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Criminal law -- Driving under influence -- Evidence -- Field sobriety exercises -- Motion to suppress roadside exercises is granted -- Where officer was actively engaged and involved in DUI investigation, video camera should have been turned on and allowed to run throughout roadside exercises

THE STATE OF FLORIDA, Plaintiff, vs. COREY HASER, Defendant. County Court, 17th Judicial Circuit in and for Broward County, Misdemeanor Division. Case No. 05-001606MM10A. July 6, 2005. Leonard Feiner, Judge. Counsel: Michael J. Satz, State Attorney, and Paul Hornick, Assistant State Attorney. Michael Mermer, Michael A. Mermer, P.A., for Defendant.

DEFENSE MOTION TO Suppress illegal stop IS HEREBY Granted. FOR REASONS AS STATED ON THE RECORD IN OPEN COURT. [Editor's Note: Transcript included below.]

Defense motion to suppress roadside exercises (violation of videotape procedure) is hereby Granted.

Transcript

WHEREUPON:

The following proceedings were had:

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THE COURT: Based on the evidence and the testimony, first of all with respect to the -- Ouch, whether it makes a difference which way I do this, but based upon -- With respect to the motion to suppress the illegal stop, based upon the fact that nobody testified as to what the posted speed limit was, nor did Officer Escobar testify as to what he even estimated the defendant's speed to be, there's no basis for the stop. If all he saw was the defendant spinning his wheel -- Or, heard the defendant spinning his wheel and moving down the road, and even with the defendant's own statement that he was speeding, there's no testimony whatsoever what the posted speed limit was; how far over the speed limit the defendant was going; and whether there was sufficient basis to even stop him for speeding.

So as to the first motion, I'm going to grant that.

With respect to the second motion, I'm going to treat that as a motion to suppress the roadside exercises. And I agree with Mr. Mermer, the decision to tape or not tape is a completely arbitrary decision of the officer. The policy itself is arbitrary. It indicates that there are certain times when the videotape should be turned on.

And Officer Dorland (phonetic) testified. He's the DUI expert. He's got the video camera in his car. When he got there, he knew it was a DUI investigation. He participated in the DUI investigation by conducting the HGN. Once he knew he was going to get involved -- If he was just going to be standing by, maybe there'd be a different issue. But the fact that he was actively engaged and involved in the DUI investigation, he should have had the video turned on and let it run throughout the entire conducting of the roadside exercises. And he

chose not to do so. Based on his testimony, Officer Escobar told him not to do so, because he offered it.

Officer Escobar says he doesn't remember that conversation. So somewhere along the line, someone's not remembering something.

But, in any event, I'm going to grant both motions.

MR. MERMER: Thank you, Judge.

THE COURT: It's set for calendar call on Friday.

MR. MERMER: Okay. But granting the illegal stop --

MR. HORNICK: Granted.

MR. MERMER: -- that basically -- The case is dismissed, correct?

THE COURT: Well --

MR. MERMER: You have illegal stop, Judge, so --

MR. HORNICK: There's no -- There's no evidence now.

MR. MERMER: Judge, with your -- your granting both --

THE COURT: It's set for Friday calendar call.

MR. MERMER: Pardon?

THE COURT: It's set for Friday calendar call. See you then.

(Whereupon the hearing was concluded.)

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