

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

June 19, 2009

SHOMBIE S. HARRIS,)	
)	
Appellant,)	
)	
v.)	Case No. 2D08-571
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

BY ORDER OF THE COURT:

Judge Khouzam has substituted for Judge Stringer on the panel in this proceeding for purposes of considering the post-opinion motions. She has viewed and listened to the recording of the oral argument conducted on December 2, 2008.

Appellee's motion for rehearing en banc is denied. Appellee's motion for rehearing and certification is denied. Judge Khouzam would grant rehearing.

On the court's own motion, the opinion issued January 23, 2009, is withdrawn and the attached opinion is substituted therefore. No further motions will be entertained in this proceeding.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES R. BIRK HOLD, CLERK

supported by the evidence, was that a trailer hitch partially blocked the tag and they could not read the letters on the tag from a distance of thirty to fifty feet. The officers stopped Harris's vehicle based on the obscured tag. After the stop, the officers smelled an odor of fresh marijuana coming from inside the vehicle. Thereafter, marijuana was found in Harris's pocket and cocaine was found in the glove box of the truck.

Harris asserts the trial court erred in denying his motion to suppress because he was improperly stopped for violating section 316.605, Florida Statutes (2006). The relevant portion of the statute reads as follows:

[A]ll letters, numerals, printing, writing, and other identification marks upon the plates regarding the word "Florida," the registration decal, and the alphanumeric designation shall be clear and distinct and free from defacement, mutilation, grease, and *other obscuring matter*, so that they will be plainly visible and legible at all times 100 feet from the rear or front.

§ 316.605(1) (emphasis added).

The only language in the statute that would apply to the case at bar is the phrase, "other obscuring matter." However, we conclude the doctrine of ejusdem generis causes this language to apply only to matter on the tag itself. Pursuant to the "'ejusdem generis' canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated." Black's Law Dictionary 514 (6th ed. 1990). Here, a reading of the language in the statute shows that the license plate must be free from obscuring matter, be it grease, grime, or some other material placed over the plate. However, it would not include a trailer hitch that is properly attached to the truck's bumper.

The dissent reads the "plainly visible" from 100 feet language as if such language was separate from "defacement, mutilation, grease, and other obscuring matter." We believe that section 316.605(1), which is all one sentence and contains 196 words, is neither clear nor concise, and therefore, the doctrine of ejusdem generis is applicable. Further, the "plainly visible" language applies to license plates obstructed by defacement, mutilation, grease, or "other obscuring matter." The sole issue is the meaning of "other obscuring matter." This phrase, under the doctrine of ejusdem generis applies to obstructions "on" the tag such as grease, grime or rags.¹ Matters external to the tag, such as trailer hitches, bicycle racks, handicap chairs, u-hauls, and the like are not covered by the statute. If the legislature chooses to bring such items external to the license plate within the statute, simple and concise language can accomplish the task.

We are not unmindful that Florida now has a variety of different license plates of various colors and design. Some of these place letters in the middle of the tag, where the trailer hitch was located in this case, and some place a symbol, such as an orange, in the middle of the tag where a trailer hitch might not obscure letters or numerals.

Although there are no cases on point in Florida, in State v. Ronau, 2002 WL 31743012 (Ohio Ct. App. 2002), the court held that the trial court did not err in finding that the stop of a truck was improperly based on the fact that the trailer hitch was blocking a portion of the license plate. We recognize that Ronau appears to be the minority position. See People v. White, 93 Cal. App. 4th 1022, 1026 (Cal. Ct. App.

¹It is clear the rag in Wright v. State, 471 So. 2d 155 (Fla. 3d DCA 1985), was in contact with the vehicle's license plate.

2001) (holding that license plate that is partially obstructed from view by a trailer hitch violates law, which provides that plates must be maintained in a condition so as to be clearly legible, and such violation provided officer with a lawful basis to stop vehicle); State v. Hill, 34 P.3d 139, 147 (N.M. Ct. App. 2001) (where law required plate to be "maintained free from foreign material and in a condition to be clearly legible," truck's plate was in violation of law where truck's trailer hitch obscured plate's renewal sticker); State v. Smail, 2000 WL 1468543 (Ohio Ct. App. 2000) (concluding that pursuant to law, which provided that "license plates . . . shall not be covered by any material that obstructs their visibility," the middle numbers of a license plate were not in "plain view" and stop of truck was lawful where license was obstructed by a ball hitch).

