

Online Reference: FLWSUPP 2209NJOH

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Officer did not have probable cause to stop defendant for failing to stop at stop sign where officer, who was following 200 feet behind defendant on unlit road at night, observed defendant activate brake lights at intersection and did not know that there was stop sign at intersection or where it was located until he reached intersection -- Officer did not have probable cause to stop defendant for failing to maintain single lane where defendant did not leave his lane when his left tires touched center line for 10 yards and subsequently when, following over-correction, right tires went off roadway in area which lacked white lines marking side of roadway -- Driving with left tires between double yellow center lines did not violate statute prohibiting drivers from crossing double yellow lines -- State's claim that stop was based on suspicion of illness, fatigue, or impairment was not supported by officer's report and testimony -- Defendant's minor deviations within lane did not provide objective basis for stop -- Motion to suppress is granted

STATE OF FLORIDA, vs. NICHOLAS JOHNSON, Defendant. County Court, 7th Judicial Circuit in and for Putnam County. Case No. 2014-1924 CT, Division 62. March 26, 2015. Joe Boatwright, Judge. Counsel: Scott Westbrook, Putnam County State Attorney's Office, Palatka, for Plaintiff. Rocco J. Carbone, III, Dallas Hedstrom, and Dustin Nemati, Douglas & Hedstrom, P.A., Palatka, for Defendant.

**AMENDED ORDER GRANTING
DEFENDANT'S MOTION TO SUPPRESS**

This matter came before the Court for hearing on March 13, 2015, upon Defendant's Motion to Suppress Stop and Search. Based on the testimony and evidence presented to the Court, the Court finds as follows:

FACTS

In the early morning hours of August 2, 2014 Florida Fish Game and Wildlife Officer James Bonds was travelling South on Highway 17 when he noticed a vehicle in front of him exhibiting a suspicious driving pattern. The suspicious vehicle made a u-turn and began to travel north on Highway 17. Officer Bonds made a u-turn but lost sight of the vehicle. Officer Bonds continued to search the area and ended up travelling south on Old San Mateo Road when he noticed a vehicle ahead of him which turned out to be the Defendant's vehicle. Officer Bonds admitted that he could not be sure if this was the same vehicle that he was following originally. He observed the Defendant's vehicle activate its brake lights prior to coming to the intersection of North Boundary Road and Old San Mateo Road. Officer Bonds was roughly 200 yards directly behind the defendant's vehicle when the brake lights were activated. It was dark outside and there were no street lights in the area. Officer Bonds testified that the Defendant's vehicle did not stop at the stop sign. Officer Bonds testified that his basis for believing this was that the Defendant's headlights had illuminated the canopy of trees around the intersection and he never saw the lights stop moving. However, at the hearing there seemed to be some confusion as the officer had originally articulated in an earlier sworn statement that it was the brake lights that had illuminated the intersection. Finally, Officer Bonds did not originally know that the Defendant's vehicle had failed

to stop at the stop sign. The reason for this was the officer did not know there was a stop sign in the area. It was only after driving up to the intersection did he notice the stop sign.

Officer Bonds did not choose to make a traffic stop after the alleged infraction for failing to stop at the stop sign. Instead, Officer Bonds continued to follow the Defendant's vehicle as it made a turn onto Highway 100 and then a turn onto East End Road. As the Defendant's vehicle travelled down East End Road it swerved to the left so that its back left tire was in the middle of the double yellow lines for about ten (10) yards. At that point, a vehicle approached the Defendant's vehicle in the opposite lane and the Defendant's vehicle swerved back to the right where his right rear tire went off the roadway and it appeared that his full right tire left the roadway for a brief moment. The Defendant's vehicle then corrected and went back to the center of the lane. The officer admitted that there were no white lines on the right side of the roadway indicating where a lane would be on the road. Further, the oncoming vehicle was not affected by the swerving of the defendant's vehicle. The officer then initiated a traffic stop on the Defendant's vehicle which led to the Defendant's subsequent arrest for Driving Under the Influence. The officer in his report stated that the basis for the stop was for failing to stop at the aforementioned stop sign and failing to maintain a single lane. At the hearing the officer testified that this was the basis for the traffic stop. However, after some prodding by the State the officer admitted that he also believed the Defendant's driving pattern concerned him that defendant might be impaired. It should be noted that nowhere in the Officer's report was impairment listed as the basis of the stop. Further, on the State's Re-Direct examination, Officer Bonds was asked what the reason for the stop was and he stated that it was all the observations together. The officer only cited the Defendant for violating Florida Statute 316.074(1) -- Obedience to a Required Traffic Control Device. The officer did not cite the Defendant for Failure to Maintain a Single Lane.

