

IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT
IN AND FOR ST. LUCIE COUNTY,
FLORIDA
CASE NO. 562006CF005068A

STATE OF FLORIDA,
Plaintiff,
vs.
[REDACTED],
Defendant.

EDWIN M. FRY, JR.
CLERK OF CIRCUIT COURT
ST. LUCIE COUNTY, FL.
2007 APR 11 AM 10:14

MOTION TO SUPPRESS

Comes Now the Accused, [REDACTED], by and through his undersigned attorney and hereby moves this Honorable Court pursuant to Florida Rules of Criminal Procedure 3.190(h) and 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 [REDACTED]
- B. Any and all testimonial evidence including but not limited to any statements given by [REDACTED]
- C. Any and all derivative evidence discovered as a result of the unconstitutional seizure and subsequent search of [REDACTED]

As grounds for this Motion, the Accused would state:

FACTS

The sworn testimony of the fire inspectors and law enforcement officers involved in the present case is as follows:

1. On October 21, 2006, St. Lucie County Fire Rescue responded to a 911 call from [REDACTED] one of two occupants of the residence located at [REDACTED] in Fort Pierce, Florida in reference to a house fire.

2. The fire was only in the front bedroom of the residence and the fire department was able to extinguish and suppress the fire swiftly.

3. Fire Inspectors [REDACTED] and [REDACTED] later arrived to investigate the cause of the fire.

4. Fire Inspectors [REDACTED] and [REDACTED] did obtain [REDACTED] consent to "examine and remove any items of evidence relating to the fire which occurred on or about October 21, 2006 at 21:47 hours."

5. Fire Inspector [REDACTED] was able to determine that the fire was accidental and that its origin was the Southwest bedroom.

6. Fire Inspector [REDACTED] responsibility was to take pictures and document the scene.

7. After the room of origin and the cause of fire had been determined, Inspector [REDACTED] located an unburned dark purple crown royal bag in a room that was separate from the fire's room of origin.

8. Fire Inspector [REDACTED] opened the bag "out of curiosity" and noticed that there was money and two bags of white powdery substance inside the crown royal bag and immediately notified the Fort Pierce Police Department at the scene.

9. Fort Pierce Police Detective [REDACTED] arrived at the scene soon thereafter and was informed of the existence of the crown royal bag and its alleged contents.

10. Detective [REDACTED] proceeded into the house, seized the crown royal bag, opened it, carried it outside and put it into a police vehicle .

11. Detective [REDACTED] also noticed another bag with what appeared to be white powder (approximately 29 grams) in a file cabinet while initially inside the home.

12. Detectives [REDACTED] and [REDACTED] attempted to procure [REDACTED] consent to search the home and [REDACTED] denied the detectives consent and exercised his right to a lawyer.

13. Despite invoking his right to counsel, Detectives [REDACTED] and [REDACTED] then tried to get [REDACTED] consent to search the home again and again [REDACTED] denied consent to the Detectives.

14. Detectives [REDACTED] and [REDACTED] then had the residence secured and wrote up an application for a search warrant for signature by St. Lucie County Judge Walsh.

15. Detectives [REDACTED] and [REDACTED] then returned back to the residence with the signed search warrant and proceeded to search the residence and seized the same plastic bag that had been previously witnessed by Detective [REDACTED] during his initial warrantless entry into the home.

16. The Detectives also found a black powder antique revolver without a cylinder, marijuana, and various items of paraphernalia.

ARGUMENT

I. FIRE INSPECTOR [REDACTED] ILLEGALLY EXCEEDED THE SCOPE OF THE CONSENT SEARCH INVOLVING THE CAUSE OF FIRE

1. Fire Inspector [REDACTED] did in fact obtain lawful consent to search the residence at [REDACTED] after the house fire had been extinguished.
2. This consent to search specifically and in writing authorizes them to enter and search the property to examine and remove evidence "relating to the circumstances and causes of the fire" which occurred on October 21, 2006.
3. According to Fire Inspector [REDACTED] the cause of the fire was determined to be accidental and in a separate room from the location of the crown royal bag in question.
4. According to Fire Inspector [REDACTED] who was Inspector [REDACTED] supervisor, it was Inspector's [REDACTED] duty to assist with the investigation by taking pictures of the scene.
5. When Inspector [REDACTED] came upon the crown royal bag it was unburned, not near the origin of the fire, and could not be seen through.
6. According to the sworn testimony of Fire Inspector [REDACTED], the cause of the fire had already been determined and given the location and appearance of the crown royal bag "it could not have had anything to do with the cause of the fire."
7. Inspector Scott [REDACTED] sworn testimony is that he "picked up the bag and looked inside it out of curiosity".
8. There is no diminution in a person's reasonable expectation of privacy or in the protection of the Fourth Amendment simply because the official conducting the search is

a fireman rather than a police officer, or because his purpose is to ascertain the cause of the fire rather than to look for evidence of a crime. *Michigan v. Tyler*, 436 U.S. 499 (1978).

