

IN THE COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT, IN AND FOR
HILLSBOROUGH COUNTY, STATE OF FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA,
Plaintiff,

Citation No. 8195-XEF
Division A

v.

FRANCINE SMITH,
Defendant.

**DEFENDANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED DURING AN
UNLAWFUL SEARCH AND SEIZURE**

COMES NOW, Defendant, FRANCINE SMITH, by and through the undersigned attorney, pursuant to Rule 3.190(h), Fla. R. Crim. P. and hereby moves this Court to suppress all evidence obtained subsequent to Plaintiff's illegal stop and seizure of Defendant and as grounds therefore states:

Facts

1. Unless otherwise indicated, the facts in this Motion are taken from the sworn police affidavit of Officer Steven Buchanan, Tampa Police Department.
2. On October 12, 2010 at about 3:20 a.m., Officer Buchanan allegedly observed defendant "traveling in the outside lane and was having a difficult time maintaining its lane, continuously crossing over the lane lines with its tires."
3. Officer Buchanan conducted a traffic stop based on this observation and his suspicion that the driver may be impaired.
4. Subsequent to the stop, Officer Buchanan indicates that Defendant made some irrational statements in an attempt to explain her driving pattern, fumbled for her driver's license and registration, forgot her insurance card, detected the odor of alcohol, and noticed slow-slurred speech, bloodshot-watery-glassy eyes, and unsteady appearance.
5. Officer Buchanan then requested Defendant to perform field sobriety exercises and Defendant to take a test of her breath. Defendant allegedly refused both requests.

Law and Argument

6. Fla. Stat. § 316.089 requires that a vehicle should be driven a nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.
7. The objective test is used to determine whether a traffic stop is reasonable. “When applying the objective test, generally the only determination to be made is whether probable cause existed for the stop in question.” Holland v. State, 696 So. 2d 757, 759 (Fla. 1997). A violation of traffic law provides sufficient probable cause to make the subsequent search and seizure reasonable. Whren v. United States, 517 U.S. 806 (1996).
8. The failure to maintain a single lane must create some sort of danger to the driver or other traffic in order to justify a traffic stop. Jordan v. State, 831 So. 2d 1241, 1243 (Fla. 5th DCA 2002). *See also* Hurd v. State, 958 So.2d 600(Fla. 4th DCA 2007). The driver’s conduct must establish a reasonable safety concern. Crooks v. State, 710 So. 2d 1041, 1043 (Fla. 2d DCA 1998). There is no evidence of danger to Defendant or other traffic in this case. *See also* State v. Townley, 6 Fla. L. Weekly Supp. 531a (Cir. Ct. 9th Cir., May 17, 1999); State v. Pierce, 15 Fla. L. Weekly Supp. 614a (Volusia Cty. Ct. 7th Cir., April 14, 2008).
9. “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const., Amendment 4.
10. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution. Fla. Const. Art. I, Section 12.
11. Once the defendant shows that evidence was obtained without a warrant, the burden shifts to the State to justify the warrantless search and seizure. State v. Morsman, 394 So. 2d 408, 410 (Fla. 1981); accord Forrester v. State, 565 So. 2d

391, 393 (Fla. 1st DCA 1990) (In the search-and-seizure context, once a defendant has established that he or she had a reasonable expectation of privacy under the circumstances, and that a warrantless search and seizure occurred, the burden shifts to the state to demonstrate that the search was reasonable-that the state was not required to obtain a warrant under the circumstances.”

12. A warrantless search is per se unreasonable under the Fourth Amendment. Jorgenson v. State, 714 So. 2d 423, 426 (Fla. 1998).
13. Evidence seized during an unlawful search cannot constitute proof against the victim of the search. Wong Sun v. U.S., 371 U.S. 471, 484 (1963); see also State v. Campbell, 948 So. 2d 725, 726-27 (Fla. 2007) (Pariente, J. *concurring*) (“This case involves a warrantless search and seizure, a situation in which evidence obtained in violation of the Fourth Amendment remains subject to suppression as “fruit of the poisonous tree” under Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963), and its progeny. In the absence of a probable cause determination by a detached magistrate, exclusion of evidence continues to vindicate persons' entitlement to the shield against government intrusion provided by the Fourth Amendment.”)
14. Following an illegal traffic stop, evidence of the identity of the Defendant is suppressible as well. Delafield v. State, 777 So. 2d 1020, 1021 (Fla. 2d DCA 2000).

Evidence to be Suppressed


15. The identity of Defendant as Francine Smith.
16. Defendant's alleged statements.
17. The results of any field sobriety exercises and any observations made by deputies of Defendant subsequent to the illegal stop.
18. The refusal to submit to any field sobriety exercises and refusal to submit to breath testing.
19. Any video obtained subsequent to the illegal stop.

WHEREFORE, Defendant, FRANCINE SMITH, respectfully requests this Court to suppress the evidence listed in paragraphs 15 through 19 and grant such further relief as this Court deems fair and just.

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Suppress and Dismiss was furnished to the Office of the State Attorney, 419 N. Pierce St., Tampa, Florida 33602 by U.S. mail delivery on this 14th day of January, 2011.

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