No.

IN THE SUPREME COURT OF THE UNITED STATES

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DELILAH COLARTE, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

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*ON PETITION FOR A WRIT OF CERTIROARI TO*
*THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT*

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# APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

**DELILAH COLARTE,**
Appellant,

v.

**STATE OF FLORIDA,**
Appellee.

No. 4D20-111

[April 14, 2021]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Gary L. Sweet, Judge; L.T. Case No. 56-2018-CF-000669 A.

Carey Haughwout, Public Defender, and Logan T. Mohs, Assistant Public Defender, West Palm Beach, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Kimberly T. Acuña, Assistant Attorney General, West Palm Beach, for appellee.

FORST, J.

Appellant Delilah Colarte appeals her conviction and sentence for possession of cannabis resin and use or possession of drug paraphernalia. Appellant argues the trial court erred in two respects: (1) by denying her motion to suppress evidence of illegal possession obtained by the police during a traffic stop; and (2) by denying her motion to correct sentencing errors, filed under Florida Rule of Criminal Procedure 3.800(b)(2).[1]

We affirm on the first argument without discussion. The trial court's decision to deny Appellant's motion to suppress is supported by adequate factual findings and the applicable law.

On the second argument, Appellant takes issue with the trial court's imposition of $50 in investigative costs and $200 in prosecution costs, and the court's denial of Appellant's motion to correct this aspect of the

[1] Since the court failed to rule on Appellant's motion within sixty days, it is deemed denied. Fla. R. Crim. P. 3.800(b)(2)B); *Sirmons v. State*, 264 So. 3d 958, 959 (Fla. 4th DCA 2019).

sentence. Regarding the investigative costs, our supreme court has explained that investigative costs cannot be imposed where the State fails to request such costs prior to the judgment. *Richards v. State*, 288 So. 3d 574, 577 (Fla. 2020). Further, we have previously held that when imposing investigative costs, evidence must support the amount assessed. *Jackson v. State*, 137 So. 3d 470, 472 (Fla. 4th DCA 2014).

Here, the State concedes the trial court erred in imposing these investigative costs, both because the State failed to request investigative fees before the judgment was rendered, and because the State failed to introduce any evidence supporting the $50 assessment. Thus, the court erroneously denied Appellant's motion to correct a sentencing error in this regard. *See Richards*, 288 So. 3d at 577; *Jackson*, 137 So. 3d at 472.

With respect to the $200 prosecution costs, Appellant contends that the amount should be lowered to $100 because that is the statutorily mandated amount, and she further maintains that the State failed to provide notice of an increased cost or proof thereof.

> Costs for the state attorney must be set in all cases at no less than $50 per case when a misdemeanor or criminal traffic offense is charged and no less than $100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred.

§ 938.27(8), Fla. Stat. (2018).

As noted in the statute, trial courts may impose a higher amount, but absent a request by the State and appropriate factual findings by the trial court, the fee will be reduced to the mandatory fee amount. *Desrosiers v. State*, 286 So. 3d 297, 300 (Fla. 4th DCA 2019). The State acknowledges that the trial court made no factual findings regarding this cost and agrees with Appellant that the cost of prosecution should be reduced to $100. We agree and conclude that the trial court erroneously denied Appellant's rule 3.800(b)(2) motion.

**Conclusion**

We affirm the trial court's judgment and sentence, with the exception of the two sentencing errors discussed above. We therefore remand the case with instructions to strike the $50 cost of investigation and to reduce the cost of prosecution to $100.

*Affirmed in part, reversed and remanded in part.*

GROSS and ARTAU, JJ., concur.

*  *  *

***Not final until disposition of timely filed motion for rehearing.***

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IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT, IN AND FOR ST. LUCIE COUNTY, FLORIDA

STATE OF FLORIDA, CASE NO: 562018CF000669

Plaintiff,

v.

DELILAH COLARTE,

Defendant.
_____/

**ORDER DENYING MOTION TO SUPPRESS**

**THIS MATTER** came before the court on Defendant's Motion to Suppress marijuana resin and paraphernalia which were seized following a traffic stop. The dispositive issue is whether the officers impermissibly lengthened the stop in order to allow the K-9 unit to arrive and perform a "sniff" search.

The evidence reveals that they did not.

The defendant's car was stopped because of an inoperable license tag light. The road patrol officer testified that the defendant had a valid license, but not with her. He also stated that one of the passengers kept interfering with his investigation by asking questions and challenging the basis for the stop. Another complicating fact was that the driver was using two different last names. In the course of the stop, the officer did the following. He had initial conversation with the driver. He had to deal with interference from a passenger. He had to resolve the driver's license issue, and clarify the situation with her two last names. Additionally, when his back up/supervisor arrived, he had to briefly bring him up to speed. Finally, he had to run the data through the computer and write a warning ticket.

While the officer was verifying the information on the three suspects (driver and two passengers), the K-9 unit arrived on scene. The "sniff" search was conducted while the officer

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was in the process of writing a warning to the driver. Start to finish, the stop took 10 minutes, and the evidence established that everything the officer did was legitimately part of the stop. Accordingly, it is hereby

**ORDERED AND ADJUDGED** the Motion to Suppress is denied.

**DONE AND ORDERED** at Fort Pierce, Saint Lucie County, Florida this 20 day of December, 2019.

Honorable Gary Sweet
Circuit Court Judge

Copies:
F. Holloman, ASA (SA19eService@sao19.org)
Edward Mosher, Esq. – Via E-Service

# Supreme Court of Florida

FRIDAY, JULY 30, 2021

**CASE NO.: SC21-839**
Lower Tribunal No(s).:
4D20-111; 562018CF000669AXXXXX

DELILAH COLARTE vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

POLSTON, LABARGA, LAWSON, MUÑIZ, and GROSSHANS, JJ., concur.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

lc
Served:

KIMBERLY T. ACUÑA
LOGAN T. MOHS
HON. LONN WEISSBLUM, CLERK
HON. GARY L. SWEET, JUDGE
HON. MICHELLE MILLER, CLERK

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA**
**FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401**

May 03, 2021

**CASE NO.: 4D20-0111**
L.T. No.: 562018CF000669A

DELILAH COLARTE v. STATE OF FLORIDA

Appellant / Petitioner(s) Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that appellant's April 27, 2021 motion for rehearing, written opinion, clarification, and certification is denied.

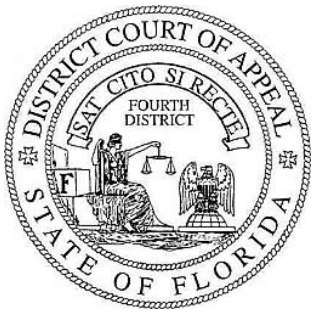
Served:

cc: Attorney General-W.P.B. Public Defender-P.B. Edward J. Mosher
Kimberly T. Acuña Logan Mohs

kr

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



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**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR ST. LUCIE COUNTY, FLORIDA**

**STATE OF FLORIDA**
**Plaintiff,**
**vs.**

**Case No. 562018CF000669A**
**Judge: Gary Sweet**

**Delilah Colarte**
**Defendant.**

**MOTION TO SUPPRESS**

COMES NOW the Defendant, by and through undersigned counsel, and, pursuant to Florida Rule of Criminal Procedure 3.190(g), hereby moves this Honorable Court to enter its order suppressing from use as evidence in this cause any observations made by the officer after the illegal search of the Defendant and any other evidence, physical or testimonial, including statements of the Defendant, as being illegally seized without a warrant. The facts upon which this motion is based are as follows:

1. On March 12, 2018, at 12:28 a.m., Officer Jesse McInerney conducted a traffic stop on a silver Volkswagen due to an inoperable tag light.

2. The officer made contact with the defendant, who appeared to be nervous.

3. The officer summoned a K-9 unit to do a walk around after the defendant refused to give consent to search her car.

4. The defendant was unreasonably detained while the officer waited for the K-9 unit to arrive and no ticket was written.

5. The K-9 unit gave a positive alert on the defendant's car. A search was conducted and a dark amber liquid was discovered that tested positive for the presence of THC.

6. The defendant was arrested and transported to the county jail.

AS GROUNDS for this motion, the Defendant would state as follows:

1. That this search and seizure, including the seizure of the defendant's person, was illegally made without a warrant and not pursuant to any of the lawful exceptions to the warrant requirement. The defendant had not committed a traffic infraction and there was no probable cause for the stop of the defendant's vehicle.

2. That this search and seizure, including the seizure of the defendant's person, was made in violation of the Defendant's U.S. and Florida State Constitutional Rights against unlawful searches and seizures.

3. That as fruit of the poisonous tree, the unlawfully seized item(s) should be suppressed from evidence in this cause, pursuant to the exclusionary rule.

WHEREFORE, the Defendant respectfully requests that this Honorable Court enter its order suppressing the above mentioned item(s) from evidence in this cause.

I HEREBY CERTIFY that a copy hereof has been furnished to the Office of the State Attorney this 28th day of September, 2019.

Respectfully submitted,

**/s/ Edward J. Mosher**
Edward J. Mosher
Florida Bar Number 0072230
210 South Depot Drive
Fort Pierce, Florida 34950
(772) 467-6790
(772) 467-6756, facsimile
mosher@mosherlawoffice.com

October 3, 2019

MOTION-TO-SUPPRESS HEARING

WHEREUPON . . .

The following proceedings were had:

THE CLERK: Delilah Colarte, 2016-669.

MR. MOSHER: This is a motion to suppress, Judge. You probably want to do this last.

THE COURT: Okay.

(Case passed and recalled)

THE CLERK: Delilah Colarte, 2018-669.

MR. MOSHER: This is a motion to suppress, Your Honor.

THE COURT: Okay. You can have a seat, ma'am, at the table.

I believe this was a warrantless search?

MR. MOSHER: It was.

THE COURT: All right. Ms. Holloman, are you ready to proceed?

MS. HOLLOMAN: Yes, I am.

THE COURT: Okay.

MS. HOLLOMAN: The State calls Officer Jesse McInerny.

THE BAILIFF: Sir, up here, please.

Sir, standing here, facing Madam Clerk, please raise your right hand to be sworn.

JESSE McINERNY,

The Witness, being duly sworn or affirmed, testified as follows:

THE BAILIFF: Okay. Right over here, sir. Just watch your step going in.

