

STATE OF LOUISIANA

VERSUS

JUAN HERRERA

CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

CASE NO. 467-763 "K"

OPINION

FACTS

Juan Herrera was driving his vehicle on October 2, 2006 at or about 8:25am in Orleans Parish when he was stopped by the New Orleans police for an alleged expired temporary license tag. After questioning the defendant, the defendant was arrested for violating LSA-R.S. 14:100.13 operating a vehicle without lawful presence in the United States and issued a traffic citation for the alleged traffic offense.

LSA-R.S. 14:100.13 states:

- A. No alien student or non-resident shall operate a vehicle in the state without documentation demonstrating that the person is lawfully present in the United States.
- B. Upon arrest of a person for operating a vehicle without lawful presence in the United States, law enforcement officials shall seize the driver's license and immediately surrender such license to the office of motor vehicles for cancellation and shall immediately notify the INS of the name and location of the person.
- C. Whoever commits the crime of driving without lawful presence in the United States shall be fined not more than one thousand dollars, imprisoned for not more than one year, with or without hard labor or both.

The Louisiana legislature passed this statute in 2002

LAW

U.S. Const. amend. IV states: "the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated...."

In United States v. Brignoni-Ponce, 422 U.S. 873, 886-87, 95 S.Ct. 2754, 2582-83, (1975), United States v. Mallides, 473 F. 2d 859, 862. (9<sup>th</sup> Cir. 1973) citing Davis v.

Mississippi, 394 U.S. 721, 726-27, 89 S.Ct. 1394, 1397, 22 L.Ed. 2d 676 (1969), United States v. Bautista, 684 F. 2d 1286, 1289 (9<sup>th</sup> Cir. 1982); State v. Wilson, 775 So. 2d 1051 (La. 00), race or color alone is not a sufficient basis for making an investigatory stop.

### **DISCUSSION**

The testimony of Officer Finneman revealed the following:

- Officer Finneman became a New Orleans police officer in January 2002.
- He became aware of LSA-R.S. 14:100.13 in October or November 2006 from his sergeant who read it from an inter-office memo to Officer Finneman and other officers during roll call.
- He never made arrests pursuant to LSA-R.S. 100.13 before Katrina nor was he aware of LSA-R.S. 14:100.13 before Katrina.
- He is aware other police officers have made arrests pursuant to LSA-R.S. 14:00.13 since Katrina.
- Officer Finneman stated he believes he has arrested 4 or 5 people pursuant to LSA -R.S. 14:100.13.
- Officer Finneman stated he has never questioned White, Black Asian, Middle Eastern, Indian or, Pakistani drivers pursuant to LSA R.S. 14:00.13, but, "if they did not have their driver's licenses or anyway to prove who they are, or have any kind of paperwork validating who they are," they were arrested.
- He also stated he did not know how many of the above people he has arrested.

When questioned by the court, the officer revealed the following:

### **THE COURT:**

And, again, your procedure is to question them whether or not they have documentation, if they don't have a driver's license? Is that your testimony?



**THE WITNESS:**

If they were stopped for any kind of violation and they didn't have any of those documents, yes?

**THE COURT:**

Questioned Latino drivers?

**THE WITNESS:**

As I would everybody else, yes.

**THE COURT:**

How many have you questioned?

**THE WITNESS:**

I don't know.

**THE COURT:**

How many have you arrested?

**THE WITNESS:**

Like I said, about 4 or 5.

**THE COURT:**

About 4 or 5.

**THE WITNESS:**

Uh-huh. (Affirmative response)

**THE COURT:**

So, based on your questions on every traffic stop, if the person didn't have an identification, or a driver's license, you also arrested them for LSA-R.S. 14:00.13?

**THE WITNESS:**

No. That only applies to illegal aliens.

**THE COURT:**

Well, how do you know they are illegal aliens?

**THE WITNESS:**

How do I know?

**THE COURT:**

Yes. Well, let me ask you this. How do you know if a white driver is an illegal alien?

**THE WITNESS:**

I'm not really sure how to answer that.

**THE COURT:**

....How do you know if a black driver is an illegal alien?

**THE WITNESS:**

I don't know how to answer that one either. They give me their name. They say they have a local address, but they can't prove it. They would be giving me a false name.

**THE COURT:**

How do you know if an Asian driver isn't an illegal alien?

**THE WITNESS:**

I'm going to answer the same way.

**THE COURT:**

How do you know if the Middle Eastern driver isn't an illegal alien?

**THE WITNESS:**

Same, same answer.

**THE COURT:**

And, how do you know if an Indian, Pakastani, or someone from Bangladesh is an illegal alien? How do you know that?

