IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

GEORGE M. KORNELAKIS APPELLATE CASE NO: 2018-CV-51-A-O

Appellant,
vs.

CITY OF WINTER PARK,

Appellee.
_____/

Appeal from a Final Administrative Order
of the Automated Red Light Enforcement
program of the City of Winter Park, Florida

Michael Panella, Esq.
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Attorney for Appellant

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General Counsel
Winter Park Police Department
Attorney for Appellee

Before CARSTEN, WHITEHEAD, WILSON, JJ.

PER CURIAM.

George M. Kornelakis ("Appellant") appeals the Final Administrative Order, rendered on April 9, 2018, upholding a Notice of Violation issued to him based upon images and video which captured his vehicle stopping three car lengths before the stop line and/or crosswalk before making a right-hand turn at a red traffic signal, even though a "Stop Here on Red" sign was posted. This Court has jurisdiction under section 316.0083(5)(f), Florida Statutes (2018), and Florida Rule of Appellate Procedure 9.030(c)(1)(C). For the reasons discussed herein, we affirm.

BACKGROUND

On November 21, 2017, an automated traffic infraction detector, located at the intersection of Orlando Avenue and Orange Avenue in the City of Winter Park, captured images and video

footage of the Appellant's vehicle, a white Dodge Ram truck, stopping three car lengths before the stop line, before making a right-hand turn at a red light traffic signal at 16 M.P.H. On November 27, 2017, the Appellant was issued a Notice of Violation, pursuant to sections 316.0083, 316.074(1), and 316.075(1)(c), Florida Statutes (2018). The Notice of Violation gave the Appellant the options of paying the violation, asserting an Affidavit of Defense as permitted by statute, or asking for a local hearing. The Appellant responded to the Notice of Violation by submitting a "Request for Hearing" and executing an "Affidavit Requesting Hearing and Forfeiting Ability to Contest Delivery."[1] The Appellant was sent notice on March 7, 2018, scheduling his requested hearing for April 6, 2018, at 8:30am.

In accordance with section 316.0083, the hearing was conducted before the City of Winter Park's appointed local hearing officer. At the hearing, Officer Sam Belfiore, the traffic infraction enforcement officer for the Appellee's Police Department, testified that prior to the vehicle crossing the stop line, the Appellant traveled through the intersection at a speed of 16 M.P.H. He also testified that the light was yellow for 5.29 seconds and the light was red for 25.52 seconds prior to the vehicle crossing the stop line. Lastly, he stated that, as depicted in the images and video, there is a posted sign that reads "Stop Here on Red."

Prior to making his arguments, the Appellant requested a continuance in order to obtain an attorney. However, the hearing officer denied his request for an attorney and responded with, "No sir, it's too late for that." The Appellant argued that he, "did stop prior to the red light at the white stop line," and that he was "driving in a careful and prudent manner," consistent with the

[1] In the Appellant's executed Affidavit Requesting Hearing and Forfeiting Ability to Contest Delivery, we note that the language contained in the Affidavit provides the following: "I understand that I have the option to reschedule a hearing once by notifying the appropriate clerk for the local hearing officer in writing at least 5 days prior to the scheduled hearing." Similar language is also found in the Notice of Hearing which was sent to the Appellant on March 7, 2018.

language of section 316.0083, prior to making his right turn at the red light. The Appellant argued that the "careful and prudent" language of the statute applied to him because the sign did not say "no right turn on red" and so, his right-hand turn was permissible.

In response, the Appellee argued that the "careful and prudent manner" language of section 316.0083(1)(a), did not apply in this case because the Appellant failed to stop before turning right at the red light. Further, the Appellee argued that a right-hand turn was not permissible at this intersection because of the "Stop Here on Red" sign. Thus, the Appellee argued, that the "careful and prudent argument" only applies where right hand turns are permissible and, since the "Stop Here on Red" sign that was posted at the intersection was not adhered to, the Appellant violated section 316.074.

