

IN THE COUNTY COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, IN AND FOR ST. LUCIE
COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

V.

TIMOTHY G. LENTZ,

Defendant.

CASE NO.: 562014MM003149
JUDGE BARNES

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MOTION TO SUPPRESS

NOW COMES the Accused, TIMOTHY G. LENTZ, by and through his undersigned counsel, and pursuant to Florida Rules of Criminal Procedure 3.190 (g) & (h) respectfully requests this Honorable Court to suppress the following items of evidence:

A. Any and all physical evidence including but not limited to items seized from TIMOTHY G. LENTZ .

B. Any and all testimonial evidence including but not limited to any statements given by TIMOTHY G. LENTZ.

C. Any and all derivative evidence discovered because of the unconstitutional seizure and subsequent search of TIMOTHY G. LENTZ.

As grounds for this Motion, Accused states:

1. That on September 18, 2014 at approximately 9:13 a.m. while on patrol a

St. Lucie County deputy sheriff¹ observed a vehicle travelling northbound speeding and leaving the lane. The deputy followed the vehicle on to St. Lucie Boulevard, where it crossed the solid line into the bike lane.

2. The deputy conducted a traffic stop. According to the arrest affidavit, he observed the driver, the accused, to be lethargic and exhibiting bloodshot and watery eyes. After asking if the accused had anything illegal in the vehicle, the deputy asked accused if he could search the inside of the vehicle, to which accused acquiesced.

3. The deputy ordered accused from the vehicle. After Accused exited, the deputy conducted a pat down of Accused's person for "weapons for my safety." The officer felt an unknown object that appeared sharp. He asked the accused what it was, and the accused replied that it contained some "bits." The deputy asked if he could remove it. Accused acquiesced. As the deputy removed the item from Accused's pocket, a pack of rolling papers fell from the pocket. Thereupon, the deputy asked if accused had cannabis on his person. Accused replied that he did, in his top shirt pocket. The deputy then checked the shirt pocket, recovering a cigarette pack. Located inside the cigarette pack was a clear plastic baggie containing cannabis.

4. After a search of the vehicle's interior, which yielded an open beer can and other items, accused was tested for impairment, but exhibited no further signs.

5. Eventually, the Accused was booked into the St. Lucie County Jail and charged with misdemeanor possession of cannabis.

ARGUMENT

6. The seizure of the Accused was unlawful and in violation of his rights under

¹ The arrest affidavit does not provide the deputy's name.

Article 1, Section 12 of the Florida Constitution and the Fourth and Fourteenth Amendment to the U.S. Constitution.

7. The search and seizure of Accused and his property occurred without a search warrant and no exception to the warrant requirement exists.

8. Accused did nothing that gave the deputy probable cause to believe that he was armed or dangerous to justify a pat down search of his person during temporary detention under Florida Statute §901.151 (5).² See Terry v. Ohio, 392 U.S.1, 88 S.Ct. 1868 (1968). Accordingly, "police officers are authorized to execute a pat-down for weapons only where they have a reasonable suspicion to believe that a suspect is armed with a dangerous weapon." Campuzano v. State, 771 So. 2d 1238, 1243 (Fla. 4th DCA 2000); see also Johnson v. State, 785 So. 2d 1224, 1226 (Fla. 4th DCA 2001) (stating that "a pat down is authorized when . . . the officer has probable cause to believe that the person stopped is armed with a dangerous weapon").

9. Consent obtained by submission to a show of authority is invalid. See State v. Jerome, 541 So.2d 756 (Fla. 4th DCA 1989).

WHEREFORE the Accused, TIMOTHY G. LENTZ, respectfully requests this Honorable Court to enter an Order suppressing all physical evidence, and any derivative evidence, including the accused's identity, discovered as a result of the unconstitutional,

² § 901.151(5), Fla. Stat. (2014, in pertinent part, states:

Whenever any law enforcement officer authorized to detain temporarily any person...has probable cause to believe that any person whom the officer has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, the officer may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon....

illegal, warrantless seizure of the Accused and his property.

CERTIFICATION

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to Assistant State Attorney, Sheena Gordon, Esquire via e-portal email sa19eservice@SAO19.org and facsimile to (772) 462-1211 this 24th day of October, 2014.

Respectfully submitted,



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