

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD, COUNTY, FLORIDA

FELONY DIVISION

CASE NO.: 06-19658-CF-10-A

STATE OF FLORIDA,

Plaintiff,

vs.

THADDEUS SONDEJ

Defendant.

_____ /

ORDER GRANTING MOTION TO SUPPRESS

THIS HONORABLE COURT, having heard testimony from two witnesses on behalf of the State, and having assessed their credibility and demeanor, and having reviewed Exhibits that were entered into evidence, and having reviewed applicable legal precedents and having heard and carefully considered extensive legal arguments from both counsel for the State and the Defense, hereby enters an Order GRANTING the Defendant's Motion To Suppress. In so doing, this Court suppresses from any hearing or trial any evidence obtained as a result of an unlawful search, including, but not limited to any cocaine found inside the vehicle, any cocaine found on the defendant's person and any oxycodone found during a search of the defendant's vehicle.

In making this ruling, the Court makes the following:

FINDINGS OF FACT

1. On November 2, 2006, in the City of Hollywood, County of Broward, State of Florida, Officers Bassas and Howard were conducting stationary radar speed measurements in the area of Georgia Street and South Ocean Drive.
2. At approximately 9:20 PM on that date, Officer Bassas observed a 2003 Silver Honda traveling northbound at a high rate of speed. Using a certified Stalker radar, the officer clocked the speed of the vehicle at 73 miles per hour.
3. Officers Bassas and Howard conducted a traffic stop of the vehicle at South Ocean Drive and Van Buren Street. The vehicle pulled over in a reasonable amount of time.

4. Officer Bassas approached the driver's side of the vehicle and Officer Howard stood at the right rear of the Honda looking through the rear window into the passenger compartment of the vehicle.
5. Officer Bassas requested the defendant produce a driver's license, registration and insurance card. The defendant was initially able to produce his driver's license, but he had difficulty locating the registration and insurance card. He looked in several places in the vehicle before locating the two items.
6. The vehicle was not registered to and did not belong to the defendant.
7. During the course of searching for the documents, the defendant was acting fidgety and nervous. As soon as he located the documents, he was no longer fidgety or nervous. The Court finds that, based on the testimony of Officer Bassas and using mere common sense, that most drivers that are stopped by police officers act nervous.
8. Officer Bassas was standing directly next to the driver's door during the encounter with the defendant driver. At no time did Officer Bassas witness the defendant with any contraband or weapons upon him. Based upon the testimony of Officer Bassas, he had no probable cause to believe that the defendant was carrying or had attempted to conceal a weapon during the traffic stop.
9. While Officer Howard was observing the defendant, he noticed the defendant move toward the glove compartment. At that time, Officer Howard noticed, what this court believes, to be the defendant make a furtive movement with his hands. The court finds that it is not reasonable to believe that the officer could have seen the defendant holding a cellophane baggie in his hand and the officer could not have seen any substance inside that baggie. The court makes this finding of fact after carefully considering the time of day, the lighting conditions, the vantage point and location of the officer in relation to the defendant, the testimony of the officer and the drawing on the sketch pad during his testimony, the photo Exhibits entered into evidence by the defense, the size of the baggie, as well as all of the testimony and evidence offered during the hearing.
10. As the result of Officer Howard's observations and that of Officer Bassas, the defendant was asked to step out of the vehicle and he was handcuffed. Officer Bassas performed a pat down search for weapons and none were found.
11. Officer Howard entered the Honda, searched it, and found a cellophane baggie with a white substance inside. A preliminary test of the substance determined that it was cocaine.
12. The defendant was arrested and a more thorough search of his person took place. A second baggie with more cocaine was found in the defendant's front pocket.

An inventory search of the Honda was conducted and a liquid vial containing oxycodone was found inside the center console.

CONCLUSIONS OF LAW

Pursuant to Florida law, a valid traffic stop took place. Having made that determination, the issue before this court is whether the officers had the legal right to search the vehicle after ordering the defendant to exit the vehicle. In order to search the vehicle, the officers must have had probable cause to believe that contraband or a weapon was contained in the passenger compartment of the vehicle. This court finds that neither Officer Bassas nor Officer Howard had the requisite probable cause required under the law to search the vehicle. Neither Officer had probable cause to believe that there was a weapon or contraband inside of the vehicle at the time a search took place.

While each officer had the right to be where he was at the time of the encounter with the defendant, neither officer observed immediately apparent contraband or weapons in plain view which might have justified the search of the vehicle. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). It is well established that in order to validate a seizure predicated upon the plain-view doctrine, the state must prove that (1) the police officers were lawfully in a position from which they viewed the object, (2) the object's incriminating character was **immediately apparent**, and (3) the officers had a lawful right of access to the object. *Jones v. State*, 648 So.2d 669 (Fla. 1994).

The case before this Court is all about the issue of whether the cocaine inside the baggie was “immediately apparent” to Officer Howard. The court finds that, based upon all of the evidence presented, that the cocaine inside the baggie was not immediately apparent to Officer Howard. The court further find that there was no probable cause, based upon all of the evidence presented, for Officer Howard to enter the vehicle and search it and seize the cellophane baggie that he found inside the vehicle. What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. Of course, the extension of the original justification is legitimate only where it is **immediately apparent** to the police that they have evidence before them; the "plain view" doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.” 403 US 443, 467.

Clearly, based upon all of the facts in this case, Officer Howard did not know what was inside of the baggie at the time he allegedly witnessed the stuffing of the baggie between the seat and the center console. In fact, this Court finds that it is improbable that the officer could even have seen the baggie itself before he entered the vehicle. At best, he had a hunch that the defendant’s movements indicated that there was something more going on inside the vehicle than just the searching for a registration and an insurance card. The lighting at the time, the angle from which the officer was positioned, the fact that Officer Bassas was literally on top of the defendant when this alleged concealment occurred and saw absolutely nothing, all lead to the same conclusion. That being, that Officer Howard could not have seen what was inside the baggie, let alone the baggie itself.

Florida courts have consistently held that when closer examination of an item observed in plain view is necessary to confirm the incriminating nature of the contraband, its incriminating nature is not considered "immediately apparent." *Caplan v. State*, 531 So.2d 88 (Fla.1988); see also, *Carr v. State*, 353 So.2d 958 (Fla. 2d DCA 1978); *Sawyer v. State*, 842 So.2d 310 (Fla. 5th DCA 2003).

Based on the foregoing, the evidence in this case must be suppressed as it was not in plain view and it was not immediately apparent to the officer what, if anything, was inside the baggie. Officer Howard admittedly could not say for sure what was in the baggie until after he physically seized it from the Defendant's car. The officer simply did not have probable cause to search the vehicle at the time that he did so. As such, all additional searches and evidence seized would be "fruits of the poisonous tree" and also subject to suppression. *Wong Sun v. United States*, 371 U.S. 47 (1963).

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida on this _____ day of September, 2007.

STANTON KAPLAN
Circuit Court Judge