[CAPTION]

MEMORANDUM OF LAW (EQUIPMENT VIOLATION TRAFFIC STOP)

FACTS

For purposes of this motion, Defendant incorporates the facts as set forth in the affidavit for probable cause which is attached hereto and incorporated as Exhibit "A."

EQUIPMENT VIOLATION

Ind. Code § 34-28-5-3 provides that whenever a law enforcement officer believes in good faith that a person has committed an infraction or ordinance violation, he may detain that person for a time sufficient to: (1) inform the person of the allegation; (2) obtain the person's: (A) name, address, and date of birth; or (B) driver's license, if in his possession; and (3) allow the person to execute a notice to appear. State v. Harris, 702 N.E.2d 722 (Ind.Ct.App. 1998). However, "a police officer's mistaken belief about what constitutes an infraction does not amount to good faith." Peck v. State, 705 N.E.2d 188 (Ind. App. 1998), *reversed on other grounds*, 712 N.E.2d 951 (Ind. 1999).

In the instant case, the officer stopped Defendant because he observed "the vehicle to not have an operational brake light on the driver's side." Defendant's vehicle was equipped with a center brake light and a passenger's side brake light, both of which were operating. Following this observation, the officer stopped the vehicle, obtaining identifying information from Defendant. The officer proceeded with his investigation, which included a driver's license check, a K-9 search of the interior and exterior of the vehicle, a search of the interior of the vehicle by police officers, and a search of Defendant's person.

Equipment requirements for motor vehicles are codified at Ind. Code § 9-19-6 *et seq.* The requirements for tail lamps are as follows:

> **IC 9-19-6-4**
> **Tail lamps**
> Sec. 4. (a) Except as otherwise provided in this section:
> (1) a motor vehicle, trailer, semitrailer, and pole trailer; and
> (2) any other vehicle that is drawn at the end of a train of vehicles;

must be equipped with at least one (1) tail lamp mounted on the rear that when lighted as required in this chapter, emits a red light plainly visible from a distance of five hundred (500) feet to the rear.

(b) Only the tail lamp on the rear-most vehicle of a train of vehicles is required to be seen from the distance specified.

(c) Excluding a truck-tractor semitrailer-semitrailer combination equipped with a B-train assembly (as defined in IC 9-13-2-13) governed by section 7 of this chapter, truck-tractor, motorcycle, or motor driven cycle:

(1) a motor vehicle, trailer, semitrailer, and pole trailer; and

(2) any other vehicle drawn at the end of a train of vehicles;

that is registered in Indiana and manufactured or assembled after January 1, 1956, must be equipped with at least two (2) tail lamps mounted on the rear that, when lighted, complies with this section.

(d) A tail lamp upon a vehicle shall be located at a height of not less than twenty (20) inches and not more than seventy-two (72) inches.

(e) Either a tail lamp or a separate lamp must be placed and constructed so as to illuminate the rear registration plate with a white light and make the plate clearly legible from a distance of fifty (50) feet to the rear. A tail lamp or tail lamps, together with a separate lamp for illuminating the rear registration plate, must be wired so as to be lighted whenever the head lamps or auxiliary driving lamps are lighted

The requirement that motor vehicles maintain operating stop lamps, i.e. brake lights, reads as follows:

IC 9-19-6-6
Selling or operating vehicles without turn signals or stoplights

Sec. 6. (a) Except as provided in subsection (b), a person may not:

(1) sell; or

(2) drive on the highways;

in Indiana a motor vehicle, including a motorcycle or motor-driven cycle unless the vehicle is equipped with **at least one (1) stoplight** meeting the requirements of section 17 of this chapter. [Emphasis supplied.]

The requirements of stop lamps required under Ind. Code § 9-19-6-6, is found at Ind. Code § 9-19-6-17,

which reads:

IC 9-19-6-17
Stop lamps and turn signals; color, visibility, and operation

Sec. 17. (a) A motor vehicle may be equipped, and when required under this chapter must be equipped, with a **stop lamp or lamps on the rear of the vehicle** that:

(1) displays a red or an amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight;

(2) will be actuated upon application of the service (foot) brake; and
(3) may be incorporated with at least one (1) other rear lamp.
(b) A motor vehicle may be equipped and when required under this chapter must be equipped with lamps or mechanical signal devices showing to the front and rear for the purpose of indicating an intention to turn either to the right or left. If lamps are used for this purpose, the lamps showing to the front must be located on the same level and as widely spaced laterally as practicable and when in use must display a white or an amber light, or any shade of color between white and amber, visible from a distance of not less than one hundred (100) feet to the front in normal sunlight. The lamps showing to the rear must be located at the same level and as widely spaced laterally as practicable and when in use must display a red or an amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight. When actuated the lamps must indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made. If mechanical signal devices are used for this purpose, the devices must be self-illuminated when in use at the times required by IC 9-21-7-2.
(c) A stop lamp or signal lamp or device may not project a glaring light. (Emphasis added).

