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

Angel Martinez,

Appellant,

v.

State of Florida,

Appellee.
_____/

CASE NO.: 2016-CV-19-A-O
Lower Court Case No.:
2015-TR-14376

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

Jason A. Cameron, Esq., for Appellant.

Erin L. DeYoung, Esq., for Appellee.

Before CARSTEN, SHEA, and LEBLANC, J.J.

PER CURIAM.

Appellant, Angel Martinez, seeks review of the traffic court hearing officer's final order determining that he was speeding. We have jurisdiction. § 318.33, Fla. Stat. (2016); Fla. R. Traf. Ct. 6.630(e). We affirm because Martinez did not sufficiently preserve his objection to evidence of his speed as obtained from a radar speed measuring device for appellate review, there was competent substantial evidence that the device was approved, and Martinez's argument that he should have been charged under a more specific statute is unavailing.

Martinez was driving on US Highway 17-92 in Maitland when a police officer used radar to determine his speed. The police officer charged Martinez with violating Florida Statute section

316.189(1), for driving 63 miles per hour in a 45 miles-per-hour zone. The citation listed the radar speed measuring device as a "Stalker."

At the traffic court hearing to contest the speeding violation, the police officer testified that the device was a "Stalker II." (Trial Tr. 5:17-19.) He also testified that US 17-92 extends from Maitland into Winter Park.

Martinez objected to the introduction of his speed as determined by the device, stating that there was a lack of foundation and citing Florida Statute section 316.1906, Florida Administrative Code Rule 15B-2.007, and *Hertless v. State*, 12 Fla. L. Weekly Supp. 107a (Fla. 9th Cir. Ct. Sept. 4, 2004). Martinez did not state what was missing from establishing the foundation for admissibility.

The hearing officer found Martinez violated section 316.189(1), and he now appeals.

Standard of Review

Appeals from traffic court are based upon the record and shall not be de novo. § 318.33, Fla. Stat. (2016). Findings of fact will be affirmed if they are supported by competent substantial evidence. *State v. Glatzmayer*, 789 So. 2d 297, 301 n.7 (Fla. 2001).

Discussion

I. Lack of foundation objection to radar speed measuring device

Martinez argues that a proper foundation was not laid for admitting his speed into evidence as measured by the radar speed measuring device. In his brief, Martinez articulates several reasons supporting this argument. The State counters that Martinez did not properly preserve these arguments for appellate review because he did not make a sufficiently specific objection at trial. At trial, when Martinez objected to the admissibility of his speed as it was measured by the officer's radar, he said that the statutory predicate needed to be satisfied and

listed Florida Statute section 316.1906 and Florida Administrative Code Rule 15B-2.007. Martinez also cited *Hertless v. State*, 12 Fla. L. Weekly Supp. 107a (Fla. 9th Cir. Ct. Sept. 4, 2004), an opinion from this Court vacating a speeding violation because the State did not show that the radar speed measuring device complied with certain enumerated statutory requirements. Martinez did not specify which subsections of the statute and rule were not met.

A court may reverse a judgment based on admitted evidence when there is a timely, specific objection and a substantial right is adversely affected. § 90.104(1)(a), Fla. Stat. (2015). Simply asserting lack of foundation is not specific enough to preserve the objection for appellate review. *Jackson v. State*, 738 So. 2d 382, 386 (Fla. 4th DCA 1999).

In *Jackson*, the defendant objected based on lack of foundation for admissibility of business records, but did not specify what was missing. *Id.* at 385. Florida Statute section 90.803(6) sets forth four requirements for admissibility of business records. *Id.* at 386. In holding that the objection was not preserved for appellate review, the court stated that "appellate courts will not consider grounds for objections to the admissibility of evidence unless they have been stated with specificity at trial." *Id.* A specific objection is needed so that the trial court can make an informed ruling and the state has an opportunity to correct the defects. *Id.* Failure to specify "what portion was missing from the foundation for the admission of business records under section 90.803(6)(a)" resulted in a loss of appellate review. *Id. See also Montes-Valeton v. State*, 141 So. 3d 204, 206 (Fla. 3d DCA 2014) (holding that objection to admissibility of blood test results based on improper predicate was not sufficiently specific to preserve for appellate review issue of whether an authorized person drew blood, as statute regarding blood tests contained many requirements, and the defendant's "lack of specificity did not put the trial court or the State on notice as to the grounds for the objection to enable the trial court to make an 'informed

decision' or for the State to cure the alleged defects."); *Filan v. State*, 768 So. 2d 1100, 1101-02 (Fla. 4th DCA 2000) (general "lack of foundation" objection to blood test results, even with statement that there was no evidence regarding who drew the blood for the test, was not sufficiently particular to enable appellate review because it "did not direct the trial court's attention to that aspect of the section 90.803(6)(a) foundation which [the defendant] now claims was deficient on appeal.").

Florida Statute section 316.1906(2) and Florida Administrative Code Rule 15B-2.007 contain numerous requirements regarding radar speed measuring devices. Section 316.1906(2) lists six requirements for the admissibility of speed measured by such a device, and Rule 15B-2.007 adds additional requirements to those listed in section 316.1906(2). This is even more than the four requirements for admissibility of business records at issue in the *Jackson* case. Although Martinez did list the statute, administrative code rule, and a case in objecting to the admissibility of his speed as determined by a radar device, he never stated what parts of the statute or rule were not complied with so that the hearing officer could make an informed ruling or the police officer could provide the missing information. Because there are so many requirements for the radar device's admissibility, Martinez was required to specify in his objection the requirements that were not met for him to subsequently make those arguments on appeal. As he did not state to the hearing officer what was missing from the foundation for admissibility, Martinez's objection was not specific enough to preserve his arguments for appellate review here.

