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IN THE SUPREME COURT
STATE OF FLORIDA

CASE No. SC12-644

RICHARD MASONE,

Petitioner,

v.

CITY OF AVENTURA,

Respondent.

APPENDIX TO ANSWER BRIEF ON THE MERITS
OF CITY OF AVENTURA

ON DISCRETIONARY REVIEW FROM A DECISION OF THE
THIRD DISTRICT COURT OF APPEAL

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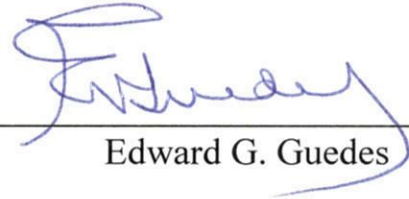
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CERTIFICATE OF SERVICE

I certify that a copy of this appendix served via e-mail on April 17, 2013, on: Bard D. Rockenbach, Esq. (bdr@FLAppellatelaw.com), Andrew A. Harris, Esq. (aah@FLAppellatelaw.com, jew@FLAppellatelaw.com) (Attorneys for Petitioner), Burlington & Rockenbach, P.A., 444 West Railroad Avenue, Suite 430, West Palm Beach, Florida 33401; Samuel J. Salario, Jr., Esq. (ssalario@carltonfields.com, bsickimich@carltonfields.com), Joseph H. Lang, Jr., Esq. (jlang@carltonfields.com), Amanda Sansone, Esq. (asansone@carltonfields.com), Carlton Fields, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, Florida 33607.



Edward G. Guedes

ARTICLE III. DANGEROUS INTERSECTION SAFETY

Sec. 48-25. Intent.

The purpose of this article is to authorize the use of an unmanned cameras/monitoring system to promote compliance with red light signal directives as proscribed by this article, and to adopt a civil enforcement system for red light signal violations. This article will also supplement law enforcement personnel in the enforcement of red light signal violations and shall not prohibit law enforcement officers from issuing a citation for a red light signal violation in accordance with other routine statutory traffic enforcement techniques.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-26. Use of image capture technologies.

The City shall utilize image capture technologies as a supplemental means of monitoring compliance with laws related to traffic control signals, while assisting law enforcement personnel in the enforcement of such laws, which are designed to protect and improve public health, safety and welfare. This section shall not supersede, infringe, curtail or impinge upon state or county laws related to red light signal violations or conflict with such laws. Nothing herein shall conflict with the primary jurisdiction of Miami-Dade County to install and maintain traffic signal devices. This article shall serve to enable the City to provide enhanced enforcement and respect for authorized traffic signal devices. The City may utilize image capture technologies as an ancillary deterrent to traffic control signal violations and to thereby reduce accidents and injuries associated with such violations. Notices of infractions issued pursuant to this article shall be addressed using the City's own Special Masters pursuant to Article V of Chapter 2 of the City Code and not through uniform traffic citations or county courts. This shall not bar the use of uniform traffic citations and the county courts when City police personnel decide not to rely on this article as the enforcement mechanism for a specific violation.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-27. Definitions.

The following definitions shall apply to this article:

Intersection. The area embraced within the prolongation or connection of the lateral curb line; or, if none, then the lateral boundary lines, of the roadways of two roads which join or intersect one another at, or approximately at, right angles; or the area within which vehicles traveling upon different roads joining at any other angle may come in conflict.

Motor vehicle. Any self-propelled vehicle not operated upon rails or guide way, but not including any bicycle or electric personal assisted mobility device.

Owner/vehicle owner. The person or entity identified by the Florida Department of Motor Vehicles, or other State Vehicle Registration Office, as the registered owner of a vehicle. Such term shall also mean a lessee of a motor vehicle pursuant to a lease of six months or more.

Recorded images. Images recorded by a traffic control signal monitoring system/device:

(1) On:

- a. Two or more photographs;
- b. Two or more electronic images;
- c. Two or more digital images;
- d. Digital or video movies; or
- e. Any other medium that can display a violation; and

(2) Showing the rear of a motor vehicle and on at least one image, clearly identifying the license plate number of the vehicle.