APPLICABLE LEGAL AUTHORITY

All that is required for a valid vehicle stop is a founded suspicion by the officer that the driver of the car, or the vehicle itself, is in violation of a traffic ordinance or statute. *Davis v. State*, 788 So. 2d 308, 309 (Fla. 5th DCA 2001) [26 Fla. L. Weekly D1215a]. A traffic stop is reasonable under the Fourth Amendment where a law enforcement officer has probable cause to believe a traffic violation had occurred, and the reasonableness of the stop does not depend on the subjective motivations of the officer who stopped the vehicle. *Whren v. United States*, 517 U.S. 806, 810 (1996). *See also*, *State v. Thomas*, 109 So. 3d 814 (5th DCA 2013) [38 Fla. L. Weekly D372a]. The validity of the traffic stop depends solely on objective criteria. *Id.* The objective test “asks only whether any probable cause for the stop existed,” which makes the subjective motivations of the officer irrelevant. *Holland v. State*, 696 So. 2d 757, 759 (Fla. 1997) [22 Fla. L. Weekly S387a].

According to Florida Statute § 316.0875 (2014):

(1) The Department of Transportation and local authorities are authorized to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving to the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones, and when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey

the directions thereof.(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1), no driver shall at any time drive on the left side of the roadway with such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.(3) This section does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

Courts have found a violation of this statute when a driver's front and back tires have crossed over the double solid lines so that the vehicle was partially into the oncoming lane of traffic regardless of whether the defendant was creating a safety hazard. *See Lomax v. State*, 148 So. 3d 119 (Fla. 1st DCA 2014) [39 Fla. L. Weekly D1942a].

According to Florida Statute § 316.089(1), a vehicle shall be driven as nearly 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. Fla. Stat. §316.089(1) (2014). Courts have found that a driver's failure to maintain a single lane as required by Florida Statute §316.089, does not by itself establish probable cause for a traffic stop unless the driver's behavior placed other vehicles in danger. *See Hurd v. State*, 958 So. 2d 600 (Fla. 4th DCA 2007) [32 Fla. L. Weekly D1594a]. Because §316.089 prohibits leaving a lane unless it can be done safely, courts have reasoned that the failure to maintain a single lane alone cannot establish probable cause when the action is done safely. *Id.* Further, when a vehicle travels briefly outside of its margin for error without more is not sufficient to justify a stop for violating §316.089. *Crooks v. State*, 710 So. 2d 1041 (Fla. 2d DCA 1998) [23 Fla. L. Weekly D1323b]. However, there is no requirement that the evidence show that the operator of the endangered vehicle took evasive action or was aware of the danger. *Williamson v. Dep't of Highway Safety and Motor Vehicles*, 933 So. 2d 665 (Fla. 1st DCA 2006) [31 Fla. L. Weekly D1890c].

