

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

STATE OF FLORIDA

CASE NO: 07-XXXXMM10A

v.

JQ

DIVISION: Hon. Peggy Gehl

MOTION TO SUPPRESS

COMES NOW, Defendant, JQ, by and through his undersigned counsel and 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. Observations of Deputy P.K. as to the Defendant's demeanor and appearance.
2. All statements made by Defendant to Deputy P.K. prior to and subsequent to the arrest of the Defendant.
3. All evidence relating to the charge of driving without a valid license.
4. The results of the roadside sobriety exercises.
5. All evidence of Defendant's refusal to submit to a breath and/or urine test.
6. All other evidence obtained against the Defendant subsequent to Deputy P.K.'S illegal warrantless entry into Defendant's vehicle.

The grounds for this motion are that all of the aforementioned evidence was illegally seized without a warrant by virtue of an unlawful detention of the 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 March X, 2007 at approximately 2:36am, Defendant, JQ, was sleeping in a legally parked car in the development <NAME OF DEVELOPMENT>. Deputy P.K. was called to investigate a white male sleeping in a vehicle. Upon arriving at the scene, Deputy P.K. observed

the Defendant sleeping in his vehicle.

Deputy K. attempted to wake the Defendant up. When unsuccessful, Deputy K. opened the door to Defendant's vehicle and physically touched the Defendant waking the Defendant up. After the Defendant had been awakened, Deputy K. proceeded to request that Defendant provide his drivers license. Defendant allegedly handed Deputy K. his cellular phone and put the car into reverse and attempted to drive away. Deputy K. prevented Defendant from leaving the scene and requested that Defendant step out of the vehicle.

Deputy K. began to question Defendant regarding his whereabouts earlier in the evening and whether Defendant had consumed any alcoholic beverages. Deputy K. later requested Defendant to submit to certain roadside exercises to which the Defendant consented. Subsequent to the exercises, Defendant was arrested for driving under the influence and transported to BSO's BAT facility.

LEGAL ANALYSIS

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). As stated above, the second level of encounter is an investigatory stop. In order not to violate a citizen's Fourth Amendment rights, as applicable to the States 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).

Deputy K.'s entry into Defendant's vehicle constitutes a seizure for purposes of the Fourth Amendment. *See Horton v. State*, 660 So.2d 755, 756 (Fla. 2nd DCA 1995) (*the Court in Horton held that a mere attempt of an officer to open a locked vehicle door constituted a show of authority sufficient to trigger constitutional protections*); *see also State v. Ecker*, 550 So.2d 545 (Fla. 2nd DCA 1989) *citing Michigan v. Chesternut*, 486 U.S. 567 (1988). Furthermore, Deputy K. made

no observations establishing a well founded suspicion that defendant was or was about to become involved in criminal activity, as would justify an investigative stop. *See Danielewicz v. State*, 730 So.2d 363, 364 (Fla. 2nd DCA 1999) (*Police Officers's observation of defendant apparently asleep in legally parked car with engine and air conditioning running was insufficient to establish well-founded suspicion that defendant was or was about to become involved in criminal activity, as would justify investigative stop*). To the contrary, Deputy K.'s only observations were that Defendant was sleeping in a legally parked vehicle without the engine running.

CONCLUSION

As Deputy K. had no reasonable suspicion to suspect that Defendant was or was about to become involved in criminal activity, Deputy K. Had no reasonable suspicion to conduct an investigative stop. All observations made by Deputy K. resulting from the unlawful seizure and detention, including any alleged criminal conduct, must be suppressed as a result of the unlawful seizure and detention of the Defendant.

Certificate of Service

I certify that a copy hereof has been furnished to the State's Attorney by fax on May xx 2007.

Michael A. Dye, P.A.

By: _____

Michael A. Dye
Florida Bar No. 723541
1 E Broward Blvd.
Suite 700
Fort Lauderdale, FL 33301
Tel. (954) 990-0525
Attorney for JQ