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

APPELLATE CASE NO: 2011-CV-94-A-O
Lower Case No.: 2011-TR-27543-A-W

RUTH STANFORD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

Appeal from the County Court
for Orange County, Florida
Caroll S. Barco, Hearing Officer

Phil A. D'Aniello, Esq.
for Appellant

Linda S. Brehmer Lanosa, Esq.,
for Appellee

Before HIGBEE, MURPHY, PERRY, JR., J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellant, Ruth Stanford, appeals the hearing officer's determination that she failed to stop at a red traffic signal captured by a red light camera rendered on November 14, 2011. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). We reverse and remand.

On August 23, 2011, Appellant was issued a citation for $262 for failing to stop at a red traffic signal on July 8, 2011 in violation of sections 316.074(1), 316.075(1)(c)1., and 316.0083. Appellant requested a hearing that was held on November 14, 2011. Appellant's counsel

appeared on her behalf and Awilda McBryde, the traffic infraction enforcement officer that issued the citation testified. The hearing officer found that Appellant committed the traffic infraction and she appeals that finding.

Appellant argues that the determination that she committed the infraction should be reversed because 1) the State did not lay the proper foundation to admit the video; 2) the State failed to establish that she is the driver of the vehicle that committed the violation; 3) there was no admissible evidence that she had custody or control of the vehicle at the time of the violation; 4) there was no evidence in the record to support the hearing officer's finding because the video and affidavit were not admitted into evidence; 5) the State failed to establish that McBryde was properly qualified under the Selective Traffic Enforcement Program (STEP) or a similar program; 6) the hearing officer did not allow counsel to complete the cross-examination of McBryde or present a defense; and 7) section 316.0083 violates her constitutional right to confrontation, equal protection, and to be presumed innocent.

Appellee argues that the disposition should be affirmed because 1) the video and images attached to or referenced in the traffic citation are admissible, self-authenticating, and raises a rebuttable presumption that the vehicle in the image was used in violation of the statue; 2) the State does not need to prove the identity of the driver and is only required to prove that the vehicle ran a red light and the identity of the registered owner of the vehicle or the identity of the person named in an affidavit who had care, custody, or control of the vehicle; 3) the State proved the elements of the infraction under section 316.0083; 4) the State does not have to prove that McBryde is qualified under STEP or a similar program; 5) Appellant had an opportunity to cross-exam McBryde, view evidence and present arguments; and 6) section 316.0083 does not violate Appellant's constitutional rights.

The sufficiency of evidence is an issue of law subject to *de novo* standard of review. *Santiago v. State,* 874 So. 2d 617, 624 (Fla. 5th DCA 2004). An appellate court must determine whether there was competent substantial evidence to support the judgment. *Tibbs v. State,* 397 So. 2d 1120, 1123 (Fla. 1981), *aff'd,* 457 U.S. 31 (1982).

Words in statutes must be afforded their plain meaning. *See Comerica Bank & Trust, F.S.B. v. SDI Operating Partners, L.P.,* 673 So. 2d 163, 167 (Fla. 4th DCA 1996) ("Where the language of a statute is clear and unambiguous, the statute must be given its plain and ordinary meaning."); *Zuckerman v. Alter,* 615 So. 2d 661, 663 (Fla. 1993) ("Words of common usage, when employed in a statute, should be construed in their plain and ordinary sense."); *A.R. Douglass, Inc. v. McRainey,* 137 So. 157, 159 (Fla. 1931) ("The intention and meaning of the Legislature must primarily be determined from the language of the statute itself and not from conjectures aliunde.").

Section 316.0083(1)(e) of the Mark Wandall Traffic Safety Program Act states:

> The photographic or electronic images or streaming video attached to or referenced in the traffic citation is **evidence** that a violation of s. 316.074(1) or s. 316.075(1)(c)1. when the driver failed to stop at a traffic signal has occurred and is **admissible** in any proceeding to enforce this section and raises a **rebuttable presumption** that the motor vehicle named in the report or shown in the photographic or electronic images or streaming video evidence was used in violation of s. 316.074(1) or s. 316.075(1)(c)1. when the driver failed to stop at a traffic signal.