Lamp is defined at I.C. § 9-13-2-91 to mean a single bulb that emits light. The motor vehicle being operated by Defendant was equipped with at least one lamp on the rear of the vehicle which was visible from a distance of 100 feet, which was red in color and illuminated when the brake pedal was depressed. Because the statute indicates that a brake light *may* be incorporated with at least one other rear lamp, a fair reading of the statute is that the brake lamp need not be incorporated in another rear lamp. The center and passenger side brake lights on Mr. Chenault's vehicle complied with all statutory requirements for motor vehicle equipment.

ANALYSIS

In Cash v. State, 593 N.E.2d 1267 (Ind.Ct.App. 1992), the Court of Appeals reversed the denial of a motion to suppress following a traffic stop premised on the officer's mistaken, but good faith, belief that Defendant had violated an infraction relating to the manner in which a license plate was secured to a vehicle. That Court observed that simple good faith on the part of the officer is not enough for if it were, "the protections of the Fourth Amendment would evaporate." Id. at 1269 (quoting Terry v. Ohio, 392

U.S. 1, 21, 22 (1968)); see also United States v. Gold, 77 F.Supp.2d 936, 940 (S.D. Ind. 1999); United States v. Powell, 929 F.2d 1190, 1194 (7th Cir. 1991); United States v. Trigg, 878 F.2d 1037, 1041 (7th Cir. 1989); Peck v. State, 705 N.E.2d 188 (Ind. Ct. App. 1998), *rev'd on other grounds* 712 N.E.2d 951 (Ind. 1999).

In State v. Rager, 883 N.E.2d 136 (Ind. Ct. App. 2008), the Indiana Court of Appeals upheld the trial court's suppression order, where an officer mistakenly believed Rager violated Ind. Code § 9-21-8-35. The Rager Court observed, "The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution protect an individual's privacy and possessory interests by prohibiting unreasonable searches and seizures." Id. (citing Howard v. State, 862 N.E.2d 1208, 1210 (Ind.Ct.App. 2007)). The State has the burden of demonstrating that the measures it used to seize evidence were constitutional. State v. Davis, 770 N.E.2d 338, 340 (Ind.Ct.App. 2002). These "safeguards extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest." Moultry v. State, 808 N.E.2d 168, 170 (Ind. Ct. App. 2004).

"A police officer may stop a vehicle when he observes a minor traffic violation. A stop is lawful if there is an objectively justifiable reason for it, and the stop may be justified on less than probable cause." Ransom v. State, 741 N.E.2d 419, 421 (Ind. Ct. App. 2000) (citation omitted), *abrogated on other grounds by* Williams v. State, 28 N.E.3d 293 (Ind. Ct. App. 2015).

> It is the requirement of reasonable suspicion which strikes the balance between the government's legitimate interest in traffic safety and an individual's reasonable expectation of privacy. Reasonable suspicion entails some minimum level of objective evidentiary justification. Due weight must be given, not to the officer's inchoate and unparticularized suspicion or "hunch" but to the specific reasonable inferences which the officer is entitled to draw from the facts in light of his experience. A court sitting to determine the existence of reasonable suspicion must require the agent to articulate the factors leading to that conclusion.

Cash v. State, 593 N.E.2d 1267, 1268-69 (Ind. Ct. App. 1992) (citations omitted).

"On review, th[e appellate] court considers whether the facts known by the police at the time of the stop were sufficient for a man of reasonable caution to believe that an investigation is appropriate. The grounds for such a suspicion must be based on the totality of the circumstances." Davis v. State, 858

N.E.2d 168, 172 (Ind. Ct. App. 2006) (citation omitted). "Although a law enforcement officer's good faith belief that a person has committed a violation will justify a traffic stop, Ind. Code § 34-28-5-3, an officer's mistaken belief about what constitutes a violation does not amount to good faith**.** Such discretion is not constitutionally permissible." Ransom, 741 N.E.2d at 422 (citing Cash, 593 N.E.2d at 1269); Rager, 883 N.E.2d at 139-40.