Finally, an officer may conduct an investigatory stop on less than probable cause if the officer has a reasonable, articulable suspicion that a person has committed, is committing, or is about to commit a crime. *Popple v. State*, 626 So. 2d 185, 186 (Fla. 1993); *See also Tamer v. State*, 463 So. 2d 1236, 1239 (Fla. 4th DCA 1985). "In order not to violate a citizen's Fourth Amendment rights, an investigatory stop requires a well-founded, articulable suspicion of criminal activity. Mere suspicion is not enough to support a stop." *Popple*, 626 So. 2d at 186. A founded suspicion is a belief which has some factual foundation in the circumstances observed by the officer, when those circumstances are interpreted in the light of the officer's knowledge. *Tamer*, 463 So. 2d at 1239. Courts have held that an officer has reasonable suspicion to justify a traffic stop if they have a belief that the driver is ill, tired, or impaired, and they observe a driving pattern that is sufficient to warrant such a belief even if there is no traffic violation. *See Yanes v. State*, 877 So. 2d 25, 26 (Fla. 5th DCA 2004) [29 Fla. L. Weekly D1282a] (finding that an officer had reasonable suspicion to stop a vehicle where he observed a vehicle cross the fog line with one half of the width of his vehicle on three occasions over a one mile period, coupled with a belief that the driver was possibly impaired).

There seems to be a conflict or confusion among different courts as to whether the officer needs to articulate a basis for the stop when he/she feels that the driver is ill, tired or impaired or

if simply the facts provided in an arrest report or testimony should be enough to provide an objective basis for the stop. *See* David A. Demers, *Florida DUI Handbook*, §4:9 (2014-2014 Ed. West Publishing). Some courts have suggested that for an investigatory stop to be lawful when based on unusual driving falling short of a traffic violation, it is important for the officer to articulate both the facts and conclusions that the officer drew from those facts. *State v. Davidson*, 744 So. 2d 1180 (Fla. 2nd DCA 1999) [24 Fla. L. Weekly D2511a]. Similarly, the Florida Supreme Court upheld a circuit court's order finding a stop unlawful because the officer's report "did not indicate that impairment was the reason for the stop." *See Dobrin v. Fla. Dep't of Highway Safety and Motor Vehicles*, 874 So. 2d 1171, 1172 (Fla. 2004) [29 Fla. L. Weekly S80a]. However, in that same case the Florida Supreme Court made it clear that based upon the finding of facts, the important determination is whether there is an objective basis for the stop. *Id.* Thus, it seems that officers must articulate facts sufficient for the stop but that the stop must be judged by an objective standard not just the subjective motivations of the officers. *See Dep't of Highway Safety and Motor Vehicles v. Jones*, 935 So. 2d 532 (3rd DCA 2006) [31 Fla. L. Weekly D1518a].

CONCLUSION

The State argues in this case that there are three separate reasons for validating the traffic stop in question. First, the State argued that the Defendant violated Florida Statute 316.074(1) by failing to stop at a stop sign at the intersection of North Boundary Road and Old San Mateo Road. Second, the State argued that the Defendant failed to maintain a single lane as defined by Florida Statute § 316.089 based on his driving pattern on East End Road. Finally, the State argued that the stop was valid because the officer had reasonable suspicion to believe the Defendant was impaired based on his driving pattern. The Court finds that the State did not meet their burden and therefore, the Motion to Suppress is granted.

First, Officer Bonds did not have probable cause to stop Defendant for violating Florida Statute § 316.074(1). Although the Defendant was cited for failure to stop at a traffic signal, it is objectively unreasonable that Officer Bonds actually witnessed such violation occur. The probable cause affidavit states that Officer Bonds was approximately 100 yards behind Defendant's vehicle at the time this alleged failure to stop occurred. However, at the suppression hearing, Officer Bonds stated that he was over 200 yards behind Defendant's vehicle and that it was dark outside with no other lights in the area. This distance was represented by Defendant's Exhibit 4 which was entered into evidence. At the hearing, Officer Bonds testified that he saw the Defendant's brake lights activate as he approached the intersection. However, Officer Bonds did not even know where the stop sign was while he was watching the vehicle. It was not until he reached the intersection did he determine that there was a stop sign in the area. Officer Bonds estimated that Defendant's vehicle moved at approximately five miles per hour through the intersection. However, Officer Bonds also admitted at the hearing that it would be impossible to perform proper speed estimation as he was not trained in this area. Officer Bonds' sole reason for believing there was a traffic violation is that he said he saw the headlights continue to move through the canopy of trees in the area of the stop sign. Based on the facts before the Court, there is no reasonable objective basis for believing that the Defendant violated Florida Statute 316.074(1) for failure to stop at a traffic signal.

