

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

ALICIA L. WELLS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO.: 2012-CV-000042-A-O

Lower Case No.: 2012-TR-009304-A-E

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

Alicia L. Wells, Pro Se, Appellant.

Clifford B. Shepard, Esquire,
Dani S. Theobald, Esquire, and
Kalanit Oded, Esquire, for Appellee.

Before J. KEST, MUNYON, and DAVIS, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING IN PART AND REVERSING IN PART LOWER COURT

Appellant, Alicia L. Wells (“Wells”), timely files this appeal of the lower court’s “Determination of Infraction” entered on June 13, 2012. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Summary of Facts and Procedural History

On March 24, 2012, Wells was cited for making a left turn on a steady red light at the intersection of eastbound Maitland Boulevard and the Interstate-4 eastbound ramp. Wells challenged the citation and a hearing was held on June 13, 2012 before Hearing Officer Carroll Barco. Upon conclusion of the hearing, Wells was found guilty of the infraction with adjudication withheld and she was assessed fines and court costs.

Arguments on Appeal

Wells argues that the lower court abused its discretion by: 1) allowing documents into evidence without first being qualified and 2) prohibiting her witness to testify in lieu of an affidavit at the hearing thereby denying her right to a fair hearing. Conversely, the State via the City of Maitland argues: 1) Wells failed to preserve issues for appeal; 2) Wells failed to file the requisite affidavit; 3) The documentary evidence was properly admitted; and 4) The evidence presented by the State sufficiently establishes the vehicle and tag.

Standard of Review

The standard of review of a trial court's rulings on the admissibility of evidence is abuse of discretion. *Carpenter v. State*, 785 So. 2d 1182, 1201 (Fla. 2001); *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980). Lastly, the Hearing Officer's findings of fact and conclusions of law come to the appellate court with a presumption of correctness and will not be disturbed unless they are clearly erroneous. *Wright v. Wright*, 431 So. 2d 177, 178 (Fla. 5th DCA 1983).

Analysis

Wells' first argument: Wells argues that the documents pertaining to the companies that the Maitland Police Department contracts with for the red light camera program, CMA

Consulting Services and Gatso USA, Inc. were improperly admitted into evidence because there was no predicate laid by law enforcement to show that these documents were relevant or material to the hearing.

This Court finds that from review of the hearing transcript and court minutes there is no mention of these specific documents. The only reference to any documents pertains to the photographs and video addressed by the law enforcement officer in his testimony at the hearing as follows:

This vehicle was photographed and video recorded by a red light camera system. I verified the tag, matched the vehicle and notice of violation was issued to registered owner.

The picture right here shows the vehicle before the stop bar with the steady red light. The second picture shows the vehicle making a left hand turn with a steady red light. There's the tag that comes back to the registered owner and the video right there, Your Honor, of the vehicle making a left hand turn on a steady red light.

Also, the only document in the court record is the Florida Uniform Traffic Citation that was issued by the Maitland Police Department, signed by Officer Michael Gallmeyer, and includes photographs of the intersection where the incident occurred and of the vehicle's tag. Accordingly, from review of the transcript, Wells did not object to the admission of any documents into evidence at the hearing; thus, even if such documents were admitted into evidence, Wells failed to preserve this issue for appeal. Second, Hearing Officer Barco as the trier of fact was in the best position to weigh and determine the relevance, credibility, and admission of said documents and because the record lacks any mention of these documents, appellate review of this issue cannot go further to determine whether the lower court abused its discretion by admitting said documents into evidence if that occurred. Lastly, it is reasonable to

find that such documents were relevant because they address the procedures and contractual authority for the red light camera program and the ultimate issuance of the citation.

Wells' second argument: Wells argues that the lower court abused its discretion by prohibiting her witness to testify in lieu of an affidavit at the hearing thereby denying her right to a fair hearing. After the law enforcement officer testified about the violation, the colloquy ensued and the hearing concluded as follows:

Hearing Officer Barco: All right, ma'am. Do you have any questions of the officer?

Wells: I don't have any questions for him.

Hearing Officer Barco: What do you want to tell me?

Wells: I travel in business quite frequently, and I know that my father, which I brought him today here, has access to my car and even in that time frame –

Hearing Officer Barco: Did you file an affidavit that he was driving the car?

Wells: No sir, he just had - -

Hearing Officer Barco: Well, I mean, the statute provides that if you were not driving the car, you file an affidavit, ma'am, naming the person who was driving the car. Otherwise the car owner is responsible. All right. Based on the testimony of the officer, I find you guilty of the offense, fine is two sixty-two, court cost thirty-three, I give you sixty days and withhold adjudication for you, ma'am.

Wells: Thank you.

Hearing Officer Barco: Thank you.

Section 316.0083(1)(d)2a.(2012), Florida Statutes, requires:

In order to establish such facts, the owner of the motor vehicle shall, within 30 days after the date of issuance of the traffic citation, furnish to the appropriate governmental entity an affidavit setting forth detailed information supporting an exemption as provided in this paragraph.

An affidavit supporting an exemption under sub-subparagraph 1.c. must include the name, address, date of birth, and, if known, the driver's license number of the person who leased, rented, or otherwise had care, custody, or control of the motor

vehicle at the time of the alleged violation. If the vehicle was stolen at the time of the alleged offense, the affidavit must include the police report indicating that the vehicle was stolen.

This Court finds that the statute allows for the use of an affidavit in lieu of live testimony. However, the statute does not appear to exclude a live presentation of the evidence. Therefore, the Hearing Officer erred by not allowing the witness to testify in this case. Thus, this error deprived Wells of due process and warrants reversal.

Accordingly, is hereby **ORDERED AND ADJUDGED** that the lower court's "Determination of Infraction" entered against Appellant, Alicia L. Wells, on June 13, 2012 is **AFFIRMED** as to Wells' first argument and **REVERSED** as to Wells' second argument and **REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 1st day of May, 2014.

/S/

JOHN MARSHALL KEST
Presiding Circuit Judge

MUNYON and DAVIS, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was furnished to: **Alicia L. Wells**, P.O. Box 1334, Sanford, Florida 32772 and **Clifford B. Shepard, Esquire, Dani S. Theobald, Esquire, and Kalanit Oded, Esquire**, Shepard, Smith & Cassady, P.A., 2300 Maitland Center Parkway, Suite 100, Maitland, Florida 32751 on this 1st day of May, 2014.

/S/

Judicial Assistant