DIRECT EXAMINATION

BY MS. HOLLOMAN:

Q Could you please state your name for the record?

A Jesse McInerny.

Q And who do you work for?

A Port St. Lucie Police Department.

THE COURT: Could I ask everybody to speak up, please? Sometimes I re-listen to these hearings and they're often difficult to hear if you don't speak up.

BY MS. HOLLOMAN:

Q How long have you worked for Port St. Lucie Police Department?

A Five years.

Q And what training did you receive to become a police officer?

A Basic law enforcement academy at Indian River College.

Q What is your current position with Port St. Lucie?

A Road Patrol Officer.

Q Was that the same position you were in at the time of this incident, March of 2018?
A Yes, ma'am.
Q On the date of this incident, March 12th, 2018 around 12:28 a.m., what were you doing?
A I was routine Road Patrol on midnight shift.
Q And where were you patrolling?
A I was in -- my assigned district at that time was District Three, midnight shift. I was assigned to Squad A. And I was doing routine patrol at that time.
Q Did you stop a vehicle around that time?
A Yes, ma'am.
Q And why did you stop this vehicle?
A For an inoperable tag light. I could not read the tag.
Q All right. Do you recall how far away you were from this vehicle when you observed this?
A I was approximately two to three cars.
Q And at that time at 12:28 a.m., was it dark outside?
A Yes, ma'am.
Q Now did you get behind the vehicle and turn on your lights to conduct a traffic stop?
A Yes, ma'am.
Q Where did the vehicle drive into?

A It -- when I initially turned my emergency lights on and while the traffic stop went down on dispatch, I was approximately one block before the intersection of Savonna on Gatlin. There's a Valero gas station. I did that to give the vehicle adequate time to stop into the gas station where it was well lit.

The vehicle passed that spot and made a right turn and turned into the rear parking lot of that gas station, which was not very well lit.

Q Did you find that odd that the vehicle drove around to the back of the gas station?

A Yes, ma'am.

Q Now who was in the vehicle when you eventually made contact with the driver and passengers?

A There was the Defendant and there was two male subjects.

Q What did the driver tell you upon approach?

A The initial contact you mean?

Q Yes.

A She asked why I was stopping her.

Q And what did you tell her?

A I explained to her the reason for the stop was the traffic violation, which was what I explained already, for the inoperable tag light.

Q Did you ask her for her information like

driver's license and registration?

A Yes. I asked her for her driver's license, insurance, and registration.

Q And what did the Defendant tell you about her license?

A She said she did not have it on her but she did have a valid license.

Q All right. Did she not have a physical license to provide you at that time?

A No, ma'am.

Q Now how did the driver and her passengers appear to you?

A That all seemed to be questioning the totality of the stop, why I stopped them for a tag light, that that wasn't a reason to stop them. As I was asking the driver questions, the two passengers, front seat and rear seat, kept interfering. And I had to tell them a couple times that I was speaking with the driver, not them.

At that time I obtained not only the driver's information but also the passengers'.

Q When you say obtained information, what does that mean?

A I got their name and date of birth.

Q And what did you do with that information?

A I checked them off for warrants and warrants on

FCIC and CIC.

Q Did you ask to search the vehicle?

A Yes, ma'am.

Q And why did you do that?

A Because of their nervous behavior and --

Q And how did the driver respond?

A She mainly said no.

Q Now at what point do you ask Dispatch to run their -- the names and dates of births of the passengers and driver?

A I'll be honest, ma'am. This is eighteen months ago. I don't recall whether I had dispatch do it or I did it myself. I do recall going back to my patrol car because my back-up officer, which was my supervisor arrived. And usually if I have a back-up officer and if the situation arises to where I feel okay to go on and do it myself, then I will. If I feel nervous to the fact for an officer safety thing, then I'll do everything through Records.

THE COURT: I'm sorry. Repeat that.

THE WITNESS: If -- for example, if I feel heightened alertness for whoever is in the vehicle for safety reasons --

THE COURT: Right.

THE WITNESS: -- then I'll automatically go on

Records to have them do the checks.

THE COURT: Okay.

THE WITNESS: But because I had a back-up officer, which I was confident with my supervisor, I went to the car. So I can only assume that I checked all three myself. But I can't testify to whether Records did any of that.

BY MS. HOLLOMAN:

Q So you do know that at some point their names were checked by either you or Dispatch?

A Yes, ma'am.

Q Now at what point did you decide to call a K9 Unit?

A It was at 00:38.

Q How long into the traffic stop was that?

A Ten minutes.

Q During that ten minutes, what was happening before you called the K9 Unit?

A My initial contact, explaining to the driver the reason for the stop, my interaction with the passengers that were interfering with my investigation with the driver, gathering the information from all three, my back-up officer arriving -- which was my supervisor, me explaining to my supervisor what was going on, and then from there going to the car, doing all the checks, making

sure she had a valid license -- because at the time she was using two different last names. So I know it took an extra minute or two to verify that as well.

Q So how long did it take for the K9 officer to arrive?

A According to the CAD notes, it was two minutes.

Q And who was that?

A At the time it was K9 Officer Duncombe, which is now -- he's not a K9 any longer. He's now a sergeant.

Q Well, at the time Officer Duncombe, while he was there conducting the search, what were you doing?

A I was in my car doing the written warning citation.

Q And you did write a warning citation?

A Yes, ma'am.

Q What was that for?

A For the inoperable tag light. And I don't know whether I gave her one for the not having a driver's license or not. It's not in my report.

Q At some point were you alerted that the K9 alerted to drugs in the vehicle?

A Yes, ma'am.

Q Okay. And did you help with the search of the vehicle thereafter?

A No, ma'am.

Q Okay. Who did that?
A The K9 officer. And I don't recall -- you'd have to see the supplements. But I know my supervisor, Sergeant Hanson, was there. And also I saw in the CAD notes that Officer Mayer showed up. So I'm not sure if he had any (Indiscernibles) in the search of the car or not. But I know that I personally did not.
MS. HOLLOMAN: All right. Thank you.
No further questions.
THE COURT: Mr. Mosher?
MR. MOSHER: Just briefly.
CROSS-EXAMINATION
BY MR. MOSHER:
Q Good morning, Officer.
A Good morning.
Q I think you've indicated that you believe, in this particular case, instead of running names and dates of birth through Dispatch to run the background check, you actually used your computer inside your car?
A I can't -- I can't testify -- I know that I used it for some things in the car. I just don't know whether it was to gain information for all three subjects in the vehicle.
Q Okay. Presumably what you're checking passengers for is if they had warrants?

A Yes, sir.
Q Okay. It sounds as though you asked them for their information. And after they stopped questioning the legality of the traffic stop, they provided their names and dates of birth?
A Yes, sir,
Q Okay. And not only did they do that, the driver did that as well?
A That's correct.
Q And you then ran that information on your computer?
A Yes.
Q And there were no hits; right? No outstanding warrants?
A No, sir.
Q And not only were there not outstanding warrants, you were able to confirm that the Defendant in this case, Ms. Colarte, had a valid driver's license?
A That's correct.
Q Okay. It was only after and at the conclusion of your investigation you then summoned a K9 Unit?
A That's not correct.
Q Okay. Well, it took you ten minutes --
A That's true.
Q -- to even request a K9 Unit?

A Yes, sir.

Q Okay. All right. When you typed your information into the computer, the result is almost instantaneous; isn't it?

A If I'm given the information and have a picture ID, yes, sir. But, like I said, the driver had two last names. And one of the passengers has a brother, which I was not certain whom that was because I have also had past relationships with the brother.

Q Okay. My question is, is that when you type the information into the computer, the results are almost instantaneous?

A Yes, sir.

Q Okay. It was only after you had obtained that information and confirmed that there were no warrants did you then decide to continue the detention and summon a K9 Unit?

A That's not correct.

Q Okay. What part of that is not correct?

A As I explained to you, sir, from the initial contact, from the time that I explained everything to the supervisor, from the time that I went to my car, it was approximately ten minutes before my initial call for the K9. But during that time, I was still verifying the check on the three subjects.

Q It took you twelve minutes to verify information on the subjects through your computer?

A No, I didn't, sir.

Q (Indiscernibles)?

A It takes time to do the traffic stop. It takes time to approach the car. It takes time to have interaction with the subjects. It takes time to -- when your back-up officer arrives -- to explain to him what's going on, at that time, being my sergeant. It also takes time from that time to go back to my car to proceed to do my job.

Q Okay. Well, there is no requirement that you brief your sergeant on the reasons for the traffic stop; right?

A I mean, that could be said, but I -- for officer safety reasons, I always do.

Q Okay. There is -- it's a simple question. There is no requirement that you brief anybody; right? On the basis of the traffic stop? This is a tag light traffic stop; correct?

A That could be argued, yes, sir.

Q It can't be argued?

A Yes.

Q Was there any other reason for the traffic stop?

A No. I said that could be argued whether you

brief your back-up officer or not. I do because it's a safety thing. It's at 12:30 at night. You're in the back of a parking lot which is not well lit. And you got three subjects who are questioning you from the initial stop.

Q Okay. It --

A That might --

Q In fact, you can justify a half-hour traffic stop if you like; right?

A Sure.

Q Okay. And so I guess the question becomes the minimum amount of time required on a traffic stop to assess the driver's information, the passengers' information to determine if they have if they have warrants, and to write them a ticket, a citation; right?

A Correct.

Q Okay. Now I think we've established that you never actually pursued writing them a citation. You gave them a written warning; correct?

A Correct.

Q Do you have a copy of that written warning?

A No, I don't.

Q Okay. Regardless of whether you give a written warning or a verbal warning, those two things function in the exact same way; right?

A That's not correct.

Q Okay. What's the difference between a verbal warning and a written warning?

A A written warning, you actually have to fill out a citation on either a computer or in handwriting; versus a warning, you go up to them, you hand them the documents back and say have a nice night.

Q The legal significance between a verbal warning and a written warning are the exact same thing?

A There is no fines if that's what you're asking, sir. Yes. That's correct.

Q Okay. Because all you're doing is giving a warning; right?

A That's correct.