The hearing officer noted that the Appellant stopped "three cars back," and that he stopped ahead of the white stop line while there was a "Stop Here on Red" posted. After hearing testimony and argument and reviewing the evidence presented, the hearing officer found that the Appellant violated section 316.074, because he did not stop at the stop line before making a right-hand turn at the red light. Thus, the hearing officer upheld the Notice of Violation. The Appellant was advised of his options in detail:

> This Order has been issued by the City of Winter Park.
>
> **You are required to pay the amount of $158.00 plus administrative costs in the amount of $137.00 for a total amount of $295.00 within 90 days from the date of this order.**
>
> **Failure to pay this amount in accordance with the terms of this order within 10 days or failure to comply with the terms and conditions of an approved payment plan will the result in the city notifying the Department of Highway Safety Motor Vehicle (DHSMV) of non-payment and the DHSMV placing a hold on the issuance of a license plate or revalidation sticker for any motor vehicle owned or co-owned by you pursuant to Florida Statutes Section 320.03(8) until the amounts assessed have been fully paid.**

Please note you have a right to appeal this final administrative order pursuant to Florida Statutes Section 162.11

This appeal follows.

STANDARD OF REVIEW

Under Florida's red light camera law, either party may use the process in Florida Statute section 162.11 (providing for appeals from code enforcement boards) to appeal the final administrative order regarding a violation. § 316.00831(5)(f), Fla. Stat. (2018). Section 162.11 states that this review is not de novo, "but shall be limited to appellate review of the record created before the enforcement board." Because this is an appeal from an administrative agency, this Court's review is limited to "(1) whether procedural due process was afforded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings and judgment are supported by competent, substantial evidence." *Bencivenga v. Osceola Cnty.*, 140 So. 3d 1035, 1036 (Fla. 5th DCA 2014). This Court may not reweigh the evidence or substitute its judgment for that of the agency, for it is the hearing officer's responsibility as trier of fact to weigh the record evidence, assess the credibility of the witnesses, resolve any conflicts in the evidence, and make findings of fact. *Dep't of Highway Safety and Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989). Instead, this Court's function is to review the record to determine whether the decision is supported by competent substantial evidence. *Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm'r*, 794 So. 2d 1270, 1273-75 (Fla. 2001); *see also Fla. Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1093-94 (Fla. 2003). Competent substantial evidence is defined as such relevant evidence as a reasonable person would accept as adequate to support the findings and decision made. *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

ARGUMENTS ON APPEAL

The Appellant argues that his right-hand turn at the red light was permissible pursuant to section 316.0083(1)(a), Florida Statutes; therefore, the hearing officer should have applied the "careful and prudent manner" standard contained in that section and found that a complete stop before he turned right at the red light was not required. He asserts that the hearing officer incorrectly concluded that section 316.0083(1)(a), requires a complete stop at the stop line before turning right on red. For support, he provides two case: *City of Oldsmar v. Trinh*, 210 So. 3d 191, 194 (Fla. 2d DCA 2016) and *Munoz-Calene v. City of New Port Richey*, 24 Fla. L. Weekly Supp. 909b (Fla. 6th Cir. Ct. 2016). He contends that he actually did make a complete stop ahead of the stop line before moving through the red light in a careful and prudent manner.[2] He asserts that, in any event, he followed the law by making a complete stop before entering the crosswalk before making a right-hand turn on red, pursuant to section 316.075. He states that there may have been some discussion about how many "car lengths" away from the stop line he was, but it is clear that he came to a complete stop ahead of the stop line, which included a "Stop Here on Red" sign, before making a right hand turn.

Additionally, he argues that his fundamental constitutional right to sufficient access to courts was violated when he was denied the opportunity to seek a continuance in order to obtain

[2] The Appellant also cites to section 316.1925(1), for the proposition that the "careful and prudent" language of this section makes no reference to speed and does not mention a prohibition against drivers who fail to stop. Section 316.1925(1) states:

> Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute *careless driving* and a violation of this section.

