

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

STATE OF FLORIDA

CASE NO: 170XXXXXMU10A

v.

S.K.

DIVISION: HON. XXXXXX XXXXXXXX

**DEFENDANT'S MOTION TO SUPPRESS**

**COMES NOW**, Defendant, S.K., 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. All evidence obtained by Broward Sheriff's Office Deputy R.S. (*hereinafter* "Deputy S") subsequent to detaining Defendant for a DUI investigation;
2. All statements made by Defendant during the course of the accident investigation;
3. Observations made by Deputy S and other Deputies on scene during the Standardized Field Sobriety Exercises;
4. Defendant's refusal to submit to a breath test to determine the alcohol concentration of his blood;
5. All other evidence which the State intends to introduce into evidence at trial.

The grounds for this motion are that all of the aforementioned evidence was obtained in violation of Defendant's Fourth and Fifth Amendment Rights guaranteed in the United States Constitution made applicable to the States through the Fourteenth Amendment of the United States Constitution and the respective provisions contained in the Constitution of the State of Florida.

**FACTS OF THE CASE**

Deputy S was dispatched to the intersection of West Commercial Boulevard and Northwest 64th Avenue in reference to a traffic accident on February 24, 2017 at approximately 12:42 am. Deputy S arrived on scene soon thereafter.

Deputy S identified the two (2) vehicles involved in the accident in the middle westbound lane of West Commercial Boulevard. Both vehicles were using their hazard lights. Deputy S exited her vehicle and made contact with the drivers of both vehicles. Once Deputy S determined that there were no injuries and that both vehicles could be moved safely, she directed both drivers to drive their vehicles into the Chase Bank parking lot located at the North East corner of the intersection. Both drivers complied with her order.

Deputy S first asked Defendant for his license as well as the insurance and registration on the vehicle. Defendant immediately provided his driver license and informed Deputy S that the vehicle belonged to his sister. Deputy S asked if Defendant had the registration and Defendant immediately began to look for the proof of registration and insurance inside of the vehicle.

Defendant called his sister to assist in locating the registration. Deputy S asked Defendant if he was speaking to his sister. Defendant replied "Yes", and Deputy S went to speak with the driver of the other vehicle.

The driver of the vehicle struck by Defendant's vehicle started to inquire as to whether Defendant would be "tested for substance abuse." Deputy S stated that she would talk to Defendant more and see if she got any "hints from it" and call another Deputy for the investigation if available. After several minutes, Deputy S returns to Defendant's car where Defendant has a folder of paperwork and is still on the phone with his sister.

Deputy S asks Defendant to step out of the vehicle and asks "have you been drinking?" Defendant replied that he had consumed one drink. Deputy S responded "Enough to have your fly unzipped?" Deputy S then told Defendant to hang up the telephone, place it in the car and not to move.

Deputy S returned to her patrol car. Approximately two (2) minutes had passed when the driver of the vehicle struck by Defendant walked past Defendant's car and all the way to the door of Deputy S' vehicle. Defendant attempts to walk to Deputy S' car to be a part of the conversation and Deputy S raises her voice to Defendant rhetorically asking him "what did I tell you? Stay right there and don't move."

The driver of the other vehicle then asks Deputy S "Is he going to get arrested? For reckless driving?" Deputy S states that she did not know. Deputy S elaborated stating "I'm going to call a specialist to come here because I'm not I'm not certified in it so I want somebody to do it who knows what they are dealing with. So I am going to call him to see if he is available right now and see if he can come do field sobriety."

After the driver of the other vehicle returns to his car, Deputy S gets out of her car yelling at Defendant because he was using his cell phone. Deputy S instructs Defendant to put his cell phone back down, step away from the car and asks Defendant if he would like to be placed in handcuffs. Defendant immediately complied with all of Deputy S orders.

Defendant sat on the sidewalk for in excess of a half hour before Deputy S performed the Standardized Field Sobriety Exercises (*hereinafter* "SFST's") herself. All the field sobriety exercises were improperly administered per National Highway Transportation and Safety Administration(*hereinafter* "NHTSA") guidelines. All the SFST's were improperly evaluated and scored per NHTSA standards.

Defendant was placed under arrest for Driving Under the Influence, in violation of Florida Statute 316.193 subsequent to the administration of the SFST's.

#### **STATEMENTS MADE DURING THE COURSE OF ACCIDENT INVESTIGATION**

Defendant's admission that he drank one drink is inadmissible pursuant to the accident report privilege. Furthermore, Defendant was placed in custody by Deputy S and was not advised of his right to remain silent prior to being questioned. Accordingly, Defendant's admission of

drinking should be excluded pursuant to Florida's accident report privilege or, in the alternative, suppressed as obtained in violation of Defendant's Fifth Amendment Rights.