Q Okay. So there is no heightened -- I guess -- scrutiny given to a written warning versus an oral or a verbal warning. It is just you saying, hey, you've got a problem; you need to fix it. And, instead of writing you a citation, I'm going to let you go. Right? I mean, that's what the difference between getting a warning and issuing a citation; right?

A It's just officer discretion.

Q Okay. And you never pursued in this case writing a citation, did you?

A I wrote a written warning, sir, as I stated.

Q So the answer is no?

A That's correct.

Q Okay. Do you have the ability to tell this Court at what point -- because the initial traffic stop is conducted at 12:28; right?

A Yes, sir.

Q Okay. The K9 is summoned at 12:38; correct?

A Yes, sir.

Q Okay. And the K9 actually arrives on scene at 12:40; correct?

A That's correct.

Q That written warning was not -- you didn't write the warning until well after the K9 had actually arrived; correct?

A I can't testify to when I gave -- when actually the written one was written, sir. This case was back in March of last year.

Q Okay. Do you have a way of determining at what point it -- is there a time-stamp on the -- that you get from your computer that says when the information that you requested on these two passengers and the driver comes back at what time that computer responds and gives you that information?

A I don't have that, no. But I know, for example, at traffic crashes, whenever you run a vehicle or somebody's driver's license, it does put that in the note.

So whether that's in there for this, I can't testify to that or not.

Q Okay.

MR. MOSHER: I don't have any question.

THE COURT: Okay.

Ms. Holloman?

MS. HOLLOMAN: Just a brief follow-up.

REDIRECT EXAMINATION

BY MS. HOLLOMAN:

Q Officer, just to be clear, at any point during your traffic investigation, did you delay running your information of the driver and the passengers and eventually writing a written warning? Did you delay doing those things to wait for the K9 Unit to show up?

A No, ma'am.

Q And that's your memory of what happened on that night?

A That's correct.

Q Is it also written into your report that, while you were conducting your investigation, the K9 Unit was called and appeared?

A That's correct.

MS. HOLLOMAN: Thank you.

No further questions.

THE COURT: Anything else, Mr. Mosher?

RECROSS-EXAMINATION

BY MR. MOSHER:

Q I guess just as far as the names that were given to you, did anybody provide a false name to you?

A No, sir.

Q Okay. Now I -- I think what you said is is that a complicating factor was is that Ms. Colarte gave you two last names?

A That's correct.

Q Okay. What -- tell me what last names it was she gave you.

A The original, at first she gave me one and not the other. I can't tell you which one she gave me but she gave me one and not the other. So when I checked that name, I, again, asked her if she had another name. And that's -- I see in my report I have alias as Colarte. So which one she gave me first, sir, I honestly can't testify to that. But I do know that she gave me two last names.

Q Your supervisor showed up seven seconds after you indicated to Dispatch that you were on a traffic stop; correct?

A I can't testify. Is that what it says?

Q Well, yeah. Have you reviewed the Dispatch reports?

A I didn't look at the time of arrival with my

supervisor --

Q Would that refresh your recollection?

A I mean, if you say -- if it's written down, sir, I mean, I -- I don't mind taking a look at it.

Yeah. It's showing he arrives, you know, within ten seconds.

Q Okay. So this idea that you had to wait for the supervisor to show up, that's not entirely accurate; right? I mean, your supervisor was there immediately; correct?

A Per the CAD notes, yes, sir.

Q Okay.

MR. MOSHER: I don't have any additional questions.

THE COURT: Okay. Are we finished?

MS. HOLLOMAN: No additional questions from the State.

THE COURT: All right. Thank you, sir.

May this Witness be excused?

MS. HOLLOMAN: Yes.

THE COURT: Thank you, sir.

THE WITNESS: Thank you.

THE COURT: Any additional witnesses?

MS. HOLLOMAN: No, Your Honor.

THE COURT: Okay.

Mr. Mosher?

MR. MOSHER: I don't have any additional evidence.

THE COURT: Okay.

Argument?

MS. HOLLOMAN: Beginning with the State?

THE COURT: Sure.

MS. HOLLOMAN: The State is requesting the Court to deny the motion to suppress. I do have some case law here that I can rely on, if I can present that. And I think it's the same case law that Mr. Mosher has provided to me earlier today.

MR. MOSHER: And just so there's no question. We don't have any issue or objection to the legality of the traffic stop. That's not an issue --

THE COURT: Right.

MR. MOSHER: -- in the case.

MS. HOLLOMAN: Then I'll skip that part here.

It's the State's position, as you heard Officer McInerny testify to, that he did not delay the traffic stop for the K9 Unit to show up. As you heard the officer state, there were many things that he was doing during the time that this traffic investigation was being conducted. He had to collect the names of these individuals, at least the driver. And the most important person in this traffic

stop doesn't have a physical ID for him to use. He has to potentially run these things or have Dispatch run these things, which takes some time; talk to his supervisor about what's going on on scene for officer safety purposes. And during that time, he calls the K9 Unit. Eventually he does write a warning citation to this individual to at least document that he did stop her for an inoperable taillight.

The cases that Mr. Mosher is going to cite to you -- and, again, the State is also relying on -- is in Jones versus State and Underhill versus State. The Underhill is a Fourth DCA case, 197 So.3d 90, 4th DCA 2016. Both Courts are concerned about prolonging a traffic stop to employ a drug-sniffing dog. And I'm just distinguishing our case from those cases here.

Both of those Courts make it a point to mention that after those traffic stops, which are very similar circumstances, there's a routine traffic stop for a traffic violation. And then the officer later on calls a K9. They mention, these Courts, that the officers did nothing with either the identification that they're given by the driver or they don't write a ticket. They eventually just let the individual go.

Seemingly in those cases, the officers had no further purpose to those stops when employing a K9. But

that's not the case here obviously. As, again, testified to, the officer spent time determining who these individuals were, having criminal history check done for each of them, and eventually writing a citation.

THE COURT: Good. Mr. Mosher?

MR. MOSHER: Judge, what the cases -- both the Jones and the Underhill case as well as the U.S. Supreme Court case specifically, deal with and address, is prolonging a traffic stop any longer than is absolutely necessary to fulfill the reason or purpose of the traffic stop. Notable in each and every one of these discussions is the fact that the officer never actually pursued writing a citation.

The question I -- I guess that we have in this particular case and how it differs from Jones and Underhill, is whether or not, you know, the fact that there were two passengers in the vehicle; and that in and of itself is cause to delay, whether or not that's a reasonable delay, in pursuing the original reason for the traffic stop.

But we know that the original reason for the traffic stop was not pursued because there was never a citation written. So that was presumably not the purpose of the traffic stop. Here the K9 Unit was not even summoned until well into the traffic stop, some ten

minutes. We don't have any evidence from the State -- and they certainly have the burden -- to sustain the legality of the traffic stop as to when this information came back. There was some indication that he had to wait for his supervisor to show up. He had to wait to confer with his supervisor. And all of this stuff takes time.

Well, the dispatcher reports -- and the officer -- I think -- candidly acknowledges his supervisor was there and immediately and so he didn't have to wait for anybody to show up. Presumably the supervisor was actively involved in the traffic stop from its inception. So that the question is, is whether or not Ms. Colarte for one minute -- or for one second really -- whether or not she was detained for any period of time than was necessary and reasonable to pursue the basis of the traffic stop. The Jones case says three minutes is excessive.

And so we think that the twelve minutes that it took for the K9 Unit to get there, the fact that they never pursued the reason for the traffic stop. The officer can't even tell you when it was that the written warning was issued to the Defendant in this case. I think all illustrate -- and I certainly understand this a new and evolving nuanced area of the law. And it significantly departed from where we were some five years ago. But, nonetheless, the requirement is, is that if you

stop somebody for a particular reason, that reason needs to be pursued. And the driver or the passengers in the vehicle cannot be detained for one second longer than is necessary to pursue the reason for the traffic stop.

Here we know that that did not occur. And we believe that based on the facts of this case and the pertinent case law that you are required to suppress the (Indiscernibles).

THE COURT: Okay. Explain to me how it did not occur.

MR. MOSHER: Well, first of all, the -- we -- we know that the -- the basis of the traffic stop was the tag light. And there was never a citation that was issued. So presumably officers can hold people while they conduct whatever investigation that it is that they're conducting. There was no reasonable suspicion to believe that any of the occupants of the motor vehicle had committed a crime. And Ms. Colarte was upfront and honest providing her name, her date of birth, and the fact that she had a valid driver's license. I think the unrebutted testimony from the officer is that he has the ability to put those into the computer. And the results of putting those into the computer are instantaneous.

So it seems as though that the fact that the passengers were questioning the legality of the traffic

stop somehow is an issue as to whether or not you can prolong the detention of the driver. And I believe that's a red herring. The officer is free to completely ignore the passengers of the car --

THE COURT: I don't think that indicates that you can prolong the detention in and of itself. Peppering the officer with questions about the stop prolongs the stop.

MR. MOSHER: Sure. It certainly could prolong the stop. But the focus of the traffic stop is the Defendant and the vehicle.

THE COURT: Well, didn't he have the -- was it not appropriate for him to ask for identification of the passengers?

MR. MOSHER: It is not because there was no reasonable suspicion or probable cause to believe that the passengers had committed any traffic violation or committed any violation of the law. It's no different than a person -- you know, the case law as it pertains to passengers in stolen cars, that law enforcement -- if the passenger of a stolen car gets out and runs, law enforcement can't charge him with resisting without violence because there's no evidence that the passenger has done anything wrong other than to be a passenger.

So questioning an officer -- look, I'm not

saying it's good -- it's a good way to make friends -- but to question an officer as to the legality of the traffic stop does not create any suspicion that the person asking the question has committed a crime and, therefore, you cannot be compelled -- compelled to identify himself.

THE COURT: Ms. Holloman?

MS. HOLLOMAN: The State has some case law adverting that. I mean, it's the State's contention that the officer can ask for -- can detain the passengers for the reasonable length of a traffic stop, first off. And that's based on Presley versus State, a Florida Supreme Court case, 227 So.3d 95 from 2017, and ask for identifying information and run that.

THE COURT: Okay. Well, unless there's anything further, I'll have to read these cases.

MR. MOSHER: Yes, sir.

THE COURT: And I'll get you a ruling.

MR. MOSHER: Well, I haven't read this one. So I --

Underhill, I think, we provided to you.

