla. 1994).

H. Other Courts which have considered the same or similar facts have determined that drifting and weaving within the lane and crossing another lane do not constitute founded suspicion unless another motor vehicle is endangered. *Collins v. State*, 65 So. 2d 61 (Fla. 1953), *State v. Alford*, 2 Fla. L. Weekly Supp. 483 (County Court -- 1994), *State v. Myer*, 2 Fla. L. Weekly Supp. 484 (County Court -- 1994), *State v. Giachinta*, 3 Fla. L. Weekly Supp. 700 (County Court -- 1996), *U.S. v. Smith*, 799 F. 2d 704 (1986).

I. Although the County Court cases referenced above are not binding authority upon this Court, they are persuasive absent any case law to the contrary. The State was given an opportunity to submit cases on point and they have failed to present any legal authority in support of their arguments. Absent such authority, this Court is bound to follow the law set forth above.

It is, therefore, upon due consideration

ORDERED:

1. The Defendant's Motion to Suppress Evidence for Lack of Reasonable Suspicion is granted and the physical and testimonial evidence obtained by the law enforcement officer subsequent to the detention of the Defendant shall not be admitted into evidence.
2. This matter shall be heard for pretrial conference on July 29, 1996 at 9:00 a.m., in Room 201, Clay County Courthouse, Green Cove Springs, Florida.

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