In United States v. McDonald, 453 F.3d 958, 961-62, (7th Cir. 2006), the court held it made no difference that an officer holds an understandable or "good faith" belief that a law had been broken. Whether the officer's conduct was reasonable under the circumstances is not the proper inquiry. See also United States v. Chanthasouxat, 342 F.3d 1271, 1279 (11th Cir. 2003). Rather, "the correct question is whether a mistake of law, no matter how reasonable or understandable, can provide the objectively reasonable grounds for providing reasonable suspicion or probable cause." McDonald, 453 F.3d at 962. The answer is that it cannot.

A stop based on a subjective belief that a law has been broken, when no violation actually occurred, is not objectively reasonable. Even though an officer may have acted in good faith, there is no good faith exception to the exclusionary rule when, as here, an officer makes a stop based on a mistake of law and the defendant is not violating the law. Id.; Chanthasouxat, 342 F.3d at 1279-80; United States v. Lopez-Soto, 205 F.3d 1101, 1106 (9th Cir. 2000); United States v. Lopez-Valdez, 178 F.3d 282, 289 (5th Cir. 1999). As the Ninth Circuit has explained, "[t]o create an exception here would defeat the purpose of the exclusionary rule, for it would remove the incentive for police to make certain that they properly understand the law that they are entrusted to enforce and obey." Lopez-Soto, 205 F.3d at 1106; see also Lopez-Valdez, 178 F.3d at 289 ("if officers are allowed to stop vehicles based on their subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred, the potential for abuse of traffic stops as pretext for effecting stops seems boundless and the costs to privacy rights excessive.").

Article I, Section 11 of the Indiana Constitution requires probable cause or, at a minimum, individualized suspicion of criminal activity before the police may stop a motorist, and that absent either,

a stop constitutes an unreasonable seizure as proscribed by the Indiana Constitution. Taylor v. State, 639 N.E.2d 1052, 1054 (Ind. Ct. App. 1994). Indiana courts have consistently recognized that a valid warrant, probable cause, or reasonable suspicion is necessary to protect the people from abuses of police power and against unreasonable searches and seizures. Id.

Under Article One, section eleven of the Indiana Constitution, the search and seizure analysis is slightly different than under the Fourth amendment. Brown v. State, 653 N.E.2d 77, 79-80 (Ind. 1995). Both provisions, however, require an objectively justifiable reason for stopping a person's vehicle. Rager, 883 N.E.2d at 139, n.3. In Rager, the appellate court concluded that the deputy mistakenly believed that Rager violated I.C. 9-21-8-35 and therefore did not have an objectively justifiable reason for stopping Rager's vehicle, and did not need to undertake separate constitutional analysis under the Indiana Constitution. Id. In the instant case, any such warrant, probable cause, or reasonable suspicion is lacking and the stop and resulting actions of the police are unreasonable and violate Article I, Section 11 of the Indiana Constitution, as well as the Fourth Amendment.

As the defendant had not committed a traffic infraction and the arrest was otherwise made without a warrant, probable cause, or reasonable suspicion, any evidence obtained pursuant to such stop and seizure and any evidence derivative of such stop and Defendant's subsequent arrest should be suppressed.

CONCLUSION

For the foregoing reasons, any evidence seized subsequent to the stop and detention of Defendant should be suppressed.

(Signature)

CASE LAW

Goens v. State, 943 N.E.2d 829 (Ind.Ct.App. 2011) (Defendant did not commit an infraction by having one inoperable brake light; officer's stop of his car was invalid, and the resulting evidence of his intoxication should have been suppressed). See also Kroft v. State, 992 N.E.2d 818 (Ind.Ct.App. 2013).

Freeman v. State, 904 N.E.2d 340 (Ind.Ct.App. 2009) (officer properly stopped Defendant's vehicle because the left tail lamp was not illuminated).

Williams v. State, 28 N.E.3d 293 (Ind.Ct.App. 2015) (reasonable suspicion necessary for a car stop can rest on a mistaken understanding of the scope of a legal prohibition, as long as the error of law is objectively reasonable; officer's belief that Defendant's act of driving with a broken tail light violated traffic law, while ultimately mistaken, was nevertheless objectively reasonable); see also Heien v. North Carolina, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014).

United States v. Stanbridge, 813 F.3d 1032 (7th Cir. 2016) (officer's mistaken belief that driver violated Illinois traffic statute when he pulled to curb while simultaneously signaling, instead of using turn signal at least 100 feet before pulling to curb, was not objectively reasonable).