

18 Fla. L. Weekly Supp. 543a**Online Reference: FLWSUPP 1806GWOR**

Criminal law -- Traffic infractions -- Careless driving -- Where it appears that vehicle that defendant rear-ended may have stopped with unexpected suddenness, defendant has not been proven guilty of careless driving beyond reasonable doubt

STATE OF FLORIDA, Plaintiff, vs. PETER J. GWOREK, Defendant. County Court, 18th Judicial Circuit in and for Brevard County. Case No. 05-2010-TR-065810-A. March 25, 2011. David E. Silverman, Judge. Counsel: Thomas P. Malone, for Defendant.

FINAL JUDGMENT

This cause coming before this Court for non-jury trial on the 25th day of March, 2011, and the Court having received sworn testimony and having considered the argument of counsel and having been advised in the premises, the Court hereby finds as a matter of fact and concludes as a matter of law, as follows.

At the outset, the Court commends the officer, the witnesses and counsel for the professionalism and courtesy each of them demonstrated in the presentation of this case.

Findings of Fact

In the early evening hours of October 29, 2010 Peter Gworek was driving north bound on State Road A1A when the vehicle ahead of him, apparently driven by Allison Randolph, struck the stopped vehicle immediately ahead of her. According to the *Affidavit of Defense* filed by Mr. Gworek, the Randolph vehicle did not brake prior to colliding with the forward vehicle. Neither Ms. Cassarora, who was the driver of the forward vehicle, nor the other witness who testified at the hearing observed the driving of Mr. Gworek's vehicle prior to the accident or were in a position to judge the distance between Gworek's vehicle and the Randolph vehicle. Officer Weber did not identify any pertinent skid marks or other indicia of braking by the Randolph vehicle and neither Ms. Randolph, who also received a citation, or her passenger, testified at the hearing.

Conclusions of Law

Section 361.1925(1), Florida Statutes, requires persons driving vehicles on the streets or highways to do so in a, "careful and prudent manner, having regard for the . . . traffic and all other attendant circumstances. . ."

The evidence in the case must be viewed with respect to the law regarding reasonable doubt as that is the applicable evidentiary standard. A reasonable doubt may arise from, "the evidence, conflict in the evidence or the lack of evidence." *Florida Standard Jury Instructions in Criminal Cases*, As amended through October 1, 2003, Instruction 2.03, Plea of Not Guilty, Reasonable Doubt; Burden of Proof.

Before the defendant may be found guilty under our law, the Court is required to have, "an abiding conviction of guilt." The instructions promulgated by the Florida Supreme Court provide that after carefully considering, weighing and comparing the evidence, if the finder of fact has a conviction that the defendant is guilty, but that conviction is one which, "is not stable but one which wavers and vacillates, then the charge is not proved beyond a reasonable doubt," and the defendant must be found not guilty. *Florida Standard Jury Instructions in Criminal Cases*, Instruction 2.03, *supra*.

Analysis

While the Court finds that the nature of the accident tends to indicate that the defendant may not have been keeping a proper distance, establishing that a person probably committed an infraction does not necessarily constitute proof beyond a reasonable doubt. It is not automatic that a person involved in a rear-end collision was driving carelessly and it appears that the car preceding Mr. Gworek may have stopped with an unexpected

suddenness. Based on the evidence, conflict in the evidence and lack of evidence, the Court entertains a doubt that is reasonable with respect to the commission of the alleged infraction. In accordance with the reasonable doubt standard, a time-honored and fundamental legal precept that this Court is bound to uphold, the Court is constrained to find the defendant not guilty.

Doubting a particular proposition is not necessarily inconsistent with investing a substantial measure of belief in that same proposition. Therefore, nothing herein should be construed to imply or suggest that the Court disbelieved the testimony of the Officer Weber or the witnesses or found any of them to be anything less than completely honest and sincere.

Judgment

It is hereby ORDERED and ADJUDGED, that the defendant is not guilty of the charge of *Careless Driving*.

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