

IN THE COUNTY COURT IN AND FOR SARASOTA COUNTY, FLORIDA

Case Number:

State of Florida

vs.

Defendant
_____ /

DEFENDANT'S MOTION TO SUPPRESS

Pursuant to Fla.R. Crim. P. 3.190(h) and (i), the Defendant moves this Court to suppress as evidence in this cause all tangible items of property, and confessions or admissions, and other evidence seized by police from the Defendant, and more particularly described as follows, to-wit:

1. The Field Sobriety Exercises,
2. Any and all statements made by the Defendant after the unlawful seizure, and
3. The results of the Defendant's Breath Test.

As grounds for the Motion, the Defendant would allege that the above-mentioned evidence was obtained by the police as a result of an unlawful and unreasonable search and seizure in violation of the Defendant's rights, guaranteed by Florida Constitution and the Fourth and Fourteenth Amendments to the United States Constitution, in that:

1. The Defendant was searched without a proper search warrant having been issued.
2. The Defendant was subjected to a search and seizure which was not incident to a lawful arrest.
3. There was no probable cause for an arrest or search of the defendant.
4. Any statements made by the Defendant were not freely and voluntarily given, in violation of the Defendant's rights, guaranteed by the Florida Constitution and the Fourteenth Amendment to the United States Constitution.
5. The Defendant was stopped without reasonable suspicion that a crime was or about to be committed.

The above evidence was obtained under the following facts and circumstances, to-wit:

1. Defendant is charged by Information with Driving Under the Influence, a violation of Section 316.193(3)(c) 1, *Florida Statutes*.
2. On or about _____, at _____ the Defendant was stopped at XXXX.
3. The Stopping Officer stated that he/she smelled the odor of alcohol and then requested the assistance of _____.
4. _____ then ordered the Defendant to perform field sobriety exercises to determine the level of his impairment.
5. The video clearly demonstrates that the Defendant was acquiescing to the authority of the Officer _____.
6. Upon completion of the field sobriety tests the Defendant was placed under arrest for _____ and taken to the XXXX Jail where Defendant was told to breathe into the breath test machine.
7. Florida has extended to its citizens even greater protection than afforded under the Fourth Amendment, by enacting the provisions of §316.1932 *Florida Statutes (2005)*.
8. The State has the burden of proving that the confession or consent to search was given freely and voluntarily. *See State v. Gonzalez*, 12 Fla. L. Weekly Supp. 482 (Dade County Circuit Court 2005), *State v. Taylor*, 648 So.2d 701 (Fla. 1995), *State v. Lynn*, 11 Fla. L. Weekly 798b (Broward County 2004), *Yaros v. DHSMV*, 12 Fla. L. Weekly Supp 630 a (Polk County 2005), *State v. Hood*, 11 Fla. L. Weekly Supp 159 a (2003).
9. The Defendant did not voluntarily consent to the performance of the field sobriety tests or the breath test.

10. The field sobriety tests and the breath test the state intends to use in this trial should be suppressed.

WHEREFORE, the Defendant prays that the above-described evidence be suppressed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to the Office of the State Attorney, Sarasota County, 2071 Ringling Boulevard, Sarasota, FL 34237, this January 26, 2010.

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