

FLORIDA CASE LAW UPDATE 15-06

Case: Aguiar v. State, 40 F.L.W. D2445a (Fla. 5th DCA)

Date: October 30, 2015

Subject: **Officer lacked legal authority to order passenger back into the vehicle after a routine traffic stop. Passenger had the right to exit the vehicle and leave, and cocaine subsequently found on the passenger was suppressed.**

FACTS: Aguiar was the front-seat passenger in a vehicle which was stopped because of a brake light violation and the driver not wearing a seat belt. The driver pulled into a marked space in a public parking lot, at which time Aguiar exited the vehicle even before the vehicle came to a complete stop. The officer conducting the stop ordered Aguiar back into the vehicle, after which contraband was discovered. Aguiar was ultimately arrested and charged with possession of cocaine and drug paraphernalia, as well as evidence tampering (the specific facts surrounding the recovery of the contraband are not recited in the decision.) Aguiar moved for suppression of the evidence in the trial court, arguing that it was discovered as a result of an illegal detention. The motion was denied, and Aguiar appealed.

RULING: The Fifth District Court of Appeal reversed the trial court, holding that the officer's command that Aguiar return to the vehicle was, under the circumstances, unlawful.

DISCUSSION: The appellate court relied on *Wilson v. State*, 734 So.2d 1107 (Fla. 4th DCA 1999) for the conclusion that while a traffic stop sufficiently justifies subjecting the driver to detention, "the restraint on the liberty of the blameless passenger is, in contrast, an unreasonable interference." As such, under *Wilson*, "an officer must have an articulable founded suspicion of criminal activity or a reasonable belief that the passenger poses a threat to the safety of the officer, himself, or others before ordering the passenger to return to and remain in the vehicle." In this case, the officer's concern that Aguiar might "run" or leave did not satisfy these requirements. Since Aguiar had the right to leave, the evidence discovered subsequent to the order to return to the vehicle must be suppressed. Charges dismissed.

COMMENTS: The state attempted to justify the officer's command by noting that Aguiar did not immediately comply with the officer's direction, questioned the command, and looked "nervous." The court was not persuaded, noting that whether an officer has reasonable suspicion to detain an individual should be judge on the facts observed by the officer before the command was given - not after.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.