Searches for administrative purposes, like searches for evidence of a crime are encompassed by the Fourth Amendment. *Id* at 499.

9. Although the Fire Department did obtain [REDACTED] consent to search the residence at [REDACTED] the consent was expressly limited to examine and remove items relating to the investigation of the circumstances and cause of the fire.

10. Although certainly the Fire Department lawfully entered [REDACTED] residence it does not follow that the authorities may search anywhere in the home that they desire. To the contrary, the scope of a consent search is strictly limited by the circumstances that justify its inception, and in fact a search that is reasonable when it begins may become unreasonable if its scope extends beyond that which is necessary to accomplish its objective. *Terry vs. Ohio*, 392 US 1 (1968)

11. In *Terry* the United States Supreme Court specifically states that the “scope of the search must be strictly tied to and justified by the circumstances which render its initiation permissible.” Thus evidence may not be introduced if it was discovered by means of a search and seizure which were not reasonably related in scope to their justification. *Terry vs. Ohio*, 392 US 1 (1968) (See also *Jacobs v. State*, 733 So. 2d 552 (Fla. 2nd DCA 1999) the limits of consent are defined by the extent of the consent given).

12. During a limited consent search of a house the authority may not open a closed container without additional consent unless the incriminating nature of the container is immediate apparent. *Jones vs. State*, 895 So. 2d 1246 (Fla. 2005).

13. When Fire Inspector [REDACTED] located the crown royal bag which was in a separate room from the origin of the fire, was unburned, was not see-through, and was seized simply out of "curiosity" he exceeded the permissible scope of the search authorized by [REDACTED] consent.

II. THE POLICE ENTRY INTO THE RESIDENCE WITHOUT A WARRANT WAS UNREASONABLE AND A VIOLATION OF THE FOURTH AMENDMENT

1. Detective Alves arrived at [REDACTED] and according to his sworn testimony proceeded into the residence without a warrant and without consent from any resident of the home.

2. After Detective [REDACTED] proceeded into the house he seized the crown royal bag, opened it, carried it outside, tested the substance, and put it into a police vehicle.

3. Detective [REDACTED] also noticed a separate bag of white powder while initially inside the home without a warrant inside a file cabinet.

4. After seizing the crown royal bag inside the home Detective [REDACTED] attempted to procure consent from [REDACTED] for a search of the home.

5. Detectives [REDACTED] and [REDACTED] later wrote up an application for a search warrant and had a search warrant signed by St Lucie County Judge Tom Walsh.

6. The search warrant at the residence of [REDACTED] was based on an observation by police and seizure of white powdered substance inside the residence without a warrant and without valid consent to search beyond the scope of the cause of the fire.

7. The warrantless search of a home is presumptively unreasonable and a violation

of the Fourth Amendment, unless the search falls within certain recognized constitution exceptions. *Seibert v. State*, 923 So. 2d 460, 468 (Fla. 2006).

8. Article I, Section 12 of the Florida Constitution and the Fourth Amendment to the United States Constitution give the citizens of Florida the right to be secure in their homes against unreasonable search and seizures. Seizure of items from a person's home without a warrant based on probable cause violates this right, rendering the items inadmissible in evidence.

9. The principals embodied in these constitutional provisions "advents the axiom that privacy is not a gratuity which we hold at the whim of our government" *Hornblower v. State*, 351 So. 2d 716, 717 (Fla. 1977). Rather, privacy in the home is a constitutional right included within the "catalog of indispensable freedoms guaranteed to each individual and in accordance with our chosen form of democratic government, the judiciary not the police has been designated as guardian". *Id* at 717.

10. The Courts have consistently held that a warrantless search of a home is illegal. *M.J.R. v. State*, 715 So. 2d 1103 (Fla. 5th DCA 1998); *Anderson v. State*, 665 So. 2d 281 (Fla. 5th DCA 1995); See also *Espiet v. State*, 797 So. 2d 598, 603 (Fla. 5th DCA 2001).

11. Whether exigent circumstances are present that would justify entry without a warrant is evaluated based on the totality of the circumstances. *Seibert v. State*, 923 So. 2d at 468.

12. The exigent circumstances exception to the warrant requirement is premised on the generally accepted notion that "the right of police to enter and investigate an emergency without accompanying intent either to seize or arrest, is inherent in the very nature of their

duty as peace officers and derives from the common law. *Zeigler v. State*, 402 So. 2d 365, 371 (Fla. 1981).

13. The sine qua non of the exigent circumstances exception is “a compelling need for official action with no time to secure a warrant.” *Michigan v. Tyler*, 436 US 499 (1978); see also *Rolling v. State*, 695 So. 2d 278, 293 (Fla. 1997) (“Of course, a key ingredient of the exigency requirement is that the police lack time to secure a search warrant.”)