We find the Appellant's cite to this section as support for his argument to be misplaced. The Appellant was charged with a violation for a failure to stop at a steady red signal under sections 316.074(1) or 316.075(1)(c), not with a violation for careless driving.

his own counsel. He contends that, although he was given notice and an opportunity to be heard before the hearing officer, he was wholly unaware that he had the opportunity to obtain counsel or that the Appellee would be represented by an attorney at the hearing. He argues that, because he was a *pro se* litigant and was unaware that he could obtain his own counsel, an exception to the time limit in which to request a continuance of the hearing, set forth in section 316.0083(5)(c), should have been granted in order to safeguard his right to sufficient access to courts. Thus, he concludes that the hearing officer abused his discretion when he refused the Appellant's request for a one-time continuance to seek the assistance of counsel.[3]

The Appellee argues that the evidence presented at the hearing – the video of the event showing his vehicle entering the crosswalk without stopping and continuing through the red light at 16 M.P.H., even though a "Stop Here on Red Sign" was posted, and Officer Sam Belfiore's testimony – exhibited that the Appellant violated sections 316.074(1), and 316.075(1)(c), Florida Statutes; thus, the hearing officer's decision observed the essential requirements of the law. The Appellee asserts that section 316.075, Florida Statutes, requires that drivers must come to a complete stop prior to turning right on red and, for support, cites to two decisions from the appellate panel of the Eleventh Judicial Circuit: *Kopelman v. City of Miami Gardens*, 26 Fla. L. Weekly Supp. 161a (Fla. 11th Cir. Ct. May 16, 2018), and *Lencovski v. City of Miami Gardens*, 25 Fla. L. Weekly Supp. 934 (Fla. 11th Cir. Ct. Dec. 15, 2017). The Appellee also argues that section 316.0083, does not make an exception to coming to a complete stop prior to making a right turn on red because that section must be read in harmony with section 316.075, revealing the

[3] Section 316.0083(5)(c), provides:

> Upon receipt of the notice, the petitioner may reschedule the hearing once by submitting a written request to reschedule to the clerk to the local hearing officer, at least 5 calendar days before the day of the originally scheduled hearing.

Legislature's intent to allow a driver to make a right-hand turn at a red light monitored by a camera, as long as they come to a complete stop and then make a turn yielding to pedestrians and other traffic. However, the Appellee argues that, because there was a "Stop Here on Red" sign posted at the intersection, a "careful and prudent turn" was prohibited, even under the Appellant's theory of the law. Lastly, the Appellee contends that, based on the facts and evidence presented to the hearing officer, the decision is lawful as there is competent substantial evidence to support his decision.

Additionally, the Appellee argues that the Appellant was afforded the required procedural due process because the Appellant: received a copy of the evidence, scheduled a hearing before the hearing officer, was present for the presentation of the evidence, was given an opportunity to present his defense, and made arguments in support of his position at the hearing. Also, the Appellee contends that if the Appellant wished to continue the hearing in order to obtain counsel, he should have complied with section 316.0083(5)(c), which requires a petitioner to submit a written request to reschedule the hearing at least 5 calendar days before the day of the originally scheduled hearing. The Appellee asserts that the Appellant did not comply with this statute, therefore, the hearing officer's decision to deny his request for a continuance, made in the middle of the hearing, is supported by the law. Thus, there was not a violation of his constitutional right to access to courts.

DISCUSSION

For the reasons explained below, we find that the Appellant was afforded the required due process, the hearing officer's decision was in accordance with the essential requirements of law, and there was competent substantial evidence to support the hearing officer's decision to uphold the Notice of Violation.

