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

STATE OF FLORIDA,

Appellant,

v.

WILLIAM CLARK,
NICOLE RIVERA, and
JOSE MANUEL TORRES ORTIZ,

Appellees.

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APPELLATE CASE NO.: 2012-CV-89-A-O
Lower Case No.: 2012-TR-29314-A-O
2012-TR-30442-A-O
2012-TR-29802-A-O

Appeal from the County Court,
in and for Orange County, Florida,
Senior Judge Janis Halker Simpson.

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

Jason T. Forman, Esquire,
for Appellees.

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

PER CURIAM.

FINAL ORDER AND OPINION AFFIRMING IN PART AND REVERSING IN PART TRIAL COURT'S DISMISSAL OF RED LIGHT CAMERA CITATIONS

Appellant, State of Florida ("the State"), brought an action against William Clark, Nicole Rivera, and Jose Torres Ortiz ("Appellees") 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 September 11, 2012. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A).

Separate Uniform Traffic Citations were issued to Appellees at different times for allegedly running red lights in Orange County, pursuant to sections 316.0083, 316.074(1), and 316.075(1)(c) Florida Statutes (2012). Appellees entered pleas of not guilty, and hearings were set for June 7, 2012 and August 2, 2012. On the day of the first hearing, these cases were consolidated with cases brought by the City of Orlando ("the City"). The trial court heard testimony from non-local witnesses that were common to both the City and the State, and the trial court then separated the cases at the second hearing. At the beginning of the first hearing, the State presented the trial court with three evidence packets, one for each of the State's cases. Part of that evidence packet was the violation evidence report and photographs and the videos of the incidents, which the State moved to admit into evidence, citing that it was self-authenticating. The trial court at that point reserved ruling and allowed both sides to proffer arguments.

After some testimony was taken, the State renewed its motion to move the report and photographs into evidence, but the trial court declined to make a ruling at that time. As the hearing continued, the State made other attempts to move the report, videos, and photographs into evidence, but the trial court did not rule on the State's motion to admit those exhibits into evidence.

At the second hearing, held on August 2, 2012, the City called Officer Leroy Alfred to testify, and the trial court did not allow the State to examine Officer Alfred. At this point, the trial court disposed of the City's cases and allowed the State to proceed. The State requested that its hearing pick up from where the June 7, 2012 hearing left off and again moved to admit the photographs, videos, and reports into evidence. The trial court indicated that it wanted to "go through everything that [the State] wanted to put in evidence." The State also tried to move into evidence testing specifications from the Department of Transportation, the matrix on file with the

Department of Transportation, and the contract between Orange County and American Traffic Solutions as self-authenticating records, but the trial court refused to accept these exhibits, as they were not presented on the first day of the hearing. The State then called TIEO McBryde, who testified that: she is employed by the Orange County Sherriff's Office as a TIEO; she took an 8-hour class with the Orlando Police Department to become a certified TIEO, which covered the ATS system, court proceedings, applicable statutes, and other relevant matters.

On September 11, 2012, the trial court entered an order dismissing the infractions, citing that the State had failed to prove that the Appellees had committed the infractions. The trial court found that the photographs and video evidence were not self-authenticating. The trial court also determined that there was a lack of evidence about the contents of STEP and therefore, it could not determine whether the training the TIEO received was a similar program as required by the statute thus, the TIEO's testimony was inadmissible. The State filed a motion for clarification, which the trial court heard on October 30, 2012. The State reiterated that there were additional motions made regarding the photographs and video and also asked for clarification on the State's other evidentiary motions. On November 21, 2012, the trial court entered an order clarifying its previous order. The Court acknowledged that Officer Alfred's testimony was not admitted in evidence but found that even if his testimony was excluded from consideration, its ruling dismissing the red light camera citations was correct.

Because this case largely concerns a matter of statutory interpretation and construction, this Court reviews those matters *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). The State also makes arguments that stem from decisions that are squarely in the discretion of the trial court, and those arguments are accordingly reviewed under an abuse of discretion standard. *See State v. Covington*, 131 So.

3d 10, 12 (Fla. 1st DCA 2012) (indicating that the trial court has discretion over the management of its courtroom).

