

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF  
FLORIDA IN AND FOR PASCO COUNTY, CRIMINAL DIVISION

STATE OF FLORIDA

v.

CASE NO.: CRC19-000363CFAWS  
UCN: 512019CF000363AXWS  
DIVISION: 4

HEATH ANSON LEBARGE  
SPN: 02926520, Defendant. \_\_\_\_\_/

**ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS**

THIS CAUSE came before the Court on the Defendant's "Motion to Suppress," filed on October 8, 2019, and the subsequent "Defendant's Amended Motion to Suppress," filed on December 23, 2019, pursuant to Florida Rule of Criminal Procedure 3.190(g). Having considered the motion, argument, and applicable law, the Court finds as follows:

**FACTS**

On January 19, 2019, the Defendant was driving in Pasco County at 3:30 A.M. Deputy Nicholas Campana was on patrol that night. He was also speaking on his personal cell phone to an (at the time) unidentified person, later known as Florida Highway Patrol Trooper Jason Coffee. After pulling behind the Defendant, Dep. Campana at some point activated his body worn camera. Trooper ("Tpr.") Coffee was heard on Dep. Campana's body worn camera stating that if anyone is driving at the location the Defendant was in at that time of night they are "probably up to something." Dep. Campana replied to Tpr. Coffee that the driver of the vehicle also identifies as an inmate release per his license, and "yeah, we're pulling this guy over."

After Dep. Campana initiated the stop, he found a baggie of marijuana in the Defendant's pants' pocket and thereafter administered a Field Sobriety Test (FST). During the administration of the FST, Tpr. Coffee and another trooper, Tpr. Alejandro Bustos arrived on scene. The Defendant was arrested. After the Defendant was arrested, Tpr. Coffee asked Dep. Campana the probable cause basis to pull the Defendant over. Dep. Campana told Tpr. Coffee that it was the Defendant's tag light. Tpr. Coffee responded to Dep. Campana by pointing to the Defendant's tag and asking Dep. Campana, "You call that illegal?"

At multiple points throughout the encounter, Dep. Campana's body worn camera was deactivated. After the Defendant was arrested, Tpr. Bustos and Tpr. Coffee performed the impound search of the Defendant's vehicle along with Dep. Campana. During that search, various illicit drugs

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were located in the Defendant's trunk, first by the troopers and then by Dep. Campana. Dep. Campana then transported the Defendant to the jail without incident.

### THE MOTION

The Defendant's motion argues that the basis of the traffic stop was illegal and compares this case to *L.N.D. v. State*, 884 So. 2d 515, 516 (Fla. 2d DCA 2004) (holding that the mere presence of a vehicle late at night does not constitute reasonable suspicion to initiate a stop) and *Langello v. State*, 970 So. 2d 491 (Fla. 2d DCA 2007) (holding that where the State did not show that the defendant's tag lights were both malfunctioning so as to render the defendant's vehicle unsafe or unequipped as required by law, there was no probable cause to believe that a traffic violation occurred and the subsequent traffic stop was not authorized).

The Defendant argues that the State cannot and did not demonstrate that the Defendant's tag light was out. The Defendant asserts that although nothing can be shown regarding the tag light, the actual tag was damaged during or after the arrest at some time. Pictures of the tag from the investigation show a flat, unwarped tag. Pictures provided from the towing company show a malformed tag on the Defendant's vehicle.

The Defendant also argues, in supplement, that Dep. Campana was disciplined for improperly deactivating his body worn camera.

### COURT'S FINDINGS

After hearing testimony and argument, this Court finds that the State did not demonstrate that Dep. Campana had a reasonable basis for the traffic stop. The Court notes that the only testimony provided that the tag light was non-functioning came from Dep. Campana, who failed to include either trooper in his report and was subsequently disciplined for improperly deactivating his body worn camera. Thus, the Court does not find that the State demonstrated that the light was actually non-functioning.

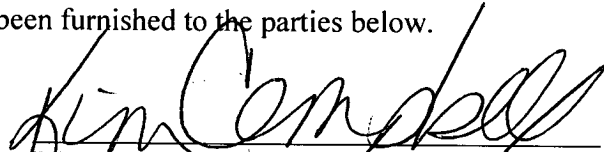
There is further evidence that the stop itself was pre-textual, given that Tpr. Coffee can be heard stating to Dep. Campana that anyone out late at night is bound to be engaged in illegal behaviors, and pretext is further indicated when the stop was initiated after Dep. Campana noted that the Defendant's tag showed that he was a prior inmate. Therefore, the Court finds that the stop was illegal. Furthermore, the intervening event, that Dep. Campana found a baggie containing a small amount of marijuana, does not dissipate the bad faith taint associated with the stop. *See State v. Frierson*, 926 So. 2d 1139, 1144 (Fla. 2006), *Wong Sun v. United States*, 371 U.S. 471 (1963).

Based upon the foregoing, the Defendant's motion is hereby **granted**.

Accordingly, it is

**ORDERED AND ADJUDGED** that the Defendant's Motion to Suppress is hereby **GRANTED**.

**DONE AND ORDERED** in Chambers at New Port Richey, Pasco County, Florida, this 14<sup>th</sup> day of February, 2020. A true and correct copy has been furnished to the parties below.

  
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Kimberly Campbell, Circuit Judge

cc: State Attorney- Samuel Boundy, Esq.

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