

21 Fla. L. Weekly Supp. 505a

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Criminal law -- Possession of cannabis -- Dismissal -- Police misconduct -- Trial court did not err in dismissing charge of possession of cannabis where it is undisputed that deputy attempted to plant illegal pills on defendant, after which defendant gave up right to remain silent and admitted to possession of cannabis in hope that he would not be charged with possession of pills

STATE OF FLORIDA, Appellant, v. BRANDON HUDSON, Appellee. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. 11-12AC10A. L.T. Case No. 09-29118MM10A. September 3, 2013. Cowart, Judge. Christopher W. Pole, Successor Judge. Counsel: James P. McLane, Office of the State Attorney, Appeals Division, for Appellant. Tamara L. Curtis, Office of the Public Defender, Appeals Division, for Appellee.

OPINION OF THE COURT

(USAN, Judge.) THIS CAUSE comes before the Court, sitting in appellate capacity, upon Appellant's timely appeal of the trial court's order granting Appellee's motion to dismiss. Having considered the briefs of both parties, the trial court record, and applicable law, this Court finds as follows:

Appellant was charged by Information with one count of possession of cannabis.

The essential facts of this matter are not in dispute. A Broward Sheriff's Office deputy, Deputy Campbell, responded to a dispatch of a male and female arguing. Upon his arrival, Deputy Campbell observed Appellant throw something over the fence. When backup arrived, Deputy Campbell scaled the fence and found a bag of marijuana. When he returned, he learned that Deputy Goenaga, who was present as backup, had made contact with Appellee, had searched him, and had handcuffed him. Deputy Goenaga claimed to have found a vial of pills in Appellee's possession. As a result, Appellee admitted to possessing the marijuana in order to avoid being charged with possession of the pills. *Both parties concede that the pills were planted on Appellee by Deputy Goenaga.* Deputy Goenaga advised Deputy Campbell that he would be taking over the investigation, and when Deputy Campbell asked him where the pills came from, Deputy Goenaga just giggled. Deputy Goenaga additionally advised Deputy Campbell that he was going to write a "Goenaga special." Deputy Campbell never questioned what that was.

On November 12, 2010, Appellee filed a Motion to Dismiss Information Based on a Due Process Violation Due to Egregious Police Misconduct. In the motion, Appellee argued that Deputy Goenaga's conduct in this case was reprehensible and offended all senses of decency, fairness, and justice. He further argued that due to Deputy Goenaga's actions, he involuntarily waived his privilege against self-incrimination in admitting to possessing the cannabis. In a response to Appellee's motion, the State admitted that the actions of Deputy Goenaga were reprehensible, but argued that dismissal was inappropriate because there was no nexus between the actions of Deputy Goenaga and the charge ultimately filed.

On February 28, 2011, the trial court held a hearing on Appellee's motion to dismiss, where while the parties stipulated to the egregious conduct of Deputy Goenaga, they argued as to why dismissal was or was not a warranted sanction. The trial court ultimately granted Appellee's motion to dismiss, stating, in part:

This Court finds that Deputy Campbell allowed Goenaga to in essence hijack this case knowing that Goenaga planted pills on the defendant. Furthermore, it wasn't until the defendant brought the pill situation to the [attention of the] sergeant at the substation that something happened.

In essence, if the defendant hadn't told the sergeant about what had occurred it seems nothing would have happened despite Deputy Campbell being told by Goenaga that he was going to write a Goenaga special.

As a result this Court finds Deputy Campbell's credibility in issue and Deputy Goenaga's actions very intertwined with the facts of this particular case. Deputy Goenaga wasn't just a backup officer or took a minor role in securing the defendant. He fabricated evidence. He hijacked the case and no one was going to stop him until the defendant talked to the sergeant at the station.

In this regard I find Deputy Goenaga's actions and Deputy Campbell's action of turning a blind eye and deaf ear to what Deputy Goenaga was doing intentional and in bad faith.

...

In this case the defendant's right to remain silent was compromised and in essence violated because he felt it necessary to admit his wrongdoing so as not to be charged with a more serious crime.

Deputy Goenaga's action (sic) are reprehensible and should strike fear in every citizen in this country. A very clear signal must be sent that this type of behavior will not be tolerated and very real consequences result such as a dismissal of charges.

To do otherwise allows the government to use if it chooses tainted evidence, albeit in this case the government has chosen not to use the defendant's statements against him at trial. This however doesn't mean that what happened to the defendant wasn't wrong, it wasn't egregious and it doesn't mean in the next case the State won't try or attempt to use the defendant's statements against him.

