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

STATE OF FLORIDA,

VS. **Case No.: 56-2021-CF-002815-A**

[redacted],

Defendant.

MOTION TO SUPPRESS

NOW COMES Defendant, [redacted], by and through his undersigned counsel, and moves pursuant to Florida Rules of Criminal Procedure 3.190(g) and 3.190(h)[1] to suppress the following:

A. Any and all evidence illegally obtained, including, but not limited to the personal use or residual amounts of illicit drugs allegedly found.

B. Any and all statements made by [redacted], including but not limited to any confession or admission obtained illegally from him.

C. Any and all other derivative evidence, including but not limited to the identity of [redacted].

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[1] *See* Fla.R.Crim.P. 3.190(g) (Motion to Suppress Evidence in Unlawful Search) ("(1) Grounds. A defendant aggrieved by an unlawful search and seizure may move to suppress anything so obtained for use as evidence because: (A) the property was illegally seized without a warrant... (2) Contents of Motion. Every motion to suppress evidence shall state clearly the particular evidence sought to be suppressed, the reasons for suppression, and a general statement of the facts on which the motion is based"); *see also* Fla.R.Crim.P. 3.190(h) (Motion to Suppress Confession or Admission Illegally Obtained) (1) Grounds. On motion of the defendant or on its own motion, the court shall suppress any confession or admission obtained illegally from the defendant. (2) Contents of Motion. Every motion made by a defendant to suppress a confession or admission shall identify with particularity any statement sought to be suppressed, the reasons for suppression, and a general statement of the facts on which the motion is based.

RELEVANT FACTS

1. On November 15, 2021, at 19:13 hours, [redacted] and [redacted] of the Ft. Pierce Police Department Crime Suppression Unit started following a vehicle (bearing Florida tag [redacted] after it left the parking lot of a local Inn/Motel. The officers observed the SUV heading northbound on US-1 highway and then crossing over two solid yellow lines to turn into the driveway of a Walgreens located about 300 feet south of the intersection at Ohio Avenue and US-1 highway, "avoiding the traffic device" at the said intersection. According to the Arrest Affidavit, the officers effectuated a traffic stop based on that observation. *See* Exhibit A at p.1.

2. The Arrest Affidavit reports that the driver was observed making suspicious, furtive movements inside of the vehicle (as if concealing items) before the officer made contact with the driver. Upon making initial contact, the reporting officer made note that the driver appeared to be "very nervous (breathing heavy, sweating profusely, and shaking)." *See* Exhibit A at p.1.

3. The officer requested [redacted] consent to search his SUV, which he denied. "K-9 Officer [redacted] was on scene to conduct a[n] outer-sniff of the SUV. After Officer [redacted] ran his K-9 around [the] vehicle, [he] stated his K-9 had just alerted him to the presence of narcotics." *Id.* at p.1 (brackets added). The search of the interior found pill capsules with residue, aluminum foil with burnt residue, and straws with residue, which field tested positive for methamphetamine and fentanyl. The amount could ***not*** be read.

4. A blue pill observed by K-9 Officer [redacted] was also found, and a "pill indicator hotline" identified it as a controlled substance (clonazepam). A scale was also reportedly found. *See* Exhibit A (Arrest Affidavit) at p.2.

5. *Post-Miranda,* [redacted] first stated his girlfriend had smoked narcotics in his SUV. [redacted] was asked if he was selling narcotics. He replied that he had been using fentanyl prior to being stopped by police. [redacted] denied having any other narcotics and noted he was seeking help for his drug use. "Due to [redacted] admitting to using narcotics prior to being stopped, paraphernalia located inside the vehicle, and having a controlled substance, he was arrested and charged". *Id.* (brackets added).

6. ***Omitted*** from the Affidavit is that the stop was delayed beyond the time needed to issue a simple citation, to facilitate the dog sniff of the SUV. The evidence shows the officers delayed the stop to facilitate the dog sniff, and only issued the traffic citation ***after*** the dog was deployed. The evidence shows that the delay for the dog sniff exceeded the time limit set by the Fourth District Court of Appeal and the United States Supreme Court. *See* Exhibit B (videos) (sniff occurred at 19:24, 11 minutes after the initial traffic stop at 19:13).

7. [redacted] was issued a traffic citation for his alleged violation of Fla. Stat. § 316.074(2) ("no person shall drive any vehicle from a roadway to another roadway to avoid obeying the indicated traffic control indicated

by such traffic control device") at 19:25 p.m., 12 minutes after the stop at 19:13 p.m. *See* Exhibit C (citation). The police delayed the stop for the sniff.