Red zone infraction. A traffic offense whereby a traffic control signal monitoring system established that a vehicle entered an intersection controlled by a duly erected traffic control device at a time when the traffic control signal for such vehicle's direction of travel was emitting a steady red signal.

Special Master. The City's Code Enforcement Special Master, as described in Chapter 2, Article V of the City Code.

Traffic Control Infraction Review Officer. The City Police Department employee designated, pursuant to subsection 48-31(b) herein, to review recorded images and issue red zone infractions based upon those images.

Traffic control signal. A device exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, using only the colors green, yellow, and red which indicate and apply to drivers of motor vehicles as provided in F.S. § 316.075.

Traffic control signal monitoring system/device. An electronic system consisting of one or more vehicle sensors, working in conjunction with a traffic control signal, still camera and video recording device, to capture and produce recorded images of motor vehicles entering an intersection against a steady red light signal indication.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-28. Adherence to red light traffic control signals.

Motor vehicle traffic facing a traffic control signal's steady red light indication shall stop before entering the crosswalk on the near side of an intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown on the traffic control signal; however, the driver of a vehicle which is stopped at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience of a steady red traffic control signal, may make a right turn (unless such turn is otherwise prohibited by posted sign or other traffic control device) but shall yield right-of-way to pedestrians and other traffic proceeding as directed by the traffic control signal at the intersection.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-29. Violation.

A violation of this article, known as a red zone infraction, shall occur when a motor vehicle does not comply with the requirements of section 48-28. Violations shall be enforced pursuant to section 48-31.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-30. Ninety-day notice; introductory period.

The Police Chief shall notify the City Manager when the red light camera system is operating correctly at the initial location established. For the 90 days following said notification, unless the driver of a vehicle received a citation from a Police Officer at the time of a red zone infraction in accordance with routine traffic enforcement techniques, the vehicle owner shall receive a warning in the form of a courtesy notice of the violation. Commencing 91 days after the above referenced notification, the vehicle owner is subject to the enforcement provisions as provided herein and no warning shall be given pursuant to this article.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-31. Review of recorded images.

(a) The owner of the vehicle which is observed by recorded images committing a red zone infraction, shall be issued a notice of violation (hereinafter also known as a "notice"). The recorded image shall be sufficient grounds to issue a notice.

(b) The City's Chief of Police shall designate a Traffic Control Infraction Review Officer, who shall be a Police Officer of the City or who shall meet the qualifications set forth in F.S. § 316.640(5)(A), or any other relevant statute. The Traffic Control Infraction Review Officer shall review recorded images prior to the issuance of a notice to ensure the accuracy and integrity of the recorded images. Once the Traffic Control Infraction Review Officer has verified the accuracy of the recorded images, he or she shall complete a report, and a notice shall be sent to the vehicle owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles or the address on record with the appropriate agency having such information in another state.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-32. Notice of violation.

The notice shall be in the form as provided for in section 2-340 of the City Code but shall also include:

- (1) The name and address of the vehicle owner;
- (2) The license plate number and registration number of the vehicle;
- (3) The make, model, and year of the vehicle;
- (4) Notice that the infraction charged is pursuant to this article;
- (5) The location of the intersection where the infraction occurred;
- (6) Notice that there are recorded images relating to the vehicle and a statement that the recorded images are evidence of a red zone infraction;
- (7) Images depicting the infraction;
- (8) A signed statement by the Traffic Control Infraction Review Officer that, based on inspection of recorded images, the vehicle was involved in and was utilized to commit a red zone infraction.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-33. Vehicle owner responsibilities.

(a) A vehicle owner receiving a notice may:

- (1) Pay the assessed civil penalty pursuant to instructions on the notice; or

(2) Appear before the Special Master to contest the notice.

(b) The failure to pay the assessed civil penalty and failure to appear before the Special Master to contest the notice will be considered an admission of liability and in such case an order may be entered against the violator for an amount up to the maximum civil penalty, plus any administrative costs.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-34. Hearing before the Special Master.

(a) The City's Code Enforcement Special Masters are authorized to hold hearings related to the enforcement of this article. A hearing shall be scheduled for all notices for which the vehicle owner timely requests an administrative hearing.

