

**IN THE COUNTY COURT OF THE SEVENTEENTH CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION**

STATE OF FLORIDA

CASE NO: 07-01XXXXMM10A

v.

SCD

DIVISION: Hon. XXXXXXXX

DEFENDANT'S MOTION TO SUPPRESS

COMES NOW, Defendant, SD, by and through his undersigned counsel and pursuant to Rule 3.190(h), Fla. R. Crim. P., 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. Approximately 5.7 grams of a substance alleged to be marijuana unlawfully seized from Defendant's vehicle by Officer GT on April XX, 2007.
2. All statements made by Defendant subsequent to the traffic stop conducted by Officer GT on April XX, 2007.

The grounds for this motion are that all of the aforementioned evidence was illegally seized without a warrant by virtue of an unlawful seizure of Defendant in violation of the Fourth Amendment of the United States Constitution made applicable to the States through the Fourteenth Amendment of the United States Constitution and Article I, Section XII of the Florida Constitution.

FACTS OF THE CASE

On April XX, 2007 Defendant was driving his vehicle in the city of Coral Springs. Officer GT conducted a traffic stop at approximately 2:50am. The Offense Incident Report prepared and signed by Officer GT states that the probable cause for the traffic stop was Defendant's "failure to maintain a single lane."

Officer GT conducted the traffic stop. After conducting the traffic stop, he alleges that he detected a strong odor of marijuana and, after he requested Defendant's Driver's License, observed a plastic bag containing a green leafy substance inside of it. Defendant allegedly stated that the substance was marijuana and the substance field tested positive for marijuana.

LEGAL ANALYSIS

The probable cause for the traffic stop was a violation of Florida Statute § 316.089(1). Florida Statute § 316.089(1) states as follows: “Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent herewith, shall apply: (1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.”

Florida Statute § 316.089(1) does not create a strict liability offense for failing to maintain a single lane. *See Jordan v. State*, 831 So.2d 1241 (Fla. 5th DCA 2002) *citing Crooks v. State*, 710 So.2d 1041 (Fla. 2nd DCA 1988). There is no violation of Florida Statute § 316.089(1) when there is no evidence that the failure to maintain a single lane did not create a safety concern or any suspicion that the driver is impaired.

In the case at bar, Officer GT did not have probable cause to stop Defendant as Officer GT did not observe Defendant create a safety concern by failing to maintain a single lane. Additionally, Officer GT did not allege that he observed a driving pattern giving rise to a suspicion of impairment.

CONCLUSION

A traffic stop may only be made upon probable cause. *See State of Florida v. Lee*, WL 1372731 at 2 (Fl. 5th DCA 2007); *see also Whren v. United States*, 517 U.S. 806, 809-10(1996); *Holland v. State*, 696 So.2d 757, 795 (Fla. 1997); *Jordan v. State*, 831 So.2d 1241 1242-43 (Fla. 5th DCA 2002); *State v. Kindle*, 782 So.2d 971 (Fla. 5th DCA 2001). There was no probable cause for a traffic stop for a violation of Florida Statute § 316.089(1) as Officer GT did not see Defendant place any other vehicles in danger nor did Officer GT observe a driving pattern giving rise to a suspicion of impairment. As such, all evidence seized as a result of the illegal traffic stop must be suppressed as fruit of the poisonous tree.

WHEREFORE, Defendant, SD, respectfully requests this Honorable Court to issue an order finding that the stop and detention by Officer GT were illegal and suppressing all of the

aforementioned evidence.

Certificate of Service

I certify that a copy hereof has been furnished to the State's Attorney by fax on June XX,
20XX.

Respectfully submitted,

Michael A. Dye, P.A.