**THE WITNESS:**



Same procedure.

**THE COURT:**

I believe your testimony is you really don't know. You cannot determine whether or not a White driver or a Black driver, an Asian driver, a Middle Eastern driver, or someone from India, is an illegal alien? Is that your testimony?

**THE WITNESS:**

No, I ask them if they are an illegal alien. If they say yes, I can go with that.

**THE COURT:**

Why would you ask them if they were an illegal alien?

**THE WITNESS:**

Because that statute, 14:100.13, relates to someone in the country illegally.

**THE COURT:**

Well, how would you know, again – I guess you already answered it – that a White driver, a Black driver, Asian driver, Indian driver, if someone from the Middle East, are illegal aliens, for you to even ask that question?

**THE WITNESS:**

I don't know, I guess.

**THE COURT:**

And you don't know, am I correct?

**THE WITNESS:**

That's what I'm saying, I guess.

**THE COURT:**

Well, what makes you ask a Latino driver whether or not he is an illegal alien?

**THE WITNESS:**

I don't have an answer for that.

**THE COURT:**

No answer? Is it because a Latino driver speaks Spanish and doesn't speak English?

**THE WITNESS:**

Not real sure.

**THE COURT:**

Well, you have White drivers from Great Britain, New Zealand, Ireland, Canada, Australia. They speak English, am I right?

**THE WITNESS:**

Yes.

**THE COURT:**

You have Black drivers from Jamaica, the Bahamas, other Carribean islands, they speak English; am I correct?

**THE WITNESS:**

Yes.

**THE COURT:**

And you also have drivers, people from the Middle East, India, and Asia, who speak English as well; am I correct?

**THE WITNESS:**

Yes.

Officer Finneman stated he did not receive training in immigration law prior to Katrina. Officer Finneman stated the New Orleans Police Department did send him to a 1 day immigration seminar in early 2006 because, he "spoke a little Spanish."

Officer Finneman also stated he issued a traffic citation to the defendant, but did not seize the alleged expired temporary license tag as evidence.



Although the Louisiana legislature passed LSA-R.S. 14:100.13 in 2002 in response to the September 11, 2001 attacks, the officer's testimony revealed the following:

- 1) Officer Finneman became a police officer in January 2002, was not aware of the LSA-R.S. 14:100.13 and never arrested anyone pursuant to LSA-R.S. 14:100.13 before Katrina struck.
- 2) The New Orleans Police Department made its officers aware of LSA-R.S. 14:100.13 in October or November 2005, 2-3 months after Katrina struck.
- 3) Officer Finneman believes as he and other officers were read an inter-office memo regarding LSA-R.S. 14:100.13 by his sergeant at roll call, and other police officers were also read the same inter-office memo at roll calls throughout the police department.
- 4) Officer Finneman has arrested 4 or 5 Latino drivers pursuant to LSA-R.S. 14:100.13 and he believes other officers have arrested Latino drivers pursuant to LSA-R.S. 14:100.13 post Katrina.
- 5) Officer Finneman also stated he did not know how many, if any White, Black, Asian, Middle Eastern, Indian, or Pakistani drivers he arrested pursuant to LSA-R.S. 14:100.13.
- 6) Officer Finneman also stated he could not determine if a White, Black, Asian, Middle Eastern, Indian, or Pakistani driver was an illegal alien, but yet he could not explain why he would ask a Latino driver if he was an illegal alien.

Although Officer Finneman is one police officer, it is logical and reasonable to conclude the New Orleans Police Department is engaged in an enforcement policy profiling, targeting and arresting Latino drivers pursuant to LSA-R.S. 14:100.13.

Such conduct and selective enforcement policy by the New Orleans Police Department is illegal and violates the Fourth amendment of the United States Constitution.

### **DECREE NISI**

The court finds the defendant's arrest pursuant to LSA-R.S. 14:100.13 was made without probable cause, because it was the result of a selective enforcement policy profiling, targeting and arresting Latino drivers.

In State v. Lopez No. 2005-K-0685 WL 3849943 (La. App. 4 Cir. 12/20/06), the Court of Appeal under similar facts affirmed the trial court's ruling granting the motion to quash the bill of information. The court concluded LSA-R.S. 14:100.13 is pre-empted by federal regulations.

The court was informed by the District Attorney's office on January 30, 2007, its intent to appeal this decision to the Louisiana Supreme Court.

The court will defer ruling on the defendant's motion to quash the bill of information and await a decision from the Louisiana Supreme Court.

Date: 01 February 06

  
JUDGE ARTHUR L. HUNTER, JR.