

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502017AP000058CAXXMB
L.T. NO.: 502016TR159712AXXXSB

NICHOLAS PHILIP VERHOEVEN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

_____ /

Opinion filed: MAR 01 2018

Appeal from the County Court in and for Palm Beach County,
Traffic Hearing Officer Sara Blumberg.

For Appellant: Edward J. Kone, Esq.
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For Appellee: Kara Berard Rockenbach, Esq.
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On November 20, 2016, Palm Beach County Sheriff's Office Deputy Patrick Pointu issued Nicholas Philip Verhoeven ("Defendant") a traffic citation for violating section 316.074, Florida Statutes, for "Traffic Control Device – Failure to Obey." The traffic citation provided no description of how Defendant violated section 316.074, Florida Statutes. At trial, after Deputy Pointu was sworn in, Defendant argued an oral motion to dismiss ("Motion"), contending that the traffic citation should be dismissed because the citation lacked the requisite specificity that due process requires. The hearing officer reserved judgment on the Motion, and Defendant stipulated that the Motion was dispositive of the case. Defendant stipulated that if the Motion were granted,

the case would be dismissed, but if it were denied, Defendant would enter a plea of no contest while reserving the right to appeal.

On March 8, 2017, the hearing officer entered an Order on Motion to Dismiss denying the Motion because Defendant argued the Motion after Deputy Pointu was sworn in which “precluded [Deputy Pointu] from offering any testimony” The hearing officer further reasoned that because Defendant’s “only grievance was that the citation was defective,” the citation could not be dismissed because Florida Rule of Traffic Court 6.455 provides that no citation shall be dismissed for any “informality or irregularity in the charging instrument.” Because the hearing officer denied the Motion, the hearing officer accepted Defendant’s no contest plea as stipulated.

A traffic citation “is a formal charging document or assertion against [an] accused.” *Estate of Wallace v. Fisher*, 567 So. 2d 505, 508 (Fla. 5th DCA 1990). Due process requires the charging document specify the conduct that forms the basis for a traffic infraction so that the accused may properly prepare for the case. *Carver v. State*, 17 Fla. L. Weekly Supp. 7a (Fla. 7th Cir. Ct. Sept. 2009) (citing *Robinson v. State*, 152 So. 717 (Fla. 1934)).

In *Leech v. State*, 20 Fla. L. Weekly Supp. 1147a (Fla. 17th Cir. Ct. July 2013), a driver was issued a citation for disobeying a traffic control device in violation of section 316.074(1), Florida Statutes, and ultimately had his license suspended for driving under the influence. *Id.* The section 316.074(1) citation provided that the driver “[f]ail[ed] to drive in a single lane Disobey traffic Control Device from 1200 N Dixie-900 N Dixie. In violation of State Statute 316.074(1).” *Id.* At the hearing on the driver license suspension, the police officer that issued the citation did not appear, and the only admissible evidence regarding the alleged violation was the citation. *Id.* The Seventeenth Judicial Circuit Court in its appellate capacity held the citation was “ambiguous at best” and reversed the driver license suspension because the driver license suspension was not

supported by competent substantial evidence. *Id.* The court reasoned that the citation did not “identify which traffic control device was disobeyed, where the traffic control device was located or how it was disobeyed by” the driver. *Id.*

Here, as in *Leech*, the charging document contained no specific description as to how Defendant allegedly violated section 316.074. Because the traffic citation did not specify the conduct that formed the basis for the traffic infraction, the hearing officer erred in denying the Motion. In addition, the lack of specificity in the charging document was not an informality or irregularity as contemplated by Florida Rule of Traffic Court 6.455, but instead failed to provide Defendant with due process so that Defendant could properly contest the citation. Defendant’s no contest plea is therefore vacated and the citation dismissed.

PER CURIAM.

REVERSED.

JOHNSON, FEUER, and KASTRENAKES, JJ., concur.

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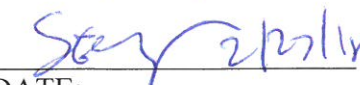
Appealed: April 6, 2017

_____/_____
DATE OF PANEL: January 22, 2018

PANEL JUDGES: JOHNSON, FEUER, KASTRENAKES

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With/Without Opinion)	With/Without Opinion)
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DATE: <u>2-27-18</u>)))
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