THE COURT: Is the Underhill an Okeechobee case?

MR. MOSHER: Is it.

THE COURT: Just as a side note, when I was in practice, I think I had a civil litigation against Mr. Underhill.

MR. MOSHER: Small world. Yes, sir.

THE COURT: He's the guy who does the mud bogs and you see those bumper stickers plant bamboo and the "n" is backwards?

MR. MOSHER: Yes, sir.

THE COURT: All right.

MR. MOSHER: Yes, sir. We appreciate your time.

THE COURT: Yeah.

MR. MOSHER: Thank you.

THE COURT: All right. I'll probably get something out to you next week.

MR. MOSHER: Yes, sir. Thank you.

She is -- if we can address, she is currently set for jury selection on October 14th. This is not a trial case. This is dispositive. So if -- I don't know if you want to go ahead and take it off the trial docket and put it on the 22nd?

MS. HOLLOMAN: That would be --

MR. MOSHER: Because it's not triable.

MS. HOLLOMAN: Okay. All right.

MR. MOSHER: Thank you.

THE COURT: Thank you.

THE CLERK: Are you setting it for October 22nd?

THE COURT: Yeah.

So that's it for the morning?

That's it.

(Proceedings in this matter concluded for the day)

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT**

DELILAH COLARTE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 4D20-0111

**INITIAL BRIEF OF APPELLANT**

On Appeal from the Circuit Court of the Nineteenth Judicial Circuit
In and For St. Lucie County

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## STATEMENT OF THE CASE AND FACTS

The arrest report alleges that an officer conducted a traffic stop on a vehicle because of an inoperable tag light. [R. 12].[1] Appellant Delilah Colarte was the driver. [R. 12]. Colarte's brother and boyfriend were also in the vehicle. [R. 12, 133]. The officer wrote a warning for the inoperable tag light, and while he was doing so another officer walked around the vehicle with his canine. [R. 12]. The dog alerted, triggering a search that revealed various drug-related objects. [R. 12]. Colarte and her brother were both arrested. [R. 13]. Post-*Miranda*, Colarte admitted ownership of some of the items. [R. 13].

The State charged Colarte with possession of cannabis resin and with use or possession of drug paraphernalia. [R. 10].

Colarte moved to suppress the evidence found during the stop due to an unreasonable delay in her detention while the officer waited for the K-9 unit to arrive. [R. 47]. The motion also alleged that the purported basis for the traffic stop, an inoperable tag light, was false and therefore that the constitutional violation started with the stop itself. [R. 47].

At the suppression hearing, Colarte withdrew her objection to the stop itself and maintained only that the delay was the constitutional violation requiring remedy. [R. 117]. The only witness at the hearing was the officer that pulled

[1] The record documents are all cited as [R. XX]; the pagination is continuous between them.

Colarte over. [*See* R. 97]. The officer testified that he stopped Colarte's vehicle for an inoperable tag light at around 12:28am. [R. 101, 13]. After telling Colarte why she had been stopped, the officer asked for her license. [R. 102-03]. Colarte told him she did not have her license on her person, but that she did have one. [R. 103]. During this time, Colarte and her two passengers all were questioning the legality of the stop. [R. 103]. The officer obtained the names and dates of birth for all three occupants of the vehicle and so that each could be run for warrants. [R. 103-04, 107-08].

After Colarte refused to give consent for her vehicle to be searched, the officer conducted the warrant check. [R. 104-05]. Although he could not be sure, he testified that it was likely he conducted the check himself rather than going through dispatch. [R. 104-05, 108]. At 12:38am, ten minutes after the stop began, the officer called for a K-9 unit. [R. 105, 108-09, 113]. The officer described part of his activities during that ten minutes as "gathering the information from all three" and "doing all the checks." [R. 105]. The K-9 officer arrived two minutes after being called. [R. 106, 113]. The K-9 officer began a sniff search of the vehicle while the original officer was writing a warning citation for an inoperable tag light. [R. 106]. Eventually the dog alerted, a search was performed, and drug-related items were found as discussed in the opening paragraph above. [R. 106-07].

After the testimony of the officer, the parties presented their arguments. [R. 117-25]. The State argued that the officer did not delay the traffic stop because all his actions were pertinent to the stop, including running the names of all three stopped people. [R. 117-18]. Colarte then argued, in relevant part, that the existence of the two passengers could not give rise to a reasonable delay in pursuing the original reason for the stop. [R. 119]. When the trial court asked whether it was "appropriate for him to ask for identification of the passengers," Colarte's attorney responded that it was not "because there was no reasonable suspicion or probable cause to believe that the passengers had committed any traffic violation or committed any violation of the law." [R. 122]. The State responded by citing the case of *Presley v. State*, 227 So. 3d 95 (Fla. 2017), for the proposition that an officer can detain passengers and ask for their identification. [R. 123].

After taking the matter under advisement, the trial court eventually denied Colarte's motion to suppress. [R. 57-58, 123]. In its order, the court recognized that "[t]he dispositive issue is whether the officers impermissibly lengthened the stop." [R. 57]. The court found that the initial stop was due to an inoperable tag light. [R. 57]. It also found that the officer "did the following": had an "initial conversation" with Colarte, "deal[t] with interference from a passenger," "resolv[ed] the driver's license issue," "clarif[ied] the situation with [Colarte's]

two last names," brought his supervisor "up to speed," and "r[a]n the data through the computer and wr[o]te a warning ticket." [R. 57]. The court found that the K-9 offcer arrived on the scene "[w]hile the [first] officer was verifying the information on the three subjects (driver and two passengers)," and that the canine sniff was conducted "while the [first] officer was in the process of writing a warning to the driver." [R. 57-58]. The court also found that the total time for the stop was 10 minutes, and made the legal conclusion that "everything the officer did was legitimately part of the stop." [R. 58]. Based on those findings and legal conclusions, the court denied the motion. [R. 58].

After the denial of her motion to suppress, Colarte entered into an open plea to the counts as charged. [R. 59-65, 126]. She explicitly reserved her right to appeal the suppression issue, which the State agreed was dispositive. [R. 60, 126].

The trial court withheld adjudication and sentenced Colarte to six months of probation. [R. 69, 88-90, 134]. It also imposed costs totaling $843. [R. 75, 134].

Colarte timely appealed. [R. 83, 91].[2]

During the pendency of this appeal, Colarte filed a 3.800(b)(2) motion to correct her sentence. [R. 141-49]. The motion challenged the $50 investigative

[2] The trial court sentenced Colarte on December 20, 2019. [*See* R. 97]. Colarte's notice of appeal was filed twenty-four days later, on January 13, 2020. [R. 76]. Her amended notice was filed two days after that, on January 15. [R. 87]. This Court has jurisdiction. Fla. R. App. P. 9.030(b)(1)(A) (jurisdiction over final orders), 9.140(b)(1) (permitting appeals by criminal defendants), 9.140(b)(3) (allowing 30 days for a notice of appeal).

costs imposed, as well as $100 worth of the $200 cost of prosecution imposed. [R. 142-45]. The motion also raised a third claim not at issue in this appeal. [R. 145-47]. The trial court did not enter an order on this motion within 60 days, making it deemed denied pursuant to the rule. [R. 150].

## SUMMARY OF THE ARGUMENT

Colarte's traffic stop was improperly extended when the officer demanded identification from her passengers and proceeded to run that identification for warrants. This was not permitted, and the time it took to perform this action extended the amount of time Colarte was detained. Had the stop taken the appropriate amount of time, the eventual search would never have occurred. All evidence in this case should therefore have been suppressed due to the unconstitutional prolongation of Colarte's detention.

The trial court imposed a $50 cost of investigation, and increased the cost of prosecution from the $100 standard to $200, without any request or evidence for these heightened values. This was improper, and the values should be lowered to their standard amounts. Because Colarte has already paid these fees, she should also be refunded by the trial court.

## ARGUMENT

### I. The trial court reversibly erred by denying Colarte's motion to suppress when the traffic stop was prolonged by the officer's decision to obtain the identification of and run warrant searches on the passengers as well as the driver.

#### Standard of Review

When reviewing motions to suppress, this Court "defer[s] to the trial court's factual findings but review[s] legal conclusions de novo." *Jones v. State*, 187 So. 3d 346, 347 (Fla. 4th DCA 2016) (quoting *Backus v. State*, 864 So. 2d 1158, 1159 (Fla. 4th DCA 2003)).

#### Argument

"[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop, and attend to related safety concerns." *Jones v. State*, 187 So. 3d 346, 347 (Fla. 4th DCA 2016) (citation omitted) (quoting *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)). The critical question for whether a Fourth Amendment violation occurs is whether any action not related to addressing the traffic infraction has prolonged the stop. *Id.* at 347-48. Put differently, "the issue is not . . . what is an objectively reasonable time in which to complete the traffic stop, but whether the [unrelated activity] in this particular stop 'adds time to' the stop." *Underhill v. State*, 197 So. 3d 90, 92 (Fla. 4th DCA 2016) (quoting *Rodriguez*, 575 U.S. at 357).

Here, the duration of Colarte's stop was extended when the officer obtained the identification of, and did a warrant search on, her passengers. [*See* R. 57 (describing this as a distinct action performed by the officer before he could turn his attention to writing the warning)]. The legal question for this Court is therefore whether such actions are part of the "mission" of a traffic stop. *Rodriguez*, 575 U.S. at 354.

*Rodriguez* itself provides the answer to this question when it described the typical inquiries that are part of the mission: "checking the *driver's* license, determining whether there are outstanding warrants against *the driver*, and inspecting the automobile's registration and proof of insurance." *Id.* at 355 (emphases added). The focus on the driver, rather than all occupants in the car, shows that the Court was not of the opinion that checking the passengers' identification and warrants was an acceptable part of the "mission" of the stop. The limit to the driver is further emphasized by the justification given: "ensuring that vehicles on the road are operated safely and responsibly"—clearly the legal privilege to drive and the lack of any outstanding driving-related warrants for the driver are relevant to that issue in a way that the passengers' information and warrant status are not. *Id.*[3]

[3] Factually, *Rodriguez* did involve the officer checking the records for the passenger as well as the driver. *Rodriguez*, 575 U.S. at 351. However, the Court did not discuss this fact or indicate that it was acceptable. It appears the parties

*Rodriguez* also provides a response to what Colarte predicts will be the State's main argument in this case, that such checks are required for officer safety. *Rodriguez* recognizes that "an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely," and cites *United States v. Holt*, 264 F.3d 1215 (10th Cir. 2001) (en banc), *abrogated on other grounds as recognized in Unites States v. Stewart*, 473 F.3d 1265, 1269 (10th Cir. 2007). But *Holt* specifically refers to "determining whether *a detained motorist* has a criminal record or outstanding warrant," not their passengers. *Holt*, 264 F.3d at 1221 (emphasis added). Notably, the court then states that an officer "may order the driver and passengers out of the vehicle." *Id.* at 1222. There is therefore a distinction drawn between passengers, who may be ordered from a vehicle, and motorists/drivers, who may both be ordered from a vehicle and have their records checked.

