

IN THE COUNTY COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

THE STATE OF FLORIDA,

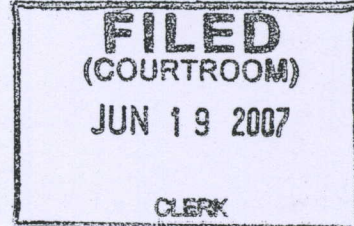
Plaintiff,

vs.

LYNN TWEARDY,

Defendant.
_____ /

CASE NO: 0682-XDK



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 applicable legal precedents and having heard and carefully considered extensive legal arguments from both counsel for the State and Defense, 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 stop, detention and arrest of the Defendant, including, but not limited to any and all observations of the Defendant, any statements made by the Defendant, the physical sobriety exercises and any breath test results.

FINDINGS OF FACT

1. On or about January 7, 2007 Officers Romero and Zabelinski of the Miami-Dade Police Department observed the Defendant's lawfully-parked vehicle in a parking lot of a shopping center. Some businesses in the shopping center were still open at the time.

2. The officers were not dispatched to that location to investigate any particular criminal activity and were on routine patrol, though Officer Romero testified that the area had been recently hit by automobile burglaries. This Court heard testimony that Officer Romero believed that persons parked in this particular area of the parking lot were "likely up to no good" yet he did not observe any suspicious activity taking place around the vehicle.

3. The officers did not observe any suspicious movements, any violent activity, noises or any suspicious objects outside of the vehicle. The windows of the vehicle were in the up position. The engine was on but no lights were illuminated.

4. Officer Romero positioned his marked police unit behind the subject vehicle, effectively blocking any movement. The vehicle could not move forward since it was parked head-in. Officer Romero illuminated the vehicle with a bright, police unit-mounted spotlight which illuminated the passenger compartment of the Defendant's Honda mini-van.

5. Officers Romero and Zabielski, both in full police uniform, approached the vehicle from either side in what was described during the hearing on the Motion to Suppress as a "tactical police maneuver." Officer Romero approached the driver's side. Romero observed a person in the driver's seat (Tweardy) and a passenger in the front passenger seat. Neither officer used their hand-held flashlights to illuminate the van.

6. As Officer Romero approached the driver side he observed the male passenger place a small object into a purse sitting on the front center console. Officer Romero testified that at that time he believed the item to be a small green-tinted plastic bag, approximately three-quarters of an inch square.

7. He suspected that the baggie contained cocaine based on his training and experience, though he could not remember seeing the contents of the small plastic bag. He also testified that such a bag could likewise contain non-contraband items and have legitimate use.

8. Officer Romero moved to the passenger side of the vehicle while directing Officer Zabielski to get the passenger out of the car. Officer Zabielski opened the passenger door of the vehicle and effectuated the removal of the passenger from the vehicle. Officer Zabielski then entered the vehicle, reached into the purse, retrieved the small green plastic bag and removed the purse from the car.

9. The officers arrested the passenger for possession of cocaine. The officers then questioned the defendant (Ms. Tweardy) and believed she was DUI. They called a DUI unit to the scene. Ms. Tweardy was tested, arrested for DUI, made statements and submitted to a breath test.

ANALYSIS OF LAW

Nothing in the circumstances of the Defendant sitting in her lawfully parked car suggested any illegal activity was taking place. Legally parked cars do not give police officers a basis for detaining or searching persons. *State v. Popple*, 626 So. 2d 185 (Fla. 1993); *Danielewicz v. State*, 730 So.2d 363 (2DCA 1999); *Sites v. State*, 582 So.2d 813 (2DCA 1991); *Brown v. State*, 577 So.2d 708 (2DCA 1991).

This Court notes the long lines of cases regarding police/citizen encounters. There are three levels of such encounters. The first level is considered a consensual encounter and involves only minimal police contact. In such an encounter, the citizen may either voluntarily comply or choose to ignore the police. Because the citizen is free to leave during a consensual encounter, constitutional safeguards are not involved. *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct 1870, 64 L.Ed. 2d 497 (1980).