8. [redacted] has been charged in a two-count Information with the actual or constructive possession of "fentanyl, or a fentanyl derivative," in violation of Fla. Stat. § 893.13(6)(a), and with the use or possession of unidentified "drug paraphernalia" in violation of Fla. Stat. § 893.147(1).

ARGUMENT

1. The investigatory detention and arrest of [redacted] was illegal and in violation of his basic rights under Article 1, Sections 9 & 12 of the Florida Constitution, and the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution.

2. The investigatory detention and arrest occurred without a warrant, and no exception to the warrant requirement existed.

Suppression is required because the traffic stop was unlawful

When a police officer stops a vehicle, the detention implicates the Fourth Amendment rule against unreasonable searches and seizures, so there must be probable cause to believe that a violation has been committed. *See Whren v. United States,* 517 U.S. 806, 809-810 (1996). All evidence derived from the illegal stop, including but not limited to all statements made and his identity, must be suppressed as inadmissible "fruit of the poisonous tree." *See Perkins v. State,* 734 So. 2d 480, 482 (Fla. 4th DCA 1999) (identity like all other "evidence must be suppressed, as fruit of the poisonous tree, where

discovered following an unlawful stop"); *State v. Perkins,* 760 So.2d 85, 88-89 (2000) (all "post-stop observations" are subject to the exclusionary rule).

The officers stopped the SUV for a violation of Fla. Stat. § 316.074(2), which proscribes that "no person shall drive any vehicle from a roadway to another roadway to avoid obeying the indicated traffic control indicated by such traffic control device." The stop was based on the observation of the SUV crossing over solid double yellow lines to turn left into a Walgreens store driveway about 300 feet south of the intersection at Ohio Avenue and US-1 highway. Under the exception in Fla. Stat. § 316.0875(3)(b) (driver may not drive on the left side of pavement striping designed to mark no-passing zone throughout its length, ***but*** section does not apply to a driver who safely and briefly drives to left of the roadway center only to "[t]urn left into . a private road, or a driveway"), [redacted] properly turned left into the store driveway, although he crossed over solid double yellow lines. *See Lomax v. State,* 148 So. 3d 119, 122 (Fla. 1" DCA 2014) (stop for § 316.074 violation where the driver crossed double yellow lines) ("316.0875 does not permit crossing solid double yellow lines even if it can be done safely, ***unless one of the exceptions in subsection (3) applies.")*** (emphasis added). Since [redacted] was subjected to an unlawful stop, all of the evidence derived therefrom, including his identity, should be suppressed. *See Perkins, supra.*

All statements must be suppressed as tainted by the unlawful detention

[redacted] made a self-incriminating admission immediately after his unconstitutional detention in the absence of intervening circumstances to attenuate the primary taint of the flagrant police misconduct exposed herein.

Even if [redacted] was *Mirandized* before he admitted that he had used fentanyl at some time before the stop, the primary taint of the unbroken chain of errors resulting in the unlawful arrest was not dissipated, and all statements must be suppressed. *See Brown v. Illinois,* 422 U.S. 590, 603 (1975) (most important factors a court must analyze to determine whether a confession is free of the taint of an illegal arrest are: "the temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct."). The causal chain between the illegal arrest and [redacted] admission to drug use was not broken. The taint cannot be purged solely by the act of reading a suspect his *Miranda* rights.

> If *Miranda* warnings, by themselves, were held to attenuate the taint of an unconstitutional arrest, regardless of how wanton and purposeful the Fourth Amendment violation, the effect of the exclusionary rule would be substantially diluted. Arrests made without warrant or without probable cause, for questioning or "investigation," would be encouraged by the knowledge that evidence derived therefrom could well be made admissible at trial by the simple expedient of giving *Miranda* warnings. Any incentive to avoid Fourth Amendment violations would be eviscerated by making the warnings, in effect, a "cure-all," and the constitutional guarantee against unlawful searches and seizures could be said to be reduced to "a form of words." ...But the *Miranda* warnings, alone and *per se,* cannot always make the act sufficiently a product of free will to break, for Fourth Amendment purposes, the causal connection between the illegality and the confession.

They cannot assure in every case that the Fourth Amendment violation has not been unduly exploited.

See Brown, 422 U.S. at 602-603.

All of the statements made by [redacted] should be suppressed as they were the product of an unconstitutional detention.

