

**4 Fla. L. Weekly Supp. 660a**

**Criminal law -- Search and seizure -- Vehicle stop -- Traffic infraction -- Officer lacked probable cause to stop defendant's vehicle for failing to maintain single lane where movement of defendant's vehicle did not endanger other vehicles -- Whether officer could have validly stopped vehicle for speeding not relevant where officer testified that stop was based on failure to maintain single lane**

THE STATE OF FLORIDA, Plaintiff, v. HENRIQUE JACQUES WAINBERG, Defendant. County Court, 11th Judicial Circuit in and for Dade County, Criminal Traffic Division. Case No. 282309X. January 24, 1997. Victoria S. Sigler, Judge. Counsel: Michael Gale, Asst. State Attorney, for Plaintiff. Jonathan Jonasz, Law Offices of Alan E. Weinstein, Miami Beach, for Defendant.

ORDER

THIS CAUSE on to be heard on Defendant's Motion to Suppress any and all evidence obtained as a result of an illegal stop, and after hearing testimony, argument of counsel and being otherwise advised in the premises the court makes the following findings of fact:

## FINDINGS OF FACT

1. That Henrique Wainberg, the defendant was observed driving his vehicle on June 21, 1996, by Officer Ramos of the Metro Dade Police Department.
2. Officer Ramos was off duty in a marked police car traveling 60 miles per hour when the defendant's vehicle passed the officer's at a "high rate" of speed.
3. The speed limit on that section of I-95 is fifty-five miles per hour.
4. At that point, the officer began following the defendant's vehicle. During that time the officer noticed that the defendant could not keep his vehicle in a single lane. The vehicle traveled from the left side of the highway to the center lane, then to the right lane, then back to the center lane and then he returned his vehicle to the right lane and exited at S.W. 25th Road.
5. While exiting at S.W. 25th Road, the defendant's vehicle went into the emergency lane and then went back into the right exit lane.
6. The officer testified that the defendant's vehicle did not cause any other vehicle on the road to take evasive action in response to his changing lanes.
7. The officer testified that he stopped the defendant and issued a citation for a violation of Florida Statute 316.089, failure to maintain a single lane.
8. Subsequent to the stop, the officer called other officers to conduct an investigation of the defendant for driving under the influence.

The court finds that in order for a violation of 316.089 to occur, an officer must observe that a vehicle is driven entirely within a single lane and is not moved from such lane of traffic until the driver ascertains that such movement can be made safely.

The officer testified that no other vehicles were around the defendant's vehicle when he changed lanes. Therefore, it would logically follow that the defendant's vehicle did not endanger the safety of other vehicles by his movement.

The Court finds that there was no probable cause to stop the car for a violation of 316.089, the reason for which the officer testified that he stopped the car. See *Florida v. Alford*, 2 F.L.W. Supp. 483 (1994) and *Florida v. Myerr*, 2 F.L.W. Supp. 484 (1994) and *Florida v. Giachinta*, 3 F.L.W. Supp. 700 (1995).

Therefore, the court finds that under *Whren v. United States*, \_\_\_ U.S. \_\_\_ (U.S. 1996), the court has an obligation to determine only if the stop was supported by probable cause. The Court need not determine if the police officer was acting in bad faith, performing a pre-text stop, or whether a reasonable officer would have stopped the defendant under the circumstances presented or any other ruminations concerning what the court supposes the officer's intent was at the time of the stop. The question is simply, whether under the facts as articulated by the officer making the stop, he had probable cause to make the stop for failure to maintain a single lane.

The court found from the officer's testimony that he may have had probable cause to stop the defendant's vehicle from speeding, but the court feels that the *Whren* decision makes clear that the court is to refrain from speculating what he could have done, but may only analyze what in fact the officer did, and why he did it.

The officer never testified that he thought the speeding was a reason for stopping the defendant's vehicle so the court may not engage in speculation that the officer's actions in stopping the vehicle are now justified by the fact that there may have been speeding, when in fact the reason articulated for the stop was the "failure to maintain the vehicle in a single lane" facts.

The defendant's Motion to Suppress is granted and the court hereby suppresses the evidence obtained as a result of the stop.

It is hereby ORDERED AND ADJUDGED that Defendant's Motion to Suppress is granted.

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