

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN
AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA.
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA

Vs

TONY L. HART
_____ /

CASE NO: 07-CF-021568

DIVISION I

ORDER ON MOTION TO SUPPRESS

On the 19th of May, 2008 the court took testimony on the Defendant's Motion to suppress evidence. Counsel for both parties was present as well as the Defendant. The court took testimony from Officers of the Tampa Police Department as well as an argument by defense counsel. The court finds the following facts as testified to by the witnesses.

Officer John Fitzgerald

Officer Fitzgerald testified he was on patrol with Officer Doane on October 15th, 2007 on Lindell Ave, in Tampa, a moderately high crime area. Officer Fitzgerald testified that they were traveling West bound on Lindell Ave when they observed a 2004 green Pontiac illegally parked on the side walk and two black males sitting in the car. The officers made a u-turn and proceeded East back toward the illegally parked car. By this time, the 2 occupants had exited the car and were standing in front of a residence at 3118 Lindell Ave. According to Officer Fitzgerald, he and Officer Doane approached the 2 males, defendant Hart and Taylor, for the purposes of issuing a routine parking citation and to inquire as to their purpose at the residence. Officer Fitzgerald testified that he obtained the defendant's information and identification and ran a check on that

information. While filling out the parking violation, officer Fitzgerald requested a narcotic detecting K-9 to respond to the location. Officer Fitzgerald completed the parking citation and handed it, along with the defendant's identification back to the defendant, at which time the narcotics K-9 and Officer Beckers arrived and began an exterior search of the vehicle.

Officer Liza Doane

Officer Doane testified that she was with Officer Fitzgerald on the day of October 15th, 2007, when they approached Hart and the passenger of the illegally parked green Pontiac in front of 3118 Lindell Ave. Officer Doane testified that when she approached Taylor and asked where they lived, Taylor became aggravated and answered that he lived at the residence, 3118 Lindell. Officer Doane obtained Taylor's information which said that Taylor actually lived at 3114 Lindell Ave. When asked, Taylor stated that his parents owned the whole block. Officer Doane testified that the contradiction in Taylor's story heightened her suspicion. The narcotics K-9 soon arrived and alerted to the passenger side of the vehicle, which was then searched and no narcotics were found. Officer Doane testified that Officer Beckers opened the trunk of the Pontiac and Officer Doane proceeded to search the inside of the trunk wherein a black nylon case containing a hand gun was found.

K-9 Officer Beckers

Officer Beckers testified that he and K-9 "Striker" were requested at 3118 Lindell Ave. on October 15th, 2007. Striker is 7 years old and has successfully completed both K-9 patrol school and narcotics school. He is required to have weekly/monthly refresher courses and it is documented when he is deployed and when he alerts. However,

documentation is missing between the dates of July 2004 and June 2005. Officer Beckers testified that he and Striker were requested by Officer Fitzgerald to do an exterior search of the illegally parked vehicle. Officer Beckers testified that Striker “alerted” to the passenger side door, on the second time around the vehicle, at which time Beckers opened the door to do an interior search of the car. No narcotics were found. Officer Beckers also testified that Striker showed “interest” in the trunk but did not alert to it. Officer Beckers then obtained the defendant's keys and opened the trunk of the vehicle in which a black nylon casing containing a hand gun was found. Defendant Hart admitted to there being a .45 caliber handgun in the trunk of the car upon opening the trunk. The defendant was subsequently arrested.

The defendant's testimony is that he was seized and his vehicle searched, without a warrant, in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 12 of the Florida Constitution, and any evidence obtained as a result of the illegal search and seizure should be suppressed as fruit of the Poisonous tree. *Wong Sun v. United States*, 371 U.S. 471 (1963). The court finds as follows: The Officers had probable cause to believe that a parking violation had been committed. However, once a parking citation is issued, without reasonable suspicion of further criminal activity, continued detention is unlawful according to *Bozeman v. State*, 603 So.2d 585 (Fla. 2nd DCA 1992). The Officers contend that they had a reasonable suspicion of trespass, given the high crime area and the somewhat aggressive behavior and contradictory information given by Taylor. After questioning, the officers were informed that the defendant and Taylor were, in fact, not trespassing and the officers suspicions should have been dispelled. The detention should have been

completed with the issuance of the parking citation given the fact that the defendant and Taylor had a right to be on the property. Reasonable suspicion of criminal activity will justify a “temporary seizure for the purpose questioning limited to the purpose of the stop.” *Brye v. State*, 927 So.2d 78 (Fla. 1st DCA 2006). Reasonable Suspicion may also give the Officers authority to conduct a brief “stop and frisk” of the defendant and the area in his immediate control for purposes of the Officers safety according to *Terry v. Ohio*, 392 U.S. 1(1968). The request for a narcotics K-9, to make an exterior search of the defendant’s vehicle, was beyond the scope of the stop and therefore unlawful. The officer’s detention of the defendant, after the parking citation had been issued and it was found that no trespass has taken place, constitutes an illegal detention.

Furthermore, according to *Matheson v State*, the state may meet their burden of probable cause to search a vehicle with a narcotics K-9 if the following factors are present: 1) adequate training of the K-9, 2) adequate standards necessary for the dog to successfully complete his training program, and 3) the track record of the dog up until the date of the search. *Matheson v. State*, 870 So.2d 8(Fla. 2nd DCA 2003). Given that “Striker” had successfully completed both the required necessary classes and has kept up to date with the required refresher courses, the state makes a reasonable argument that Striker’s “alert” to the passenger side door of the vehicle gave the officers probable cause to search the interior of the car. However, even if the officers could argue that they had probable cause to search the interior of the car that the K-9 alerted to, that does not necessary give them the authority to search the trunk that the K-9 did not “alert” to. *New York v. Belton*, 453 U.S. 454(1981). Showing “interest”, according to Officer Beckers

testimony, does not equal an alert and therefore does not give the officers the necessary probable cause to search.

Based on the forgoing facts, the defendant's motion is therefore granted, and the hand gun should be suppressed.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida
this _____ day of June, 2008.

CONFORMED COPY
ORIGINAL SIGNED

JUN 05 2008

MANUELA. LOPEZ
CIRCUIT JUDGE

JUDGE MANUEL LOPEZ, CIRCUIT JUDGE

Copies to:

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