

13 Fla. L. Weekly Supp. 193a

Criminal law -- Search and seizure -- Vehicle stop -- Anonymous tip -- Where officer received anonymous tip that someone was driving with flat tire and no headlights without any description of driver or vehicle involved, when officer stopped defendant's vehicle its headlights were on, and officer saw tilt to vehicle but could not see flat tire before stop, officer did not observe sufficient corroborative facts to support investigative stop -- Further, where officer observed no roadway damage from defendant allegedly riding on rim and no other vehicles were affected, and there were no public safety concerns over flat tire, as vehicle was released to be driven by defendant's mother minutes after stop, there was no reasonable suspicion or probable cause of traffic violation to support stop -- Motion to suppress granted

STATE OF FLORIDA v. JACKIE DAWN HENDERSON, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. 05004185MM10A, Misdemeanor Division. October 21, 2005. Mary Rudd Robinson, Judge. Counsel: Michael A. Mermer and Fleming K. Whited, III, Michael A. Mermer, P.A., Coral Springs, for Defendant.

ORDER GRANTING DEFENDANT'S

MOTION TO SUPPRESS

THIS CAUSE, having come on to be heard before me, the undersigned Judge, upon defendant's motion to suppress all evidence as the result of an illegal stop of defendant, and after taking testimony and hearing argument, and after reviewing the case law on this issue, this court rules as follows:

This Court makes the following Findings of Fact:

1. An alleged anonymous tip from an unidentified caller brought Officer Dunsavage of the Coconut Creek Police Department into contact with the Defendant, Ms. Jackie Henderson, on February 25, 2005, at about 11:00 p.m., when she was thereafter arrested for DUI.
2. The tip stated that someone was driving with a "flat tire" with "no headlights" in the vicinity of Coconut Creek. Not only was the identity of the alleged tipster unknown, but there was no description of the defendant and no discernable description of the vehicle that was involved. In fact, when first observed by Officer Dunsavage, Ms. Henderson's headlights were on according to the testimony.
3. Although Officer Dunsavage testified that he followed the Defendant for about 50-75 feet while she was making a left turn into a residential development prior to the stop, Mrs. Henderson's mother, Addie Henderson, testified that she was talking to her daughter at the call box at the residence at the time of the alleged stop and there was no mention by the defendant of being stopped by the police, no mention of her seeing any emergency lights, and nothing unusual about her voice which would have indicated she might have been impaired or being stopped by the police. The Court finds this testimony credible.
4. Pictures of Ms. Henderson's vehicle were introduced into evidence by the State showing the right passenger tire flat, but it was acknowledged under cross examination that the pictures were taken after the fact, and that this was not the view the Officer had of her right front passenger tire prior to the stop and he could see very little except perhaps a "tilt" in the vehicle for the limited time of his observation, if any.
5. Nor was there any credible testimony about "public safety" concerns over the flat tire, since the

vehicle was released back to the Defendant's mother minutes later who testified she drove it into her development.

6. Officer Dunsavage further testified that he observed no sparks, no noise and no road damage from the Defendant allegedly riding on the tire or rim. He also acknowledged that no other vehicles were affected by the Defendant's driving. Thus, there was no testimony that the tire or the Defendant's driving was "likely" to damage the roadway under Florida Statute § 316.2051 for which the Defendant was cited.

Legal Analysis

7. It is well settled that anonymous tips are considered to be at the low end of the reliability spectrum, as opposed to information from a citizen informant. There is no question that in this case, the alleged tip was completely anonymous and displayed little or no indicia of reliability. Upon arriving in the area, the officer did not observe sufficient corroborative facts to support an investigatory stop. *Florida v. J.L.*, 529 U.S. 266, 120 S.Ct. 1375, 146 L. Ed. 2d 254 (2000); *Solano v. State*, 763 So. 2d 1249 (Fla. 4th DCA 2000); *Evans v. State*, 692 So.2d 216 (Fla. 4th DCA 1997); *Cunningham v. State*, 591 So.2d 1058 (Fla. 2d DCA 2000).

8. This Court finds that driving on a flat tire is not a per se violation of §316.2051, Florida Statutes. *See Baker v. Hayes*, 3 So. 2d 590 (Fla. 1941). There was no traffic violation under 316.2051 on these facts since the testimony did not reveal that Ms. Henderson's driving did or was even likely to damage the roadway. *See State v. Williams*, 7Fla. L. Weekly Supp. 425 (Fla. 9th Cir. Ct. April 7, 2000). There was no testimony or evidence that Ms. Henderson was committing any sort of traffic violation. There was no "public safety" issue in this case. There was no testimony of any erratic or unsafe driving pattern that would have justified the stop pursuant to *Whren v. United States*, 517 U.S. 806 (1996). Since the police lacked reasonable suspicion or probable cause of a traffic violation, the stop was invalid. *See State v. Riley*, 638 So. 2d 507 (Fla. 1994).

9. Since this court finds the initial stop of the defendant illegal, all of the evidence thereafter obtained as a result of the unlawful stop, including the detention, any observations, results of any roadside sobriety tasks, statements, the subsequent arrest and alleged refusal to submit to the breath test are therefore suppressed as the fruits of a poisonous tree. *Wong Sun v. United States*, 371 U.S. 471 (1963).

ORDERED AND ADJUDGED that the defendant's motion to suppress all evidence in this case based upon the illegal stop is hereby GRANTED.

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