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

STATE OF FLORIDA Case No.: 0XXXXXXXMM10A

v. Div.: XXXXXX

DD

MOTION TO SUPPRESS

COMES NOW, Defendant, DD, by and through her undersigned counsel pursuant to Florida Rule of Criminal Procedure 3.190(h) and moves this Court to issue an order suppressing certain evidence that may be used in this case. The specific evidence sought to be suppressed is as follows:

1. The refusal to submit to a breath test and/or any other type of chemical analysis requested;
2. Video tape A-2XXXX;
3. All other evidence the State intends to introduce at trial subsequent to Deputy L requesting the Defendant to exit her vehicle.

The grounds for the motion are that all of the aforementioned evidence was illegally obtained without a warrant by virtue of an unlawful detention and seizure of the Defendant in

made applicable to the State through the Fourteenth Amendment of the United States Constitution and Article I, Section XII of the Florida Constitution.

FACTS OF THE CASE

On April 5, 2008, Deputy AB conducted a traffic stop on a Black GMC Yukon at approximately 11:50pm. The traffic stop was for an allegation of reckless driving. The driving pattern consisted of making a right hand turn at an intersection across two travel lanes. It is important for the Court to note that the turn did not interfere with any traffic as the road was

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Deputy A

registration. After his initial contact with the Defendant, Deputy A returned to his cruiser to write the Defendant a citation. Deputy A did not suspect the Defendant of driving while impaired, did not request a member of the DUI Task Force to respond to the scene and did not conduct a DUI Inves / - A requested a backup unit.

Deputy L received a dispatch to Deputy A 23 1 - 311 / Deputy L arrived on scene at 12:12am on even date. When Deputy L arrived on the scene of the traffic stop, Deputy A was in his cruiser writing a citation for the Defendant for an improper lane change. *See Aff. Dep. L Pg. 1* attached and made a part hereof as Exhibit A. Deputy L had a brief conversation with Deputy A /

Once Deputy L -

Defendant. According to Deputy L-

/ *See Id.* At that point, Deputy L asked the Defendant to step out of her vehicle. At that point, Deputy L stated that the Defendant stumbled and leaned on her car. Additionally, Deputy L noticed that the Defendant had watery eyes. *See Id.*

Deputy L requested that the Defendant submit to Standardized Field Sobriety Exercises) - / L

implied consent advise

any other testing. Deputy L the arrested the Defendant for failure to submit to testing and driving under the influence.

LEGAL ANALYSIS

I. NO REASONABLE SUSPICION

The United States Supreme Court and the Supreme Court of Florida recognize three distinct levels of police-citizen encounters. These levels are a consensual encounter, an investigatory stop and an arrest supported by probable cause. *See Brye v. State of Florida,* 927 So.2d 78, 81(Fla. 1st DCA 2006) *citing United States v. Mendenhall*, 446 U.S. 544(1980); *Terry*

v. Ohio, 392 U.S. 1(1968); *Popple v. State*, 626 So.2d 185, 186(Fla. 1993). In order not to - tes through the Fourteenth Amendment, an investigatory stop requires a well-founded, articulable suspicion of criminal activity. *See Popple v. State of Florida*, 626 So.2d 185, 86(Fla. 1993) *citing Terry v. Ohio*, 392 U.S. 1(1968). Whether characterized as a request or an order, the mere instruction for an individual to exit a vehicle elevates the encounter to an investigatory stop which must be supported by a reasonable suspicion of criminal activity. *See Popple* at 188 *citing Dees v. State*, 564 So.2d 1166(Fla. 1st DCA 1990). A law enforcement officer cannot request that an individual *at least* reasonable suspicion to believe that the driver of the vehicle is impaired. *See Department of Highway Safety and Motor Vehicles v. Guthrie*, 662 So.2d 404(Fla. 1st DCA 1995) *see also Jones v State*, 459 So.2d 1068, 1080(Fla. 2nd DCA 2 5 / developed prior to requesting the Defendant exit the vehicle. *See Popple* at 188 *citing Dees v. State*, 564 So.2d 1166(Fla. 1st DCA 1990).

Deputy L did not develop a reasonable suspicion of criminal activity prior to requesting / , when Deputy L spoke with the Defendant he stated that her speech was slurred and slow. This was the only clue that Deputy L observed prior to requesting the Defendant to step out of the vehicle.

