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

STATE OF FLORIDA,

Appellant,

versus

ERNEST MEDINA,

Appellee.
_____/

CASE NO.: 2012-CV-0076-A-O
Lower Court Case No.: 2012-TR-4923-A-E

DATE: September 23, 2013

Appeal from the County Court,
for Orange County,
W. Michael Miller, Judge.

Linda S. Brehmer Lanosa, Esquire,
for Appellant.

Lisa M. Figueroa, Esquire,
for Appellee.

Before Higbee, Murphy and Perry, JJ.

PER CURIAM.

ORDER AFFIRMING FINAL JUDGMENT OF DISMISSAL

The issue in this red light camera violation case concerns whether the State established that the traffic infraction enforcement officer ("TEIO") who issued the uniform traffic citation ("UTC") was statutorily qualified to do so. The county court concluded that the State had not shouldered it burden of proof on this point and granted defendant's motion to dismiss the case.

We dispense with oral argument and affirm.

A UTC was issued on March 7, 2012, to Ernest Medina ("Medina" or "Appellee"), the registered owner of a 2000 Infiniti, for allegedly running a red light on January 12, 2012, at 11:47 a.m. This was done based upon a photograph of what the State says is the Infinite traveling through the signal. The statute which authorizes public entities to attempt to capture red light violations on automatic cameras is known as the Mark Wendall Traffic Safety Act ("the Act") and codified at section 318.0083 of Florida Statutes. Medina denied the infraction and requested a hearing. On September 28, 2012, the hearing was held.

Section 316.640, Florida Statutes, provides in relevant part:

> (5) (a) Any sheriff's department or police department of a municipality may employ, as a traffic infraction enforcement officer, **any individual who successfully completes instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program** as approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, **or through a similar program**, but who does not necessarily otherwise meet the uniform minimum standards established by the Criminal Justice Standards and Training Commission for law enforcement officers or auxiliary law enforcement officers under s. 943.13. Any such traffic infraction enforcement officer who observes the commission of a traffic infraction or, in the case of a parking infraction, who observes an illegally parked vehicle may issue a traffic citation for the infraction when, based upon personal investigation, he or she has reasonable and probable grounds to believe that an offense has been committed which constitutes a noncriminal traffic infraction as defined in s. 318.14. In addition, any such traffic infraction enforcement officer may issue a traffic citation under s. 316.0083. For purposes of enforcing s. 316.0083, any sheriff's department or police department of a municipality may designate employees as traffic infraction enforcement officers. The traffic infraction enforcement officers must be physically located in the county of the respective sheriff's or police department.

§ 316.640 (5)(a), Fla. Stat. (2013) (emphasis added).

The Selective Traffic Enforcement Program referenced in the statute is also known as the "STEP program."

At the hearing, the County Court received what the State offered as evidence of "a certified copy of the STEP program itself." (T165:19-20).

This exhibit indicates that the effective date of the STEP program is June 1, 2001, almost 10 years prior to the Act. The STEP Program, according to this exhibit, consists of five substantive course topics, excluding administration and orientation:

1) Pre-investigation-recommended 18 hours

2) Investigation- 24 hours

3) Post-investigation – 12 hours

4) Completing crash reports – 16 hours

5) Court testimony and demeanor – 8 hours.

There is no "block," "module" or topic referred to as "traffic enforcement procedures" as specifically required in section 316.640 (5) (a).

At the hearing below, the State called Traffic Infraction Enforcement Officer Awilda McBryde, an Orange County employee, who issued the UTC to defendant, Medina. After voir dire, Medina argued that the State had not established how McBryde had completed training through a program similar to STEP as required by section 316.640 (5)(a) of Florida Statutes.

The County Court sustained Medina's objection explaining that:

> She has been through a lot of courses, but it's not even in the syllabus that you-all have given me. So I just can't determine – I don't know what she has taken. I don't know what FDLE would teach in that that block of training referenced in the statute as traffic enforcement procedures. I can imagine what court presentation might entail, but as to what traffic enforcement procedures entails, I don't know because those terms aren't even used here on page 4 of the syllabus.

