

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

YOUNG B. KIM,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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APPELLATE CASE NO: 2014-CV-17-A-O

Lower Case No.: 2013-TR-33263-A-W

Appeal from Ocoee Traffic Court  
Hearing Officer Carroll Barco

Young B. Kim, pro se  
Appellant

No appearance by Ocoee Police Department  
Appellee

Before LAUTEN, LEBLANC, MURPHY

PER CURIAM.

**FINAL ORDER AFFIRMING LOWER COURT**

Appellant seeks review of a traffic hearing officer's decision finding him guilty of speeding through a school zone. The Court has jurisdiction to review the matter under section 318.33, Florida Statutes, and Traffic Court Rule 6.630(e). According to section 318.33, the review shall be based on the record of the hearing below and is not de novo. If the lower court's findings are supported by substantial, competent evidence, they cannot be disturbed on appeal. *Small v. Fluegel-Small*, 943 So. 2d 897, 899 (Fla. 5th DCA 2006). However, to the extent that Appellant raises a pure question of law, the appropriate standard of review is de novo. *Anderson v. State*, 87 So. 3d 774, 777 (Fla. 2012).

On September 17, 2013, Appellant was ticketed for driving 32 miles per hour through a school zone with a posted speed of 20 miles per hour. At the traffic infraction hearing on February 3, 2014, he did not contest his speed. Instead he argued that the school signal was obstructed and so he could not be charged with violating the speed limit. He cited to section 316.074(3), Florida Statutes (2013), which reads,

No provision of this chapter for which official traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic control devices are required, such section shall be effective even though no devices are erected or in place.

Appellant presented photographs which he said demonstrated the school speed zone signal was obstructed by a tree limb. The hearing officer ruled that the above statute did not apply to Appellant's infraction and found him guilty.

As for the applicability of Appellant's attempted defense, section 316.003(23), Florida Statutes (2013), defines "official traffic control devices" as

All signs, signals, markings, and devices, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

Section 316.185, Florida Statutes (2013), regarding school speed zones, states that

the Department of Transportation and each county and municipality in the state shall install and maintain such traffic and pedestrian control devices [as established by DOT] in conformity with such uniform system.

It seems clear that a school speed zone signal is a required and official traffic control device subject to the limitations of section 316.0174(b). A driver may raise the defenses of this section with regard to a school speed zone signal. The hearing officer erred in stating that this section did not apply in this case.

Although the hearing officer said that section 316.074(3) was not applicable, he nevertheless allowed Appellant to present evidence of the defense and he considered the issue of whether the signal was obstructed. Section 316.074(5), Florida Statutes (2013), states that traffic devices shall be presumed to be correctly placed and compliant with applicable rules unless competent evidence establishes the contrary. The burden was on Appellant to show that the signal was either improperly placed or not sufficiently legible to be seen by an ordinarily observant person.

Appellant presented no arguments or evidence that the signal was not in the correct place; his claim was that the signal was obstructed by a tree limb. After looking at Appellant's photos, and hearing both the police officer's and Appellant's description of the location, the hearing officer made the finding that "I don't see where there is an obstruction for traffic light B, that you say there's been an obstruction. Until you get up to a specific point where you got a limb in front of it, but it's not there when . . . you get into the school zone." Thus, while the hearing officer may have misstated the law, he applied it correctly by reviewing the evidence of obstruction; he found there was none.

As substantial competent evidence supports the finding that Appellant sped through a school zone in violation of a posted and unobstructed signal, it is hereby **ORDERED AND ADJUDGED** that the decision of the hearing officer is **AFFIRMED**.

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, this 16th day of September, 2014.

/S/ \_\_\_\_\_  
**FREDERICK J. LAUTEN**  
**Presiding Circuit Judge**

.LEBLANC and MURPHY, J.J., concur.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Young B. Kim**, 641 Brookfield Place, Apopka, Florida 32703 and the **Ocoee Police Department, Legal Department**, 646 Ocoee Commerce Parkway, Ocoee, Florida 43761 this 16th day of September, 2014.

/S/ \_\_\_\_\_  
Judicial Assistant