1. The Appellant was Afforded the Required Procedural Due Process.

"The 'core' of due process is the right to notice and an opportunity to be heard. *Carillon Cmty. Residential v. Seminole Cnty.*, 45 So. 3d 7, 9 (Fla. 5th DCA 2010). "Due process is a flexible concept" that provides more or less protection depending upon the nature of the proceeding involved. *Id*. It "requires only that the proceeding be 'essentially fair.'" *Id*. In the context of quasi-judicial proceedings, such as the Notice of Violation hearing in this case, the extent of procedural due process afforded to a party "is not as great as that afforded to a party in a full judicial hearing." *Id.* at 10. Indeed, such hearings are not subject to strict rules of evidence and procedure. *Id.* With respect to notice of violation hearings, a petitioner must be permitted to "'present evidence, cross-examine witnesses, and be informed of all the facts upon which the [City] acts.'" *Id*. (citations omitted).

The limited authority of local hearing officers also factors into the extent of due process owed to a petitioner. This is because local hearing officers conducting notice of violation hearings are generally not judges (and may not even necessarily be attorneys) and, therefore, their authority is strictly confined to that explicitly imposed by statute.[4] *See Canney v. Bd. of Pub. Instruction of Alachua Cnty.*, 278 So. 2d 260, 262 (Fla. 1973) (noting that, "[a]s a general rule administrative agencies have no general judicial powers, notwithstanding they may perform some quasi-judicial duties, and the Legislature may not authorize officers or bodies to exercise powers which are essentially judicial in their nature."). Section 316.0083(5)(e), explicitly provides that a local

[4] Section 316.003(35) defines a local hearing officer as:

> The person, designated by a department, county, or municipality that elects to authorize traffic infraction enforcement officers to issue traffic citations under s. 316.0083(1)(a), who is authorized to conduct hearings related to a notice of violation issued pursuant to s. 316.0083. The charter county, noncharter county, or municipality may use its currently appointed code enforcement board or special magistrate to serve as the local hearing officer. The department may enter into an interlocal agreement to use the local hearing officer of a county or municipality.

hearing officer "shall determine whether a violation . . . has occurred," and depending upon that determination, shall either "uphold or dismiss the violation" in the form of a final administrative order.

Notice of violation hearings are preliminary in the sense that they occur prior to issuance of, and in an effort of avoiding, a Uniform Traffic Citation ("UTC"). *See* § 316.0083, Fla. Stat. (2018); Florida House of Representatives Staff Analysis, CS/CS/H.B. 7125 (May 14, 2013). Indeed, the Legislature added such proceedings to the Mark Wandall Traffic Safety Program ("Wandall Act") in 2013 as an elective remedy for those seeking to challenge alleged violations without the risk of incurring the large administrative fees associated with hearings in the county courts following the issuance of a UTC. *See* Motor Vehicles – Rules and Regulations, 2013 Fla. Sess. Law Serv. Ch. 2013-160 (C.S.C.S.H.B. 7125) (West); Florida House of Representatives Staff Analysis, CS/CS/H.B. 7125 (May 14, 2013).

In the instant case, the record demonstrates that the City of Winter Park did not deny the Appellant the opportunity to be heard because a hearing was conducted so that the Appellant could contest the issuance of the violation. The Appellant was sent a Notice of Violation, which listed the options available to him, including an option to contest the violation, which he chose. The Appellant was also given access to evidence of the violation prior to the hearing. At the hearing, the Appellant was allowed to cross-examine the witness, Officer Sam Belfiore, and to make arguments in support of his position. At the conclusion of the hearing, after each side presented its case, the hearing officer found that the Appellant violated sections 316.074(1) and 316.075(1)(c).