All of that, however, still assumes that obtaining a person's identification and checking their records would increase officer safety. That conclusion is doubtful. As recognized by the Supreme Court of Iowa, "any increased officer danger arises from continuing the detention of the driver while the license and warrant checks are conducted." *State v. Coleman*, 890 N.W.2d 284, 301 (Iowa

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focused their arguments on the post-warning seizure rather than arguing the pre-warning delay. The Court's choice to decide only the question presented without commenting on the other potential reason for reversal cannot reasonably be read as an affirmative holding in support of the officer's choice to ID the passenger.

2017). The court also questioned whether officer safety was really an issue when no claim of fear was raised, which it was not in Colarte's case. *Id.* Not checking the identifications of passengers means less time spent in the stop, fewer trips back and forth to the squad car, and lowers the feelings of antagonism that the passengers might harbor. Checking identification of passengers does not increase officer safety, it decreases it by increasing the officer's exposure.

Therefore, Colarte respectfully submits that the officer's decision in this case to require her passengers to turn over their identification, and his choice to run that information through his database, were not legitimate decisions in pursuit of the "mission" of the traffic stop. Because those actions added time to the stop, Colarte was unconstitutionally detained in violation of *Rodriguez*. The discoveries made by law enforcement (the sniff, search, confession, etc.) would not have happened if Colarte's seizure was not unconstitutionally lengthened, and therefore they should be suppressed.

There are a few more arguments Colarte predicts will be made by the State in this appeal, but none hold water. First, in the trial court, the State relied on *Presley v. State*, 227 So. 3d 95 (Fla. 2017), for the proposition that an officer may detain passengers during a stop *and* may check their identification and run warrant checks. *Presley*, however, is limited to the first proposition, not the second. The holding was "that law enforcement officers may, as a matter of course, detain the

passengers of a vehicle for the reasonable duration of a traffic stop without violating the Fourth Amendment." *Id.* at 96. Presley's argument was that "he was illegally detained during the traffic stop," not that his legal detention was extended by the time it took to run a records check. *Id.* at 97. The analysis therefore focuses on officer safety as it relates to controlling the scene; nothing in the opinion deals directly with the question of identification. *See id.* at 106-07. The closest the opinion comes is when it says that the reasonable length for a traffic stop "is the length of time necessary for law enforcement to check the driver license, the vehicle registration, and the proof of insurance; to determine whether there are outstanding warrants; [and to write the ticket]." *Id.* at 107. But crucially, the use of the singular "license" there and the focus on the documents being those carried by the driver rather than passengers indicates that an identification and record check of the driver is appropriate while the same for the passengers is either inappropriate or left for another day to decide. *Id.* Here, Colarte's argument is not that her passengers were illegally detained during the stop because they should have been free to go—that argument is clearly foreclosed by *Presley*. Rather, her argument is that her own detention was illegally extended when the officer diverted his attention from the task at hand (writing her a ticket or warning) and delayed the resolution of the stop by obtaining and running her passengers' identification.

Next, Colarte predicts the State may rely on a recent First DCA decision: *Flowers v. State*, 290 So. 3d 642 (Fla. 1st DCA 2020). There, Flowers was a passenger in a vehicle, the officer ran both the driver's and Flowers's licenses, and a dog sniff led to a search and Flowers's eventual arrest. *Id.* at 643-44. The First DCA affirmed. *Id.* at 644. However, there is a key distinction between *Flowers* and this case, as well as a legal misstatement in *Flowers* that this Court should not repeat. First, although Flowers argued that his stop was "unreasonably prolonged," the opinion does not explain what Flowers believes was wrong with the stop. *See id.* at 643-44. That is, there is no specific challenge described to any particular action taken by the officer, as described in the final paragraph of the opinion. *Id.* at 644. Here, in contrast, Colarte argued in the trial court and argues again here that the specific acts of asking for and running her passengers' licenses was an improper extension of the stop. *Flowers* therefore may seem similar at first, but the lack of detail about his actual argument makes any precedential value minimal at best.

Second, *Flowers* states that "a traffic stop may continue for the time necessary for an officer to check drivers' licenses, search for outstanding warrants, and inspect registrations and proofs of insurance." *Id.* The use of the plural for "drivers' licenses" suggests that passengers, as well as the driver, may be subjected to identification and a warrant check. This plural also exists in the case cited for

support, *Cowart-Darling v. State*, 256 So. 3d 250, 252 (Fla. 1st DCA 2018). However, the case that *Cowart-Darling* relies on is *Rodriguez v. United States*, 575 U.S. 348 (2015), discussed above. As described, *Rodriguez* does not speak of licenses in the plural, instead recognizing that typical inquiries of a traffic stop mission (in other words, those things that do not unreasonably prolong a stop) "involve checking the *driver's* license, determining whether there are outstanding warrants *against the driver*, and inspecting the automobile's registration and proof of insurance." *Rodriguez*, 575 U.S. at 355 (emphases added). And as noted, the justification given, "ensuring that vehicles on the road are operated safely and responsibly," works for checking drivers' information in a way that it does not work for checking the information of passengers. *Id.*

*Flowers*, *Cowart-Darling*, and any other cases that allow for the examination of and warrant check on a passenger's identification are therefore not in line with the United States Supreme Court's rule in *Rodriguez*. There, the Court held that a reasonable activity during the stop was to inspect the identification of and run a warrant check on the *driver*, but it did not affirmatively condone such actions with respect to any passengers.

Finally, Colarte notes that this Court would not be alone if it were to find that law enforcement officers are not permitted to demand the identifications of, and run records checks on, passengers in vehicles they stop. The Kansas Court of

Appeals held in *In re M.K.W.*, 242 P.3d 1281 (Kan. Ct. App. 2010),[4] that a warrant check of passengers was "a step not necessary to the stop" that "measurably extended the length of the stop." *Id.* at *3.[5] The court also questioned the legitimacy of any officer safety concern when such a claim was made without record support, which any claim made by the State in this appeal would similarly lack. *Id.* In *State v. Thompkin*, 143 P.3d 530 (Ore. 2006), the Supreme Court of Oregon reached a similar conclusion: "the request and retention of [a passenger's] identification to run a records check [] was not reasonably related to the traffic violation and was not initiated to ensure the safety of the officers." *Id.* at 534. Citing its state constitution, a Massachusetts appellate court has held that "[i]nterrogation of passengers in a car stopped for a traffic offense, without an objective basis for suspicion that the passenger is involved in criminal activity, slips into the dragnet category of questioning that [the state constitution] prohibits." *Commonwealth v. Alvarez*, 692 N.E.2d 106, 109 (App. Ct. of Mass. 1998). The Washington Supreme Court, sitting en banc, put it best:

> Where the driver of an automobile commits a traffic offense, the stopping of the automobile and detention of the driver in order to

[4] This is an unpublished decision.

[5] The court emphasized that the problem was that doing these checks extended the length of the stop, not that the information could not be requested if somehow that could be done with zero time wasted. *M.K.W.* at *3. Here too, Colarte recognizes she would not have standing to challenge a violation of her passengers' rights by having to turn over their identification; the violation of her own right was the delay, as was the case in *M.K.W.*

> check his driver's license and automobile registration are not unreasonable under the Fourth Amendment. The record indicates that the police believed the automobile in this case was improperly parked when they first noticed it. Assuming arguendo that a parking violation can be characterized as a traffic offense, as contemplated in *Prouse*, then the police officers would have acted properly in stopping the car and questioning the driver on the ground that it had been illegally parked. **However, a stop based on a parking violation committed by the driver does not reasonably provide an officer with grounds to require identification of individuals in the car other than the driver,** unless other circumstances give the police independent cause to question passengers. To hold otherwise would restrict the Fourth Amendment rights of passengers beyond the perimeters of existing case law.

*State v. Larson*, 611 P.2d 771, 773-74 (Wash. 1980) (en banc) (citations and footnote omitted).

In this case, law enforcement legitimately pulled over Colarte and properly demanded her identification, ran a warrant check, and wrote her a warning. However, the total time taken to perform this operation (which resulted in a drug dog arriving and alerting toward the end of the encounter) was lengthened by the improper request for and running of Colarte's passengers' identifications. Colarte's seizure was therefore unconstitutionally prolonged, and the evidence that resulted from the prolonged seizure should have been suppressed.

Colarte respectfully requests that this Court reverse the trial court's order denying her motion to suppress, and remand with instructions to discharge her case due to the dispositive nature of the motion.

## II. The trial court reversibly erred by denying Colarte's motion to correct sentencing errors.

### Standard of Review

"A trial court's ruling on a motion to correct a sentencing error is reviewed de novo." *Anderson v. State*, 229 So. 3d 383, 386 (Fla. 4th DCA 2017).

### Argument

In her 3.800(b)(2) motion to correct sentencing errors, Colarte raised three issues. [R. 141-49]. This issue on appeal is limited to the first two of those errors, as well as the "additional relief requested."

First Error — The $50 Investigative Costs Should Be Stricken

"In the criminal law, '[i]t is well established that a court lacks the power to impose costs in a criminal case unless specifically authorized by statute.'" *Chapman v. State*, 974 So. 2d 625, 626 (Fla. 4th DCA 2008) (alteration in original) (quoting *Holmes v. State*, 658 So. 2d 1185, 1186 (Fla. 4th DCA 1995)).