II. Approved radar speed measuring device

Martinez argues that there was no competent substantial evidence that the radar speed measuring device the police officer used was approved in Florida, which is required for the

results to be admissible. The police officer testified that the device used was a "Stalker II." (Trial Tr. 5:17-19.) The citation issued to Martinez listed the radar device as a "Stalker." (R. 3.)

A hearing officer may draw permissible inferences from the evidence, and his factual determinations made from reasonable inferences will be upheld if they are supported by competent substantial evidence. *Kany v. Fla. Eng'rs Mgmt. Corp.*, 948 So. 2d 948, 953 (Fla. 5th DCA 2007); *Heifetz v. Dep't of Bus. Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

Florida Administrative Code Rule 15B-2.013 contains a list of approved radar speed measuring devices. Under subsection (1)(a), "Model STALKER," "Model STALKER II MDR," and "Model STALKER II SDR" are listed as approved devices. Fla. Admin. Code R. 15B-2.013(1)(a)1., 7., 8. (2015). The hearing officer reasonably inferred that the radar speed measuring device used in this case, described as a "Stalker" or "Stalker II," was an approved device in Florida from the listings in Rule 15B-2.013 that include "STALKER" and two different versions of "STALKER II." The Court rejects Martinez's argument that there was no competent substantial evidence supporting the hearing officer's decision.

III. Charging under a general versus specific statute

Martinez's final argument is that the trial court erred in finding that he violated a general statute when a more specific statute governs his conduct. Martinez was charged with violating Florida Statute section 316.189(1), which governs speed limits on city and county roads. Martinez argues that his behavior more appropriately falls under section 316.187(1), which governs speed limits on state roads and roads that connect municipalities.

First, it is not clear that section 316.187 is a specific statute and section 316.189 is a general one. Both govern speed limits, and both specify the types of roads that they apply to. A

statute pertaining to county and municipal roads does not seem to be more general than a statute pertaining to state roads and roads connecting municipalities.

Second, the same punishment is incurred under both statutes. Both contain the following identical provision: "Violation of the speed limits established under this section must be cited as a moving violation, punishable as provided in chapter 318." § 316.187(3), Fla. Stat. (2015); § 316.189(4), Fla. Stat. (2015). Even if Martinez had been charged under section 316.187, the resulting sanction would have been the same.

Third, the cases that Martinez relies on to support his argument are distinguishable because they involve scenarios where the application of one statute rather than another affected the length of the defendants' sentences. *See Adams v. Culver*, 111 So. 2d 665 (Fla. 1959) (defendant should have been charged under more specific statute regarding showing a pornographic picture to a minor, rather than more general statute of committing a lewd or lascivious act in the presence of a child, and specific statute contained less severe penalty than general statute); *Burnett v. State*, 737 So. 2d 1106 (Fla. 1st DCA 1998) (same); *McDonald v. State*, 957 So. 2d 605 (Fla. 2007) (more specific 10-20-LIFE statute controlled over the general prison releasee reoffender statute, even though it imposed a lesser sentence than that under the PRR statute); *Mendenhall v. State*, 48 So. 3d 740 (Fla. 2010) (10-20-LIFE statute should be applied instead of general statute providing punishments for first-degree felonies). As noted above, here, the sanctions are the same under both sections 316.187 and 316.189.

Fourth, unlike the cases that Martinez cites, the prohibited behavior is exactly the same in both statutes: "Violation of the speed limits established under this section . . . ." § 316.187(3), Fla. Stat. (2015); § 316.189(4), Fla. Stat. (2015). In *Adams* and *Burnett*, the behavior was

particularly described in the specific statute, but the general statute encompassed many different behaviors. *Adams v. Culver*, 111 So. 2d at 667; *Burnett v. State*, 737 So. 2d at 1107.

As it does not seem that section 316.187 is a more specific statute than section 316.189, and the punishments and the prohibited behaviors are the same under both statutes, Martinez's argument that the trial court erred in finding that Martinez violated section 316.189, rather than section 316.187, is unavailing.

Martinez did not sufficiently preserve his argument that the foundation was not met for introduction of his speed as measured by radar for appellate review. There was competent substantial evidence supporting the hearing officer's determination that the radar speed measuring device was an approved device. Finally, it was not error to charge Martinez with violating the statute regarding city and county roads.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Order finding Martinez violated Florida Statute section 316.189(1) is **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 20th day of September, 2016.

/S/
KEITH A. CARSTEN
Presiding Circuit Judge

SHEA and LEBLANC, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Carroll S. Barco, Traffic Hearing Officer**, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801; **Jason A. Cameron, Esq.**, Cameron & DeCastro, P.A., P.O. Box 622753, Oviedo, FL 32762; and **Erin L. DeYoung, Esq., General Counsel**, Maitland Police Department, 1837 Fennell Rd., Maitland, FL 32751, on this 20th day of September, 2016.

/S/
Judicial Assistant