

34 Fla. L. Weekly Supp. 150a**Online Reference: FLWSUPP 3403RIVE**

Traffic infractions -- Speeding -- School zone speed detection system -- Evidence -- Identity of vehicle owner -- Officer's testimony regarding identity of registered owner of vehicle photographed by school zone speed detection system is hearsay and does not fall within exception to hearsay rule -- Judgment of acquittal entered

STATE OF FLORIDA, Plaintiff, v. LESMAY GONZALEZ RIVES, Defendant. County Court, 20th Judicial Circuit in and for Lee County. Case No. 25-TR-061175. May 6, 2026. Randy E. Merrill, Hearing Officer. Counsel: Joshua Fredrickson and Kimberly Sams, Assistant City Attorneys, Cape Coral, for Plaintiff. Ted Hollander, The Ticket Clinic, West Palm Beach, and Jackson Todd, The Ticket Clinic, Fort Myers, for Defendant.

[Notice of Appeal filed June 5, 2026, Case No. 26-AP-000002.]

AMENDED ORDER

THIS CAUSE came before the Court for a non-jury trial on April 14, 2026. Present on behalf of the Defendant were Ted Hollander, Esquire and Jackson Todd, Esquire. Present on behalf of the City of Cape Coral were Joshua Fredrickson, Esquire, and Kimberly Sams, Esquire. Sergeant Patrick Taylor of the Cape Coral Police Department testified on behalf of the City.

Testimony elicited at the trial was that The Defendant was charged by Uniform Traffic Citation with unlawful speed in a school zone as a result of the Defendant being sent a notice of violation that the Defendant chose to contest.

At the time the violation occurred, the school zone was being monitored by a speed detector pursuant to the City's school zone safety program instituted pursuant to *F.S. 316.1896*, *F.S.316.1896*, *F.S. 316.0083* and *F.S. 316.0776*, and operated pursuant to contract by RedSpeed Florida, LLC. The Defendant's citation was generated by virtue of the system being triggered by a vehicle travelling in excess of the school zone limit at the time and a photograph of the rear of the vehicle and a close-up photograph of the vehicle's rear license plate was captured along with details of the circumstances surrounding the violation. The notice of violation was sent to the registered owner of the vehicle. The Defendant contested the violation and the trial was conducted.

At the trial, Sergeant Taylor testified and he was the officer in charge of the system and who reviewed the details and ultimately issued the uniform traffic citation. During his testimony, the issue of the identification of the driver was raised. Sergeant Taylor testified that he reviewed the photograph made it a time of the violation, and noted the license plate number, make, and model of the vehicle. He then entered the information obtained from the license plate into the State Driver and Vehicle Identification Database (DAVID), To obtain the registered owner's information. That database revealed the defendant as the first registered owner. The defense objected on the grounds that the information was hearsay. After brief argument, the court asked for briefing of the cases argued and reserved ruling on the objection.

After receiving case law from both the city and the defendant, and the court having reviewed the cases and the testimony from the trial, finds as follows:

The testimony regarding the registered owner of the vehicle from the license plate information is hearsay under F.S. 90.801 and admissible only if and it falls within an exception to the hearsay rule. The defense argues that the owner's information from the registration could come into evidence only if the registration

information was on a certified of the vehicle registration. There was no certified copy offered in evidence. The City of argues that a certified copy is not a requirement and cites *State v. Vanderpool*, 2011 WL 2742641 (Fla.Co.Ct.) (Trial Order) County Court of Miami-dade County, Florida. In *Vanderpool*, the City of Miami Beach used an electronic database to obtain the name and address of the registered owner. The *Vanderpool* Court found that because the information was obtained electronically by computer, the information is not hearsay. No exception to the hearsay rule was cited in the opinion,

A case more on point are *Kahn v. State*, 243 So. 3d 506 (Fla. 2DCA 2018) [43 Fla. L. Weekly D747a] and *Holborough v. State*, 103 So. 3d 221 (Fla. 4DCA 2012) [37 Fla. L. Weekly D2735b]. IOn *Holborough*, an officer based the identification on a Florida ID displayed to him. The Court found the officer's in-court testimony as to what the ID said was hearsay, falling into no exception. "The officer's testimony was offered for the truth of the matter. ." (*id at 223*). *Kahn* referenced *Holborough* and stated that such identification testimony was inadmissible hearsay even supposing an exception to the hearsay rule applied as a public record under F.S. 90.803(8) the exception for public records, citing *Tillman v. State*, 964 So. 2d 785, 787-789 (Fla. 4DCA 2007) [32 Fla. L. Weekly D2161a]. See also *Riggins v. State*, 67 So. 3d 244, (Fla. 2DCA 2010) [35 Fla. L. Weekly D2480b]. In *Riggins*, the only evidence offered to prove the identity of the driver was the officer's use of his in-car computer to search the VIN through FCIC/NCIC which indicated that *Riggins'* car was not registered properly -- which was a charge against him. The Court found the officer's testimony as to what the FCIC/NCIC readout said was hearsay. The Court noted that the State could have obtained a certification from the Department of Highway Safety and Motor Vehicles to establish the registration issue.

In review of the above, the Court finds the testimony as to the identity of the registered owner herein is hearsay and not within an exception.

Therefore, the Defendant's objection to the testimony regarding the registered owner of the vehicle in this case is SUSTAINED.

As a result of this Order, the Defendant is granted a judgment of acquittal.

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