

IN THE FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

STATE OF FLORIDA,
Appellant,

APPELLATE DIVISION (CRIMINAL)
CASE NO. 05-69 AC A02

vs.

DAVID KAMPS,
Appellee.

Opinion filed: June 27, 2006

Appeal from the County Court in and for Palm Beach County,
Timothy P. McCarthy, Judge for Peter Evans, Judge.

For Appellant, Theodore S. Booras, Chief A.S.A., Office of State Attorney, 401 North Dixie
Highway, West Palm Beach, FL 33401

For Appellee, Donna P. Levine, 324 Datura Street Suite 145, West Palm Beach, Florida 33401

A trial court's ruling on a motion for mistrial is subject to an abuse of discretion standard of review. *State v. Balezos*, 765 So.2d 819,822 (Fla. 4th DCA 2000). Moreover, whether a trial court should grant a mistrial is within that court's discretion; however, a mistrial should not be granted unless an absolute legal necessity to do so exists. *White v. Consolidated Freightways Corp. of Delaware*, 766 So.2d 1228 (Fla. 1st DCA 2000).

In the case at bar, there was a bench conference concerning Miranda. The State was questioning a witness concerning the traffic stop of Appellee. During the bench conference, Appellee argued that questions concerning Miranda were "outside the scope of the field sobriety exercises" and that the proper predicate was not laid to ask such questions. In response, the court sustained the objection indicating the need for a proper predicate. Nevertheless, immediately

by the Defendant to explain his poor attempts to perform road side tests. Trooper Devaul stated, without objection that "after he (Appellee) got done with the one-legged stand, he (Appellee) stated to me that he didn't do as well as he should have." (T.27) The prosecutor then asked, "And did he tell you why he thought this was?" (T.27) The defense objected. This objection was sustained. It was error to sustain this objection. It is clear from the bench conference that followed that the Judge was under the mistaken view that if the defendant was not free to leave then Miranda warnings must be given prior to questioning of the defendant. This view is incorrect with regard to traffic stops. Traffic stops do not require Miranda warnings before questioning may begin. Berkemer v McCarty, 468 US 420 (1984); State v Dykes, 816 So2d 179 (Fla. 1st DCA 2002). In addition, the Defendant's statement sought to be admitted was not in response to a question.

In a misguided but good faith effort to clear this up (citing a case would have been the correct method), the ASA asked the trooper, "Trooper, at this time were you required to inform the defendant of his Miranda rights?"

Trooper: No, Mam

ASA: and why is that?

Trooper: Because I didn't ask him any questions.

Appellee: Objection, your Honor

Court: Sustained, that is a legal conclusion. (This was a correct ruling but this transgression was an insufficient basis for mistrial. Particularly in light of the fact that the A.S.A's actions were prompted by incorrect rulings of the Court.)

Appellee: I make a motion for mistrial

Court: Granted

There was no legal basis for a mistrial. I agree with the majority that this case should be reversed and remanded for a new trial.