

6 Fla. L. Weekly Supp. 761a

Criminal law -- Search and seizure -- Vehicle stop -- Traffic infraction -- Failure to maintain single lane or to give appropriate signal -- Record established that defendant did not commit any traffic infractions and was not involved in erratic driving which would give rise to founded suspicion justifying stop of vehicle -- Error to deny motion to suppress

BERTHA STALEY, Appellant, vs. STATE OF FLORIDA, Appellee. 19th Judicial Circuit in and for Indian River County, Appellate Division. Circuit Case No. 98-548-CA-24. L.T. No. 98-12 CT. Decision filed August 18, 1999. Counsel: Osborne Walker O'Quinn, Fort Pierce, for Appellant. Jennifer Perrone, Assistant State Attorney, Fort Pierce, for Appellee.

(Robert A. Hawley, Judge.) Bertha Staley appeals the County Court's denial of her Motion to Suppress. We reverse the Trial Court because the deputy sheriff had no objective basis to stop the Defendant's vehicle.

On January 4, 1998, at approximately 12:00 a.m., Bertha Staley was driving her vehicle in the right southbound lane of US Highway #1 near Ohio Avenue in St. Lucie County. US Highway #1 at that location was described as five-lane divided roadway (two northbound lanes with an additional turn lane and two southbound lanes). The deputy was following Ms. Staley approximately 50 yards behind her vehicle. The area was well lit by street lights.

The deputy observed Ms. Staley's vehicle drift from the right lane or the outer lane across the lane divider line into the inside lane or the left lane and then back into the right lane. Her left tires had crossed the divider line. Ms. Staley then continued southbound for approximately one minute in the right lane. Ms. Staley then changed lanes from the right lane into the left southbound lane without using a turn signal. Ms. Staley then made a left turn onto Tennessee Avenue again without using a turn signal. The deputy suspected that Ms. Staley was impaired, sleepy, or sick and stopped her on Tennessee Avenue. There was no evidence presented that any traffic was affected by Ms. Staley's actions or that she was cited for any traffic infractions by the deputy.

The Trial Judge found that the deputy had reason to believe that a traffic infraction had occurred in his presence justifying the initial stop of the Defendant's vehicle. The only traffic infractions that could possibly be applicable based upon the evidence presented at the hearing would be Section 316.155 Florida Statutes (When signal required). Section 316.089 provides in pertinent part:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others, consistent herewith, shall apply:

(1) 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.

The record does not reflect any evidence presented to establish that Ms. Staley was outside the "practicable" lane. Even if she was briefly outside this margin of error, there is no objective evidence suggesting that Ms. Staley failed to ascertain that her movements could be made with safety. *Crooks v. State*, 710 So.2d 1041 (Fla. 2 DCA 1998). Section 316.155, F.S. (1997) provides in pertinent part that:

(1) No person may turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety, and then only after giving an appropriate signal in

the manner hereinafter provided, in the event any other vehicle may be affected by the movement.

The plain language of the statute only requires a signal if another vehicle would be affected by the turn. If no other vehicle is affected by a turn from the highway, then a signal is not required by the statute. *State v. Riley*, 638 So.2d 507 (Fla. 1994). There was no evidence presented at the hearing that the Defendant violated this statute.

The State also argues that driving behavior need not reach the level of a traffic violation in order to justify a DUI stop. However, the evidence in this case fails to support the State's position that Ms. Staley's driving was erratic to the point of being sufficient to establish a founded suspicion to validate a stop for suspected DUI. *State v. Carrillo*, 506 So.2d 495 (Fla. 5 DCA 1987) and *State Dept. of Hwy. Safety v. DeShong*, 603 So.2d 1349 (Fla. 2 DCA 1992).

The record establishes that Ms. Staley did not commit any traffic infractions nor was she involved in any erratic driving giving rise to a founded suspicion to justify stopping her vehicle. The stop by the deputy was illegal. Therefore, the Motion to Suppress should have been granted. We reverse the County Court Judge and remand for the Court to grant the Motion to Suppress.

REVERSED AND REMANDED. (Paul Kanarek, Judge, and Ben Bryan, Jr., Judge, concur.)

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