

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

JOSEPH MICHAEL CARROLL,

CASE NO.: 2015-CV-000047-A-O

Appellant,

v.

CITY OF ORLANDO,

Appellee.

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Appeal from a Final Administrative Order  
of the Traffic Infraction Administrative Court  
of the City of Orlando, Florida.

Kellie Biferie Hastings, Esq.,  
for Appellant.

Victoria Cecil Walker, Esq., Assistant City Attorney,  
for Appellee.

Before MYERS, G. ADAMS, and HIGBEE, JJ.

PER CURIAM.

**FINAL ORDER AFFIRMING FINAL ADMINISTRATIVE ORDER**

Appellant Joseph Michael Carroll appeals the hearing officer's determination that his vehicle ran a red light as captured by the City of Orlando's camera. This Court has jurisdiction under Florida Statute section 316.00831(5)(f), and Florida Rule of Appellate Procedure 9.030(c)(1)(C). We affirm.

The City sent a Notice of Violation to Carroll that on December 12, 2014, his vehicle was photographed running a red light. Carroll requested a hearing and tried to obtain additional photographs and videos regarding the incident.

Carroll asked the City for copies of photo frames, a full version copy of the video showing timecodes, and videos from different angles. The City directed Carroll to the website for information it maintains and to contact Tom Horak with American Traffic Solutions for any other information. Carroll then emailed Horak requesting the same information he requested from the City. Horak responded via an email containing the procedure and the charges. Carroll's requested information would cost at least \$116.50. Carroll then cancelled his request due to the cost, but asked Horak if he "could direct me to a website or send additional information regarding the 'data' header window located at the top of each of the two still photo frames sent in the 'Notice of Violation.'" (App. 51.) Carroll stated that he wished "to clearly understand what each specific data cell means." (App. 51.) Horak responded by stating that the information on the data bar is not on the website, but asked Carroll "[w]hat question or questions do you have and I can hopefully help you answer th[o]se?" (App. 52.)

At the hearing to determine whether the violation should be upheld, Carroll told the hearing officer that he asked ATS what the information on the data bar on the video means and that ATS did not have that information. Carroll did not mention that ATS told him there would be a fee for the additional images he sought. Also, Carroll did not argue that this failure to obtain the information amounted to the City withholding evidence from him.

Carroll did argue that the traffic light was, at least briefly, yellow and red simultaneously, and gave the hearing officer a still photograph purporting to show this. After viewing the video several times, the hearing officer stated that he could not see the alleged simultaneous red and yellow lights. Even after the hearing officer was shown the picture, he said, "I'm looking at it on the video and the video certainly doesn't . . . have any indication – Of course, it could be, also, that the mind has a hard time, with video, perceiving it." (Hr'g Tr. 22:12-18.)

Carroll also testified that a truck behind him was driving aggressively and following him so closely that it would have been dangerous to stop. After reviewing the video, the hearing officer stated that the truck did not appear to be close to hitting Carroll's vehicle. The hearing officer also rejected Carroll's argument that he drove through the intersection to escape an aggressive driver, stating that Carroll's actions were inconsistent with how the hearing officer would have responded in such a situation. The hearing officer then upheld the violation.

### **STANDARD OF REVIEW**

Under Florida's red light camera law, either party may use the process in Florida Statute section 162.11 (providing for appeals from code enforcement boards) to appeal the final administrative order regarding a violation. § 316.00831(5)(f), Fla. Stat. (2014). Section 162.11 states that this review is not de novo, "but shall be limited to appellate review of the record created before the enforcement board." As this is an appeal from an administrative agency, the Court's review is limited to "(1) whether procedural due process was afforded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings and judgment are supported by competent, substantial evidence." *Bencivenga v. Osceola Cnty.*, 140 So. 3d 1035, 1036 (Fla. 5th DCA 2014).

