

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

JUDGE PERKINS

STATE OF FLORIDA,

CASE NO.: 2019-000699CFFA

v.

TERRENCE MCMANUS,

Defendant.

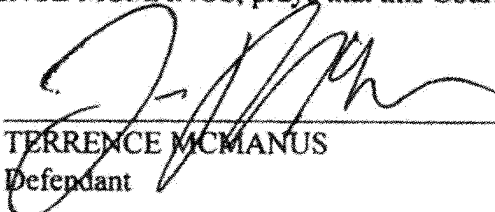
MOTION TO DISMISS

Pursuant to Fla. R. Crim. P. 3.190(c)(4), defendant, TERRENCE MCMANUS, moves for an order dismissing the charges against him and, as grounds therefore, states that there are no material disputed facts and that the undisputed facts do not establish a prima facie case of guilt against defendant. The facts on which this motion is based are:

1. Mr. McManus is charged with a violation of Florida Statutes 316.193 (1) and (2) (b) (3) driving under the influence.
2. Florida Statutes 316.193 states: (1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and: The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, when affected to the extent that the person's normal faculties are impaired; and (b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or (c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.
3. On July 24, 2019 at approximately 1:20 A.M., Officer Cozzone of the Flagler Beach Department saw lights coming from the area of state road A1A in Flagler Beach that was under repair, specifically 1700 South Oceanshore Blvd. This area was closed to vehicular traffic. Officer Cozzone exited his patrol vehicle approached the lights and saw a golf cart stuck in the soft sand of that portion of A1A. He observed Mr. McManus leaning over the steering wheel of the golf cart. Officer Cozzone never observed Mr. McManus driving the golf cart.
4. Mr. McManus was impaired as legally defined in Florida Statutes 316.193.(1).
5. Mr. McManus was not driving as legally defined in Florida Statutes 316.193 (1).
6. The State must be alleging that Mr. McManus, by seating himself in the driver's seat of the golf cart, was in actual physical control of his vehicle.

7. The golf cart was stuck in the sand at the time Officer Cozzone approached it and observed Mr. McManus seated on the golf cart's bench seat. Therefore the vehicle in which Mr. McManus was sitting was inoperable because it could not be moved except by an outside agency. The golf cart had to be towed out of the sand by Johns Towing.
8. Sitting in a vehicle that is found to be inoperable so that it could not be moved except by an outside agency is insufficient as a matter of law to establish actual physical control of a vehicle. Jones v. State, 510 So. 2d 1147, 1149 (Fla. 1st DCA 1987)
9. Mr. McManus cannot be convicted of DUI for being in the driver's area of a parked golf cart that is inoperable.

Therefore, the defendant, Mr. TERRENCE MCMANUS, prays that this Court will dismiss the pending charges pursuant to law.



 TERRENCE MCMANUS
 Defendant

STATE OF FLORIDA
 COUNTY OF FLAGLER

Physical Presence,
 -- or --
 Online Notarization

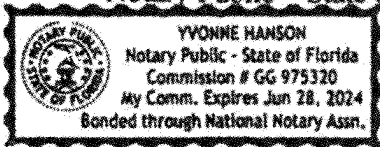
BEFORE ME, the undersigned authority, personally appeared TERRENCE MCMANUS, who was sworn and said that the facts stated in the foregoing motion are true.

Sworn to and subscribed before me on Sept 1, 2020, by TERRENCE MCMANUS who is personally known to me/produced identification.




 Notary Public - State of Florida

My commission expires: 06/28/2024



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by delivery to Philip Boyington, Assistant State Attorney, this 15th day of September, 2020.


 WILLIAM BOOKHAMMER
 ASSISTANT PUBLIC DEFENDER
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