(b) Upon receipt of the named violator's timely request for an administrative hearing, the City shall schedule a hearing before the Special Master pursuant to section 2-342 of the City Code. Notice of hearing shall be provided to the vehicle owner pursuant to the notice provisions contained in Article V of Chapter 2 of the City Code.

(c) The hearing shall be held pursuant to the procedures set forth in Article V of Chapter 2 of the City Code. The Traffic Control Infraction Review Officer may testify at the hearing. The vehicle owner may present testimony and evidence.

(d) Recorded images indicating a red zone infraction, verified by the Traffic Control Infraction Review Officer, are admissible in any proceeding before the City's Special Master to enforce the provisions of this article, and shall constitute prima facie evidence of the violation.

(e) Unless an affidavit is provided pursuant to section 48-35, it is presumed that the person registered as the vehicle owner with the Florida Department of Motor Vehicles or any other state vehicle registration office, or an individual having the owner's consent, was operating the vehicle at the time of a red zone infraction.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-35. Vehicle owner affidavit of non-responsibility.

(a) In order for the vehicle owner to establish that the motor vehicle was, at the time of the red zone infraction, either: (1) in the care, custody, or control of another person without the consent of the registered owner or (2) was subject to a short term (less than six months) car rental agreement entered into between a car rental agency, which is licensed as required by applicable law and is authorized to conduct business in the State of Florida, and the operator of the vehicle, the vehicle owner is required, within 20 days from the date listed on the notice, to furnish to the

City, an affidavit setting forth the circumstances demonstrating, either: (1) that the motor vehicle was not in the vehicle owner's care, custody, or control, and was not in the care, custody or control of another person with the vehicle owner's consent or (2) that the motor vehicle was subject to a short term (less than six months) rental agreement between the car rental agency receiving the notice and the vehicle operator and provide a true and correct copy of the short term car rental agreement, as applicable. The affidavit must be executed in the presence of a notary, and include:

(1) If known to the vehicle owner, the name, address, and the driver's license number of the person who had care, custody, or control of the motor vehicle, without the vehicle owner's consent, at the time of the alleged red zone infraction; or

(2) The name, address and drivers license number of the person who rented the motor vehicle from the car rental agency which has received the notice, at the time of the alleged red zone infraction; or

(3) If the vehicle was stolen, the police report indicating the vehicle was stolen at the time of the alleged red zone infraction; and

(4) The following language immediately above the signature line: "Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true."

(b) Upon timely receipt of a sufficient affidavit pursuant to this section, any prosecution of the notice issued to the vehicle owner shall be terminated. Proceedings may be commenced by the City against the responsible person identified in the affidavit, and in such event, the responsible person shall be subject to the same process and procedures which are applicable to vehicle owners.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-36. Administrative charges.

In addition to the penalty pursuant to section 48-39 herein, administrative charges may be assessed pursuant to Article V of Chapter 2 of the City Code in the event of a hearing and/or the necessity to institute collection procedures arises.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-37. Collection of fines.

Collection of fines shall be accomplished pursuant to Article V of Chapter 2 of the City Code.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-38. Exceptions.

This article shall not apply to red zone infractions involving vehicle collisions (unless no citation or charge is issued for a violation of a state statute related to said collision) or to any authorized emergency vehicle responding to a bona fide emergency; nor shall a notice be issued in any case where the operator of the vehicle was issued a citation for violating the state statute regarding the failure to stop at a red light indication for the same event or incident.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-39. Penalty.

A violation of this article shall be deemed a non-criminal, non-moving violation for which a civil penalty, as proscribed in Article V of Chapter 2 of the City Code, shall be assessed. As the violation relates to this article and not to the Florida Statutes, no points as otherwise provided in F.S. § 322.27, shall be recorded on the driving record of the vehicle owner or responsible party.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-40. Enforcement.

This article may be enforced by any other means available to the City.

(Ord. No. 2007-15, § 2, 10-18-07)

Sec. 48-41. Signage.

The City shall, to the extent practicable, at the primary motor vehicle entry points to the City, cause to be erected and maintained signs, which substantially meet the design specifications indicated in Exhibit "A", providing notice of this article. Failure to erect, maintain or create these signs shall not invalidate or impair any enforcement of this article.