14. Thus, where the police claim exigent circumstances, “the burden is on the State to demonstrate that the procurement of a warrant is not feasible because the exigency of the situation made the chosen course imperative.” *Vasquez v. State*, 870 So. 2d 26, 29 (Fla. 2nd DCA 2003)

15. Clearly, police may not enter a home simply because they think they have probable cause to believe evidence of a crime may be found there. *McDuffy v. State*, 837 So. 2d 590 (Fla 2nd DCA 2003) (Citing *Butler v. State*, 697 So. 2d 907 (Fla. 2nd DCA 1997); *Vasquez v. State*, 870 So. 2d 26, 29 (Fla 2nd DCA 2003) (“In the absence of exigent circumstances or permission the police clearly may not enter a home without a search warrant simply because they think they have probable cause to believe evidence of a crime may be found therein”)(quoting *Butler vs. State*, 697 So. 2d 907 (Fla. 2nd DCA 1997) (Citing *Vale v. Louisiana*, 399 U.S. 30, 34 (1970)

16. When the Police entered the home at [REDACTED] without a warrant there were absolutely no exigent circumstances present so as to justify the entry into the home.

17. The State can not meet its burden of overcoming the presumption of illegality that attends to the warrantless entry into [REDACTED] residence by claiming there were exigent

circumstances. In order to do so the State would have to prove that "the procurement of a warrant was not feasible because the exigency of the situation made the chosen course imperative." *Vasquez v. State*, 870 So. 2d at 29 (Fla 2nd DCA 2003)

18. [REDACTED] was not suspected of engaging in any violent or grave offense.

19. The officers had no reason to believe that evidence would be destroyed if they did not enter the residence immediately.

20. The fire had long been extinguished and the safety of the public and of the authorities was not in jeopardy.

21. The totality of the circumstances in the present case do not even come close to support a finding of the type of exigent circumstances that could justify a warrantless entry into [REDACTED] home.

22. The police entry into [REDACTED] must be deemed illegal and violative of the Florida and United States Constitutions.

III. THE ILLEGALITY OF THE POLICE CONDUCT PROCEEDING THE SEARCH WARRANT ALSO TAINTS THE WARRANT, RENDERING ALL EVIDENCE OBTAINED PURSUANT THERETO INADMISSIBLE

1. The initial search and seizure of the crown royal bag was illegal and was (1) outside the scope of the initial consent given by [REDACTED] and (2) illegally seized by the police inside the home without a warrant and without consent.

2. Because the search warrant was based solely on the impermissible conduct of the authorities all the evidence seized pursuant to the initial search is the fruit of the poisonous tree and is inadmissible. *Wong Sun v. United States*, 371 U.S. 471 (1963) (See also *Terry v. State*,

668 So. 2d 954 (Fla. 1996) See also *Davis v. State*, 834 So. 2d 322, 326 (Fla. 5th DCA 2003) (Suppression required when a warrant was based on information derived from impermissible conduct. (Citing *Wong Sun v. United States*, 371 U.S. 471 (1963))

3. It is axiomatic that evidence resulting from an illegal search cannot be the basis of probable cause supporting a subsequent search warrant. *State v. Morsman*, 394 So. 2d 408, 410 (Fla. 1981) It is settled doctrine that probable cause for belief that certain articles subject to seizure are in a dwelling cannot of itself justify a search without a warrant. *Jones v. United States*, 357 U.S. 493, 497-48 (1958)

4. Furthermore, the inevitable discovery rule has no application upon a showing that the government could have lawfully discovered the subject evidence if its officers had proceeded differently than they actually did - for example, if they had obtained a search warrant for a home, instead of lawlessly entering the home based on probable cause but without a warrant. *Mancusi v. DeForte*, 392 U.S. 364, 372 (1968)

5. The rights against unreasonable search and seizure are to be protected even if the same result might have been achieved in a lawful way. *Silverthorn Lumber Company v. United States*, 251 U.S. 385 (1920)

6. Thus, even though different circumstances in this matter may have resulted in the lawful discovery of the subject evidence, it is clear that the authorities did not act in a lawful manner and thus, suppression of the unlawfully seized evidence is required by law.

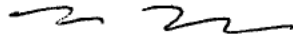
WHEREFORE the Accused, [REDACTED], respectfully requests this Honorable Court to enter an Order suppressing all evidence seized, including without limitation the cocaine, marijuana, drug paraphernalia and antique firearm, and including any

and all statements by [REDACTED] obtained as a result of the illegal search and seizure in violation of his Fourth Amendment rights.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Courthouse Box to the Office of the State Attorney, St. Lucie County, Florida this 11th day of April, 2007.

Respectfully submitted,

BY: _____


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