

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

THE STATE OF FLORIDA,

Plaintiff,

CASE NO: 0682-XDK

vs.

LYNN TWEARDY,

Defendant.  
\_\_\_\_\_ /

MOTION TO SUPPRESS: UNLAWFUL STOP AND DETENTION

The Defendant, LYNN TWEARDY, through counsel, respectfully moves this Honorable Court to enter and Order suppressing from any hearing or trial any evidence obtained as a result of the 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.

FACTS

1. On or about January 7, 2007 Officers Romero and Zabelinski of the MDPD observed the Defendant's lawfully-parked vehicle in a parking lot of shopping center in which business were still open.
2. The engine of the vehicle was on, but no headlights. The officers were not dispatched to that location to investigate any particular criminal activity and were on routine patrol. Officer Romero observed that 2 individuals were sitting in the parked car. The officers did not observe any furtive movements, any violent activity, noises or any suspicious objects outside of the vehicle. The windows of the vehicle were in the up position.
3. Officer Romero positioned the marked police unit behind the subject vehicle, effectively blocking it in since a bumper and fence prevented any forward movement. Officer Romero illuminated the vehicle with a police unit-mounted spotlight.
4. Officers Romero and Zabelinski approached the vehicle from either side, with Romero at the driver's side. Romero observed a person in the driver's seat (Tweardy) and a passenger in the front passenger seat.
5. As Officer Romero approached the driver side he observed the passenger place a small object into the purse of the driver. Officer Romero testified that at that time he believed the

item to be a small opaque green baggie and that he suspected that the baggie contained cocaine based on his experience.

6. 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 removed the passenger from the vehicle. Officer Zabielski then entered the vehicle, reached into the purse, retrieved the small green baggie and removed the purse from the car.

7. The officers arrested the passenger for possession of cocaine. The officers then questioned the defendant (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.

#### MEMORANDUM 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).

Clearly, this is an illegal stop. While there is no litmus paper test for distinguishing a consensual encounter from a seizure, a significant identifying characteristic is that the officer cannot hinder or restrict the person's freedom to leave or move or refuse to answer inquiries without well-founded articulable suspicion of criminal activity. State v. Simons, 549 So.2d 785 (2DCA 1989).

The officers did not observe any criminal activity or observe any obvious contraband in plain view. The officer's mere/bare suspicion that the small green opaque baggie contained cocaine cannot justify the entry into the vehicle and subsequent arrest of the Defendant for DUI.

The fruits of the unlawful conduct of the officer, that is, either physical or intangible evidence secured thereby, would be 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).

WHEREFORE, the Defendant respectfully moves this Honorable Court to suppress the above-requested evidence obtained as a result of the unlawful seizure.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand-delivered ( ) / mailed ( ) to the Office of the State Attorney, Miami, Florida on this \_\_\_\_ day of \_\_\_\_\_, 2007.

Respectfully submitted,

Jonathan B. Blecher, P.A.  
Suite 1510, Two Datan Center  
9130 South Dadeland Boulevard  
Miami, FL 33156  
(305) 670-1800

BY: \_\_\_\_\_  
Jonathan B. Blecher, Esq.  
Florida Bar #337821