Second, Officer Bonds did not have probable cause to stop the Defendant for failing to maintain a single lane as defined by Florida Statute 316.089 based on his driving pattern on East

End Road. First, the Defendant did not leave his lane of traffic when his car touched the center line and because of that the oncoming car was never in any danger. Officer Bonds never testified the Defendant's vehicle ever crossed over the center lane. All he saw was the back left tire between the two double lines for about a distance of 10 yards. Officer Bonds testified that as the Defendant's vehicle travelled down East End Road it swerved to the left so that its back left tire was in the middle of the double yellow lines for about ten (10) yards. This was only a slight margin of error for a brief period of time which would not justify a stop without the vehicle in the other lane being endangered as stated in *Crooks v. State*, 710 So. 2d 1041 (Fla. 2d DCA 1998) [23 Fla. L. Weekly D1323b] and that would not have been possible since the Defendant never fully left his lane to endanger the other vehicle. Subsequently, when the oncoming vehicle approached the defendant's vehicle in the opposite lane and the defendant's vehicle swerved back to the right where his right rear tire went off the roadway and then corrected back to the center of the roadway did not give rise to a violation of §316.089. The reason for this is that the officer admitted that there were no white lines on the right side of the roadway indicating where a lane would be on the road and this also was only a minor deviation from the road and the oncoming vehicle was not endangered.

Next, Officer Bonds never wrote any citation to the Defendant for failing to maintain a single lane. Thus, to clarify any issue in this matter, the Court also finds that there was no violation of the similar statute of Florida Statute § 316.0875. The reason for this is that the Defendant's vehicle never fully crossed over the center line. The basis for the Court's conclusion is supported by *Lomax v. State*, 148 So. 3d 119 (Fla. 1st DCA 2014) [39 Fla. L. Weekly D1942a].

Finally, the Court does not find that there was reasonable suspicion to justify a stop on the basis that the Defendant was ill, tired, or impaired. Officer Bonds never placed in his probable cause affidavit that he stopped the Defendant because he thought he was ill, tired or impaired. Although, he testified that he placed everything in his report that he thought was important for this case. It was only at the suppression hearing, after some prodding by the State did, he say he was concerned about possible impairment but never articulated why he was concerned about possible impairment. Further, he was asked on re-direct why he stopped the vehicle and his response was the driving pattern and all his observations together but never articulated how this fit with an impaired driver. Thus, Officer Bonds never clearly articulated that he stopped the vehicle because he thought the driver impaired.

Also, objectively looking at the facts before the Court there was no basis for the stop in question. The only driving pattern that the Court can consider is that of the pattern on East End Road. The driving pattern of having one tire in the middle of the double yellow lines for 10 yards and then correcting to the right to what appeared as a tire off the roadway where there was no designated lane for only brief period of time does not constitute reasonable suspicion to believe the Defendant was ill, tired or impaired. That driving pattern only rises to the level of mere suspicion not reasonable suspicion. In fact, from the time that the Officer saw the vehicle on Old San Mateo Road until the stop was made on East End Road the officer, the Defendant covered a distance of a couple miles. Throughout the entire time that the officer followed the Defendant, the Defendant did not violate any traffic law or exhibit any suspicious driving pattern other than the perceived running of a stop sign which has already been discussed above before they reached East End Road. Thus, objectively, the minor deviations in the lane on East End Road do not give rise

to a valid traffic stop for believing the driver was ill, tired, or impaired. *See Fl. v. Barton*, 20 Fla. L. Weekly Supp. 720a (7th Judicial Circuit 2013).

THEREFORE IT IS ORDERED AND ADJUDGED that the Defendant's MOTION TO SUPPRESS is hereby GRANTED.

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