(Ord. No. 2007-15, § 2, 10-18-07)



RED LIGHT CAMERA PROGRAM ANALYSIS

INTRODUCTION

Section 316.0083, Florida Statutes, directs the Department of Highway Safety and Motor Vehicles (DHSMV) to provide a summary report on the use of traffic infraction enforcement detectors (red light cameras) used to enforce red light violations. The statute specifies three areas to be addressed in the report; statistical data, enhancement to traffic safety, and procedural information. This summary is a compilation of information the DHSMV received from local counties and municipalities (agencies) through an on-line questionnaire.

METHODOLOGY

Agencies were requested to participate by completing an online questionnaire which captured selected activities and agency data. The online *Florida Red Light Camera Annual Report Survey* was the primary instrument used to gather data for this report and consisted of 9 multiple choice and 15 free form data elements. Each agency entered data specific to red light camera utilization between July 1, 2011 and June 30, 2012. In total, 73 agencies responded to the online survey in accordance with reporting requirements set forth in Florida Statute.¹ The information requested specific to red light camera implementation and program operations included:

- Rating factors used to select red light camera locations
- Number of intersections utilizing red light cameras
- Comparison of intersection data before and after red light camera installation for:
 - Total crashes
 - Side-impact crashes
 - Rear-end crashes
- Number of Notices of Violation issued
- Personnel responsible for Notices of Violation
- Number of Notices of Violation challenged
- Personnel responsible for reviewing notice of violation challenges
- Number of Notices of Violation dismissed after challenged
- Number of Uniform Traffic Citations issued for red light camera violations
- Personnel responsible for issuing Uniform Traffic Citations
- Policies regarding enforcement of red light violations while making right-hand-turns

APPENDIX "B"

ANALYSIS

Seventy-three agencies reported collectively throughout the State of Florida there are 404 intersections with red light cameras installed. During the reporting period of July 1, 2011 through June 30, 2012, these agencies reported issuing 999,929 Notices of Violation.

Agencies also captured data regarding Notices of Violation challenged and reported 20,064 challenges. Of those violations challenged, 14,065 were dismissed. Thus, nearly 70% of violations challenged are dismissed. (950 challenges pending at the time of this report)

Florida Statutes provides for the issuance of a Uniform Traffic Citation (UTC) when a notice of violation is not paid within 30 days of receipt. In all, 66 agencies issued 265,783 UTCs based on red light camera violations.

Each agency surveyed was asked to rate the factors below, from most to least important, used in selecting an intersection for red light camera installation.

Table 1

Factors Used to Select Intersections for Camera Installation (rated 1-5 by importance)						
	Most (1)	(2)	(3)	(4)	Least (5)	Response Count
Traffic Crash Data	39	11	9	3	8	70
Traffic Citation Data	4	18	18	20	11	71
Citizen Complaints	7	17	14	18	15	71
Law Enforcement Officer Observations	7	18	22	22	2	71
Video Survey of Violation	14	8	8	6	34	70

While a majority of agencies listed traffic crash data as the primary consideration for placement of the cameras, the data demonstrates that 44% did not consider this first when placing cameras.

However as depicted in Tables 2, 3 and 4, the most common outcome since the installation of red light cameras is a decrease in traffic crashes. Forty-three percent noticed a reduction in side-impact crashes, 41% of the agencies surveyed experienced a reduction in rear-end crashes, while 56% of the agencies experienced a total reduction in crashes at red light camera intersections.

Table 2

Red Light Camera Side-Impact Crash Outcome		
	Response Percent	Response Count
Increased	11.0%	8
Decreased	43.8%	32
Remained the same	15.1%	11
No data available	30.1%	22
Respondents		73

Table 3

Red Light Camera Rear-End Crash Outcome		
	Response Percent	Response Count
Increased	22%	16
Decreased	41%	30
Remained the same	6.8%	5
No data available	30%	22
<i>Respondents</i>		73

Table 4

Red Light Camera Total Number of Crashes Outcome		
	Response Percent	Response Count
Increased	15%	11
Decrease	56.2%	41
Remained the same	9.6%	7
No data available	19.2%	14
<i>Respondents</i>		73

Agencies were asked to provide information regarding additional improvements in traffic safety stemming from the implementation of red light cameras. The most common improvements cited were: reductions in drivers running red lights at intersections using cameras; reductions in red light violations observed by law enforcement at all intersections; and an increase in cautious driving, jurisdiction-wide.