The Appellant asserts error by the hearing officer because he denied the Appellant's request for a continuance in the middle of his hearing in order to retain a lawyer. As the Appellant properly concedes, there is no constitutional right to an attorney at a civil administrative hearing. However,

the Appellant had the option of bringing an attorney with him to the hearing. The Appellant had approximately one month prior to the date of the hearing to prepare for the hearing, but elected not to hire counsel during that time.[5] The Appellant argued that he should have been allowed to continue the hearing and the hearing officer's decision to deny that request interfered with his right to access to the courts. If the Appellant wished to continue the hearing, he should have complied with section 316.0083(5)(c), which he did not do. Requesting a continuance simply because the hearing is not going as desired, is not a good faith ground for a continuance. We find that the hearing officer made an appropriate ruling pursuant to the statute and that the Appellant was afforded procedural due process as required under the law. *See Carillon Cmty. Residential*, 45 So. 3d at 9 (holding that absent a deprivation of a constitutionally protected liberty or property interest, there can be no denial of due process) (citation omitted).

2. The Hearing Officer Observed the Essential Requirements of Law and Properly Interpreted the Florida Statutes at Issue.

Application of the correct law is synonymous with observing the essential requirements of law. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). "A ruling constitutes a departure from the essential requirements of law when it amounts to 'a violation of a clearly established principle of law resulting in a miscarriage of justice.'" *Miami-Dade Cnty. v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 199 (Fla. 2003) (quoting *Tedder v. Florida Parole Comm'n*, 842 So. 2d 1022, 1024 (Fla. 1st DCA 2003)).[6]

[5] We note that the record reflects that, at the hearing, the Appellant made arguments grounded in the pertinent statutory sections and to support his defense. He had the time to contact a few governmental agencies to ascertain more information about the violations and red light cameras in the City of Winter Park.

[6] The Florida Supreme Court described the departure from the essential requirements of law as follows:

> Departure from the essential requirements of law means something far beyond legal error. It means an inherent illegality or irregularity, and abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice.

Heggs, 658 So. 2d at 527.

There are several statutory provisions at play in the instant case; thus, we find it prudent to briefly set forth the pertinent provisions. The Florida Uniform Traffic Control Law authorizes counties and municipalities to utilize traffic infraction detectors to enforce drivers' compliance with traffic signals. §§ 316.001, 316.008(8)(a), Fla. Stat. Specifically, the Wandall Act permits traffic infraction enforcement officers, or TIEOs, to issue UTCs to those who violate traffic signals. § 316.0083, Fla. Stat. The statute also permits at least some involvement of local government agents, such as private vendors, in the process: "This paragraph does not prohibit a review of information from a traffic infraction detector by an authorized employee or agent of the department, a county, or a municipality before issuance of the traffic citation by the traffic enforcement officer." § 316.0083(1)(a), Fla. Stat. (2018).

Section 316.0083(1)(a), states in pertinent part:

> For purposes of administering this section, the department, a county, or a municipality may authorize a traffic infraction enforcement officer under s. 316.640 **to issue a traffic citation for a violation of s. 316.074(1) or s. 316.075(1)(c)1**. A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection **where right-hand turns are permissible**. **A notice of violation and a traffic citation may not be issued under this section if the driver of the vehicle came to a complete stop after crossing the stop line and before turning right if permissible at a red light, but failed to stop before crossing over the stop line or other point at which a stop is required.** This paragraph does not prohibit a review of information from a traffic infraction detector by an authorized employee or agent of the department, a county, or a municipality before issuance of the traffic citation by the traffic infraction enforcement officer. This paragraph does not prohibit the department, a county, or a municipality from issuing notification as provided in paragraph (b) to the registered owner of the motor vehicle involved in the violation of s. 316.074(1) or s. 316.075(1)(c) 1.

(emphasis added). Section 316.074(1), states in pertinent part:

> **The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto**, placed in accordance with the provisions of this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

(emphasis added). Section 316.075(1)(c)(1)(a), states in pertinent part:

> Except for automatic warning signal lights installed or to be installed at railroad crossings, whenever traffic, including municipal traffic, is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend, and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:
>
> . . .
>
> (c) Steady red indication.—
>
> 1. **Vehicular traffic facing a steady red signal shall stop before entering the crosswalk** on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown; however:
>
> a. The driver of a vehicle **which is stopped at a clearly marked stop line**, but if none, before entering the crosswalk on the near side of the intersection, or, if none then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience to a steady red signal may make a right turn, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, **except that municipal and county authorities may prohibit any such right turn against a steady red signal at any intersection, which prohibition shall be effective when a sign giving notice thereof is erected in a location visible to traffic approaching the intersection**.

