

Date	Type	Note	User Created	Dt Created	Relation
05/07/2019 13:20	ATTY	<p>MEMO TO FILE: Upon review of the stopping video and review of case law provided by the defense attorney, no reasonable likelihood of successful defense to a motion to suppress the traffic stop. There is only one instance where the defendants vehicle crosses the solid white line into the bike lane to his right, and no other indicators. He is seen driving through an intersection while maintaining clear control of the vehicle. Based on the reasonable motion to suppress issue, no file is appropriate. Below is the case law provided by DAT:</p> <p>12 Fla. L. Weekly Supp. 120b Top of Form Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Founded suspicion -- Observation of defendant's vehicle swerving into bicycle lane for brief moment of time twice, with nothing to indicate anyone was endangered, did not establish founded suspicion justifying stop -- Error to deny motion to suppress DAVID JILES, Appellant, v. STATE OF FLORIDA, Appellee, Circuit Court, 12th Judicial Circuit (Appellate) in and for Sarasota County, Case No. 2004 CA 2543 SC, L.C. Case No. 2002 CT 5613 SC, October 29, 2004. Harry M. Rapkin, Judge. Appeal from the County Court for Sarasota County, Barbara B. Briggs, on Motion and Emanuel LoGalbo Jr., at trial, County Judges. Counsel: Elliot C. Metcalfe Jr., Public Defender, and Christopher E. Cosden, Assistant Public Defender, Sarasota, for Appellant, Earl Moreland, State Attorney, and Betty F. Toussaint, Assistant State Attorney, Sarasota, for Appellee. Appellant appeals the judgment and sentence of the county court convicting him, after a jury verdict, of Driving Under the Influence with Prior Conviction. Appellant raises two issues, but this court finds Appellant's first issue requires reversal. Appellant was arrested after a traffic stop that was conducted on State Road 776 in Sarasota County on May 6, 2002 at approximately 8:00 p.m. by Deputy Sean Johnson of the Sarasota County Sheriff's Office. Deputy Johnson testified that he observed Appellant's vehicle in the right-hand lane going southbound on State Road 776, north of Overbrook. Deputy Johnson testified that he was three car lengths behind Appellant in the left-hand lane when he observed Appellant's vehicle swerve into the bicycle lane for three seconds. Deputy Johnson testified that Appellant's vehicle went into the bicycle lane about two or three feet. Thereafter, Deputy Johnson observed Appellant's vehicle again sway into the bicycle lane for five or six seconds, but he did not testify as to how far into the lane Appellant's vehicle went the second time. Based upon his training, Deputy Johnson suspected Appellant may be under the influence and he conducted a traffic stop of Appellant. Appellant's pretrial motion to suppress was denied and his renewed motion at trial was also denied. Appellant appeals arguing his motion should have been granted as Deputy Johnson did not have founded suspicion to affect the stop. First, the "trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling." Pagan v. State, 830 So. 2d 792, 806 (Fla. 2000). However, a defendant is entitled to a de novo review of whether the application of the law to the facts establishes an adequate basis for the trial court's finding of probable cause. See Donaldson v. State, 803 So. 2d 856, 858 (Fla. 4th DCA 2002). The court recognizes that "police officers can stop a driver based on a founded suspicion that the driver is under the influence, even where the driver is not committing a separate traffic offense." Nicholas v. State, 857 So. 2d 980, 981 (Fla. 4th DCA 2003), citing, Roberts v. State, 732 So. 2d 1127, 1128 (Fla. 4th DCA 1999). In Nicholas, the Fourth District distinguished its own decision in Roberts v. State, 732 So. 2d 1127 (Fla. 4th DCA 1999), and relied upon Donaldson v. State, 803 So. 2d 856 (Fla. 4th DCA 2002), in deciding that a stop based on the driver making a left-hand turn, without signaling, from the right-hand lane did not constitute founded suspicion that defendant was under the influence. Nicholas at 982. Specifically, the court pointed out that defendant had not been observed for any period of time, nor was there anyone around that was endangered by the defendant's actions. Here, although there is no evidence as to the length of time Deputy Johnson observed Appellant, it appears that it was a brief amount of time and there is nothing to indicate anyone was endangered by Appellant's actions. Further, the Deputy's observation that Appellant's vehicle went two or three feet over the line into the bicycle path does not constitute sufficient evidence that Appellant deviated from his lane by more than what was practicable, unlike that found in Yanes v. State, 877 So. 2d 26-27 (Fla. 5th DCA 2004). Additionally, the Deputy's testimony that generally a driver's second deviation outside the normal lane would constitute a founded suspicion of driving under the influence is not "an objectively reasonable basis for making the stop." Dobrin v. Florida Dept. of Highway Safety and Motor Vehicles, 874 So. 2d 1171, 1174 (Fla. 2004). In view of the court's disposition, the court will not address Appellant's claimed sentencing error. This cause is reversed and remanded.</p>	SMESHULAM	05/07/2019 13:23	