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

STATE OF FLORIDA

CASE NO.: 07-CF 21568

vs.

TONY L. HART

DIVISION : I

_____/

MOTION TO SUPPRESS

COMES NOW the above-named Defendant, TONY HART, by and through his undersigned counsel, pursuant to Florida Rules of Criminal Procedure 3.190, Article I Section 12 of the Constitution of the State of Florida and the Fourth Amendment to the Constitution of the United States and respectfully moves this Honorable Court to suppress all evidence obtained by law enforcement in the instant case as fruit of the poisonous tree. In support of such relief the Defendant alleges as follows:

EVIDENCE TO BE SUPPRESSED

The evidence sought to be suppressed includes: a .45 caliber handgun, two magazines, bullets, two ski masks, and any other items seized from the Defendant's vehicle.

GROUNDS FOR SUPPRESSION

The Defendant 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 of the Defendant should be suppressed as fruit of the poisonous tree. *Wong Sun v. United States,* 371 U.S. 471 (1963).

FACTUAL BASIS

1. On October 15, 2007 the Defendant, Tony Hart, was driving a 2004 green colored Pontiac in the area of Lindell Avenue in Tampa. Michael Taylor was a passenger in the vehicle.

2. At some point around 11 A.M. the Defendant parked his vehicle along the 3100 block of Lindell Avenue in front of the residence at 3118 Lindell Avenue.

3. According to law enforcement the vehicle was parked illegally on the sidewalk.

4. Tampa Police Department officers John Fitzgerald and Liza Doane were working together in a plain clothes capacity in the neighborhood. The officers pulled their vehicle in behind the Defendant's vehicle and approached the Defendant and Taylor to question them.

5. The Defendant told the officers upon questioning that he had just parked the car.

6. Ofc. Fitzgerald then requested a narcotic detecting K-9 to respond to the location of the Defendant's vehicle.

7. Ofc. Fitzgerald then filled out a parking citation and then handed parking citation number 635228 to the Defendant.

8. The Defendant was forced to remain present at the scene by Officers Fitzgerald and Doane while the K-9 unit arrived.

9. K-9 Ofc. Beckers and his dog Stryker then arrived at the scene and the dog was deployed around the car, alerting on two specific locations. No narcotics were found within the vehicle.

10. After alerting the second time, the trunk of the car was searched wherein a handgun was found in a black nylon case and two ski masks were found in a backpack.

11. The Defendant was subsequently arrested and interrogated. During the interrogation, the Defendant made incriminating statements.

LEGAL AUTHORITY AND ARGUMENT

I. DETENTION AND SEARCH

In order to justify an investigatory stop, a police officer must have a well-founded suspicion that the person detained has committed, is committing, or is about to commit a crime. In considering whether the officer has a particularized and objective basis for suspecting the person stopped of criminal activity, the totality of the circumstances as viewed by an experienced police officer must be taken into account. Although an officer making an investigatory stop "must be able to articulate something more than an inchoate and unparticularized suspicion or hunch. *State v. Marrero,* 890 So.2d 1278, 1282-1283 (Fla. 2nd DCA 2005).

Once an officer has decided to permit a routine traffic offender to depart with a ticket, a warning, or an all clear, the Fourth Amendment applies to limit any subsequent detention and search. *State v. Griffin,* 949 So.2d 309, 314 (Fla.1st DCA 2007). Absent a well-founded suspicion of criminal activity, continued detention is illegal once a police officer accomplishes the purpose of a traffic stop. *Bozeman v. State,* 603 So.2d 585 (Fla. 2nd DCA 1992).

A reasonable suspicion of criminal activity will justify "a temporary seizure for the purpose of questioning limited to the purpose of the stop." However, where a deputy continued to detain a defendant after he no longer had any founded reason to do so, and then asked for permission to conduct a personal search, the detention was unlawful. *Brye v. State,* 927 So.2d 78 (Fla. 1st DCA 2006).

A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete the mission. *Illinois v. Caballes,* 543 U.S. 405, 125 S.Ct. 834 (2005).

A canine sniff of the exterior of a car conducted during a traffic stop that is lawful at its inception and otherwise executed in a reasonable matter does not infringe upon a constitutionally protected privacy interest. Such a dog sniff may be the product of an unconstitutional seizure, however, if the traffic stop is unreasonably prolonged before the dog is employed. *State v. Griffin,* 949 So.2d 309, 314 (Fla.1st DCA 2007).

The request to search a vehicle, after any reasonable suspicion of wrongdoing had been dispelled, coupled with the threat to prevent appellant's departure until dogs could be brought to the scene, amounted to an illegal detention. *Cooper v. State,* 654 So.2d 229, 231 (Fla. 1st DCA 1995).

II. PROBABLE CAUSE TO SEARCH BASED ON K-9 ALERT

The fact that a dog has been trained and certified, standing alone, is insufficient to give officers probable cause to search based on the dog's alert. *Matheson v. State,* 870 So.2d 8, 14 (Fla. 2nd DCA 2003). The 2nd DCA in *Matheson* adopted the list of factors announced in *State v. Foster,* 390 So.2d 469 (Fla. 3rd DCA 1980). In considering whether the State has met their burden, the factors are as follows: 1) the exact training the dog has received; 2) the standards the dog was required to meet to successfully complete his training program; and 3) the "track record" of the dog up until the search (emphasis must be placed on the amount of false alerts or mistakes the dog has furnished).

Whether applying for a search warrant beforehand or justifying a warrantless search after the fact, it is the State's burden to show that the search will be or was justified by probable cause. *Matheson* at 11.

III. AMENDED ARGUMENT

The Defendant was illegally detained and his car illegally searched without consent and without probable cause. After Ofc. Fitzgerald handed the Defendant the civil citation for an illegally parked vehicle the original purpose of the stop was completed. In order to justify the Defendant's continued detention, the officers must have had a well-founded suspicion that Mr. Hart had committed, was committing, or was about to commit a crime. The State, in this case, can not articulate to this Court anything more than an inchoate and unparticularized suspicion or hunch on behalf of the officers to support the continued detention.

Furthermore, it is patently clear that Officers Fitzgerald and Doane continued to detain the Defendant illegally for an unreasonable amount of time for the purposes of conducting a warrantless, non-consensual search of the Defendant's car. The Defendant did not consent to a search of his car thereby necessitating the existence of independent probable cause to justify any search. No such independent probable cause existed.

The officers unreasonably relied upon Stryker's alert as the basis for probable cause to search the Defendant's car because the canine in this case falls short of meeting the standards set by the 2nd DCA in *Matheson*. Law enforcement did not have any other reasonable basis to establish probable cause for search of the car.

Furthermore, it is clear from Officer Becker's report that Stryker alerted first on the passenger side door after being walked around the car. The dog was placed inside the car for an interior search. A search inside the car did not reveal any drugs. After this Officer Beckers took the Defendant's keys from him without his consent and opened the trunk. Officer Doane then began to search the trunk. At this point Stryker had not alerted on the trunk as the only alert up

to this point had been on the passenger side door. Law Enforcement acted without consent and without probable cause to search the trunk.

It is alleged that the Defendant made a spontaneous statement at the time Officer Doane began to reach for the black nylon case. The Defendant denies making any such statement. In any event, law enforcement had already begun to search the trunk at that point without consent and without probable cause.

WHEREFORE, the Defendant requests this Court to Grant the Motion and for other such relief as this Court deems just and equitable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to the OFFICE OF THE STATE ATTORNEY, Hillsborough County Courthouse Annex, Tampa, Florida 33602, by Hand Delivery, this ____ day of May, 2008.

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