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

APPELLATE DIVISION (CRIMINAL): AC
CASE NO: 502013AP900039XXXXMB
L.T. NO: 502012TR266831AXXXXMB

DEBORAH C. ACOSTA,
Appellant,

v.

COUNTY OF PALM BEACH,
PALM BEACH COUNTY SHERIFF'S
OFFICE
Appellee.

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Opinion filed: SEP 22 2014

Appeal from the County Court in and for Palm Beach County,
Traffic Hearing Officer Steven Rubin

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PER CURIAM.

We affirm the order finding Appellant guilty of violating section 316.075(1)(c)(1), Florida Statutes, as to all issues raised. We write only to address Appellant's contention that a provision of section 316.0083, Florida Statutes ("the Mark Wandall Traffic Safety Act"), is facially unconstitutional.

A facial challenge to the constitutionality of a statutory provision is a pure question of law which is subject to de novo review. *See, e.g., City of Miami v. McGrath*, 824 So. 2d 143,

146 (Fla. 2002). "In a facial challenge, we consider only the text of the statute, not its specific application to a particular set of circumstances." *Abdool v. Bondi*, 141 So. 3d 529, 538 (Fla. 2014). "For a statute to be held facially unconstitutional, the challenger must demonstrate that no set of circumstances exists in which the statute can be constitutionally applied." *Id.*

The present facial challenge is based on the doctrine of separation of powers. "As stated in our state's constitution, '[t]he supreme court shall adopt rules for the practice and procedure in all courts.'" *Hanzelik v. Grottoli & Hudon Inv. of Am., Inc.*, 687 So. 2d 1363, 1365 (Fla. 4th DCA 1997) (quoting Art. V, § 2(a), Fla. Const.). "Accordingly, under the doctrine of separation of powers, the legislature is not permitted to set forth any enactment which would govern procedure in the courts of this state." *Id.* Moreover, where the Supreme Court "has promulgated rules that relate to practice and procedure, and a statute provides a contrary practice or procedure, the statute is unconstitutional to the extent of the conflict." *Massey v. David*, 979 So. 2d 931, 937 (Fla. 2008).

Appellant contends section 316.0083(1)(e), Florida Statutes, is unconstitutional because it infringes upon the Supreme Court's exclusive authority to promulgate procedural laws. The statute provides as follows:

> The photographic or electronic images or streaming video attached to or referenced in the traffic citation . . . is admissible in any proceeding to enforce this section and raises a rebuttable presumption that the motor vehicle named in the report or shown in the photographic or electronic images or streaming video evidence was used in violation of s. 316.074(1) or s. 316.075(1)(c) 1. when the driver failed to stop at a traffic signal.

§ 316.0083(1)(e), Fla. Stat. (2012). Appellant contends that the statutory language that images and video are "admissible" means that such evidence is *automatically* admissible,[1] thus creating

[1] As Appellant recognizes, the statute does not contain an express statement that images and video are admissible without separate authentication. Nevertheless, Appellant contends that the statute is facially unconstitutional

a conflict with section 90.901, Florida Statutes, which provides that "[a]uthentication or identification of evidence is required as a condition precedent to its admissibility."

There is no binding authority interpreting section 316.0083(1)(e) to determine whether it provides that images and video evidence are admissible without authentication, and there is conflicting persuasive authority. *Compare State v. Tolos*, 21 Fla. L. Weekly Supp. 860b (Fla. 9th Cir. Ct. Apr. 14, 2014) ("Because the statute plainly states that photographic or electronic images or streaming video are admissible and evidence that a violation of section 316.074(1) or section 316.075(1)(c)(1) occurred, this evidence is self-authenticating[.]") *with State v. Clark*, 20 Fla. L. Weekly Supp. 74b (Fla. Orange Cnty. Ct. Sept. 11, 2012) ("[T]he statute is not sufficiently clear such that this Court should dispense with traditional predicates for admissibility of the photographs and video[.]"). We are thus tasked with interpreting the statute.

"Legislative intent is the polestar that guides the interpretation and construction of a statute." *Anderson v. State*, 87 So. 3d 774, 777 (Fla. 2012). "A court primarily discerns legislative intent by looking to the plain text of the relevant statute." *Id.* "A court gives a statute its plain meaning when the language of the statute is clear and unambiguous and conveys a definite meaning." *Id.* "When the meaning of a statute is ambiguous, a court may turn to the rules of statutory interpretation and construction." *Id.*

By its plain language, section 316.0083(1)(e) does not demonstrate any intent to dispense with the authentication requirement for the evidence referred to therein, instead merely providing that such evidence is admissible. Even assuming *arguendo* that the statute's mere reference to admissibility renders it ambiguous, however, "where a statute is reasonably susceptible of two

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because, in the proceedings below, the traffic hearing officer interpreted the statute to provide that such evidence is automatically admissible.

interpretations, one of which would render it invalid and the other valid, we must adopt the constitutional construction." *Green v. State*, 765 So. 2d 910, 913-14 (Fla. 2d DCA 2000) (citing *State v. Lick*, 390 So. 2d 52 (Fla. 1980)). Accordingly, we interpret the statute to not dispense with the authentication requirement of section 90.901, Florida Statutes. The statute therefore does not conflict with any rule promulgated by the Florida Supreme Court and is not facially unconstitutional.

As noted previously, the traffic hearing officer adopted a contrary interpretation of section 316.0083, concluding that it did allow for automatic admission of the photographic images. However, despite that incorrect legal statement by the hearing officer, the State presented testimony that supported the authentication and admissibility of the images. Therefore, under the facts of this case, we find no reversible error.

AFFIRMED.

KASTRENAKES, ALVAREZ, CROW, JJ. concur.