§ 316.0083(1)(e), Fla. Stat. (2011) (Emphasis added).

Therefore, from a plain reading of the statute, the video and photograph are admissible without further authentication, and it was not necessary for the State to lay a proper foundation to admit the video.

In addition, section 316.0083(1)(d) states:

> 1. The **owner** of the motor vehicle involved in the violation is **responsible and liable for paying the uniform traffic citation** issued for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when the driver failed to stop at a traffic signal, unless the owner can establish that:
> …….
> c. **The motor vehicle was, at the time of the violation, in the care, custody, or control of another person;** or
> ……
> 3. Upon receipt of an affidavit, **the person designated as having care, custody, and control of the motor vehicle at the time of the violation may be issued a traffic citation** for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when the driver failed to stop at a traffic signal. **The affidavit is admissible in a proceeding pursuant to this section** for the purpose of providing proof that the person identified in the affidavit was in actual care, custody, or control of the motor vehicle.

§ 316.0083(1)(d), Fla. Stat. (Emphasis added).

Contrary to Appellant's argument, the Act does not require the State to prove the identity of the driver. Instead, the State must prove that the vehicle in the photograph or video failed to stop at a red light and the identity of the owner of the vehicle or the identity of a person named in the affidavit, which is admissible at a proceeding pursuant to the Act.

McBryde, testified that the vehicle depicted in the video viewed at the hearing by the hearing officer and Appellant's counsel, was behind the white stop bar after the light turns red and then proceeds through the intersection with no brake lights making a left turn. This testimony was not contested. In addition, a uniform traffic citation issued to Appellant was filed in the lower court case. The citation includes a photograph of the vehicle that committed the violation and the license number. McBryde also testified that a notice of violation was issued to Enterprise Rent-A-Car and Enterprise provided the sheriff's office with an affidavit stating the Appellant leased the vehicle at the time the violation occurred. McBryde attempted to submit the affidavit at the hearing, however counsel objected to the admission of the document as hearsay.

The hearing officer overruled the objection and determined that the affidavit was admissible. Based on the plain meaning of the language of section 316.0083(d)3., the hearing officer correctly ruled that the affidavit was admissible. However, the affidavit was not admitted into evidence, and therefore it is not part of the record on appeal.

It is unclear from the record whether the hearing officer reviewed the affidavit and therefore had evidence before him that Appellant was the person named in the affidavit as having care, custody, or control of the vehicle at the time of the violation. Therefore, we cannot determine whether there was competent substantial evidence before the hearing officer to support the finding that Appellant violated sections 316.074(1), 316.075(1)(c)1., and 316.0083. Accordingly, the determination that Appellant committed the infraction must be reversed and this matter is remanded for a new hearing. In light of our ruling, we find it is unnecessary to address Appellant's other arguments.[1]

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the determination that Appellant committed the infraction is **REVERSED** and this matter is **REMANDED** for a new hearing.

REVERSED and **REMANDED.**

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 29th day of April, 2014.

/S/
HEATHER L. HIGBEE
Presiding Circuit Judge

MURPHY and PERRY, JR., J.J., concur.

[1] We note, however, that this Court determined that whether the ticket issuer was qualified to issue the ticket is not an element of the offense. *State v. Medina*, 21 Fla. L. Weekly Supp. (Fla. 9th Cir. Ct. Sept. 23, 2013).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished on this 30 th day of April, 2014 to: **Phil A. D'Aniello, Esq.**, Fassett, Anthony & Taylor, P.A., 1325 W. Colonial Drive, Orlando, Florida 32804; **Linda S. Brehmer Lanosa, Assistant County Attorney,** Orange County Attorney's Office-Litigation Section, 201 S. Rosalind Avenue, Third Floor, P.O. Box 1393, Orlando, Florida 32802-1393.

/S/
Judicial Assistant