Suppression is required due to the unlawful prolongation of the stop

The police officers had no "founded suspicion" that [redacted] was engaged in criminal activity, as they saw no more than a "nervous" driver who had exited a motel known for narcotics dealers and users. *See Doe v. State,* 973 So.2d 682. 683 (Fla. 4th DCA 2008) ("To stop and detain a person for investigation, an officer must have a reasonable suspicion that the person has committed, is committing, or is about to commit a crime") (defendant driving away from area known for drug dealing did not raise a reasonable suspicion of criminal activity to justify traffic stop); *compare* Exhibit A (Arrest Affidavit) (SUV was observed leaving motel "known for narcotics dealers and users"). "'Mere' or 'bare' suspicion... cannot support detention. Mere suspicion is no better than random selection, sheer guesswork, or hunch, and has no objective justification." *State v. Stevens,* 354 So.2d 1244, 1247 (Fla. 4th DCA 1978). [redacted] nervousness did not justify the prolonged detention. *See Dukes v. State,* 753 So.2d 750, 781 (Fla. 5* DCA 2000) (rejecting alternative state argument that driver had exhibited suspicious behavior as she appeared nervous, was from Georgia,

and only bought $3.00 of gas at station where vehicle was stopped); *see also* ***A.N.H. v. State,*** 832 So.2d 170, 172 (Fla. 3rd DCA 2002) ("physical state was consistent with innocence, and could not give rise to reasonable grounds to suspect that he was involved in some criminal activity"). There existed no reasonable suspicion to prolong [redacted] detention for a dog sniff. The officers made no attempt to issue a citation until ***after*** the canine was deployed, and a traffic stop cannot last longer than the time it takes to write a citation. *See Cresswell v. State,* 564 So.2d 480, 481-482 (Fla.1990); *Rodriguez v. United States,* 135 S.Ct. 1609, 1614-1615 (2015). In *Jones v. State,* 187 So.3d 346, 347 (Fla. 4th DCA 2016), the Fourth District panel noted that *Rodriguez* "eliminates any ambiguity about the reasonableness of the time required for the officer to complete a traffic stop." *Id.* at 347-348 (3-minute prolongation of stop for sniff unconstitutional). The prolongation of the traffic stop beyond 3 minutes for the sniff is well-documented here. *See Underhill v. State,* 197 So. 3d 90, 92 (Fla. 4th DCA 2016) ("In *Jones,* our Court concluded that the officer had abandoned the purpose of the stop by deciding not to write a ticket but to start the dog sniff. Therefore, the stop was prolonged beyond what was necessary to accomplish the mission. Likewise, in this case, the officer had obtained all the necessary information from dispatch and could have started to write the ticket immediately. Instead, he decided to interrupt the traffic stop for the dog sniff. Although it was only a short period of time until the dog alerted, under *Rodriguez,* the sniff

unconstitutionally prolonged the completion of the mission of the traffic stop.") (citations omitted).[2]

The courts have "interpreted *Rodriguez* as requiring a particularized review of the individual stop to determine, sometimes on a minute-by-minute basis, whether time has been added to the stop through a dog sniff. *Id.* Here, review of the traffic stop shows that the officers unconstitutionally prolonged the stop to conduct a dog sniff, and the citation was only issued thereafter.

All of the evidence derived from the illegal conduct in this case must be suppressed as *fruit of the poisonous tree. See Wong Sun v. United States,* 371 U.S. 471 (1963) (excluding drugs and statements as fruits derived from illegal police conduct) (seminal case on *fruit of the poisonous tree* doctrine).

CONCLUSION

For all of the foregoing reasons, the Defendant, [redacted] moves this Court to find that the police violated his rights under Article 1, Sections 9 and 12 of the Florida Constitution, and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and to GRANT this Motion to Suppress, ordering the exclusion of all evidence obtained, all

[2] Records show that this K9 team has been used to detect marijuana although not trained for such detection. *See* Ft. Pierce P.D. Case Nos. 21-05-00482; 21-06-00547. The discovery obtained in this case suggests that the K9 team has been deployed in less than ten (10) stops, which could allow one to infer that false alerts have been ignored to accurately assess the dog's reliability.

statements that were elicited during the unconstitutional seizure, and all other derivative evidence, including his identity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-mail to the Office of the State Attorney, St. Lucie County, Florida this 10th day of March 2022.

By: S/Brian H. Mallonee
Brian H. Mallonee, Esquire