(T180:14-23).

Having excluded McBryde's testimony, the County Court dismissed Medina's citation. The State now appeals.

STANDARD OF REVIEW

The State urges us to review the decision below de novo because "[t]his case concerns a matter of statutory interpretation and construction which is a question of law . . . ." (App. Br. 7). We agree. *See Chiropractic One, Inc. v. State Farm Mut. Auto. Ins. Co.*, 92 So.3d 871, 873 (Fla. 5th DCA 2012). To the extent any factual determinations were involved, they were based upon documents in the record about which there is no dispute.

Statutory Interpretation

Because legislative intent is determined primarily from the text of the statute, we begin our analysis of section 316.640 (5) (a), as we do in any case of statutory interpretation, with the "actual language" used by the Legislature. *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 198 (Fla. 2007); *Borden v. E.-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006). If it is clear and unambiguous, we proceed no further and apply the provisions as written. *See Foley v. State,* 50 So. 2d 179, 184 (Fla. 1951). *See also Quarantello v. Leroy*, 977 So. 2d 648, 651 (Fla. 5th DCA 2008).

The language applicable here is clear and unambiguous as is the issue we confront. The statute required, among other things, that McBryde possess instruction in traffic enforcement procedures and that the instruction be similar to that offered through STEP

The State complains that by requiring it to demonstrate that McBryde had completed the training in traffic enforcement procedures, as required by section 316.640 (5)(a), the judge below departed from the "plain meaning" of the statute. We disagree. To the contrary, the

county court judge adhered to the plain language chosen by the legislature. Section 316.640 (5), according to the State, provides that a TIEO who does not complete the STEP program must have training in traffic enforcement procedures (and court presentation) "similar to" STEP. The county judge required this. Here, the State has not demonstrated what instruction in traffic enforcement procedures is taught through STEP. Of necessity, then, it cannot show what is "similar" to what it never proved in the first place.

The State maintains that "[o]nce Officer McBryde testified that she was employed by the Sheriff as a certified TIEO, the State met its burden." (App. Br. 19). There is no authority cited for this assertion and we reject it. In addition to such testimony, the State must prove that the TIEO has completed the STEP program or a similar one. The issue is not certification but rather the actual training received. As the State would have it, anyone may be employed as a certified TIEO and possess statutory authority to issue a traffic citation under section 316.0083. That position is perhaps suggested by *State v. Vanderpool*, No. 8751 LAH, 2011 WL 2742541 (Fla. Miami-Dade Cty. Ct. July 6, 2011), which the State quotes in its brief as stating that "as long as the person issuing the UTC testifies that they [sic] are qualified by the Department of Law Enforcement as a certified traffic enforcement officer no proof of their actual training is required." *State v. Vanderpool*, No. 8751 LAH, 2011 WL 2742541 (Fla. Miami-Dade Cty. Ct. July 6, 2011). To the extent this passage could be read to mean that McBryde's qualifications to write a uniform traffic citation for a red light camera violation can be established merely by her own say-so, we reject it. A reading of *Vanderpool*, however, convinces us that County Judge Leifman did not mean such a thing and the State has merely plucked what it deems favorable language out of the opinion as well as out of context. *Vanderpool* was a "vehicle" used by the county court in Miami-Dade to rule on issues which had arisen in "numerous cases." One such

issue concerned the training of the officers issuing the UTC. In all the cases related to the *Vanderpool* decision, the UTCs had been issued by police officers. The case simply did not involve TIEOs or the necessity that they receive training in traffic enforcement procedures and court presentation training described in § 316.640(5)(a) or the sufficiency of such training. Any statement the *Vanderpool* court may have made in this regard is not correct to the extent it may be read as relieving the State of any burden to show a TIEO who issued a UTC was statutorily qualified to do so. The difference between *Vanderpool* and the instant case is simply that here the defendant has lodged a credible objection to the qualification of the TIEO who issued the UTC.

