

MANDATE

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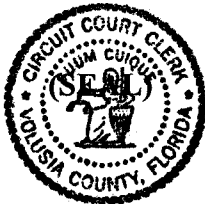
CIRCUIT COURT OF APPEAL OF VOLUSIA COUNTY, FLORIDA

SEVENTH JUDICIAL CIRCUIT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY
APPEAL, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED
ITS OPINION; REVERSED AND REMANDED

YOU ARE HEREBY COMMANDED THAT SUCH FURTHER
PROCEEDINGS BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE
OPINION OF THIS COURT ATTACHED HERETO AND INCORPORATED AS
PART OF THIS ORDER, AND WITH THE RULES OF PROCEDURE AND
LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE JUDGE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR VOLUSIA COUNTY, FLORIDA AND THE SEAL OF SAID
COURT AT DELAND, FLORIDA ON THIS 16 February 2011.



DIANE M. MATOUSEK
CLERK OF THE CIRCUIT COURT

BY:

Cheryl L. Crile

Cheryl Crile
Deputy Clerk

Style:Ronald Marlar vs. State of Florida
Appeal Docket No.:2010-10006-APCC
Lower Case No.:2009-333136-TRCI;2269GDB
c: Hon. Stasia Warren;Thomas Greene,Esq.;
Asst.S.A.; court file;A.Nolan, Supr.

CL-0147-9804

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IN THE CIRCUIT COURT OF THE SEVENTH CIRCUIT,
IN AND FOR VOLUSIA COUNTY, FLORIDA

RONALD MARLAR,

APPEAL CASE NUMBER 2010-10006-APCC

Appellant,

LOWER CASE NUMBER 2009-333136-TRCI

v.

STATE OF FLORIDA,

Appellee.

_____ /

ORDER

The traffic hearing officer found the driver guilty of a violation of section 316.2397(7), Florida Statutes.

The first of two issues raised on appeal arises from the manner in which the driver was given notice of his purported offense. The original ticket issued by the officer referenced section "316" of the Florida Statutes as the offended traffic statute. Section 316, of course, is lengthy and is fraught with opportunity for the driver to run afoul of the law. The officer went on, however, to describe on the face of the ticket the particular conduct of the driver that led to their meeting: "FLASHING HEADLIGHTS @ SB TRAFFIC 3X TO WARN OF MOTOR (indistinguishable) SOUTH BOUND, (indistinguishable) HIGGINS". At an undefined point in the proceedings someone changed the number of the offended statute on the face of the citation to read section "316.2397(7)". There is no transcript of the proceeding before the hearing officer. It is impossible to know the circumstances under which the amendment from the vague to the specific was performed. On appeal the driver argues that he was not properly notified of the section number of the particular statute he may have offended. However, the court finds that any person who did not fall off the pumpkin truck last night would understand the charge as described on the face of the ticket. The driver was charged with the intended destruction of a well laid plan wherein the officer would wait in the weeds to bring hapless drivers to justice for speeding or similar reprehensible conduct. The court is confident the driver knew what brought the officer to the window of his motor vehicle. There is no transcript of the conversation which likely took place through that window. However, common sense and a passing familiarity with the human experience convince the court that the officer shared his thoughts at the scene. Under the circumstances of this case the court finds that notice to the driver of the nature of the charge was more than adequate.

The remaining issue on appeal addresses a more serious substantive issue. The question is whether it is illegal for drivers to warn other drivers by flashing their lights when an officer is hiding

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out of view with the intent of catching traffic offenders. The statute in question provides in pertinent part that "*Flashing lights are prohibited* on vehicles except as a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway...." (emphasis supplied). The court is not convinced that drivers are precluded from signaling to their fellow travelers that officers are nearby by turning their headlights off and on or similarly signaling with their high beams. The title of the pertinent section is "Certain Lights Prohibited". The cited statute prohibits the existence of "flashing lights" – the coupling of an adjective and a noun. Clearly, at least one offending act under this statute is the presence of equipment designed to flash. It is not difficult to conjure up a variety of types of equipment that would confuse or mislead drivers on the highways, such as colored or blinding lights. The law is obviously designed to protect the driving public from the kinds of confusion that may reign on the highways if such lights were permitted. The legal question, however, is whether the act of flashing one's lights - if they were capable of being flashed, but not necessarily designed for flashing - falls within the umbrella of acts intended to be illegal under this statute. The driver in this case is charged with "flashing" – a verb. While flashing – the verb - may be illegal in infinitely more interesting contexts, it is not illegal under this statute to flash your headlights or to alternate your high and low beams. It is the noun, not the verb, which brings on this particular law. It is the possession of lights designed to flash – not the act of flashing lights- that constitutes the illegal conduct. One does wonder in passing if the driver would have been ticketed if he had been signaling other drivers to be cautious because of the presence of a warm puppy or a kindly grandmother using a walker to cross the street. Further, we can fervently hope that if the legislature had intended to prohibit drivers from flashing their lights to warn of impending speed traps the statute would not read: "Flashing lights *are* prohibited...." Rather, it would read: "Flashing of lights *is* prohibited..."

Accordingly, the rendering of the hearing officer is reversed and remanded with instructions to the Clerk of the Court to dismiss the traffic citation. The Department of Motor Vehicles, State of Florida, is directed to remove the charge from the driving record.

DONE AND ORDERED this 14th day of January, 2011.



JOSEPH G. WILL
CIRCUIT JUDGE

Copies to:

State Attorney's Office
Thomas Greene, Esquire