

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR SUMTER COUNTY, FLORIDA

CASE NO.: 2020-CF-56

STATE OF FLORIDA,
Plaintiff,

vs.

SUMMER YODER,
Defendant.

MOTION TO DISMISS

COMES NOW the Defendant, SUMMER YODER, by and through the undersigned counsel, pursuant to Florida Rule of Criminal Procedure 3.190(c)(4), moves to dismiss counts one, two, and three of the information filed against her because there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. As grounds therefor, she swears that the following facts are true:

I. FACTS

1. On January 18, 2020, Officer Grinon with the Wildwood Police Department reported to a vehicle driven by the Defendant. The Defendant identified herself with a Florida driver's license.
2. During the subsequent conversation between the Defendant and Deputy Grinon, Deputy Grinon told the Defendant that he could smell the odor of what he believed to be alcohol, and asked the Defendant to exit the vehicle.
3. Upon exiting the vehicle Deputy Grinon could see in plain view a vaping pen.
4. The vehicle was then searched. Grinon located a plastic container with some green leafy substance inside the Defendant's purse, as well as, a green leafy substance.
5. The vape pen was field tested.

6. The field test gave a result presumptively positive for tetrahydrocannabinol (THC). This field test did not quantify the amount of THC in the substance, but merely signaled its presence.
7. The Defendant was arrested.
8. On March 5, 2020, an analyst with the Florida Department of Law Enforcement drafted a report after having conducted an analysis of the vape pen “oil” material in this case. It identified the material as Tetrahydrocannabinol(s).
9. Despite the identification of the substance as Tetrahydrocannabinol(s), the report specifically noted that the analysis performed could not exclude the substance as being hemp (as defined in §581.217, Florida Statutes), industrial hemp (as defined in §1004.4473, Florida Statutes), or marijuana (as defined in §381.986, Florida Statutes), and that the chemical components of the substance were not quantitated.
10. Marijuana and industrial hemp are different varieties of the same plant species, *Cannabis Sativa* L. Marijuana typically contains 3 to 15 percent THC on a dry-weight basis, while industrial hemp contains less than 1 percent. Most developed countries that permit hemp cultivation require use of varieties with less than 0.3 percent THC. However, the two varieties are indistinguishable by appearance. A study of 97 *Cannabis* strains demonstrated that short of a chemical analysis of the THC content, there is no way to distinguish between marijuana and hemp varieties.¹

¹ Industrial Hemp in the United States: Status and Market Potential. United States Department of Agriculture Economic Research Service, January 2000.

II. LEGAL ARGUMENT

1. The above facts are undisputed, and do not establish a prima facie case of guilt against the Defendant.
2. The Defendant is charged by information in Count I Possession of THC, Count II Possession of Cannabis, and Count III Possession of Paraphernalia.
3. "Cannabis" is listed as a Schedule I prohibited controlled substance under §893.03(1)(c)(7), Florida Statutes. Possession of the Cannabis plant is thus prohibited by Florida law.
4. Florida Statute § 581.217(3)(d) defines "hemp" as "the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, *that has a total delta-9 tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.*" (emphasis added). § 581.217(3)(e) defines "hemp extract" as "a substance or compound intended for ingestion that is derived from or contains hemp and that does not contain other controlled substances." The statute contains legislative findings that hemp is an agricultural commodity and that hemp-derived cannabinoids are not controlled substances, and explicitly authorizes the distribution and retail sale of hemp extract.
5. It follows from a reading of these three statutes that the possession of the cannabis plant or its derivatives is unlawful if its THC content is above 0.3 percent, and lawful if its THC content is 0.3 percent or below.
6. The only way to conclusively determine whether a suspected substance is unlawful cannabis or lawful hemp is to perform a quantitative test on the THC concentration

in the substance. The field testing conducted in this case merely demonstrated the presence of THC, not the concentration, and consequently has no bearing on the legality of the substance tested.

7. The State has not conducted such quantitative testing on the substance collected and charged in this case. In fact, as noted above, the Florida Department of Law Enforcement (FDLE) lab that analyzed the plant material seized in this case specifically opined that "*Hemp as defined in F.S. 581.217, industrial hemp as defined in F.S. 1004.4473, and Marijuana as defined in F.S. 381.986 cannot be excluded due to the type of analysis completed. The chemical components of exhibits 1 were not quantitated.*" (emphasis added). The State conducted no formal testing on the bag.
8. Deputy Grinon's training and experience allowing him to identify the cannabis plant based on sight or smell does not enable him to ascertain the THC concentration of these plants. Any case law holding that law enforcement can identify marijuana through sight or smell has been rendered inapplicable by virtue of Florida's legalization of hemp and hemp extract.
9. The Defendant's various statements do not establish a legally sufficient case against her, because there is no reason to believe that she had any accurate knowledge, or for that matter any knowledge at all, as to the exact THC concentration of the plant material in her possession.

WHEREFORE, the Defendant requests that this Honorable Court dismiss counts I, II and III of the information filed against her.

I, Summer Yoder, the Defendant in this case, do hereby swear that the factual allegations contained in section I of this motion are true and correct.

Summer Yoder
Summer Yoder

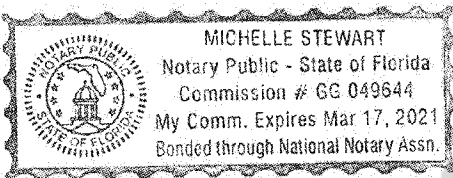
I HEREBY CERTIFY that on this day before me, an officer duly authorized to take acknowledgments, personally appeared Summer Yoder, who is personally known to me or who has produced a Florida Driver's License as identification and who executed the foregoing instrument and acknowledged before me that he executed the same freely and voluntarily.

IN WITNESS WHEREOF, I have set my hand and seal in the County and State last aforesaid this 10th day of May, 2020.

Michelle Stewart

NOTARY PUBLIC

My Commission Expires: 3/17/21



CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished via e-filing to the Office of the State Attorney on this 1st day of July 2020.

s/Jaimie Washo Spivey

Jaimie Washo Spivey, Esquire

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