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

APPELLATE CASE NO: 2013-CV-7-A-O
Lower Case No.: 2012-TR-32807-A-W

STATE OF FLORIDA,

Appellant,

v.

ANGELA MARIA ATILES,

Appellee.
_____/

Appeal from the County Court
for Orange County, Florida
Barry Hepner, Hearing Officer

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

Jason T. Forman, Esq.
for Appellee.

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

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant, State of Florida, appeals the hearing officer's order rendered on January 24, 2013 dismissing the citation for failing to 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 affirm.

On October 18, 2012, Appellee Angela Atiles was issued a citation 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. Atiles requested a hearing that was held on January 24, 2013 and moved to dismiss the citation

arguing that the Traffic Infraction Enforcement Officer (TIEO) who issued the citation, Officer Awilda McBryde, was determined to be unqualified by a judge in another red-light camera case, *State v. Clark et al.*, 20 Fla L. Weekly Supp. 74b (Fla. Orange Cty. Ct. Sept. 11, 2012), and the hearing officer was bound by that ruling. The State argued that it had additional information that was not presented in *Clark* such as McBryde's certification in the new Selective Traffic Enforcement Program (STEP) as of December 7, 2012 and testimony that her previous training was similar to STEP. The hearing officer stated that he was bound by the ruling in *Clark* and would not allow the State to apply McBryde's training in the new STEP retroactively, but allowed the State to proffer evidence.

McBryde testified that she completed training to become a TIEO by Officer Leroy Alfred on March 31, 2011 and on December 7, 2012, she completed training in the new STEP effective November 1, 2012. She stated that for both the new STEP training and Alfred's training she received instruction in court presentation; A-shot, B-shot, and C-shot videos; and the statutes. She also testified that she had over 170 hours of classroom training and over a thousand hours of on-the-job training. The State presented exhibits including a certified copy of the STEP effective June 1, 2000. After McBryde's testimony, the hearing officer found that she was not qualified to issue the citation based on the ruling in *Clark* that Alfred's training was not similar and adequate to STEP and her training in the new STEP would not be applied retroactively.

The State argues that 1) 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; 2) section 316.640(5)(a) does not require the TIEO to complete the entire STEP training but only instruction on traffic enforcement procedures and court presentation through STEP or a similar program; and 3) the hearing officer erred by dismissing the citation based on *Clark* because in this case it presented more evidence about the contents of STEP, it presented evidence that the

TIEO completed a new STEP prior to the hearing, and the defense did not raise a credible challenge to the TIEO's training.

Atiles argues that 1) the *Clark* order finding that McBryde was not qualified created a credible challenge shifting the burden to the State; 2) proof of completion of court presentation and traffic enforcement procedures through STEP or a similar program is a condition precedent to prosecution; and 3) the citation was properly dismissed because McBryde was not trained in accordance to STEP at the time the citation was issued.

This case concerns a matter of statutory interpretation and construction; therefore, this matter is subject to *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).

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 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, Atiles raised the TIEO's qualifications as a defense and moved to dismiss the citation based on the ruling in *Clark.* Therefore, the burden was shifted to the State to demonstrate that the TIEO was qualified.

In *Clark*, the citations were dismissed because there was a lack of evidence about the contents of STEP and the contents of the similar training program in those cases; and therefore, the court could not determine whether the training McBryde received was similar to STEP. *Clark*, 20 Fla L. Weekly Supp. 74b. In this case, the State attempted to demonstrate that McBryde was qualified to issue the citations through McBryde's testimony. McBryde's training in the new STEP in December 2012 cannot be applied retroactively to establish that she was authorized to issue the citation on October 18, 2012. In order to establish that McBryde was authorized to issue the citation, the State must demonstrate that the March 2011 training was similar to instruction in traffic enforcement procedures and court presentation through the STEP

applicable when the citation was issued on October 18, 2012, which was the June 2000 STEP. Instead, the State compared McBryde's March 2011 training to the new STEP effective November 1, 2012, after the citation was issued. The State acknowledged that the only applicable module for the June 2000 STEP was court presentation. However, section 316.640(5)(a) requires training in traffic enforcement procedures and court presentation through STEP or a similar program. The fact that the State could not establish that McBryde's March 2011 training was similar to training in traffic enforcement procedures through STEP because the June 2000 STEP may not include training in traffic enforcement procedures does create a problem for the State. However, this Court cannot cure that problem by interpreting the statute contrary to its plain and unambiguous meaning. *See Cont'l Cas. Co. v. Ryan Inc. E.*, 974 So. 2d 368, 379 (Fla. 2008) (finding that "[I]t is outside this Court's purview to correct a potential inequity by interpreting a statute contrary to its plain language.").

While the hearing officer erred in excluding McBryde's testimony based simply upon the failure of the State to establish her qualifications, the hearing officer properly found that she was not qualified to issue the citation and therefore properly dismissed the citation, albeit for the wrong reason.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the hearing officer's decision dismissing the citation is **AFFIRMED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 4th 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 copy of the foregoing order was furnished on this 4th day of August, 2014 to: **Jason T. Forman, Esq.**, 633 Southeast Third Avenue, Ste. 4F, 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