All other observations made by Deputy L cannot be considered for purposes of developing reasonable suspicion as the Deputy requested the Defendant to step out of the vehicle prior to making such observations. *See Id.* The allegation that the Defendant had slurred and slow speech alone does not support a finding of reasonable suspicion. The National Highway Transportation and Safety Administration (hereinafter NHTSA) lists thirteen (13) specific phase II (personal contact) clues that a driver is impaired. A reference chart of those thirteen clues as they related to the instant case is set forth below:

NHTSA Clue	Observed by Deputy Prior to Exiting Vehicle	Running Total Clues
Bloodshot Eyes	No	0
Soiled clothing	No	0
Fumbling fingers	No	0
Alcohol Containers	No	0
Drugs or Paraphernalia	No	0
Bruises, Bumps, Scratches	No	0
Slurred speech	Yes	1
Admission of Drinking	No	1
Inconsistent Responses	No	1
Abusive Language	No	1
Alcoholic Beverages	No	1
Marijuana	No	1
	No	1
TOTAL CLUES		1 OUT OF 13

The Circuit Court in and for Broward County, Florida has held that at a very minimum there must be three clues present in order to support reasonable suspicion to request an individual / 2 3 dshot Glassy Eyes and 3) Slurred speech. *See State v. Bertoni*, Appellate Case No. 05-23AC10A(17th Cir. 2006) *see also State v. Medina-Moya*, 8 Fla. L. Weekly Supp. 396 (Fla. 17th Circuit Ct., March 19, 2001). The allegation of slurred speech without any further clues of impairment does not give rise to reasonable suspicion that the individual driving a vehicle is impaired. Furthermore, pertaining only to this case, the fact that Deputy A did not suspect that the Defendant was driving under the influence only serves to support the Defense contention that there was no reasonable suspicion to request the Defendant to exit the vehicle.

II. LENGTH OF DETENTION

Even if a vehicle is properly stopped for a traffic infraction, the stop can be for no longer than it takes to write out a traffic ticket. *See State v. Anderson*, 479 So.2d 816, 818(Fla. 4th

DCA 1985) In order to justify a detention in excess of what it would take to simply write a traffic citation, the officer must have a reasonable suspicion based on articulable facts that criminal activity is afoot. *See Cresswell v. State*, 564 So.2d 480 (Fla. 1990) *citing Terry v. Ohio*, 392 U.S. 1, 30 (1968).

In this matter, the Defendant was stopped at approximately 11:50pm on April 5, 2008. Deputy A testified that an average traffic stop takes approximately 10 to 15 minutes. Deputy L received the dispatch to the location approximately 15 minutes after the traffic stop was conducted and arrived approximately 22 minutes after the traffic stop was conducted. During that period of time, Deputy A did not develop a reasonable suspicion that a crime had or was being committed as Deputy A did not suspect that the Defendant was driving under the influence. As the Defendant was detained in excess of the length of time necessary to write a

- *Terry v. Ohio*.

Any evidence obtained subsequent to the amount of time necessary for Deputy A to write a traffic citation and see the Defendant on her way should be suppressed.

III. INVALID IMPLIED CONSENT & REFUSAL TO SUBMIT

Pursuant to Florida Statute § 316.1932(1)(a)1.a., all persons who accept the privilege of driving in the State of Florida are deemed to have given consent to a chemical test of their breath to determine the alcohol content **incidental to a lawful arrest for driving under the influence**.

consent refusal a / *See Taylor v. State*, 625 So.2d 911, 912(Fla. 2nd DCA 1993) (*The implied consent law set forth in section 316.1932, Florida Statutes governing tests for alcohol, chemical substances or controlled substances does not require an operator of a motor vehicle within Florida to submit to pre-arrest field sobriety tests.*) *see also State v. Taylor*, 648 So.2d 701, 703-05(Fla. 1995) (*Supreme Court review of Taylor v. State holding*

but does not overrule 2nd .)

In this matter, Deputy L

test prior to her being placed under arrest.

> sobriety exercises which she refused. I read Implied Consent to Clark and she still refused any and all testing. I arrested Clark for
> /

It is clear from Deputy L

submit to a chemical test of her breath prior to her being placed under arrest in violation of

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ce. If an individual refuses to

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upon his observations up to that point. *See State v. Taylor*, 648 So.2d 701, 704(Fla. 1995)

(

names.)

As Deputy L stated that he requested the Defendant to submit to a chemical breath test in

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Addit -

and does not give rise to probable cause for a DUI arrest as the case law clearly states that the arrest must be made on the officers observations up to that point. Without reasonable suspicion, there can be no probable cause. As such, this matter rests on whether Deputy L developed reasonable suspicion as was set forth in Section I of this motion.

CONCLUSION

As Deputy L had no reasonable suspicion to suspect the Defendant of driving under the influence, the length of detention was excessive, the implied consent warnings were given in

constitute probable cause, the Defendant respectfully requests that this Honorable Court suppress

all evidence the State intends to introduce at trial and for such other and further relief as this Court may deem just and proper.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the Office of the State Attorney this ____ day of September, XXXXX.