(emphasis added).

The Florida Supreme Court has given courts direction on how to interpret different statutes or wording on the same topic. In *Larimore v. State*, 2 So. 3d 101, 106 (Fla. 2008), the Court identified key principles of statutory construction and indicated that to discern legislative intent, a court must look first to the actual language used in the statute. The Court held the following:

> Moreover, a 'statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts (citations omitted) the doctrine of in pari material is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the legislature's intent (citations omitted). Similarly, "related statutory provisions must be read together to achieve a consistent whole and … ' where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another."

Id.

Section 316.0083 specifically incorporates and adopts section 316.075 as well as section 316.074(1). Even if section 316.0083 provided an exception to those statutes, which it clearly does not by its reference in the first sentence, "careful and prudent" turns are only permitted where right-hand turns are permitted. In this case, there was a sign which states "Stop Here on Red" at the intersection. The Appellant went through the intersection at 16 M.P.H. without coming to a stop contrary to the posted sign (section 316.074) or failing to stop at a red light (section 316.075). We find that the sign "Stop Here on Red" makes a "careful and prudent turn" prohibited even under the Appellant's theory of the law. Reading these two statutory sections together shows that the Legislature still allows a driver to make a right-hand turn at a red light monitored by a camera, as long as they come to a complete stop and then make a turn yielding to pedestrians and other traffic.

Additionally, section 316.075(1)(c)(1), addresses what a driver must do at a red light: the driver of a vehicle which is stopped at a clearly marked stop line, in obedience to the steady red signal may make a right turn, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection unless there is a sign prohibiting it. As evidenced by the record, the Appellant did not stop before entering the crosswalk or before making the right-hand turn at the red light; thus, the hearing officer lawfully found a violation of section 316.075(1)(c). Lastly, the intersection in question contained a traffic control device, specifically, a sign which reads "Stop Here on Red." The Appellant did not adhere to the sign when he did not stop at the red light, but instead proceeded through the intersection at 16 M.P.H. Thus, the hearing officer lawfully found a violation of section 316.074(1). There is no clearly established principle of law that exists which excuses a driver from adhering to sections 316.074 and/or 316.075. The

only conceivable and consistent way to read the laws, is to read them together. The driver must come to a complete stop, and if no sign, yield the right-of-way to pedestrians and other traffic (otherwise known as being "careful and prudent") prior to making a turn. We recognize that the Appellant admitted to stopping three car lengths back, which the hearing officer acknowledged. However, we do not believe that these statutory sections permit a driver to make a complete stop at any length of distance before reaching the crosswalk and a red light. If that was the case, drivers could stop as far back from the crosswalk and a red light as they deemed fit, which would render the laws meaningless. We doubt the Legislature intended that result.

Importantly, as the Appellee asserts, two circuit court appellate decisions have looked at the issue raised by the Appellant, which we find persuasive.[7] Specifically, whether a driver can make a "careful and prudent" turn without abiding by section 316.075.[8] The Eleventh Judicial Circuit in its appellate capacity addressed the argument of whether a hearing officer may find a person liable for failing to stop prior to making a right-hand turn on at least two occasions. In *Marcos Lencovski v. City of Miami Gardens*, the panel found that the hearing officer did not err when they found that the driver must make a complete stop prior to making a "careful and prudent" turn. The panel stated the following:

> "When reading the statutes in their entirety, a right turn at a red light is permissible after the driver makes a complete stop and then proceeds in a reasonable and prudent manner.
>
> . . .