Section 938.27, Florida Statutes provides that "convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies." § 938.27(1), Fla. Stat. (emphasis added). However, to impose such costs, they must be requested by the investigating agency and the court must receive evidence of their amount. *Jackson v. State*, 137 So. 3d 470, 472 (Fla. 4th DCA 2014); *Felton v. State*, 939 So. 2d 1159 (Fla. 4th DCA 2006).

Here, the trial court orally imposed a $50 cost of investigation. [R. 134]. However, this cost was not requested by the State, and there was no evidence introduced supporting the specific amount. [*See* R. 134]. The cost was therefore improper and should be stricken.[6] Additionally, the State should not be permitted to seek this $50 in further proceedings, based on *Richards v. State*, 288 So. 3d 574 (Fla. 2020).

Because the $50 cost of investigation was neither requested nor substantiated by evidence, the trial court lacked the statutory authority to impose it. Colarte therefore respectfully requests that this Court reverse her cost disposition and remand with instructions to strike the $50 investigative costs.

Second Error — The $200 Cost of Prosecution Should Be Lowered to $100

"In the criminal law, '[i]t is well established that a court lacks the power to impose costs in a criminal case unless specifically authorized by statute.'" *Chapman v. State*, 974 So. 2d 625, 626 (Fla. 4th DCA 2008) (alteration in original) (quoting *Holmes v. State*, 658 So. 2d 1185, 1186 (Fla. 4th DCA 1995)).

Florida law mandates the imposition of a $100 cost for the state attorney in all cases where a felony offense is charged. § 938.27(8), Fla. Stat. The law also allows, but does not require, a higher cost to be set "upon a showing of sufficient proof of higher costs incurred." *Id.* This showing requires evidence. *Speed v.*

[6] Colarte adopts by reference the more detailed argument made in the following section with respect to the procedural and substantive errors here.

*State*, 262 So. 3d 267, 268 (Fla. 5th DCA 2019); *Hogle v. State*, 250 So. 3d 178, 181 (Fla. 1st DCA 2018).

Here, the State did not request a special increased cost of prosecution, nor did it provide any evidence or argument regarding an increased cost. [*See* R. 134]. Nevertheless, the trial court orally imposed $200 instead of the standard $100. [R. 134].

The imposition of this increased cost was error for both a procedural and a substantive reason. Procedurally, there was no prior notice given to Colarte that the State would seek to assess this cost. *See Brown v. State*, 189 So. 3d 837, 840 (Fla. 4th DCA 2015) ("A defendant must receive notice *before* the sentencing hearing . . . ."). This failure to give prior notice prevented defense counsel from being able to "prepare any challenges to the evidence the state plan[ned] to offer in support." *Id.*

Substantively, the problem is that there was no evidence (or even a request with argument) for defense counsel to challenge. At the hearing, the State did not request or offer any evidence, let alone "sufficient proof," of the $200 cost. § 938.27(8), Fla. Stat.; *Speed*, 262 So. 3d at 268; *Hogle*, 250 So. 3d at 181. There was no supporting documentation introduced to the trial. *See Thompson v. State*, 699 So. 2d 329 (Fla. 2d DCA 1997); *see also Brown*, 189 So. 3d at 840 (stating that an attachment to a motion and proffered testimony was not sufficient to

establish costs of prosecution). The State therefore failed to meet its "burden of demonstrating the amount of costs incurred," which it was required to meet "by the preponderance of the *evidence*." § 938.27(4) (emphasis added). The trial court therefore lacked authorization to impose the cost. Additionally, the State should not be permitted to seek the heightened amount in further proceedings, based on *Richards v. State*, 288 So. 3d 574 (Fla. 2020).

Colarte therefore respectfully requests that this Court reverse her cost disposition and remand with instructions for the trial court to lower the cost of prosecution imposed in this case from $200 to $100.

Additional Relief Requested

Based on the record and the publicly available docket for this case, it appears that Colarte has already paid all but $50 in the total costs for her case. Because the relief requested here would remove $150 from her total obligations, this means she has already overpaid by $100. Colrte therefore respectfully requests that this Court not only order the trial court correct her documentation so that she does not have to pay the final $50 believed to be outstanding, but also that it order she be refunded the $100 mistakenly collected.

Issue Conclusion

For the reasons described above, Colarte respectfully moves this Court to correct her costs, and to order a refund of her overpayment.

## CONCLUSION

Colarte respectfully requests that this Court reverse the trial court's denial of her motion to suppress and that it remand with instructions for her case to be discharged.

If this Court denies that primary request for relief, Colarte would respectfully request that this Court reverse her improperly heightened costs and remand with instructions for her to receive a refund for the overpayment she has made.

Respectfully submitted,

/s/ Logan T. Mohs
Logan T. Mohs
Assistant Public Defender
Florida Bar No. 120490
lmohs@pd15.state.fl.us
appeals@pd15.org

## CERTIFICATE OF SERVICE

I certify that this brief was electronically filed with the Court and a copy of it was served on Celia Terenzio, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 N. Flagler Drive, West Palm Beach, Florida 33401-3432, by email at CrimAppWPB@MyFloridaLegal.com this 28th day of August, 2020.

/s/ Logan T. Mohs
Logan T. Mohs
Assistant Public Defender
Florida Bar No. 0120490
lmohs@pd15.state.fl.us
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## CERTIFICATE OF COMPLIANCE

I certify this brief has been prepared and filed in Times New Roman 14-point font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Logan T. Mohs
Logan T. Mohs
Assistant Public Defender
Florida Bar No. 120490
lmohs@pd15.state.fl.us
appeals@pd15.org

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT**

| | | |
|---|---|---|
| DELILAH COLARTE, | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | |
| v. | ) | CASE NO. 4D20-0111 |
| | ) | |
| STATE OF FLORIDA, | ) | |
| | ) | |
| Appellee. | ) | |
| | ) | |
| | ) | |

**APPELLANT'S MOTION FOR WRITTEN OPINION, CLARIFICATION, CERTIFICATION OF A QUESTION OF GREAT PUBLIC IMPORTANCE, AND REHEARING**

Appellant Delilah Colarte, through undersigned counsel and pursuant to Florida Rule of Appellate Procedure 9.330, respectfully moves this Court for a written opinion and/or clarification, and the certification of a question of great public importance. To the extent a motion for rehearing is technically necessary to allow this Court to change the outcome of the case if the act of writing the opinion changes the Court's views, Appellant also moves for rehearing.

**Case Background**

Appellant was convicted of possession of cannabis resin and possession of drug paraphernalia. She received a probationary sentence.

On appeal, Appellant raised two issues. The first challenged the denial of her motion to suppress evidence, and the second dealt with cost-related sentencing errors. This Court "affirm[ed] on the first argument without discussion," but wrote a brief opinion reversing the cost issue. This motion involves only the un-explained suppression issue.

**Argument**

Motion for Written Opinion, Clarification, and Certification

Although this Court did technically issue a written opinion, its holding with respect to the motion to suppress issue is effectively no more than a PCA. Undersigned counsel therefore respectfully moves for a written opinion on this argument.[1]

A motion for written opinion is appropriate when such an opinion would provide: "a legitimate basis for supreme court review" or "guidance to the parties or lower tribunal when . . . the issue decided is expected to recur in future cases." Fla. R. App. P. 9.330(a)(2)(D). The Florida Supreme Court has discretionary jurisdiction over decisions that "expressly construe a provision of the state or federal constitution" and those that "pass upon a question certified to be of great public importance." Fla. R. App. P.

[1] If this Court does not agree that the decision is a PCA in this regard, Appellant alternatively moves for clarification of this Court's reasoning.

9.030(a)(2)(A)(ii), (v). This case implicates both of these grounds for jurisdiction. Additionally, this issue is likely to recur in future cases.

Whether this Court affirms or reverses on the motion to suppress issue, it will have "expressly construe[d] a provision of the . . . federal constitution," specifically the Fourth Amendment right to be free from unreasonable seizures. Either the Fourth Amendment prevents law enforcement from seizing a person for an extended period of time during which their passengers' identifications are checked, or it does not. But no matter which is the case, this Court's opinion will necessarily trigger the first basis for supreme court review. To the extent the decision is not a PCA and therefore the supreme court's jurisdiction can already be invoked, an explanation of this Court's reasoning would provide a starting point for that court in its understanding of the case.

Additionally, this issue is one of great public importance, and Appellant respectfully moves this Court to certify it as such. *See* Fla. R. App. P. 9.330(a)(2)(C).[2] The scope of what is permissible during traffic stops, and what alternatively constitutes an impermissible extension of the time, has become vitally important in the wake of *Rodriguez v. United*

[2] Undersigned counsel respectfully suggests: "Whether obtaining the identifications of, and running warrant checks on, the passengers in a vehicle subject to a traffic stop impermissibly extends the time of the stop in violation of the Fourth Amendment."

*States*, 575 U.S. 348 (2015). For the sake of clarity in the law, an answer from the Florida Supreme Court on whether the checking of passenger identifications is part of the "mission" of a traffic stop is necessary.

As described in Appellant's briefs, there is no binding case law that clearly explains the basis for this Court's decision. At best, there is only questionable and weak persuasive authority from other District Courts of Appeal. If this Court found those persuasive, or if it believes that there is binding case law that compelled the outcome, it should explain that reasoning. Based on that explanation, further argument in either the Florida Supreme Court or the United States Supreme Court[3] can proceed.

Appellant respectfully moves this Court for a written opinion and/or clarification, and for certification of a question of great public importance.

Motion for Rehearing

This Court's effective per curiam affirmance of the suppression issue prevents Appellant from being able to "state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended." Fla. R. App. P. 9.330(a)(2)(A). However, for the reasons argued in the briefs, Appellant respectfully believes that this Court erred in

[3] Appellant notes that her briefs have identified a split in authority throughout the United States on the question at hand. United States Supreme Court review is therefore not out of the realm of possibility.

its decision to affirm. To the extent that a specific motion for rehearing is procedurally required in order for this Court to reconsider its decisions if it grants the motion for written opinion, Appellant is including this section for that purpose.

Appellant respectfully moves this Court to rehear the suppression issue in her case, and to reverse her conviction.

**Conclusion**

For the reasons described above, Appellant respectfully moves this Court to write a more detailed explanation of the suppression issue and to certify a question of great public importance. In an abundance of caution in case it is technically required, Appellant also moves for rehearing so that this Court may reconsider the outcome when writing the requested opinion.

