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

STATE OF FLORIDA,

Appellant,

v.

LAUREN KELLY BREWER, et al.,

Appellees.
_____/

APPELLATE CASE NO: 2012-CV-87-A-O
Lower Case No.: 2012-TR-96811-A-O
2012-TR-98475-A-O
2012-TR-116331-A-O
2012-TR-95215-A-O
2012-TR-96814-A-O
2012-TR-105686-A-O
2012-TR-97362-A-O
2012-TR-110294-A-O
2012-TR-113626-A-O

Appeal from the County Court
for Orange County, Florida
Sherea-Ann Ferrer, Hearing Officer

Linda S. Brehmer Lanosa, Esq.,
for Appellant.

Jason T. Forman, Esq.
for Appellees.

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

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellant, Orange County, appeals the hearing officer's orders rendered on November 29, 2012 dismissing the citations for failing stop at a red traffic signal captured by a camera. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). We reverse and remand.

Appellees were issued citations for $262 for failing to stop at a red traffic signal in violation of sections 316.074(1), 316.075(1)(c)1., and 316.0083. Appellees requested a hearing that was held on November 29, 2012. Appellees moved to dismiss the citations arguing that the Traffic Infraction Enforcement Officer (TIEO) who issued the citations, Officer McBryde, was

found to be unqualified by a judge in another red-light camera case, *State v. Clark*, 20 Fla L. Weekly Supp. 74b (Fla. Orange Cty Ct. Sept. 11, 2012). Officer Alfred, the officer who trained McBryde, was not available to testify and the County's request for a continuance for his testimony was denied because it did not file a motion for continuance. However, the County stated that it was prepared to go forward with the hearing without Alfred to demonstrate that McBryde's training was similar to the Selective Traffic Enforcement Program (STEP) through new testimony and exhibits that were not available to the judge in *Clark*. The County stated the new evidence not presented in *Clark* included a certified copy of STEP and the testimony of a traffic engineer who was involved in the creation of the new STEP that was approved after the citations in these cases were issued. The hearing officer dismissed the citations without allowing the County to present evidence based on *Clark* and determined that the County could not prove McBryde's training was comparable to STEP because Alfred, who trained McBryde, was not present to testify.

The County argues that 1) the hearing officer violated its due process rights by dismissing the citations without allowing it to present testimony and evidence; 2) the training received by a TIEO is not an element of the infraction, but instead goes to the weight and credibility of the TIEO's testimony; and 3) section 316.640(5)(a) does not require the TIEO to complete the entire STEP but only instruction on traffic enforcement procedures and court presentation through STEP or a similar program.

Appellees argue that the lower court properly dismissed the citations because McBryde was determined to be unqualified to testify in court for failing to meet the requirement of STEP or an equivalent program and the County did not argue that McBryde received supplemental training. Appellees concede that the TIEO is only required to complete instruction on traffic

enforcement procedures and court presentation in STEP or a similar program, but claims that proof of the TIEO's completion of the training is a condition precedent to prosecution that must be established by the County. Appellees also argue that the County failed to proffer the traffic engineer's testimony and therefore, any error in not allowing the testimony was not preserved for review.

This case concerns a matter of statutory interpretation and construction, and therefore is subject to *de novo* review. *Anderson v. State*, 87 So. 3d 774, 777 (Fla. 2012); *see also Sproule v. State*, 927 So. 2d 46, 47 (Fla. 4th DCA 2006).

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)(a) of the Mark Wandall Traffic Safety Program Act states, "[f]or 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**. § 316.0083(1)(a), Fla. Stat. (2012) (Emphasis added).

Section 316.640(5)(a) states:

> 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.

§ 316.640(5)(a), Fla. Stat. (2012) (Emphasis added).

Therefore, from a plain reading of the statutes, only an individual who has completed the instruction in traffic enforcement procedures or court presentation through STEP or a similar program is authorized to issue a traffic citation under section 316.0083. The County correctly argues that whether the TIEO was qualified to issue the ticket is not an element of the offense. However, Appellees raised the TIEO's lack of qualification as a defense and the County attempted to refute this defense. The County correctly argues that *Clark* states that the citations were dismissed because there was a lack of evidence about the contents of STEP and the contents of the similar training program; and therefore, the court could not determine whether the training McBryde received was similar to STEP. *Clark*, 20 Fla L. Weekly Supp. 74b. The County attempted to demonstrate that McBryde was qualified to issue the citations through the testimony of McBryde, the traffic engineer, and the exhibit of a certified copy of STEP. However, the hearing officer did not allow the County to present any evidence and instead dismissed the citations based on the findings in *Clark* and because Officer Alfred was not present to testify.

Procedural due process requires that a party have notice and an opportunity to be heard before entry of a final judgment. *Cavalier v. Ignas*, 290 So. 2d 20, 22 (Fla. 1974); *Dep't of Transp. v. Baird*, 992 So. 2d 378, 381 (Fla. 5th DCA 2008). The County was not permitted to present its evidence to disprove Appellees' claim that McBryde was not qualified to issue the citations although it informed the hearing officer that it was prepared to go forward with the hearing and had additional evidence not presented in *Clark*. The hearing officer did not exclude the County's evidence as irrelevant as Appellees argue. Instead, the hearing officer did not allow the County to present any evidence before dismissing the citations. Therefore, the County was denied due process. However, we find no error in the hearing officer's denial of the County's request for continuance for the testimony of Officer Alfred who was unavailable on the date of the hearing.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the hearing officer's decision dismissing the citations is **REVERSED** and this matter is **REMANDED** for further proceedings.

REVERSED and **REMANDED.**

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 9th day of July, 2014.

/S/
HEATHER L. HIGBEE
Presiding Circuit Judge

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished on this 9th day of July, 2014 to: **Jason T. Forman, Esq.**, 633 South Andrews Avenue, Ste. 201, Fort Lauderdale, Florida 33301; **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