[7] *But see Massani v. City of Miami Gardens*, 2019 WL 2157722 (Fla. 11th Cir. Ct. May 2, 2019) (holding that "[i]n enacting section 316.0083, the Legislature clearly and unambiguously decided that a driver who carefully and prudently makes a right turn at a red light without coming to a complete stop as otherwise required by section 316.075(1)(c)(1), must, nevertheless, not be issued a traffic citation if the alleged failure to stop was solely captured by a red-light camera and by interpreting section 316.0083 as requiring a complete stop prior to making a careful and prudent right turn, the Local Hearing Officer ruled in a manner contrary to the statute's unambiguous language and departed from the essential requirements of the law.").

[8] We note that in both cases from the Eleventh Judicial Circuit, a "Stop Here on Red Sign" was not posted, unlike the instant case.

> In the present case, the record evidence supports the contention that Mr. Lencovski failed to make a complete stop. Based on this evidence and the reading of section 316.0083(1)(a), Florida Statutes in its entirety, the essential requirements of law were observed." 25 Fla. L. Weekly Supp. 934a.

Additionally, a different panel in the Eleventh Judicial Circuit in its appellate capacity made the same ruling in *Lawrence Kopelman v. City of Miami Gardens*, holding that:

> "The Special Master properly interpreted the State law, which requires drivers to make a complete stop before turning at a red light. Thus, the Special Master's determination was based on a complete and thorough reading of the applicable statutes, and the essential requirements of the law were observed. 26 Fla. L. Weekly Supp. 161a.

The Appellant's reliance on the cases he cites is misplaced. *Munoz-Calene* was simply decided on procedural grounds and never addressed the substantive issue of whether section 316.0083, provides an exception to section 316.075. Specifically in *Munoz-Calene*, the hearing officer stated that he must find a violation of a red light if the driver failed to come to complete before turning based on another hearing officer's published opinion (referring to *Deutzman v. City of Miami Beach*, 22 Fla. L. Weekly Supp. 973a (Jan. 14, 2015). The issue raised in *Munoz-Calene* was whether one hearing officer is bound by precedent of another hearing officer. The *Munoz-Calene* panel found that the hearing officer's decision in another circuit is not binding precedent, and the hearing officer in *Munoz-Calene* must make his or her own decision based on their record. The panel specifically stated that it was not making a finding as to the issue of whether or not a driver must stop prior to making a turn at a red light, stating that " [t]he correctness of the holding in *Deutzman* is not before this Court." *Munoz-Calene*, 24 Fla. L. Weekly Supp. 909b, fn 1. Contrary to the Appellant's brief, there is no discussion in *Munoz-Calene* about there being a sign which reads "Stop Here on Red." The topic of such a sign is not discussed in *Munoz-Calene*, and the case does not stand for the principle that the Appellant asserts.[9] Additionally, the Appellant

[9] Counsel states in page 10 of his brief: "The circuit court in *Munoz-Calene* expressly found that the plain language

cites to *City of Oldsmar v. Trinh* for the proposition that sections 316.074(1) and 316.075(1)(c)(1), grant discretion to a city or a city's vendor to propose a speed threshold for a violation and to determine whether a violation is present. We are unclear where the Appellant finds this principle in the case cited and are unable to find any discussion of the Appellant's proposed holding in the case, thus, we disregard this argument. We caution appellate counsel about making blatant misstatements of the law before this Court.

Based on the above, we find that the hearing officer properly interpreted the applicable statutory sections, which require drivers to make a complete stop before turning right at a red light. Thus, the hearing officer's determination was based on a complete and thorough reading of the applicable statutes, and the essential requirements of the law were observed.

