

**IN THE COUNTY COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA**

**STATE OF FLORIDA,  
Plaintiff,**

**Case #: 05-2015-MM-018253-AXXX-XX**

**vs.**

**THOMAS DANIEL CALLIN,  
Defendant,**

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**ORDER GRANTING AMENDED MOTION TO SUPPRESS**

**THIS CAUSE** having come on the Defendant's Motion to Suppress identify of the Defendant, and the seizure of the Defendant, and the Court having reviewed the Motion, taken testimony of Officer Tayge and the Defendant, and further having reviewed the dash cam video of the sequence of events leading to the stop and seizure of the vehicle in which the Defendant was a passenger , and having further reviewed the citation written and notes on the citation written by the Officer, and further having reviewed the email messages from the ASA to the officer and his response; and further having reviewed the video of the traffic infraction hearing and further having considered argument of counsel, and being otherwise fully advised in the premises, it is

**ORDERED and ADJUDGED as follows;**

**FINDINGS OF FACT**

1. On March 7, 2015 at 11:30pm, Officer Tayge of the Rockledge Police Department was parked in the Village Green Shopping Center located just east of the intersection of

2. Barton Boulevard and Fiske Boulevard, in Rockledge Brevard County Florida. At the time of the stop the Officer had been a police officer for a year and a half.
3. At that time and place he observed a vehicle with passengers parked in the parking lot, when all of the businesses were closed. The vehicle was parked close to a CVS drug store that was closed but had a Red Box, movie dispenser outside that was operational.
4. The Officer was curious and approached the vehicle in his marked unit and shined his spot light on the vehicle. The Officer testified that he got out of his vehicle to approach the illuminated vehicle. As he approached, the vehicle driven by Ms. Rathgeb drove away.
5. The Officer testified that he followed the vehicle as it exited the parking lot travelling West on Barton Boulevard.
6. The Officer testified that the vehicle approached the intersection at Fiske Boulevard and stopped at the intersection. The vehicle then turned right on red after stop and the officer pursued the vehicle and stopped the vehicle because the driver's front wheels did not stop before reaching the stop bar. The crosswalk was fully illuminated by the Rathgeb vehicles headlights while it was stopped.
7. He issued a citation to the driver, a Ms. Rathgeb, and ascertained the identity of the passenger to be the Defendant. The Officer learned that there was a no contact Pretrial Release Order in place ordering the Defendant to have no contact with Ms. Rathgeb. The Defendant was arrested and taken to jail and held without bond.

8. The dash cam video of the officers marked vehicle was placed in evidence. A review of the video revealed that there was no evidence that the Officer excited his marked unit as he testified, and that it appeared that the Rathgeb vehicle did properly stop prior to the crosswalk. It did not appear credible to the court that the Officer could see where the front tires of the Rathgeb vehicle were positioned during the stop because he was directly behind the Rathgeb vehicle.

9. Also placed in evidence was an email from the State Attorney to the Officer, which was disclosed to the Defense Attorney questioning the Officer why he stopped the vehicle?. The response from the Officer was that Rathgeb vehicle "rolled through the intersection" and "ran the red light". This contradicts the video because the vehicle did make a complete stop as reflected on the video.

10. On April 23<sup>rd</sup>, 2015 the cause came on for an infraction hearing and the County Judge found Ms. Rathgeb not guilty of running the stop light.

11. The Defendant testified that Ms. Rathgeb properly stopped her vehicle before the stop bar and came to a complete stop. Also, of note is the fact that he was a former Florida Highway Patrolman, for twenty seven years.

### **CONCLUSIONS OF LAW**

First, the Court finds that the Officers testimony regarding the reason for the stop to not be credible. The evidence when viewed as a whole indicates clearly to the Court that the Officers stop was pretextual.

He clearly pursued the Rathgeb vehicle to find out what they were doing in the parking lot at that time of the night.

The Court cannot find any legitimate lawful reason for the stop.

It is well established that identity of a person unlawfully seized as a result of an illegal seizure is properly subject to suppression. State v. Perkins 760 So.2d 85 (Fla2000).

The question raised as to applicability the doctrines of Collateral Estoppel and Res Judicata are unnecessary here.

The finding of not guilty in the infraction hearing applied a different standard of proof and there really was not an identity of parties.

Of note, it is significant that Ms. Rathgeb was issued a citation for violation of FS 316.074(1)(2015).for failing to comply with a Traffic Control Device.

A "stop bar" is apparently a "marking" as defined in F.S. 316.003(23) 2015 but there is no specific reference to a "stop bar".

However, nowhere in the code is there any requirement that the tires of a motor vehicle stop behind a Stop Bar.

But, FS 316.123(2)(a)(2015) dealing intersections controlled only by stop signs require a stop "at" a clearly marked stop line "At" is defined as being before the bumper reaches the line. See State v. Daniels, 158 So.3d 629 (5DCAFla.2014). The driver here was not issued a citation for her alleged violation of this statute.

However the Statute has its primary purpose, the safety of any pedestrians who may be in crosswalk or cross-traffic that could be in the intersection.

This is consistent with F.S. 316.075 (1)(a)2a(2015) which deals with Traffic Signal Controlled intersections, which requires a stop "before" entering the crosswalk...

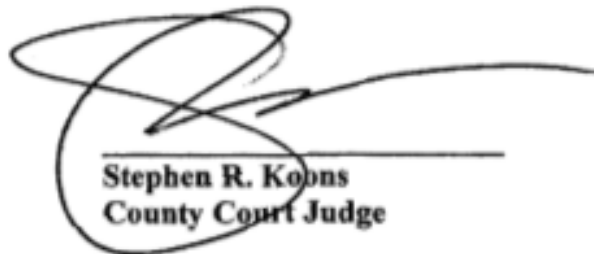
There was no cross traffic or pedestrians here, and it appears to the court that the vehicle transporting the Defendant properly stopped.

It is well settled that a traffic stop is not pre textual and is a valid stop as long as there is probable cause to believe that a traffic violation has occurred. See Whren v. United States, 517 U.S. 806 (1996).

In this case there was no basis for the stop.

According the Motion to Suppress is GRANTED.

**DONE AND ORDERED** in Viera, Brevard County, Florida, this 22<sup>nd</sup> day of June of 2016.



Stephen R. Koons  
County Court Judge

cc: Div. 3

**Ben Baxter**  
Assistant State Attorney – Viera

**Attorney Kepler B. Funk**  
Attorney for the Defendant