

16 Fla. L. Weekly Supp. 570a

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Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Where sole basis for stop was officer's observation that vehicle's tires rode on fog line for less than one second, officer did not have probable cause or reasonable suspicion for stop -- Motion to suppress granted

STATE OF FLORIDA vs. PAUL DONALD MATHIS. County Court, 4th Judicial Circuit in and for Duval County. Case No. 16-2008-CT-034329, Division Q. April 23, 2009. Dawn K. Hudson, Judge. Counsel: Victoria Harmon, Assistant State Attorney, for State. Christopher T. Wilson, Law Offices of Harris, Guidi, Rosner, Dunlap, & Rudolph, P.A., Jacksonville, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION

TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE

This cause came before the Court at hearing upon the Defendant's Motion to Suppress Illegally Obtained Evidence. In essence, the Defendant's motion alleges that law enforcement did not have grounds to stop his vehicle, order him out of the vehicle, request that he perform field sobriety exercises, or lawfully arrest him for driving under the influence. Assistant State Attorney Victoria Harmon appeared for the State and Christopher T. Wilson, Esquire, appeared for the Defendant. The State called Officer T. L. Stanley of the Atlantic Beach Police Department to testify along with introducing into evidence Officer Stanley's roadside video.

The testimony and evidence at the hearing established that on December 14, 2008, Officer Stanley was on patrol in Atlantic Beach, Duval County, Florida. He was in a parking lot when he observed the Defendant traveling westbound on Atlantic Boulevard. Officer Stanley pulled out into the same outside lane as the Defendant following him at some distance. At some point, Officer Stanley noticed that the Defendant's vehicle drifted to the right and his passenger side tires rode on the fog line for 25 to 50 feet. Later in his testimony, he confirmed that the tires rode the fog line for a maximum of 50 feet. The speed limit was 35 mph. The Defendant turned off of Atlantic Boulevard and eventually turned into a shopping plaza where Officer Stanley initiated his blue lights in order to stop the Defendant. The Defendant complied and stopped his vehicle. Thereafter, Officer Stanley questioned the Defendant, detected signs of impairment, asked him to exit his vehicle, requested that the Defendant perform field sobriety exercises, to which the Defendant refused, and Officer Stanley ultimately arrested him for driving under the influence.

Officer Stanley testified that the distance between the McDonald's and the shopping plaza where the stop occurred is 1-2 miles. He admitted that during the entire time that he followed the Defendant, the Defendant obeyed the speed limit, made no improper turns, used his blinkers appropriately, reacted to the blue lights normally, parked satisfactorily, and drove properly in every other way except for the time period when his tires rode on the fog line. There was no evidence of the Defendant's vehicle affecting other traffic.

The Defendant illustrated with mathematical computations that a vehicle traveling 35 mph for a distance of 50 feet is able to cover that distance in 0.97 seconds. In other words, given the Officer's testimony regarding speed and distance, the Defendant's vehicle could have only rode the fog line for less than a second. It appears to this Court that the extent to which the tires rode the fog line is very minimal, at best.

The record before this Court does not reflect that the Officer suspected the Defendant to be ill or fatigued or impaired by alcohol prior to the stop. The sole basis for the stop as adduced by the State was the Officer's observation that the vehicle's passenger side tires touched the fog line for a maximum of 50 feet at 35 mph. This deviation is very minor, isolated, and does not rise to the level of being erratic. *Noorigan v. State*, 7 Fla. L. Weekly Supp. 369a (4th Jud. Cir. Ct. February 23, 2000); *State v. Barber*, 7 Fla. L. Weekly Supp. 341b (Clay Cty. Ct. March 1, 2000); *State v. Singer*, 15 Fla. L. Weekly Supp. 62a (Duval Cty. Ct. October 1, 2007).

The State relied upon *Yanes v. State*, 877 So. 2d 25 (Fla. 5th DCA 2004). In that case, the stop was justified based upon the vehicle crossing the fog line three separate times within a one-mile distance. That case is distinguishable from this case in that the Defendant's vehicle rode on, not crossed, the fog line, and only did so once, as opposed to three separate times as in *Yanes*.

Officer Stanley made the stop without probable cause to believe a civil infraction had occurred, *Whren v. U.S.*, 517 U.S. 806 (1996), nor was the stop based upon reasonable suspicion to believe a crime had just occurred, was occurring, or was about to occur, *Terry v. Ohio*, 392 U.S. 1 (1968); *State v. Moore*, 791 So. 2d 1246 (Fla. 1st DCA 2001). Reasonable suspicion is something less than probable cause, but more than an inchoate and unparticular suspicion or hunch. *Rouse v. State*, 643 So. 2d 696 (Fla. 1st DCA 1994).

The Court, having had the opportunity to hear Officer Stanley's testimony, judge his credibility, view the video, review case law submitted by the State and Defendant, and consider legal argument, finds that Officer Stanley's suspicion amounted to no more than a hunch.

Therefore, it is hereby,

ORDERED AND ADJUDGED:

The Defendant's Motion to Suppress Illegally Obtained Evidence is hereby *GRANTED* based upon the unlawful stop. All evidence obtained after law enforcement initiated their blue lights for the stop is suppressed and excluded.

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