On appeal, the State makes three arguments: (1) that the trial court erred by not receiving the electronic images, video, and violation evidence report into evidence because all of these are admissible under the act and because the trial court did not rule on Orange County's motions to admit its exhibits into evidence; (2) that the trial court erred by requiring after the fact all exhibits be filed in June even for witnesses called in the August hearing; (3) that the trial court erred by dismissing the State's cases based upon evidence presented in the City's cases; and (4) that the trial court erred by dismissing the red light camera citations based upon the State's failure to show that TIEO McBryde's training was through a program that was similar to the STEP program. Conversely, Appellees argue: (1) that section 316.0083, Florida Statutes (2012), does not authorize evidence to be automatically admitted if it does not comply with the Florida Evidence Code; (2) that the trial court did not abuse its discretion when it required the State to file exhibits at the beginning of trial; (3) that the trial court properly dismissed the State's cases because it was based on the same evidence as the City; and (4) that the trial court properly dismissed the red light camera infractions because TIEO McBryde's training did not meet the express requirements of section 316.640(3)(5)(a), Florida Statutes (2012).

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)(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 that the trial court did not automatically admit this evidence at the hearing. *See State v. McEldowney*, 99 So. 3d 610 (Fla. 5th DCA 2012) (finding that statute creating rebuttable presumption that speed measuring device used by law enforcement was timely tested and

working properly upon the production of a certificate to that effect did not unconstitutionally infringe upon Supreme Court's authority to promulgate procedural law).

With respect to the trial court requiring all exhibits to be filed in June, even for an August hearing, while the State argues that the trial court erred by imposing a burden on it that goes beyond the Traffic Court Rules, and infringed upon the fundamental right of the State to have a fair and impartial hearing with equitable rules known and applied to all equally, the trial court has broad discretion over the management of its own courtroom. *See Covington*, 131 So. 3d at 12. Accordingly, this Court finds that the trial court did not abuse its discretion in requiring all exhibits be submitted in June for an August hearing. The Court therefore finds no error as to this argument.

As to the State's contention that the trial court erred by dismissing its cases based upon evidence or testimony presented in the City's cases, it is true that the trial court must base its ruling on evidence presented at the evidentiary hearing. Here, the trial court did not allow the State to cross-examine the City's witness, Officer Alfred, yet based its decision to dismiss the State's cases on Officer Alfred's testimony. If the trial court wished to consider Officer Alfred's testimony with respect to the State's case, then the State should have been afforded an opportunity to examine that witness. As a result, it was in error for the trial court to disallow the State's examination of Officer Alfred, yet base its ruling on that testimony.

Finally, regarding the State's contention that the trial court erred by dismissing the red light camera citations based upon the State's failure to show that TIEO McBryde's training was through a program that was similar to the STEP program, 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 and court presentation through STEP or a similar program is authorized to issue a traffic citation under section 316.0083. The State 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 qualifications as a defense and moved to dismiss their citations;[1] therefore, the burden was shifted to the State to demonstrate that McBryde was qualified. Here, the trial court issued an order that stated that "the statute specifically requires training through a program similar to the STEPS program" and that there was a "lack of evidence as to the contents of the STEPS program."

[1] This is correctly indicated in the trial court's September 11, 2012 order, which indicates:

> The court agrees that generally, as in any other traffic infraction hearing prosecuted by a sworn officer, it is sufficient that the officer presenting the red light camera case testify that he or she is a certified traffic enforcement officer. However, the Court holds that where a credible challenge to the qualifications and training of the traffic enforcement officer is made, the defense may question the officer with regard thereto.

The trial court correctly indicated that there was a "lack of evidence as to the contents and substance of the STEPS program and the content and substance of the comparable training the [State] claims satisfies the statute." The State had the opportunity to examine McBryde as to the quality of her program and its similarity to STEPS, but failed to adequately do so. It is clear that the trial court correctly interpreted the applicable statute, and it appears as though it would have accepted the qualifications had the State proven that McBryde's program was in fact similar to STEPS. This was not done. Therefore, the State's argument lacks merit.

In addition, the trial court also dismissed the citations because it determined the State failed to establish compliance with section 316.07456 of Florida Statutes. Section 316.07456 states that any traffic infraction detector deployed on the highways and streets must meet specifications established by the Department of Transportation and be tested at regular intervals. However, Appellees did not raise this argument below, and therefore; it was error for the trial court to dismiss the citations on this ground.

In conclusion, because the trial court erred in finding that the photographs and video were not self-authenticating and did not allow the County to cross-examine Officer Alfred, we reverse.

Accordingly, it is hereby **ORDERED AND ADJUDGED** the trial court's order dismissing Appellees' red light camera citations is **AFFIRMED in part, REVERSED in part, and REMANDED** to the trial court for further proceedings.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 25th day of August, 2014.

/S/
HEATHER L. HIGBEE
Presiding Circuit Judge

MURPHY and PERRY, JR., 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 **Jason T. Forman, Esq.,** 633 Southeast Third Avenue, 4F, Fort Lauderdale, Florida 33301, on the 26th day of August, 2014.

/S/
Judicial Assistant