3. The Hearing Officer's Decision to Uphold the Notice of Violation was Based on Competent Substantial Evidence.

The competent and substantial evidence standard cannot be used by a reviewing court as a mechanism for exerting covert control over the policy determinations and factual findings of a local agency. *Dusseau*, 794 So. 2d at 1275. Where competent substantial evidence supports the findings and conclusions of the administrative agency and the record discloses neither an abuse of discretion nor a violation of law by the agency, a court should not overturn the agency's determination. *Cohen v. Sch. Bd. of Dade Cnty.*, 450 So. 2d 1238, 1241 (Fla. 3d DCA 1984). Thus, as long as the administrative hearing officer's findings of fact are supported by competent substantial evidence, then this Court must accept them. *Kany v. Fla. Eng'rs Mgmt. Corp.*, 948 So. 2d 948, 953 (Fla. 5th DCA 2007). The hearing officer "'consider[s] all the evidence presented, resolve[s] conflicts, judge[s] credibility of witnesses, draw[s] permissible inferences from the

of 316.0083(1)(a), Fla. Stat. permits turns on red at intersections marked with signs that say '"stop here on red."' This is simply not what the court held in *Munoz-Calene*.

evidence, and reach[es] ultimate findings of fact based on competent, substantial evidence.'" *Id*. (quoting *Heifetz v. Dep't of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)). The circuit court, in reviewing the hearing officer's findings, cannot determine credibility or substitute its judgment for the hearing officer's. *San Roman v. Unemployment Appeals Comm'n*, 711 So. 2d 93, 95 (Fla. 4th DCA 1998). If there is conflicting evidence, then it is the hearing officer that determines the weight of the evidence and whether to reject it. *Id*. "It is not the role of the appellate court to re-weigh the evidence anew." *Young v. Dep't of Educ., Div. of Vocational Rehab.*, 943 So. 2d 901, 902 (Fla. 1st DCA 2006). "When the facts are such as to give an agency the choice between alternatives, it is up to that agency to make the choice, not the circuit court." *Miami-Dade Cnty. v. Reyes*, 772 So. 2d 24, 28 (Fla. 3d DCA 2000).

In the instant case, the hearing officer was provided evidence from Officer Sam Belfiore who issued the violation. The hearing officer was provided images and a video of the Appellant's car traveling through the crosswalk and the steady red signal at 16 M.P.H., without stopping, in violation of the posted sign which states "Stop Here on Red." The Appellant does not contest that he ran the red light, but instead argues that the turn was "careful and prudent." The hearing officer rejected this argument based on the evidence presented and determined that the Appellant failed to make a complete stop before proceeding through the red light. Importantly, the Appellant did not even slow down as he made the right turn, thus, not proceeding in a "careful and prudent manner." We find that the hearing officer's decision was based on competent and substantial evidence, and we see no reason to overturn that decision.

"The issue before [this] Court is not whether the agency's decision is the best decision or even a wise decision, for these are technical and policy-based determinations properly within the purview of the agency." *Dusseau*, 794 So. 2d at 1275. The hearing officer, as the trier of fact, was

responsible for resolving any conflicts in the evidence and was free to weigh and reject any testimony, as long as that decision was based on competent substantial evidence. *Dep't of Highway Safety & Motor Vehicles v. Wiggen*, 152 So. 3d 773, 776 (Fla. 5th DCA 2014). It is not this Court's task to reweigh evidence presented to the hearing officer, evaluate the pros and cons of conflicting evidence, and reach a conclusion different from that of the agency. *Id*. Accordingly, the Final Administrative Order upholding the Notice of Violation is affirmed.

DONE AND ORDERED in Orlando, Orange County, Florida this _____day of July, 2019.

/S/_____
KEITH A. CARSTEN
Presiding Circuit Judge

WHITEHEAD and WILSON, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order has been furnished to **Michael Panella, Esq.**, Attorney for Appellant, **Panella Law Firm**, 1238 East Concord Street, Orlando, Florida 32803; and **Erin L. DeYoung, Esq.**, Attorney for Appellee, **Winter Park Police Department**, 500 North Virginia Avenue, Winter Park, Florida 32789, this _____ day of July, 2019.

/S/_____
Judicial Assistant