

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

MICHELLE ANN GLASS,

CASE NO.: 2013-CV-000038-A-O

Appellant,

Lower Case No.: 2012-TR-027060-A-W

v.

STATE OF FLORIDA,

Appellee.

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

Bartley G. Vickers, Esquire, for Appellant.

Kimberly A. Gibbs, Assistant General Counsel, for Appellee.

Before DAWSON, TURNER, and WHITEHEAD, J.J.

PER CURIAM.

FINAL ORDER REVERSING LOWER COURT

Appellant, Michelle Ann Glass (“Glass”), timely files this appeal of the lower court’s “Determination of Infraction” entered on April 1, 2013. 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 August 23, 2012, Glass was cited for speeding in a school zone in violation of section 316.1895(10), Florida Statutes. On December 6, 2012, Glass filed a discovery exhibit, which contained a video on DVD of the area in which the alleged violation took place. The hearing on the citation was continued a few times due to multiple conflicts. On April 1, 2013, Traffic Hearing Officer Carroll S. Barco conducted a hearing on the citation.

At the hearing, Sergeant Ogburn of the Florida Highway Patrol (“Ogburn”) testified that she observed Glass driving northbound on Kirkman Road on August 23, 2012 at approximately 2:54 p.m. and that she followed Glass and paced her vehicle at 50 miles per hour. She also testified that she saw crossing guards on the roadway and yellow flashing lights and that Glass did not slow down until reaching the 408 Expressway. Further, Ogburn testified that her speedometer was calibrated on April 24, 2012 and October 3, 2012. On cross examination, Ogburn testified that the speed limit was 20 miles per hour; the reduced speed limit was posted on both sides of the roadway; she drove back to verify the speed limit; and that she drove through that area frequently. Lastly, Ogburn testified that she had been previously asked to review the video filed by Glass, which she declined, stating that she knew what it looks like, referring to the roadway where the alleged infraction occurred.

After Ogburn’s testimony was concluded, Glass’ counsel requested to possibly recall Ogburn after the video was entered into evidence. However, before Glass’ counsel attempted to enter the video into evidence, Hearing Officer Barco denied admission of the video. At that point, Glass’ counsel attempted to inform Hearing Officer Barco that the video on a disc was previously filed by Glass and a copy of it could be played on counsel’s equipment. Glass’ counsel also requested Hearing Officer Barco to verify that the disc was in the court file, which

he did confirm. Hearing Officer Barco then stated: “We have no way of doing this. We don’t take video evidence in traffic court. We are in traffic court now.” Further, he stated: “If you have a piece of video equipment showing it, where you can leave it all with us, then we’ll take it.” Glass’ counsel attempted to begin laying a foundation for the video, but then Hearing Officer Barco stated: “I’m not going to take it, sir. You can appeal my ruling.”

Glass then testified that she was driving northbound on Kirkman Road and was pulled over at 2:55 p.m. Glass further testified that, while there are signs indicating a school crossing is ahead, she didn’t observe any crossing guards, and there were no signs indicating a modified speed limit, other than the set speed limit on that road of 45 miles per hour. Hearing Officer Barco accepted into evidence two photographs from Glass that according to her, showed the only two signs in the area that she was able to find in the northbound direction. However, Hearing Officer Barco took issue that the photograph wasn’t taken that day, although according to Glass, she acknowledged that the photograph depicted the scene in the same or substantially the same condition as the date in question. Hearing Officer Barco also took issue that there was not a date stamp on the photograph. At that point, Sergeant Ogburn testified again that she drove back after writing the citation to verify the signs showing a reduced speed. Glass’ counsel attempted to question Ogburn further, but was unable to do so as Hearing Officer Barco at that point made his ruling and based on Ogburn’s testimony, he entered the Determination of Infraction finding Glass guilty as cited and assessing a fine in the amount of \$690.00 plus \$33.00 in court costs.

Immediately following the ruling, Glass’ counsel requested to lay a record, in which he argued that section 316.1895(6), Florida Statutes, requires that permanent signs designating school zones and school zone speed limits be uniform in size and color and have the times during which the restricted speed limit is enforced clearly designated thereon. Glass’ counsel also

reiterated that a disc containing a video had been previously filed and there had previously been a television with a DVD player in that courtroom. Hearing Officer Barco stated that the courtroom did not contain a television with a DVD player and also stated: “You have no evidence to prove to me that there is no sign. You have no photographs to prove there is no sign.” Shortly thereafter, the hearing was concluded.

Standard of Review

A trial court’s ruling on the admissibility of evidence will not be disturbed absent an abuse of discretion. *Carpenter v. State*, 785 So. 2d 1182, 1201 (Fla. 2001).

Arguments on Appeal

Glass argues: 1) The lower court prejudicially erred in denying her request to admit, publish, and view a video showing the area in which she was cited, either substantively or for impeachment purposes and 2) The lower court erred in finding the infraction was proven when no substantial or competent evidence provided a showing of guilt beyond a reasonable doubt, which included an illegal shift of the burden of proof to her.

In Response, the State via the Florida Department of Highway Safety and Motor Vehicles (“Department”) concedes that the lower court denied Glass due process by refusing to receive and consider the video evidence proffered by Glass’ counsel. Further, the Department consents to entry of an order remanding this matter to the lower court with directions to re-schedule another traffic infraction hearing for Glass; and with additional directions for the lower court to accept Glass’ video evidence into the record at the re-scheduled hearing; and further, to afford Glass an opportunity to question Sergeant Ogburn about the video evidence at the re-scheduled hearing.

Analysis

In addressing Glass' first argument and from review of the record in this case, specifically the trial transcript and the subject video, this Court concurs with Glass and the Department that the lower court erred by refusing to receive and consider the video evidence proffered by Glass' counsel and thus, denied Glass due process. Accordingly, this case must be remanded to the lower court for a hearing to allow Glass to enter the subject video into evidence, provided that a proper predicate and foundation is laid, and to provide Glass the opportunity to question Sergeant Ogburn about the video. Lastly, this Court finds that Glass' first argument is dispositive. Therefore, review of Glass' second argument is not necessary.

Accordingly, is hereby **ORDERED AND ADJUDGED** that the lower court's "Determination of Infraction" entered against Appellant, Michelle Ann Glass, on April 1, 2013 is **REVERSED and REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 4th day of December, 2013.

/S/ _____
DANIEL P. DAWSON
Presiding Circuit Judge

TURNER and WHITEHEAD, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was furnished to: **Bartley G. Vickers, Esquire**, Mandell Law, P.A., 201 S. Orange Avenue, Suite 900, Orlando, Florida 32801, bvickers@fightforyou.org and **Kimberly A. Gibbs, Assistant General Counsel**, Dept. of Highway Safety and Motor Vehicles, P.O. Box 570066, Orlando, Florida 32857, kimgibbs@flhsmv.gov on this 4th day of December, 2013.

Judicial Assistant