We have reviewed the testimony of Ms. McBryde as well as the exhibit entered during her testimony and are in accord with the county court judge that the State failed to demonstrate that she has completed the requisite course of study through a program similar to STEP. The trial court judge was troubled by the absence of any evidence concerning "traffic enforcement procedures," if any, in which McBryde had been trained. It appeared that McBryde did complete a single eight-hour course in traffic infraction enforcement training through the Orlando Police Department. The State, though, fails to demonstrate how this satisfies the requirements of section 316.640 (5)(a). The State still fails to point to any specific "traffic enforcement procedures," as the words of the statute state, but relies, cavalierly, we think, on the assertion that the judge below failed to accord the statute its "plain meaning." At the hearing, however, the State said that traffic infraction enforcement procedures "may not even be part of the STEP program. That's part of the problem." (Hearing 9/28/12; T22: 9 – 11). If the State has a "problem" establishing the qualification of its TIEO to issue citations for red light camera infractions, we will not permit it to redound to the detriment of Medina. If the statutory

requirement of instruction in traffic enforcement procedures is a "problem," it is one for the legislature, not this Court, to address.

That the State encountered a "problem" in meeting its burden of qualifying McBryde is apparent. Not all proof "problems" under this statute can be overcome merely by emphasizing its civil nature, relying on presumptions it affords the State or seeking refuge in the "informal process" of the Act. The legislation is favorable enough to the State that it cannot expect this Court to re-write the statute to be even more so. One of the cardinal rules of statutory interpretation is "the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of the statute meaningless." *State v. Goode*, 830 So.2d 817, 824 (Fla. 2002). We find apt the County Court's observation that, as the State would have it, "anyone, whether they had training or not, could write the citation . . . ." (T24: 8-9). We decline, therefore, the State's invitation to read out of section 316.640, its mandate that TEIOs "successfully complete[ ] instruction in traffic enforcement procedures and court presentation." § 316.640 (5)(a), Fla. Stat. (2012).[1]

The State properly argued to the trial court that whether or not the ticket issuer was qualified to issue the ticket was not an element of the offense. However, the Defense had raised the qualifications of the ticket issuer as a defense and the county court treated that defense as a motion to dismiss and the parties fully litigated that issue without objection. Therefore, while the trial court erred in excluding the ticket issuer's testimony based simply upon the failure of the State to establish her qualifications, the trial court properly found that the ticket issuer was not qualified to issue the ticket and therefore properly dismissed the ticket albeit for the wrong

[1] The State attempts to paper-over its "problem" with demonstrating McBryde met the qualifications for a TIEO by claiming that such qualifications are not an element of the offense and, presumably, do not have to be proven. (See T24: 16-17; see State's Br. 12.) This was addressed above in connection with the Court's discussion of *Vanderpool*. The elements of the offense are not the issue but rather whether the issuing TIEO met statutory qualifications and thus had authority to issue a notice of infraction

reason.

The State has raised other arguments on appeal but in light of our disposition of this matter we need not address them.

WHEREFORE, the judgment of the County Court be and hereby is AFFIRMED.

CERTIFICATE OF SERVICE

I certify that on this date I served this order via United States Mail upon: 1) Linda S. Brehmer Lanosa, Esquire, Assistant County Counsel, ORANGE COUNTY ATTORNEY'S OFFICE LITIGATION SECTION, 201 South Rosalind Avenue, Third Floor, P.O. Box 1393, Orlando, Florida 32802-1393; Linda.BrehmerLanosa@ocfl.net.; 2) Lisa M. Figueroa, Esquire, THE FIGUEROA LAW FIRM, 5626 Curry Ford Road, Suite 140, Orlando, Florida 32822 lisa@figuerolawlawfirm.com on the 16th day of October, 2013.

/S/_____
Judicial Assistant