Respectfully submitted,

CAREY HAUGHWOUT
Public Defender
Fifteenth Circuit
421 Third Street
West Palm Beach, Florida 33401
(561) 355-7600

/s/ Logan T. Mohs
Logan T. Mohs
Assistant Public Defender
Florida Bar No. 120490
lmohs@pd15.state.fl.us
appeals@pd15.org

**CERTIFICATE OF SERVICE**

I certify that this motion was electronically filed with the Court and a copy of it was served on Kimberly T. Acuña, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 N. Flagler Drive, West Palm Beach, Florida 33401, by email at CrimAppWPB@MyFloridaLegal.com this 27th day of April, 2021.

/s/ Logan T. Mohs
Logan T. Mohs
Assistant Public Defender
Florida Bar No. 120490
lmohs@pd15.state.fl.us
appeals@pd15.org

Filing # 69355688 E-Filed 03/16/2018 09:05:19 AM

IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, FOR ST. LUCIE COUNTY

STATE OF FLORIDA

Case No. (s):
56-2018-CF-000669-A

-vs-

(A) Delilah Ashbel Colarte - 10/16/1996 - H/F
Defendant(s)

(A) Ct. 1: Possession Of Cannabis Resin (Hash) (F 3)
(A) Ct. 2: Use Or Possession Of Drug Paraphernalia (M 1)

**INFORMATION**

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:
BE IT REMEMBERED that BRUCE H. COLTON, State Attorney for the Nineteenth Judicial Circuit of the State of Florida, prosecuting for the State of Florida, in St. Lucie County, under oath, information makes that in St. Lucie County:

COUNT 1: On or about March 12, 2018 Delilah Ashbel Colarte did knowingly be in actual or constructive possession of the resin extracted from the plants of the genus Cannabis, or any compound, manufacture, salt, derivative, mixture, or preparation of such resin, in violation of Florida Statute 893.13(6)(a);

COUNT 2: On or about March 12, 2018 Delilah Ashbel Colarte did unlawfully use, or possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance, or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, in violation of Florida Statute 893.147(1);

contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Florida.

I do hereby state that I am instituting this prosecution in good faith.

Alissa R. Cohen
Assistant State Attorney for the
Nineteenth Judicial Circuit of
Florida, prosecuting for said State
Fla. Bar No. 87928
Designated eService address:
SA19eService@sao19.org

STATE OF FLORIDA
County of St. Lucie

Personally appeared before me Alissa R. Cohen, Assistant State Attorney for the Nineteenth Judicial Circuit of the State of Florida, who being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to by the material witnesses as true and which, if true, would constitute the offense(s) therein charged.

The foregoing instrument was acknowledged before me this 16 day of March, 2018 by Alissa R. Cohen, who is personally known to me and who did take an oath.

Margaret Durkin
Notary Public

MARGARET DURKIN
Commission # FF 946499
Expires December 28, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

A72

JOSEPH E. SMITH, CLERK OF THE CIRCUIT COURT - SAINT LUCIE COUNTY
FILE # 4656881 OR BOOK 4363 PAGE 1708, Recorded 12/27/2019 01:14:22 PM

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

___ Modified
___ Resentence
___ Amended
___ Corrected
___ Mitigated
___ Community Control Violator
___ Probation Violator

Case Number: 562018CF000669AXXXXX

**STATE OF FLORIDA**
**- vs -**
**DELILAH ASHBEL COLARTE**
Defendant

____ Sexual Predator
____ Sex Offender
____ Minor Victim
____ Sentenced in Absentia

**JUDGMENT**

The Defendant, DELILAH ASHBEL COLARTE being personally before this Court represented by AttorneyEDWARD JOSEPH MOSHER, the Attorney of record, and the State represented by FELICIA HOLLOMAN, and having:

____ been tried and found guilty by Jury/by the Court of the following crime(s).
____ entered a plea of guilty to the following crime(s).
X **entered a plea of nolo contendere to the following crime(s)**
____ Admitted Violation of Probation
____ Found Guilty of Violation of Probation
____ Admitted a Violation of Community Control
____ Found Guilty of Violation of Community Control

| Count | Crime | Offense Statute Number(s) | Level / Degree | OBTS Number |
|---|---|---|---|---|
| 1 | **POSSESSION OF CANNABIS RESIN (HASH)** | **893.13(6A)** | **F-3** | **5601236994** |
| 2 | **USE OR POSSESSION OF DRUG PARAPHERNALIA** | **893.147(1)** | **M-1** | **5601236994** |

____ and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).
____ and being a qualified offender pursuant to Florida Statute 943.325 - defendant shall be required to submit DNA samples as required by law
X **and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD. ; AS TO COUNT(s) 1, 2**

**KD/DC**



St. Lucie County File Date: 12/27/2019 10:58 AM

CASE NUMBER 2018CF000669 A

The Defendant in open Court was advised of the right to appeal from this Sentence by filing notice of appeal within 30 days from this date with the Clerk of this Court and the Defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

Circuit Judge GARY L SWEET

**FINGERPRINTS OF DEFENDANT**

| 1. Right Thumb | 2. Right Index | 3. Right Middle | 4. Right Ring | 5. Right Little |
|---|---|---|---|---|
|  |  |  |  |  |
| **6. Left Thumb** | **7. Left Index** | **8. Left Middle** | **9. Left Ring** | **10. Left Little** |
|  |  |  |  |  |

Fingerprints taken by: [illegible] Name [illegible] Title

I HEREBY CERTIFY that the above and forgoing fingerprints are the fingerprints of the Defendant DELILAH ASHBEL COLARTE and that they were placed thereon by said Defendant in my presence in open Court this date.

DONE AND ORDERED in Open Court at St. Lucie County, Florida, on Friday, December 20, 2019

Nunc Pro Tunc To:

Circuit Judge GARY L SWEET

JOSEPH E. SMITH, CLERK OF THE CIRCUIT COURT - SAINT LUCIE COUNTY
FILE # 4662895 OR BOOK 4370 PAGE 733, Recorded 01/15/2020 11:23:38 AM

**STATE OF FLORIDA**

-VS-

**DELILAH A. COLARTE**
Defendant

IN THE NINETEENTH JUDICIAL CIRCUIT COURT, IN AND FOR ST LUCIE COUNTY

CASE NUMBER **562018CF000669A**

DC NUMBER **Q70702**

## ORDER OF PROBATION

This cause coming before the Court to be heard, and you, the defendant, being now present before the court, and you having

☐ entered a plea of guilty to
☒ entered a plea of nolo contendere to
☐ been found guilty by jury verdict of
☐ been found guilty by the court trying the case without a jury of

**Count 1- POSSESSION OF CANNABIS RESIN (HASH)**
**Count 2- USE OR POSSESSION OF DRUG PARAPHERNALIA**

**SECTION 1: JUDGMENT OF GUILT**

☐ The court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld and that you be placed on Probation for a period of __ under the supervision of the Department of Corrections, subject to Florida law.

**SECTION 2: ORDER WITHHOLDING ADJUDICATION**

☒ Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on Probation for a period of Six (6) months, each count to run concurrent under the supervision of the Department of Corrections, subject to Florida law.

**SECTION 3: INCARCERATION DURING PORTION OF SUPERVISION SENTENCE**

It is hereby ordered and adjudged that you be:

☐ committed to the Department of Corrections
for a term of _____ prison with credit for _____ jail time, followed by Probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.
or
confined in the County Jail
for a term of _ with credit for___ jail time. After you have served all of the term, you shall be placed on Probation for a period ___ under the supervision of the Department of Corrections, subject to Florida law.
or
☐ confined in the County Jail
for a term of _____ with credit for _____ jail time, as a special condition of supervision.

**IT IS FURTHER ORDERED** that you shall comply with the following standard conditions of supervision as provided by Florida law:

(1) You will report to the probation officer as directed.



St. Lucie County File Date: 01/14/2020 15:24 PM
**St. Lucie County File Date: 01/14/2020 03:24 PM**

(2) You will pay the State of Florida the amount of $40.00 per month, as well as 4% surcharge, toward the cost of your supervision in accordance with s. 948.09, F.S., unless otherwise exempted in compliance with Florida Statutes.

(3) You will remain in a specified place. You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.

(4) You will not possess, carry or own any firearm. You will not possess, carry, or own any weapon without first procuring the consent of your officer.

(5) You will live without violating any law. A conviction in a court of law is not necessary for such a violation of law to constitute a violation of your probation, community control, or any other form of court ordered supervision.

(6) You will not associate with any person engaged in any criminal activity.

(7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician, registered nurse, or physician's assistant. Nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.

(8) You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.

(9) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.

(10) You will pay restitution, court costs, and/or fees in accordance with special conditions imposed or in accordance with the attached orders.

(11) You will submit to random testing as directed by your officer or the professional staff of the treatment center where you are receiving treatment to determine the presence or use of alcohol or controlled substances.

(12) You will submit a DNA sample, as directed by your officer, for DNA analysis as prescribed in ss. 943.325 and 948.014, F.S.

(13) You will submit to the taking of a digitized photograph by the department. This photograph may be displayed on the department's website while you are on supervision, unless exempt from disclosure due to requirements of s. 119.07, F.S.

(14) You will report in person within 72 hours of your release from incarceration to the probation office in ST. LUCIE County, Florida, unless otherwise instructed by the court or department. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at 2806 SOUTH US 1 FT. PIERCE, FL .

**Effective for offenders whose crime was committed on or after September 1, 2005,** there is hereby imposed, in additional to any other provision in this section, mandatory electronic monitoring as a condition of supervision for those who:

- Are placed on supervision for a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older; or
- Are designated as a sexual predator pursuant to s. 775.21; or
- Has previously been convicted of a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

**You are hereby placed on notice that should you violate your probation or community control, and the conditions set forth in s. 948.063(1) or (2) are satisfied,** whether your probation or community control is revoked or not revoked, you shall be placed on electronic monitoring in accordance with F.S. 948.063.