Agencies were asked to provide a breakdown of personnel issuing Notices of Violation, reviewing challenges to Notices of Violation, and issuing UTCs. Nearly 70% of agencies reported some participation by sworn law enforcement officers for each of these functions. These results are depicted in Tables 5-7 below.²

Table 5

Personnel Issuing Notices of Violation		
	Response Percent	Response Count
Vendor	23.2%	17
Non-Sworn Government Employee	23.2%	17
Sworn Employee	71.2%	52
Other	5.5%	4

Table 6

Personnel Reviewing Notice of Violation Challenges		
	Response Percent	Response Count
Vendor	16.4%	12
Non-Sworn Government Employee	27.3%	20
Sworn Employee	68.5%	50
Other	12.3%	9

Table 7

Personnel Issuing Uniform Traffic Citations		
	Response Percent	Response Count
Vendor	26%	19
Non-Sworn Government Employee	19%	14
Sworn Employee	68.5%	50
Other	11%	8

Pursuant to s. 316.0083, F.S. “A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible.” Agencies were asked whether they issued such notices for right-hand turn violations and had a policy defining “careful and prudent manner”. The results are depicted in Tables 8 and 9.

Table 8

Notices of Violation & Citations for Right-Hand Turns on Red Lights		
	Response Percent	Response Count
Yes	62.5%	45
No	37.5%	27
<i>Respondents</i>		72

Table 9

Agency Policy Defining “Careful and Prudent Manner”		
	Response Percent	Response Count
Yes	22.5%	16
No	77.5%	55
<i>Respondents</i>		71

Several agencies utilized the Careful Driving statute, s. 316.1925 F.S. to define “careful and prudent manner”. Others agencies utilized a more objective process and determined that drivers proceeding in a careful manner, not violating the right of way of other vehicles or pedestrian traffic, were acting in a careful and prudent manner.

CONCLUSIONS

Agencies reported that historical traffic crash data and law enforcement observation were the top two factors used to select red light camera locations. In most cases, Notices of Violation were issued and reviewed by sworn agency employees. And while violations were rarely challenged, more than 70% of those challenged were ultimately dismissed. In cases where Notices of Violation were not paid or dismissed, sworn employees were responsible for issuing the majority of Uniform Traffic Citations.

Section 316.0083, F.S. states that “a notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible.” Of the 73 agencies which submitted data, 44 actively issue Notices of Violation and citations for right-hand turns on red signals. However, only 16 agencies reported having a policy defining “a careful and prudent manner”.

With regards to crash data, the most common outcome was a decrease in rear-end and side-impact crashes. In fact, a majority of agencies reported decreases in the total number of crashes at red light camera intersections. Lastly, agencies reported that in addition to the decrease in total crashes, traffic safety improved throughout the jurisdiction as drivers were more cautious when approaching all intersections.

Prepared by:
Florida Highway Patrol
Office of Strategic Services
December 28, 2012

¹Agencies using red light cameras are required to report summary data annually to the Department of Highway Safety and Motor Vehicles. To ensure that all required data was reported in a timely manner, the Department attempted to identify jurisdictions with active red light camera programs by compiling lists of the following:

- agencies which requested UTC's specifically related to red light camera violations
- agencies which submitted UTC's for red light camera violations;
- agencies identified by the Department of Revenue as having received revenue from red light camera citations.

Identified agencies were provided with instructions and a link to the on-line questionnaire. The Florida Sheriff's Association and Florida Police Chiefs Association were provided data reporting procedures for distribution the member agencies. In addition, a red light camera vendor informed participating client agencies of the Department's reporting guidelines.

²Note: Agencies were asked to select all applicable personnel categories and as such, there are more responses than respondents. Percentages, however, remain indicative of total respondents.