

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

STATE OF FLORIDA,

CASE NO.: 2012-CV-61-A-O
LOWER COURT CASE NO. 2012-TR-10026-A-E

Appellant,

v.

PERRY ERIC TOLOS,

Appellee.

Appeal from the County Court,
in and for Orange County, Florida,
Judge Maureen A. Bell.

Linda Sue Brehmer Lanosa, Assistant County Attorney,
for Appellant.

Eric J. Trabin, Esquire,
for Appellee.

Before HIGBEE, MURPHY, and PERRY, J.J.

PER CURIAM.

**FINAL ORDER AND OPINION REVERSING AND REMANDING TRIAL COURT'S
DISMISSAL OF RED LIGHT CAMERA CITATION**

Appellant, State of Florida (“the State”), brought an action against Perry Eric Tolos (“Tolos”) for running a red light manned by red light cameras. The State filed the instant appeal of the trial court’s dismissal of the citation, rendered July 27, 2012. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A).

On May 16, 2012, a Uniform Traffic Citation was issued to Tolos for allegedly running a red light, pursuant to sections 316.0083, 316.074(1), and 316.075(1)(c) Florida Statutes (2012). Tolos entered his plea of not guilty and filed a notice of appearance on June 4, 2012. The State filed its exhibit list and exhibits on July 23, 2012, which included a video and photographs of the incident, notice of violation, a DMV report, along with the red light camera citation. On July 27, 2012, the trial court held a hearing, where the State offered a certified copy of the DMV report. The State also argued that pursuant to section 316.0083(1)(e), photographs or electronic images of the video were automatically admissible in the proceedings; alternatively, the State argued, even if the video, photographs, and report were not automatically admissible without extrinsic evidence, the State had testimony ready to show that they were all the true and correct copies that were referenced in the red light camera citation. Ultimately, the trial court determined that the photographs and video were only admissible upon proper authentication. The trial court further dismissed Tolos's citation, as it found that the State failed to prove the identity of the driver who went through the red light, along with the fact that the driver would receive a fixed four points on his or her driving record as a result of the citation.

Because this case concerns a matter of statutory interpretation and construction, this Court reviews the matter below *de novo*. *Anderson v. State*, 87 So. 3d 774, 777 (Fla. 2012); *see also Sproule v. State*, 927 So. 2d 46, 47 (Fla. 4th DCA 2006).

On appeal, the State makes three arguments: (1) that the trial court erred by basing its conclusion on the faulty premise that points are imposed as a result of a violation of the steady red light statute under the act; (2) that the trial court erred when it found that the State needed to prove the identity of the driver; and (3) the trial court erred when it determined that relevant photographs and videos were not self-authenticating and needed proper foundation before they

could be admitted. Conversely, Tolos argues that the trial court correctly dismissed the citation. Additionally, Tolos contends that it would violate the principles of double jeopardy if this Court were to reverse and that the State failed to properly preserve its objections, thereby making it unable to raise its arguments on appeal.

As a preliminary matter, Tolos's arguments that this appeal is barred because of the principles of double jeopardy and because the State failed to preserve its objections for appeal are without merit. Double jeopardy does not apply to this case, as this is a noncriminal traffic infraction. *See Davis v. State*, 928 So. 2d 442, 447-448 (Fla. 5th DCA 2006) (indicating that "[d]ouble jeopardy under both the Florida and United States Constitutions apply to criminal proceedings, not to civil proceedings"). With respect to the State's alleged failure to preserve its objections, the State is essentially alleging a claim of fundamental error, which cannot be waived. *See Sanford v. Rubin*, 237 So. 2d 134, 137 (Fla. 1970) (noting that "[f]undamental error, which can be considered on appeal without objection in the lower court, is error which goes to the foundation of the case or goes to the merits of the cause of action").

The Mark Wandall Traffic Safety Program is codified under section 316.0083, Florida Statutes (2012); this law allows uniform traffic citations to be issued to the registered owner of a vehicle when that vehicle fails to stop at a steady red light that is manned by a red light camera. Specifically, section 316.0083(1)(d)(1) indicates that "[t]he 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 one of the enumerated exceptions. This statute further does not designate that points shall be added to the registered owner's driver's license. Finally, the statute does not require that the State prove the identity of the driver; rather, the statute creates a

rebuttable presumption that the vehicle named in the report or shown in photograph or video is was used in violation of 316.074(1) and 316.075(1)(c)1.” Fla. Stat. § 316.0083(1)(e) (2012).

Here, the trial court, when it was issuing its dismissal of the citation, stated:

To prove that a person went through a red light, **one of the key things is proving the identity of a person. They also get a fixed four points on their driving record, so it significantly changes from a notice of violation to a traffic infraction.**

And on the basis of all this, this gentleman has now been cited with going through a red light, and he cannot be shown to be the driver, so without even—I gave you all of my dilemmas on the first part of the statute, but now on the second part of the statute, I can’t find beyond and to the exclusion of every reasonable doubt that he was the driver. I don’t know who was the driver. And I also know that even if I could look at all the videos, that it would never show the driver or anybody else who’s in the case. Therefore, I cannot adjudicate you guilty of running a red light.

(emphasis added). As indicated above, the statute does not require the State to prove the identity of the driver; rather, it merely indicates that the registered owner of the vehicle shall be responsible for paying the citation. Additionally, because identity need not be proven, there is nothing in the statute that allows points to be charged against the registered owner’s driver’s license. Because it appears from the record that the trial court misconstrued the statute at issue, reversal is warranted.

As to the issue of the admissibility of the State’s evidence, section 316.0083(1)(e) states that:

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 show 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.

(emphasis added). The 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) (indicating that “[w]hen 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) (noting that “[w]ords 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) (stating that “[t]he intention and meaning of the Legislature must primarily be determined from the language of the statute itself and not from conjectures[, and furthermore w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning”). Because the statute plainly states that photographic or electronic images or streaming video are admissible and evidence that a violation of section 316.074(1) or section 316.075(1)(c)(1) occurred, this evidence is self-authenticating, and it was in error to require the State to provide further information to admit the video and photograph of the violation.

Accordingly, it is hereby **ORDERED AND ADJUDGED** the trial court’s dismissal of Tolos’s red light camera citation is **REVERSED and REMANDED** to the trial court for further proceedings.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 14th day of April, 2014.

/S/ _____
HEATHER L. HIGBEE
Presiding Circuit Judge

MURPHY and PERRY, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to **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; and **Eric J. Trabin, Esq.**, The Trabin Law Firm, P.L., 7200 Aloma Avenue, Suite E-5, Winter Park, Florida 32792, on the 15th day of April, 2014.

/S/ _____

Judicial Assistant