

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

DORIS J. COMBS)	
)	
Defendant-Below/Appellant,)	
)	
v.)	C.A. No.: CPU4-12-002673
)	
THE CITY OF WILMINGTON)	
)	
Plaintiff-Below/Appellee.)	

Submitted: January 4, 2013
Decided: February 1, 2013

Doris J. Combs
15 Majestic Drive
Newark, DE 19713
Self-represented Defendant-Below

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Assistant City Solicitor
800 N. French Street, 9th Floor
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**CORRECTED
MEMORANDUM OPINION & ORDER GRANTING APPELLEE’S
MOTION FOR SUMMARY JUDGMENT**

This civil matter is an appeal from the Justice of the Peace Court regarding a citation for failure to stop at a red light before a right-hand turn. On December 28, 2011, Defendant-Below, Doris J. Combs (“Ms. Combs”), received a citation for a civil violation from the Plaintiff-Below, the City of Wilmington (“the City”). The citation alleges that Ms. Combs violated City Ordinance, Section 37-95, enabled by 21 *Del. C.* § 4101, which granted counties and municipalities the power to adopt ordinances that conform to the State’s red light violation statutes. Section 37-95 requires vehicles making a legal right-hand turn on a red

light to “stop before crossing the stop line, whether marked by sign or painted line if none, before entering the walk. . . .”

The citation states that on December 17, 2011, at 12:30 a.m., Ms. Combs failed to stop at a red light before making a right-hand turn at the intersection of Delaware Avenue, Westbound, and Van Buren Street. Ms. Combs requested a hearing on the violation, and the Justice of the Peace Court held a hearing on May 15, 2012. The City presented evidence of the violation, and the Justice of the Peace Court found that Ms. Combs was responsible for violating City Ordinance 37-95, and imposed a civil penalty of \$110.00.

Ms. Combs appealed the Justice of the Peace Court’s decision to this Court. The City filed this Motion for Summary Judgment, arguing that there are no genuine issues of material fact because Ms. Combs’ sole argument is that the video tape was tampered with, however, she provides no evidence of the alleged tampering. Therefore, the City claims, they are entitled to judgment as a matter of law. Ms. Combs did not file a response in opposition to the motion. On January 4, 2013, the Court held a hearing on the motion and both parties appeared. The following are the Court’s factual findings and decision granting the City’s Motion for Summary Judgment.

PROCEEDINGS BELOW AND MOTION HEARING IN THIS COURT

At the hearing before this Court, the parties did not dispute what evidence was presented to the Justice of the Peace Court regarding the alleged failure to stop. The parties stipulated that three photographs and a videotape of Ms. Combs’ failure to stop were recorded by the electronic monitoring system and were reviewed by the Justice of the Peace

Court. The City argued that Ms. Combs failed to rebut the statutory presumption by not offering any evidence to support her argument that the videotape was manipulated. The City also submitted that the electronic monitoring system's photographs and videotape are reviewed at numerous administrative levels prior to a hearing in the Justice of the Peace Court.

The City submitted in support of its motion, the evidence presented to the Justice of the Peace Court. Denley Calliste, who has ten years of experience in technical support for the red light photo enforcement program, testified at the Justice of the Peace hearing.¹ Mr. Calliste testified that the monitoring system on the traffic signal at Delaware Avenue, Westbound, and Van Buren Street, at the time of Ms. Combs' violation, was working properly. Mr. Calliste then identified Ms. Combs as the registered owner of the vehicle through the vehicle and license plate number depicted on the citation and in three still photographs. Mr. Calliste identified the videotape, which was approximately ten seconds long and clearly showed Ms. Combs' vehicle going through the red light without stopping.

Ms. Combs did not object to the evidence at the Justice of the Peace Court hearing. Ms. Combs' cross-examination consisted of her theory that the videotape had been manipulated and never denied that it was her vehicle in the photos and videotape, or that she was driving. Therefore, the City requests that judgment is entered in their favor as a matter of law.

At this hearing before this Court, Ms. Combs continued to argue that the videotape was manipulated and never refuted that she was driving or that she failed to stop. In fact,

¹Plaintiff-Below Exh. 1.

Ms. Combs admitted at the hearing that it may have been “a rolling stop.” However, Ms. Combs then contradicted herself by maintaining that she stopped or paused, and that the Justice of the Peace Court evaluated the evidence in error.

DISCUSSION

The Court must determine whether there are any genuine issues of material fact for trial and whether the City is entitled to judgment as a matter of law. The standard for a motion for summary judgment is provided by *CCP Civ. R. 56(c)* and states that “[t]he judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” If the moving party submits affidavits or evidence in support of its motion, then the burden shifts to the non-moving party to “provide evidence showing a genuine issue of material fact for trial.”² Next, if the non-moving party fails to “make a sufficient showing of the existence of an essential element of his or her case, summary judgment must be granted.”³ If genuine issues of material fact are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record, then summary judgment must be denied.⁴

² *Waterhouse v. Hollingsworth*, 2010 WL 8250801, at *2 (Del Super. May 3, 2010) (citations omitted).

³ *Waterhouse*, 2010 WL 8250801, at *2.

⁴ *Ebersole v. Lowengrub*, 180 A.2d 467 (Del. 1962).

In the instant appeal, the only argument presented by Ms. Combs is that the videotape was erroneously evaluated by the Justice of the Peace Court and was manipulated. The City submitted evidence and affidavits in support of its motion, arguing that the tape was not manipulated and the electronic monitoring system was in working order. The City's evidence shifted the burden to Ms. Combs to provide some evidence of a genuine issue of material fact for trial.⁵ Ms. Combs was only able to offer the Court her testimony that the videotape was manipulated. Moreover, Ms. Combs admitted at the hearing that she made a "rolling stop." In Ms. Combs' Answer, she disputes the definition of a "stop" and argues that it is a "pause."

This Court finds that Ms. Combs failed to provide some evidence that the Justice of the Peace Court erroneously evaluated the videotape or that the videotape was manipulated. Furthermore, Ms. Combs provides no evidence that she was not driving, that it was not her car, or that she did, in fact, stop before turning at the red light. Therefore, I find that there is no genuine issue of material fact for trial and the City is entitled to judgment as a matter of law.

While the Justice of the Peace Court reviewed the evidence of the civil violation under a preponderance of the evidence standard, this Court, if a hearing were to be scheduled to review the evidence submitted at the hearing below, would evaluate the evidence below using a clear and convincing evidence standard. The standard for clear and convincing evidence is "an intermediate evidentiary standard, higher than mere

⁵ *Waterhouse*, 2010 WL 8250801, at *2.

preponderance, but lower than reasonable doubt.”⁶ However, since the Court is granting summary judgment because there are no genuine issues of material fact, the Court does not need to reach the clear and convincing evidence analysis.

CONCLUSION

Therefore, **IT IS HEREBY ORDERED** this 1st day of February, 2013 that Appellee’s Motion for Summary Judgment is granted.

The Honorable Alex J. Smalls
Chief Judge

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⁶ *Cerberus Intern., Ltd. v. Apollo Management, L.P.*, 794 A.2d 1141, 1150 (Del. 2002) (quoting, *In re Tavel*, 661 A.2d 1061, 1070 (Del. 1995)).