#### **I. Procedural Due Process**

Carroll argues that the City failed to provide metadata to him, and this failure violated his due process rights. First, Carroll argues that charging for the additional information he sought violates section 316.0083(1)(c)2, which states that the owner of the car has the right to review the electronic images, but does not mention paying to view the images. Second, Carroll argues that metadata is part of the document, so failing to provide the metadata violates section

316.0083. Finally, Carroll argues that failure to provide this information amounts to a due process violation under *Brady v. Maryland*, 373 U.S. 83 (1963).<sup>1</sup>

**A. Preservation of Error**

The City argues that Carroll did not raise the issues at the hearing regarding his attempts to obtain information, and thus this Court cannot consider these arguments on appeal. At the hearing, Carroll stated that he asked ATS what the information on the data bar on the video means and that ATS did not have that information. Carroll did not mention that ATS told him there would be a fee for the additional images he sought, and he did not argue that the alleged failure to provide information amounted to a *Brady* violation.

Appellate courts require preservation of error for three reasons: first, to put the lower tribunal on notice of a possible error; second, to give the lower tribunal an opportunity to correct the mistake sooner in the proceedings rather than later; and third, to prevent a party “from not challenging an error so that he or she may later use it for tactical advantage.” *Clear Channel Commc’ns, Inc. v. City of N. Bay Vill.*, 911 So. 2d 188, 189 (Fla. 3d DCA 2005) (holding that questioning witness in city commission hearing was inadequate to preserve legal errors).

*Brady* violations also must be raised in the lower tribunal to be considered on appeal. *Blanco v. State*, 963 So. 2d 173, 177 (Fla. 2007) (holding *Brady* claim waived when not alleged during trial court hearing); *see also Jones v. State*, 998 So. 2d 573, 581 (Fla. 2008) (holding that defendant failed to preserve *Brady* claim where trial court did not rule on the argument).

Although Carroll stated that ATS did not provide the requested information, he did not tell the hearing officer that ATS asked for money to produce additional videos and photographs. Carroll also did not argue to the hearing officer that the City suppressed evidence that was

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<sup>1</sup> “Under *Brady v. Maryland*, . . . the State is required to disclose material information within its possession or control that is favorable to the defense.” *Floyd v. State*, 18 So. 3d 432, 450 (Fla. 2009).

favorable to him. The hearing officer thus did not have notice of or an opportunity to correct these issues, assuming that they needed correcting. Carroll thus failed to preserve these arguments for appellate review.

## **B. Metadata**

Carroll's remaining argument is that the metadata is part of the document, and thus the City violated section 316.0083(1)(c)2, by failing to provide this information when requested. This issue was arguably raised in the hearing below when Carroll told the hearing officer that Carroll asked ATS what the information on the data bar on the video means and that ATS did not have that information.

In Carroll's email to ATS, Carroll asked Horak if he "could direct me to a website or send additional information regarding the 'data' header window located at the top of each of the two still photo frames sent in the 'Notice of Violation.'" (App. 51.) Carroll stated that he wished "to clearly understand what each specific data cell means." (App. 51.) Horak responded that the information on the data bar is not on the website, but asked Carroll "[w]hat question or questions do you have and I can hopefully help you answer th[o]se?" (App. 52.)

This is not a request for metadata. Metadata is "data that provides information about other data." Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/metadata> (last visited Oct. 13, 2015). Carroll requested the categories of information on the data bar. He did not request data that provides information about other data. In addition, ATS's representative said that he would answer Carroll's questions. The City did not violate the disclosure requirement in section 316.0083(1)(c)2 when the ATS representative specifically invited Carroll to ask him questions. Because Carroll did not request metadata, and

because the City did not fail to offer access to the information, Carroll's argument that he was denied due process fails.

## **II. Competent Substantial Evidence**

Carroll argues that the unrefuted evidence before the hearing officer was that the traffic light was yellow and red simultaneously. Carroll also argues that the only evidence before the hearing officer was that a truck behind Carroll was driving aggressively and following him so closely that it would have been dangerous for Carroll to stop at the traffic signal. Carroll contends that this evidence was sufficient to rebut the presumption established by section 316.0083(1)(e), and created by the video, that the vehicle ran the red light.