**Effective for offenders who are subject to supervision for a crime that was committed on or after May 26, 2010,** and who has been convicted at any time of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s. 943.0435(1)(a)1.a.(I), or a similar offense in another jurisdiction, against a victim who was under the age of 18 at the time of the offense; the following conditions are imposed in addition to all other conditions:

(a) A prohibition on visiting schools, child care facilities, parks, and playgrounds, without prior approval from the offender's supervising officer. The court may also designate additional locations to protect a victim. The prohibition ordered under this paragraph does not prohibit the offender from visiting a school, child care facility, park, or playground for the sole purpose of attending a

religious service as defined in s. 775.0861 or picking up or dropping off the offender's children or grandchildren at a child care facility or school.

(b) A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the court.

**YOU ARE HEREBY PLACED ON NOTICE** that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

**IT IS FURTHER ORDERED** that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

**IT IS FURTHER ORDERED** that you pay:
**Court Costs, Fees, and Fines, as imposed at sentencing, in the total amount of: $ 793.00**

Payments processed through the Department of Corrections will be assessed a 4% surcharge pursuant to s. 945.31, F.S.
Pursuant to s. 948.09, F.S., you will be assessed an amount of $2.00 per month for each month of supervision for the Training Trust Fund Surcharge.

**IT IS FURTHER ORDERED** that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

**DONE AND ORDERED,** on Jan 10, 2020

**NUNC PRO TUNC 12/20/019**

WILLIAM L. ROBY
CIRCUIT JUDGE

---

I acknowledge receipt of a copy of this order and that the conditions have been explained to me and I agree to abide by them.

Date: _____

_____
Defendant

Instructed by: _____
Supervising Officer

DECEMBER 20, 2019

CHANGE-OF-PLEA AND SENTENCING HEARING

WHEREUPON . . .

The following proceedings were had:

THE CLERK: Delilah Colarte, 2018CF669.

MR. MOSHER: Judge, she is approaching at present. And this is the case we did a motion to suppress on and we're waiting for an order.

THE COURT: I think I'm going to get to it today.

MR. MOSHER: Okay.

THE COURT: And I'm going to deny the motion.

MR. MOSHER: Yes, sir. In that case we are ready to proceed with a change of plea. The only --

THE COURT: And I apologize for the length of time.

MR. MOSHER: It's okay. You've been busy, busy.

We are (Indiscernibles) on getting her to a plea of no contest, as charged. We are specifically reserving our right to appeal the denial of the motion to suppress.

THE COURT: Sure. Okay.

MR. MOSHER: I think the State would agree that it is dispositive.

MS. HOLLOMAN: Yes.

THE COURT: All right, ma'am. If you would,

please, face the Clerk and raise your right hand.

THE CLERK: Do you swear or affirm that the evidence you're about to give will be the truth, the whole truth, and nothing but the truth?

THE DEFENDANT: Yes.

THE COURT: All right, ma'am. You are twenty-three years old; is that correct?

THE DEFENDANT: Yes.

THE COURT: And you have some college --

THE DEFENDANT: Yes.

THE COURT: -- education?

So, clearly then, you are able to read this plea form --

THE DEFENDANT: Yes.

THE COURT: -- and you understood what you read?

THE DEFENDANT: (No audible response)

THE COURT: You have been charged with possession of marijuana resin -- I think that's a five-year felony; and then also possession of paraphernalia. That's a one-year misdemeanor. And you are here today to enter a no contest plea to that charge?

THE DEFENDANT: (No audible response)

THE COURT: All right. Do you understand -- or yes, ma'am. Do you understand you don't have to do that?

THE DEFENDANT: Yes, sir.

THE COURT: You're constitutionally entitled to a jury trial. However, you're giving up that right?

THE DEFENDANT: Yes, sir.

Also if you have various legal or factual defenses other than the motion to suppress the evidence, you're giving up your right to assert those defenses.

And, apparently, I'll acknowledge that you're reserving your right to appeal the denial of your motion to suppress.

Other than --

MR. MOSHER: Yes, sir. And also that it was dispositive.

THE COURT: Yeah. In other words, dispositive.

Other than that, you're giving up all other legal or factual defenses that you may have otherwise had.

Okay. Are you doing this freely and voluntarily?

THE DEFENDANT: Yes.

THE COURT: Okay. And because of the appellate issue, I'm sure you're doing this because it's in your best interest?

THE DEFENDANT: Yes, sir.

THE COURT: And, Mr. Mosher, will you stipulate that there is a factual basis for the plea?

MR. MOSHER: Yes. We do stipulate there's a

factual basis for the plea.

THE COURT: Okay. All right. Ma'am, you're pleading to a five-year felony and a one-year misdemeanor. So you could be sentenced, I guess, up to --

MR. MOSHER: Six years.

THE COURT: Yeah. Six years. But you score 16.2. So, as I understand the law, anyway, unless there was a jury finding that you were a danger to the community, the most you can get is one year in the County Jail. Do you understand?

THE DEFENDANT: Yes.

THE COURT: And I don't know what you're going to get.

We're imposing sentence today?

MR. MOSHER: Yes, sir.

THE COURT: All right. So if you receive a sentence that you think is unfair or too harsh, so long as it's a legal sentence, you can't come back to me and change your mind.

THE DEFENDANT: Yes, sir.

THE COURT: Okay. If you are adjudicated guilty of these charges, you will become a convicted felon. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: And also your driver's license will

be suspended for six months.

THE DEFENDANT: Yes, sir.

THE COURT: If you're not a U.S. citizen, entering this plea could affect your immigration status and could cause you to be deported. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And if you've ever been convicted of a sexually motivated or violent crime, entering this plea could cause you to be involuntarily committed as a sexual offender or predator under the Jimmy Ryce Act. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions?

THE DEFENDANT: No, not that I can think of.

THE COURT: Okay. So you've understood all of this?

THE DEFENDANT: Yes.

THE COURT: All right. I'll accept your plea. Any reason we can't proceed to sentence?

MR. MOSHER: No. We're ready to proceed.

THE COURT: All right. Mr. Mosher, you may proceed.

MR. MOSHER: I'll just ask Ms. Colarte a few questions.

Ma'am, are you currently a student?

THE DEFENDANT: Yes.

MR. MOSHER: And where are you going to school and what are you going to school for?

THE DEFENDANT: Indian River State College. I'm going for my nursing degree.

MR. MOSHER: Okay. And just to make sure that we understand, they found a pen which contained the residue or the oil for smoking?

THE DEFENDANT: They found a pipe that had traces of resin inside of the pipe.

MR. MOSHER: Okay. And you -- do you not now have a medical marijuana license?

THE DEFENDANT: I do.

MR. MOSHER: Okay. The likelihood of you ever being in trouble again seemed -- was probably zero?

THE DEFENDANT: Correct.

MR. MOSHER: Okay. How appropriate is the withhold of adjudication here?

THE DEFENDANT: (Indiscernibles).

MR. MOSHER: Okay. You're still hoping to go on and achieve great things?

THE DEFENDANT: Of course. Yes.

MR. MOSHER: Okay. The basis of the traffic stop, you weren't driving crazy. It was you had a tag

light that was out.

THE DEFENDANT: Right.

MR. MOSHER: Okay.

THE COURT: Was this an Okeechobee music festival case?

MR. MOSHER: No. No, sir.

THE DEFENDANT: Direct (Indiscernibles) homework.

MR. MOSHER: So -- okay. And so we're asking the Court to withhold adjudication?

THE DEFENDANT: Yes.

MR. MOSHER: And to put you on a period of probation that -- the length of the Court could summon, that you don't believe that there's really any need for a lengthy supervision because you've shown him you can conform your conduct to the law?

THE DEFENDANT: Correct.

MR. MOSHER: Do you have your act together?

THE DEFENDANT: Yes.

MR. MOSHER: That means that you are a student, so you would put that (Indiscernibles)?

THE DEFENDANT: That's right.

MR. MOSHER: I don't have any additional questions.

THE COURT: Ms. Holloman, any questions?

MS. HOLLOMAN: Ms. Colarte, where do you work?
THE DEFENDANT: I do work at Planet Fitness, manager.
MS. HOLLOMAN: Okay. What time do they close?
THE DEFENDANT: We're 24/7.
MS. HOLLOMAN: Planet Fitness is 24/7?
THE DEFENDANT: 24/7. Correct.
MS. HOLLOMAN: Okay. What time were you -- why were you driving at midnight here? Was that you said you were coming from work?
THE DEFENDANT: Yes. I was bringing my boyfriend to his house at the time. Yes.
MS. HOLLOMAN: Who's Schuyler (Indiscernibles)?
THE DEFENDANT: My brother.
MS. HOLLOMAN: And Troy Hokes is your boyfriend?
THE DEFENDANT: Ex-boyfriend as of now.
MS. HOLLOMAN: Thank you.
No further questions.
MR. MOSHER: I have no further evidence.
THE COURT: All right. What's your recommendation, Mr. Mosher?
MR. MOSHER: Judge, this is one of those, you know, cases that, you know, the issue has kind of rectified itself by now obtaining and properly holding a marijuana card. So the likelihood of any future criminal

conduct I would think is zero. She's obviously a (Indiscernibles) student who has her whole future ahead of her. The withhold of adjudication is probably the most important. I know in some cases, you know, probation determines -- is determined by the services that aren't necessary to, I guess, rehabilitate. I don't really think that there's any need to rehabilitate. She's shown that, notwithstanding, she has a marijuana card. She's able to function. She's going to be a nurse. And so with that being said, we're asking for a withhold of adjudication and apparent probation if the Court thinks is appropriate. But --

THE COURT: Ms. Holloman?

MS. HOLLOMAN: The State is asking for two years of drug offender probation.

THE COURT: All right. Well, I'll withhold adjudication of guilt as to both counts. And as to both counts, you're to be placed on six months of probation, standard terms and conditions. I'll assess the $418 in court costs, $200 cost of prosecution, $50 cost of investigation, and $125 Drug Trust Fund assessment. You're going to have to repay these amounts as a condition of your probation.

If you wish to take an appeal as to your motion to suppress or any other issue that's been preserved, you

have the right to do that. It would have to be filed within thirty days. And if you couldn't afford a lawyer to do that, I could appoint one for you.

Do you understand?

THE DEFENDANT: Yes.

THE COURT: All right. Ma'am, you need to step over there in the corner. The Bailiff is going to take your fingerprints, a DNA sample, and then you need to talk to that young lady right there about your probation. Okay?

THE DEFENDANT: Thank you, sir.

(Proceedings in this matter concluded)