Planting contraband on a defendant in hopes of either charging them with more serious crimes or inducing confessions of existing crimes so as to not be charged with more serious fabricated crimes is reprehensible. The State cannot be allowed to merely say, Judge, we don't plan on using the confession and the deputy who committed the wrongdoing won't testify.

To allow that consequence is no consequence at all and will not prohibit further conduct such as this in the future. The government undoubtedly will argue the sanctions too harsh. This Court has considered lesser sanctions but given everything said finds that this is the most appropriate way to deal with this conduct.

To do otherwise leaves the consequence to the prosecutors or government, the government's office, who like they chose to in this case, to not introduce the defendant's statements or call the wrongdoing deputy to testify thereby resulting in no consequence to egregious misconduct. This consequence is no consequence at all.

(Tr. Vol. II at 13-16.)

In the instant appeal, Appellant claims that the trial court erred in granting Appellee's motion to dismiss where Deputy Goenaga's misconduct did not inhere in the criminal charge filed against Appellee.

On the other hand, Appellee argues that the trial court did not err in granting his motion to dismiss, as it considered lesser sanctions, but under the circumstances, determined that nothing

short of dismissal would serve as a deterrent to such egregious police misconduct and serve the ends of justice.

“A trial court should grant a motion to dismiss an information when police conduct is so egregious as to violate the defendant's due process rights. Due process of law imposes upon a court the responsibility to conduct ‘an exercise of judgment upon the whole course of the proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice.’ ” *McDonald v. State*, 742 So. 2d 830, 831 (Fla. 4th DCA 1999) [24 Fla. L. Weekly D2070a]. Additionally, “[T]o determine whether police conduct violates a defendant's due process rights, the courts must weigh the opposing policy considerations which recognize a defendant's right to be protected from egregious governmental conduct and the government's need to combat crime.” *Id.* at 831. “Cases finding a due process violation based on outrageous government conduct have one common thread: affirmative and unacceptable conduct by law enforcement or its agent.” *State v. Cannon*, 57 So. 3d 892, 894 (Fla. 4th DCA 2011) [36 Fla. L. Weekly D444a]. “The rule [of dismissal] applies regardless of the defendant's predisposition and *serves to check outrageous police conduct*. This rule is narrowly applied and is limited to those instances where the government's conduct so offends decency or a sense of justice that the judicial power may not be exercised to obtain a conviction.” *Id.* at 894-895.

It is without dispute that Deputy Goenaga attempted to plant illegal contraband on Appellee. It is without dispute that such action clearly constitutes egregious police misconduct. This Court finds no error in the trial court's dismissal of the charge. This case too, includes the common thread of affirmative and unacceptable conduct by law enforcement. Moreover, the egregious misconduct was not a result of a general procedure or policy utilized by a law enforcement agency which happened to affect Appellee. Rather, Appellee was the victim of a *specific, deliberate, and targeted* attempt of a police officer to plant contraband on him, which without his reporting said misconduct to a higher authority within the police department, could easily have led to him being charged with a much more serious crime.

Furthermore, after realizing that a vial of illegal pills were being planted on him, Appellee gave up his constitutional right to remain silent and admitted to possessing the cannabis, with the hope that he wouldn't be charged with possession of the pills. As such, Appellee's Fifth Amendment rights against self-incrimination were also violated as a result of Deputy Goenaga's egregious misconduct. The case law makes clear that part of the reasoning as to why dismissal is warranted when a defendant's due process rights are violated as a result of government misconduct is to “. . . serve to check outrageous police conduct.” *Id.* at 894. In the instant case, this Court agrees with the ruling of the trial court that the suppression of Appellee's statement and/or the concession of the State that Appellee's statement would be inadmissible would not be enough to further the goal of serving to check outrageous police conduct.

This Court also agrees with the trial court that, although the actions of Deputy Goenaga did not have a *direct* nexus to the possession of cannabis charge, the misconduct was nevertheless intertwined with the charge. This is evidenced, in part, on Appellee giving up his constitutional right against self-incrimination due to the misconduct, as indicated herein. Moreover, the misconduct was so egregious that it tainted the entire investigation of the matter.

Based on all of the unique circumstances of this case, including the stipulated egregious misconduct on the part of Deputy Goenaga, this Court finds no error in the trial court's determination that dismissal of the instant charge was warranted.

Accordingly, it is

ORDERED AND ADJUDGED that the trial court's order granting Appellee's motion to dismiss is hereby AFFIRMED.

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