

**Administrative: TRAFFIC INFRACTIONS** – Red light camera. Instead of looking to the plain language of the statute, the hearing officer relied on a final administrative order from another municipality. Thus, the hearing officer applied the incorrect law to determine if a violation occurred. Reversed. *Munoz-Calene v. City of New Port Richey*, No. 16-CF-1167-WS (Fla. 6th Cir. App. Ct. Nov. 29, 2016).

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED**

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY  
APPELLATE DIVISION**

**GABRIEL MUNOZ-CALENE,**  
Appellant,

UCN: 512016CF001167A000WS  
Appeal No.: CRC16-01167CFAWS  
L.T. No.: 3211500099577

v.

**CITY OF NEW PORT RICHEY,**  
Appellee.

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On appeal from a Final Administrative Order,  
Local Hearing Officer

Gabriel Munoz-Calene, Esquire  
Appellant,

Timothy Driscoll, Esquire  
for Appellee.

**ORDER AND OPINION**

The Local Hearing Officer (“LHO”) departed from the essential requirements of law in determining whether Appellant’s turn was made in a careful and prudent manner. The Final Administrative Order is reversed and remanded.

**STATEMENT OF THE CASE AND FACTS**

A red light camera captured Appellant making a right-hand turn at a red light. Appellee issued a Notice of Violation for violations of sections 316.0083, 316.074(1), and 316.075(1)(c)1, Florida Statutes. Appellant received the Notice of Violation and requested an administrative hearing before a local hearing officer.

At the hearing, Appellant appeared and raised two arguments. First, Appellant argued that he should not have been issued a Notice of Violation because he executed the right-hand turn in a careful and prudent manner as permitted by the plain language

of section 316.0083, Florida Statutes. Second, Appellant argued, citing to *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2015), that the citation should be dismissed because Appellee improperly delegated its police powers to an outside vendor. John Cybart, the traffic infraction enforcement officer for Appellee's Police Department testified that Appellant did not stop at the red light and was traveling through the intersection at a speed of 16 miles per hour. During cross-examination, Officer Cybart conceded that Appellant slowed his vehicle as he approached the intersection and that there were no other vehicles coming from any other direction. However, he argued that Appellant was not permitted to make a right-hand turn in a careful and prudent manner "at this particular intersection."

After the hearing, the LHO ruled that the infraction occurred. On Appellant's first argument, the LHO relied solely on *Deutzman v. City of Miami Beach*, 22 Fla. L. Weekly Supp. 973a (January 14, 2015), and stated that the case "indicates that if there's a red light that you have to stop even when you're making a right-hand turn, despite the language in the statute...If there's a red light and it's red, then you have to stop before you make a right-hand turn." As to Appellant's second argument, the LHO refused to make a ruling. The LHO entered a Final Administrative Order ("Order"), which Appellant has appealed.

### **STANDARD OF REVIEW**

When the circuit court in its appellate capacity reviews local governmental administrative action, there is a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the administrative body departed from the essential requirements of law by applying the incorrect law; and (3) whether the agency's findings and judgment are supported by competent, substantial evidence. *Lee County v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993).

### **LAW AND ANALYSIS**

Appellant makes several arguments in this appeal. First, he argues that the LHO's finding on whether Appellant made the turn in a careful and prudent manner was based on an erroneous application of the law and, therefore, departs from the essential requirements of the law. Second, he contends that given the totality of the circumstances surrounding his right-hand turn, the LHO's finding is not supported by

competent, substantial evidence. Third, Appellant argues that the LHO's refusal to determine whether Appellee improperly delegated its police powers departs from the essential requirements of law and violates due process. Because this Court agrees with Appellant's first argument, this Court does not reach Appellant's second and third arguments.

Appellant contends that the Order deviates from the essential requirements of the law because the LHO relied upon *Deutzman v. City of Miami Beach*, 22 Fla. L. Weekly Supp. 973a (January 14, 2015). In *Deutzman*, a local hearing officer in the City of Miami was faced with a similar violation and interpreted the "careful and prudent" language of section 316.0083, Florida Statutes. The relevant portion of section 316.0083, Florida Statutes, states:

*A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible. A notice of violation and a traffic citation may not be issued under this section if the driver of the vehicle came to a complete stop after crossing the stop line and before turning right if permissible at a red light, but failed to stop before crossing over the stop line or other point at which a stop is required.*

Fla. Stat. § 316.0083(1)(a) (emphasis added). Stating that his decision was dictated by the holding of the Fourth District Court of Appeals in *State v. Arrington*, 95 So. 3d 324 (Fla. 4th DCA 2012), the local hearing officer in *Deutzman* held that a full stop is required under the statute.<sup>1</sup> Appellant argues that instead of looking to the plain language of the statute, the LHO relied on a final administrative order from another municipality that previously had been dismissed on appeal.

This Court agrees that the Local Hearing Officer's reliance on *Deutzman* was improper. In concluding that section 316.0083(1)(a) requires a complete stop, the LHO did not examine the statutory language or consider all the testimony. Instead, the LHO treated *Deutzman* as controlling authority and applied its holding to find that Appellant committed a violation. *Deutzman* is not controlling authority. It is merely the opinion of a local hearing officer from a different municipality. In fact, this Court questions whether

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<sup>1</sup> While the correctness of the holding in *Deutzman* is not before this Court, the Court notes that *Arrington* does not address the phrase "careful and prudent manner," but rather analyzes the penalty provision of section 316.0083, Florida Statutes, based on equal protection grounds. *Arrington*, 95 So. 3d at 327.

the final administrative order in *Deutzman* has any precedential value. As Appellant aptly notes, the citation at issue in *Deutzman* was subsequently *nolle prossed* and the appeal on the final administrative order was dismissed.<sup>2</sup>

Because the LHO applied the incorrect law to determine if a violation occurred, the Order must be reversed and remanded to the LHO for a determination of whether Appellant violated section 316.0083, Florida Statutes, by failing to make a right-hand turn in a careful and prudent manner. The “Attorney General’s Unopposed [sic] Motion for Leave to File an Amicus Curiae Brief and to Deem Amicus Brief Filed” untimely filed by the Office of the Attorney General is dismissed as moot.

### **CONCLUSION**

The LHO departed from the essential requirements of law. The Order is therefore reversed.

It is ORDERED AND ADJUDGED that the Final Administrative Order of the Local Hearing Officer is hereby REVERSED and the cause remanded for further proceedings.

It is further ORDERED AND ADJUDGED that the motion for leave to file an amicus curiae brief is DISMISSED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida on this 29th day of November, 2016.

Original order entered on November 29, 2016, by Circuit Judges Daniel Diskey, Susan Barthle, and Kimberly Campbell.

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<sup>2</sup> The driver, John Deutzman, appealed the final administrative order. Among other things, he specifically challenged the local hearing officer’s finding that a full stop was required under section 316.0083, Florida Statutes. The City of Miami Beach, moved to stay the proceedings due to pending red light camera cases. The Eleventh Circuit Appellate Court denied the request for stay. Subsequently, the City of Miami Beach *nolle prossed* the notice of violation and moved to dismiss the case. The Eleventh Circuit Appellate Court granted the motion to dismiss on June 17, 2015.