We conclude that Harris's vehicle was improperly stopped pursuant to section 316.605. Accordingly, we reverse Harris's judgments and sentences.

Reversed and remanded.

WILLIAMS, CHARLES E., ASSOCIATE JUDGE, Concurs.
KHOUZAM, J., dissents with opinion.

I respectfully dissent. The majority relies on the phrase "other obscuring matter" as the only language in the statute that would apply to the obstruction of the alphanumeric designation of the tag in this case. I do not read the statute to be limited to matter on the tag itself. In my view, the construction of the statute in the majority opinion disregards other critical terms and phrases contained in the statute as emphasized below:

[A]ll letters, numerals, printing, writing, and other identification marks upon the plates regarding the word "Florida," the registration decal, and the alphanumeric

designation shall be **clear** and **distinct** and free from defacement, mutilation, grease, and other obscuring matter, **so that they will be plainly visible and legible at all times 100 feet from the rear or front.**

§ 316.605(1) (emphasis added).

Based on a plain reading of the statute, I read the foregoing to require the alphanumeric designation on the plates to be plainly visible and legible at all times 100 feet from the rear or the front of the vehicle. This would include obstructions caused by items placed in front of license tags, such as trailer hitches.

If a statute is unambiguous, we do not resort to statutory construction. See State v. Hobbs, 974 So. 2d 1119, 1122 (Fla. 5th DCA 2008) (opining that for purposes of statutory interpretation, the maxim ejusdem generis should only come into play when it is necessary to construe an ambiguous statute, not to create an ambiguity in a clearly worded statute). Further, it is inappropriate to use the maxim ejusdem generis "if, as a result, the court fails to give meaning to all of the words used by the legislature." Id. at 1121. The interpretation of section 316.605 set forth in the majority opinion now before us for rehearing disregards the terms "clear" and "distinct" and the phrase "so that they will be plainly visible and legible at all times 100 feet from the rear or front." In my view, there is no need to apply the maxim ejusdem generis to interpret this unambiguous statutory provision.

"A statute should not be construed to bring about an unreasonable or absurd result, but rather to effectuate the obvious purpose and objective of the legislature. The law favors a rational and sensible construction of statutes so as to avoid an unreasonable or absurd result." George v. State, 203 So. 2d 173, 175-76 (Fla. 2d DCA 1967) (citations omitted). It would be unreasonable to read section 316.605(1)

as meaning that a plate is visible if it cannot be read by an officer following safely in his or her patrol car.

To follow the reasoning in the majority opinion, items displayed in front of the license tag that obscure the plate would not be in violation of the statute and would not provide law enforcement with a lawful basis to stop the vehicle, so long as the items are not affixed to the tag itself. This is neither a plain nor reasonable interpretation of the statute.

Law enforcement officers should not be precluded from stopping a vehicle when they are unable to read a license plate because such a restriction would hinder them in fulfilling their duties to carry out the significant state interest of protecting citizens. I find Wright v. State, 471 So. 2d 155 (Fla. 3d DCA 1985), instructive. In Wright, an officer noticed that the license plate on the rear of a parked vehicle was partially obscured by a dirty rag. Id. at 156. The officer approached and asked the defendant to exit the vehicle. Id. at 157. The court found that the officer had the authority, even the duty, to investigate why the license tag was obscured in violation of the motor vehicle statute. Id. Like the rag in Wright, the trailer hitch here obscured the critical alphanumeric designation of the tag.² In fact, in this case the officers testified they were in separate vehicles travelling together, parallel to each other, when they first saw Harris's truck. Both officers testified that they attempted to determine the tag number from the rear and were unable to do so because the tag was obscured by a

²It appears that the rag in Wright was not affixed to the face of the license plate. The defendant told the officer that the rag was being used because the gas tank leaked, and that the rag must have blown over the license plate. 471 So. 2d at 157. The defendant lifted the license plate and the officer observed that the gas tank had a regular cap in place. Id.

trailer hitch. As in Wright, I would find that the officers had the authority to investigate why Harris's tag was obscured.

In light of the foregoing, I would affirm the trial court's denial of the motion to suppress. The trial court correctly applied the plain language of the statute and properly determined that Harris was in violation of the statute because the license plate was partially obscured by a trailer hitch and was not plainly visible at distances well under 100 feet.