

NOT FINAL UNTIL TIME EXPIRES
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AND, IF FILED, DISPOSED OF.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

APPELLATE DIVISION

CASE NO. 11-713 AP

LOWER CASE NO. 55499802

JONATHAN CORBETT,

Appellant,

vs.

MIAMI DADE PARKING BUREAU,

Appellee.

7-23-12
Dorly Karlan 7/27/12
7/31/12

Opinion Filed:

August 2, 2012

An Appeal from the Miami Dade County Parking Violations Bureau for Miami-Dade County Florida.

Jonathan Corbett, Pro Se, for Appellant.

Luis Montaldo, for Appellee.

Before KARLAN, RODRIGUEZ, and ARECES, JJ.

RODRIGUEZ, J.

This is an appeal from a decision of the Appellee, Miami Dade County Parking Violations Bureau. On April 1, 2011, Appellant Jonathan Corbett [Corbett] was in the back of his office on Lincoln Road. He was in the process of loading his vehicle with his trunk open. One person was with vehicle while Mr. Corbett and another person moved boxes from his office to his vehicle. A Miami Beach public safety officer approached the person with the vehicle and informed him to

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move the vehicle or it would be towed.

Mr. Corbett returned to his vehicle and explained to the public safety officer that he was loading his vehicle. The public safety officer informed Mr. Corbett to move his vehicle or it would be towed. The public safety officer issued a citation because the vehicle was parked on the sidewalk. Mr. Corbett requested a hearing of the citation.

At the hearing of September 15, 2011, a hearing officer of the Miami Dade Parking Violations Bureau determined that Mr. Corbett was guilty of the parking violation. No transcript of the hearing of September 15, 2011 was submitted on this appellate record. As a consequence, a decision of a lower tribunal carries with it a presumption of correctness. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). However, a misconception by a lower tribunal of a principle of law in rendering a decision can constitute a ground for reversal. *Id.*

Mr. Corbett argues on appeal that the Miami Dade Parking Violations Bureau failed to prove beyond a reasonable doubt that his vehicle was in fact parked, an element of the citation charge. No response on appeal was filed by the Miami Dade Parking Violations Bureau. We agree that the Miami Dade Parking Violations Bureau did not carry its burden of proof that Mr. Corbett's vehicle was in fact parked to establish that a parking violation occurred.

The parking violation charged in the citation was "parking in prohibited areas". A copy of the citation was not included in this appellate record. According to the appellate record, the elements of that parking violation were: 1) that a defendant parked a vehicle; and 2) that the place at which the defendant parked his vehicle was prohibited. "Park or parking" is statutorily defined as "[t]he standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers as

may be permitted by law under this chapter.” §316.003(27), Fla. Stat. (2010).

During the hearing, the Miami Dade Parking Violations Bureau based its burden of proof on no other evidence than the public safety officer’s testimony to establish that a parking violation had occurred. The public safety officer testified on direct that a vehicle is considered parked if the gear shift is in park. Mr. Corbett correctly pointed out that this testimony involved a misconception of the statutory definition of park or parking. As a result of this misconception of the law, this Appellate Court finds that insufficient evidence existed on this record to satisfy the statutory elements proving the existence of a parking violation. Therefore, we reverse the hearing officer’s determination that Mr. Corbett was guilty of a parking violation. REVERSED and REMANDED.

(KARLAN and ARECES, J.J. concurs.)

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