If the administrative hearing officer's findings of fact are supported by competent substantial evidence, then this Court must accept them. *Kany v. Fla. Eng'rs Mgmt. Corp.*, 948 So. 2d 948, 953 (Fla. 5th DCA 2007). The hearing officer "'consider[s] all the evidence presented, resolve[s] conflicts, judge[s] credibility of witnesses, draw[s] permissible inferences from the evidence, and reach[es] ultimate findings of fact based on competent, substantial evidence.'" *Id.* (quoting *Heifetz v. Dep't of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)). The circuit court, in reviewing the hearing officer's findings, cannot determine credibility or substitute its judgment for the hearing officer's. *San Roman v. Unemployment Appeals Comm'n*, 711 So. 2d 93, 95 (Fla. 4th DCA 1998). If there is conflicting evidence, then it is the hearing officer that determines the weight of the evidence and whether to reject it. *Id.* "It is not the role of the appellate court to re-weigh the evidence anew." *Young v. Dep't of Educ., Div. of Vocational Rehab.*, 943 So. 2d 901, 902 (Fla. 1st DCA 2006). "When the facts are such as to give an agency the choice between alternatives, it is up to that agency to make the choice, not the circuit court." *Miami-Dade Cnty. v. Reyes*, 772 So. 2d 24, 28 (Fla. 3d DCA 2000).

After viewing the video several times, the hearing officer stated that he could not see the alleged simultaneous red and yellow lights on the video. Even after the hearing officer was shown a still frame from the video purporting to demonstrate the two lights on at the same time, he said that the video did not show it. The hearing officer therefore had before him two arguably conflicting pieces of evidence: the video not showing simultaneous red and yellow lights, and a photograph purporting to show simultaneous red and yellow lights. It was within the hearing officer's purview to reject the photograph and rely on the video, and this Court is not permitted to substitute its judgment for the hearing officer's.

The same is true regarding whether the truck driver behind Carroll's car was driving aggressively or too closely for the car to safely stop at the intersection. In reviewing the video, the hearing officer stated, "I see that truck behind you and it doesn't seem to be in any danger of smacking into your rear end." (Hr'g Tr. 17:11-12.) The hearing officer also rejected Carroll's argument that he drove through the traffic light to escape an aggressive driver, stating:

That truck seemed to be very – moving very slowly. I'm not saying he wasn't driving aggressively before but – . . . if I was afraid of the guy coming behind me, I would have punched it to get away from him and go through the intersection. . . . if you'd have done that, that would have been a little bit more believable. But the fact that you just kept right on driving –

(*Id.* 20:6-8, 14-19.) As indicated by the hearing officer's remarks, the hearing officer considered Carroll's testimony regarding the truck and weighed it against the depiction on the video. The hearing officer also made a determination regarding Carroll's credibility. This was within the hearing officer's authority, and because the video is competent substantial evidence that supports the hearing officer's determination, this Court cannot substitute its judgment for his.

Because Carroll did not preserve his due process arguments for appellate review, the City did not violate section 316.0083(1)(c)2 regarding disclosing information, and competent

substantial evidence supports the hearing officer's determination that the vehicle violated the Florida Statutes by running a red light, we affirm.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Final Administrative Order is **AFFIRMED**.

**DONE AND ORDERED** in Chambers, at Orlando, Orange County, Florida, on this 3rd day of November, 2015.

/S/ \_\_\_\_\_  
**DONALD A. MYERS, JR.**  
**Presiding Circuit Judge**

G. ADAMS and HIGBEE, JJ., concur.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished to: **Kellie Biferie Hastings, Esq.**, Law Office of Kelli B. Hastings, PLLC, 4005 N. Orange Blossom Trail, Orlando, FL 32804; and **Victoria Cecil Walker, Esq.**, Assistant City Attorney, Orlando City Hall, 400 S. Orange Ave., Orlando, FL 32801; on this 3rd day of November, 2015.

/S/ \_\_\_\_\_  
Judicial Assistant