The second level of police-citizen encounters involves an investigatory stop as described in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct.1868, 20 L.Ed.2d 889 (1968) and its progeny. At this level a police officer may legally detain a citizen if the officer has reasonable suspicion that a person has, is or is about to commit a crime. In order to not violate a citizen's Fourth Amendment rights, an

investigatory stop requires a well-founded, articulable suspicion of criminal activity. Mere suspicion is not enough to support a stop. *Fla. Stat. 901.151*.

The third level of police-citizen encounters is an arrest. An arrest must be supported by probable cause that a crime has been committed. *Henry v. United States*, 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959)

This Court finds that the police action in this case amounted to an investigatory stop requiring reasonable suspicion and that the arrest of the passenger was without a warrant or probable cause.

This was not a mere citizen encounter, as proposed by the State. While there is no litmus test for distinguishing a consensual encounter from a seizure, each case must be viewed on its own set of particular circumstances. One highly significant factor is that the officer cannot hinder or restrict a person's freedom to leave or move absent well-founded articulable suspicion of criminal activity. *State v. Simons*, 549 So.2d 785 (2DCA 1989).

In the case at bar, the officers positioned their marked police vehicle behind the Defendant's van in such a way that the Defendant could not move her vehicle without striking the police unit. Additionally, the police used their bright, vehicle-mounted spot light to illuminate the van, rather than flashlights. This Court, using its common sense, concludes that the use of the spot-light would have effectively blinded the occupants looking to see who might be approaching, despite the lack of any such testimony from the Defendant or the passenger. Further, the police approached the van from opposite sides in a tactical police maneuver.

Florida courts have consistently agreed that a law enforcement officer's use of the bright lights or takedown lights on a police vehicle when confronting an individual constitutes an investigatory stop of that individual, rather than a consensual encounter. The reason these citizen contacts are investigatory rather than consensual is that the use of such lights would lead a reasonable citizen to believe that he or she is no longer free to leave. For this same reason, positioning a patrol car to obstruct the path of a vehicle once it is stopped elevates a consensual encounter into an investigatory stop. See *Koppelman v. State*, 876 So.2d 618 (Fla. 4th DCA 2004); *Young v. State*, 803 So.2d 880, 882 (Fla. 5th DCA 2002); *Baker v. State*, 754 So.2d 154 (Fla. 5th DCA 2000); see also *Errickson v. State*, 855 So.2d 700, 701 (Fla. 4th DCA). The police officer's conduct would have communicated to a reasonable person that they were not free to leave.


Assuming, *arguendo*, that the police action in this case was a mere consensual encounter, the removal and arrest of the passenger from the vehicle, the entry into the vehicle by the police and subsequent seizure of the plastic bag from the driver's purse was without a warrant and without probable cause. This illegal police action resulted in the police contact with the Defendant which ultimately resulted in her arrest.

The officers did not observe any criminal activity or observe any obvious contraband in plain view. The officer's bare suspicion that the small green opaque baggie might have contained cocaine cannot justify the entry into the vehicle, the subsequent arrest of the passenger and consequently the detention of the Defendant for DUI. The officer testified that there are innocent and legal uses for such a bag. Officer Romero testified that as he approached the van he did not observe any narcotics or paraphernalia in plain view. He did not observe the individuals in the car using narcotics or conducting a narcotics transaction.

Thus, this Court also finds that the police did not observe immediately apparent contraband in plain view which might have justified the arrest of the passenger. *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); *Texas v. Brown*, 460 U.S. 730, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983).

The fruits of the unlawful conduct of the officer, that is, either physical or intangible evidence secured thereby, are inadmissible in any proceeding against the defendant. *Etheridge v. United States*, 380 F. 2d 804, 808 (U.S. DCA 5th Cir. 1967). See also: *Wong Sun v. United States*, 371 U.S. 47, 83, S. Ct. 407 (1963).

Done and Ordered, in Miami-Dade County, Florida on this 5th day of June, 2007.


CRISTINA MIRANDA
COUNTY COURT JUDGE

Cristina Miranda
County Court Judge

Cc: Jonathan B. Blecher, Esq.
State Attorney's Office