Deputy S instructed defendant to provide his driver license, proof of registration and insurance as part of the accident investigation. Defendant advised Deputy S that the car belonged to his sister and he did not know where the registration and insurance card were located. As Defendant began looking for the required documents, Deputy S obtained the required information from the driver of the other vehicle.

After several minutes, Deputy S returned to Defendant's vehicle. Defendant was still on the telephone with his sister attempting to locate the registration and insurance information. Deputy S grew frustrated with the situation and ordered Defendant to step out of the vehicle. Deputy S, without advising Defendant that she was beginning a criminal investigation, asked Defendant how much he had to drink that night.

Florida Statute 316.066 (4) states that evidence obtained during an accident investigation is without prejudice to a defendant and any statements made by a defendant are inadmissible. Because Florida Statute 316.066 (1) and (2) create a statutory duty to make statements, the investigating officer is required to clearly advise the driver when the accident investigation ends and the criminal investigation begins. *See State v. Marshall*, 695 So.2d 719, 721 (Fla. 3rd DCA 1996) (Holding admission of statement acknowledging consumption of alcohol was not harmless error) *see also Wetherington v. State*, 135 So.3d 584 (Fla. 3rd DCA 2014) (Holding defendant's admission of being the driver of the vehicle involved in the accident was inadmissible.)

In the event the court determines Defendant's statement is not subject to the accident report privilege, the statement should be suppressed as Defendant was in custody for purposes of the Fifth Amendment. Defendant was taken into custody for purposes of the Fifth Amendment when Deputy S instructed Defendant to get off his telephone and step out of the vehicle. *See Popple v. State*, 626 So.2d 185 (Fla. 1993). Requiring defendant to do anything more than step out of the car constitutes a seizure for purposes of the Fourth and Fifth Amendments. *See McNeil v. State*, 656 So.2d 1320 (Fla. 5th DCA 1996) (Holding that officer ordering defendant to leave her purse in the vehicle constituted a seizure) *see also Evans v. State*, 546 So.2d 1125 (Fla. 3rd DCA 1989) (Holding officer ordering defendant to take his hands out of his pockets constituted a seizure.)

Accordingly, as Defendant was taken into custody without probable cause, Defendant was unlawfully seized and his admission to consuming one (1) alcoholic beverage should be suppressed.

#### **DE FACTO ARREST NOT SUPPORTED BY PROBABLE CAUSE**

Florida Statute 316.061 requires that an individual involved in an automobile accident resulting in damage done to property remain at the scene of the accident until an accident report can be taken in accordance with Florida Statute 316.062. An individual is not free to leave the scene while the officer completes the accident investigation.

Typically, a traffic stop, involving an accident, is not permitted to last any longer than is necessary to complete the crash report and issue the responsible party citations. *See State v.*

Arevalo, 112 So.3d 529, 531-32(Fla. 4th DCA 2013). Any further investigatory detention, such as a DUI investigation, must be based on legally obtained information which forms reasonable suspicion to conduct a DUI investigation. See State v. Goddard, 202 So.3d 144, 145-146 (Fla. 2nd DCA 2016). As stated above, Defendant was illegally seized without probable cause, instructed to leave his telephone in his car. Subsequently, Defendant was instructed to leave his telephone in his vehicle and sit on a curb on the other side of the parking lot.

Nevertheless, the time from when Defendant was taken into custody to the time of Defendant's arrest was in excess of an hour. The length of time supports the finding that Defendant's detention was a de facto arrest which was not supported by probable cause.

### **ARREST NOT SUPPORTED BY PROBABLE CAUSE**

The totality of the circumstances do not rise to probable cause to make an arrest for DUI. Pursuant to NHTSA standards, Defendant did not exhibit sufficient cues in Phase II of the DUI arrest process to justify an investigatory detention let alone an actual arrest. The SFST's were all administered improperly pursuant to NHTSA guidelines. Furthermore, Defendant's performance on the SFST's was evaluated incorrectly. As the standardized tests were not conducted within the protocol set forth by NHTSA, the exercises have no evidentiary value and do not provide probable cause for a DUI arrest.

### **CONCLUSION**

**WHEREFORE**, Defendant, S.K. respectfully requests this Honorable Court grant Defendant's Motion to Suppress in its entirety and for such other and further relief as this Court may deem just and proper.

### **Certificate of Service**

I certify that a copy hereof has been furnished to The Office of the State Attorney via electronic delivery on April XX, 20XX.

Respectfully submitted,

The Law Offices of Michael A. Dye, P.A.

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