

IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY

STATE OF FLORIDA
Plaintiff,

vs.

CASE NO.2008 CT 4369

D. H. S.
Defendant.

_____ /

ORDER GRANTING MOTION TO SUPPRESS

THIS CAUSE came on to be heard on April 16, 2009 upon Defendant's Motion to Suppress, and the Court having heard testimony, and having heard argument of counsel for the respective parties, and being otherwise fully advised, finds as follows:

1. Officer Titen of the Bradenton Police Department received a dispatch call regarding someone lying on the ground near a vehicle.
2. Officer Titen went to the general area and located a vehicle shortly after 9 p.m. that was lawfully parked in a proper parking space, but saw no individual.
3. Upon approaching the vehicle Officer Titen saw Defendant inside the vehicle and asked Defendant to open the car door. Defendant cooperated.
4. This Court notes the numerous cases that have addressed similar issues, and the fine line between an officer's concern for public and an individual's

safety, and the 4th Amendment protections against unreasonable search and seizure.

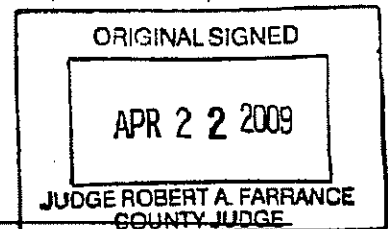
5. In this case, Defendant was detained and Officer Titen's intended citizen encounter became a "Terry" stop. See *Terry v. Ohio*, 392 U.S. 1, (1968).
6. At this level, a police officer may reasonably detain a citizen temporarily if the officer has a reasonable suspicion that a person has committed, is committing, or is about to commit a crime. In order not to violate a citizen's Fourth Amendment rights, an investigatory stop requires a well-founded, articulable suspicion of criminal activity. Mere suspicion is not enough to support a stop. See *Popple v. State*, 626 So.2d 185, 186 (Fla. 1993).
7. There is no suggestion that the officer had a reasonable suspicion of any criminal activity or even a traffic infraction at the time he made the decision to ask the Defendant to open his door. See *Hrezo v. State*, 780 So.2d 194 (2DCA, 2001).
8. Merely observing an individual in a legally parked car is insufficient to raise a well-founded suspicion of criminal activity to support a stop. See *State v. Taylor*, 826 So.2d 399 (3DCA, 2002).
9. A consensual encounter is transformed into an investigatory stop if a reasonable person would not feel free to leave. *Popple*, pp. 187-188. Here, Officer Titen stated that the Defendant was not free to leave, and while Officer Titen's concern for an individual in a parked vehicle is commendable, there was insufficient evidence for Officer Titen to ask

Defendant to open his door based on the minimal information provided to him by dispatch. That is the distinction between the case at bar and *Gardner v. State*, 8 Fla. L. Weekly Supp. 350b (Palm Beach County, 2001) in which that Defendant voluntarily rolled his window down. See *Danielewicz v. State*, 730 So.2d 363 (2DCA, 1999).

Based on the foregoing, Defendant's Motion to Suppress is **GRANTED**.

DONE AND ORDERED at the Manatee County Judicial Center, Bradenton,


Florida on this _____ day of April, 2009.



ROBERT A. FARRANCE
County Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished to Richard Cipriano, Assistant State Attorney, Office of the State Attorney by Interoffice Mail and to Thomas S. Hudson, Esquire, 7780 West Moreland Drive, Sarasota, Fl. 34243 by U.S. Mail on this 22 day of April, 2009.



Judicial Assistant