

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE OF NEW YORK

v.

[REDACTED]

[REDACTED]

MEMORANDUM OF LAW

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Hon. [REDACTED]
25 Delaware Ave.
Buffalo, NY 14202

Erie County District Attorney
25 Delaware Ave.
Buffalo, NY 14202

This memorandum of law is submitted in support of the defendant's motion to suppress statements and observations made after the police unlawfully asked him for his driver's license. A hearing on the motion was conducted on [REDACTED].

Late on the evening of [REDACTED], Buffalo Police Officers Steven Zappia and Brenden Robinson were on patrol when they observed a vehicle driving with dark tinted windows (6; numbers in parentheses refer to pages of the suppression hearing transcript). They pulled the vehicle over, and the defendant was in the front passenger's seat (37-38). Zappia checked the driver's DMV records and told Robinson, "she's good" (60). Robinson asked the defendant for his license, and the defendant handed him an ID card (39-40). When Zappia checked the defendant's DMV records, he learned that the defendant had a warrant out of the City of Buffalo on a vehicle and traffic matter (14). Robinson ordered defendant out of the vehicle, patted him down, and felt a hard object in the front of the defendant's waistband (45-46). There was a brief struggle, and the defendant pulled out a white tube sock (46-47). The sock fell to the ground. The driver picked up the sock and tossed it into the car (19). The defendant said, "pull off," and she did (19). They eventually learned that the driver's license was suspended, and the sock and a firearm were eventually recovered.

PO Robinson's request for the defendant's license was unlawful.

The police have the authority to enforce the Vehicle and Traffic Law. However, this purpose is not served by asking a passenger for his driver's license, especially after Zappia told Robinson that the driver was "good." Robinson's request was based upon "idle curiosity," unrelated to the traffic stop, and therefore unlawful (*People v. DeBour*, 40 NY2d 210, 217 [1976]). Without running his ID, the police would never have learned about the warrant, and would not have had a basis to pat him down pursuant to taking him into custody on the warrant.

All of the evidence that flowed from the unlawful request must be suppressed.

Evidence may be suppressed on the ground that it was obtained as a result of other evidence obtained by means of an unlawful search and seizure under circumstances precluding admissibility of such evidence (CPL 710.60[4]). The question is “whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint” (*Wong Sun v. United States*, 371 US 471, 488 [1963]).

Observations of the police, where they are an “unattenuated by-product” of unlawful activity, are subject to suppression (*People v. Smith*, 1 AD3d 965, 966 [4th Dept. 2003]).

The observations made by the police during the pat-down should be suppressed as fruit of the unlawful request. These observations include the hard object in his waistband, the sock falling to the ground, and him saying “pull off.” None of these observations would have been made if the police had not violated the defendant’s Fourth Amendment rights.