SC16-1976

In the Supreme Court of Florida

LUIS TORRES JIMENEZ,
Petitioner,

v.

STATE OF FLORIDA, ET AL.,
Respondents.

THE ATTORNEY GENERAL'S ANSWER BRIEF

ON DISCRETIONARY REVIEW FROM THE
THIRD DISTRICT COURT OF APPEAL
Case Nos. 3D15-2303 & 3D15-2271

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INTRODUCTION

Petitioner Luis Torres Jimenez seeks the dismissal of a traffic citation charging him with running a red light. He does not claim that he did not run the red light in question. Nor could he. His ticket was issued based on photographs and video obtained from the City of Aventura's red light camera program, that evidence clearly shows that Jimenez made a turn during a red light at a no-turn-on-red intersection, and the officer who issued the citation provided supporting testimony as to why such evidence sufficed to establish a red light infraction.

Unable to dispute the evidence supporting his citation, Jimenez argues that the City's red light camera program is illegal for three reasons. First, he claims that, under the program, the City has delegated to its red light camera vendor a role in reviewing camera images that exceeds the statutory authority of section 316.0083, Florida Statutes. But, as the Third District explained, the vendor is "strictly circumscribed" by contract language, City guidelines, and actual practices, such that the vendor is performing a ministerial and non-discretionary function that fully comports with the Legislature's express authorization for the use of an "agent" to "review" red light camera images before an officer issues a citation.

Second, Jimenez claims that the vendor may not print and mail infraction notices and citations, arguing that because an "officer" must "issue" the citation, a vendor cannot perform those ministerial, non-discretionary tasks. The Third

District properly rejected this argument, concluding that it "conflates the non-delegable discretionary power to make the decision to issue the citation with the delegable clerical and ministerial task of delivering the citation." *State ex rel. City of Aventura v. Jimenez*, 211 So. 3d 158, 170 (Fla. 3d DCA 2016). Taken to its logical conclusion, the Third District observed, Jimenez's position would "require the officer [issuing the citation] to affix the stamps, seal the envelopes, and drop the items in the mailbox." *Id.*

Finally, Jimenez takes issue with the vendor's transmission of citation data to the clerk of the court, again arguing that the officer who issues the citation must transmit the data to the court. As the Third District explained, the trial court correctly determined that the ministerial and clerical task of electronically transmitting the red light camera citations "is no different than the process by which [citation data is] transmitted when an officer issues the [citation] roadside." *Id.* at 171.

Throughout this litigation, Jimenez has relied on the Fourth District's decision in *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014). As the court below determined, the record in this case makes it clear that the vendor does not have "unfettered discretion" to determine whether a citation will be issued. 211 So. 3d at 168-170. Similarly, the Second District Court of Appeal has rejected a challenge like the one at issue here. *City of Oldsmar v. Trinh*, 210 So. 3d

191 (Fla. 2d DCA 2016). Thus, appellate courts considering these issues in the context of a properly developed record have uniformly rejected the claims Jimenez raises.

In sum, Jimenez fails to show that the City's red light camera program runs afoul of applicable statutory requirements. Accordingly, this Court should approve the Third District's well-reasoned decision.

STATEMENT OF THE CASE AND FACTS

The Proceedings Before the Trial Court

In response to images captured by a red light camera, Respondent, the City of Aventura, issued Petitioner Luis Torres Jimenez a traffic citation in September 2014 for "failing to stop at a red traffic signal." R1:6.[1] Jimenez challenged his citation in Miami-Dade County traffic court and moved for its dismissal, arguing that the City had improperly delegated its police powers to a red light camera vendor in contravention of Chapter 316, Florida Statutes.[2] R1:7, 13-21. His arguments relied heavily on *City of Hollywood v. Arem*, in which the Fourth District had ruled Hollywood's red light camera program invalid because it improperly delegated police powers to a third-party vendor vested with "unfettered

[1] The record on appeal consists of eight volumes and will be referred to as R#:*, where # stands for the volume number and * for the page number.

[2] All citations to Florida Statutes are to the 2014 version, unless otherwise indicated.

discretion" to decide which images are sent for review by a traffic infraction enforcement officer. 154 So. 3d 359, 365 (Fla. 4th DCA 2014), *review denied* 168 So. 3d 224 (Fla. 2015) (table).

Specifically, Jimenez alleged that, although section 316.0083(1)(a) "permits the review of information from a [red light camera] by an . . . agent of the department," it does not allow the City of Aventura to delegate to the vendor, American Traffic Solutions (ATS), the task of initially reviewing images captured under the program. R1:15. Further, Jimenez argued that the City's program violated section 316.650(3)(c), Florida Statutes, because ATS (rather than the officer who actually issued the infraction notice) was printing and mailing the infraction notices and citations and electronically transmitting citation data to the clerk of court. R. 1:16–17.

Under Florida law, the city that issues a citation handles the prosecution on behalf of the State of Florida for non-criminal infractions. *See* § 316.008(2), Fla. Stat. The Attorney General intervened in the proceeding against Jimenez and, along with the City, opposed Jimenez's motion to dismiss. R1:26–29, 35–160; 2:166–666, 6:1097. The case proceeded to a hearing on Jimenez's motion to dismiss, R7:1211–1503, at which the following evidence was adduced concerning the City's program.

The City's Red Light Camera Program

The City employs a computerized camera system, statutorily defined as a "traffic infraction detector," to record red light violation images. *See* § 316.003(87). The City first contracted with ATS in 2008 to provide the cameras and software data services for its program, which was established under City Ordinance 2007-15.[3] R2:200–232; 8:1519. Under that original contract language, ATS was to review the camera images and determine which ones should be sent to the City police as sufficient for demonstrating a violation of the Ordinance. The earlier (and pre-Wandall Act) contract language read as follows:

> The Vendor shall make the initial determination that the image meets the requirements of the Ordinance and this Agreement, and is otherwise sufficient to enable the City to meet its burden of demonstrating a violation of the Ordinance. If the Vendor determines that the standards are not met, the image shall not be processed any further.

R2:225; 8:1520.

In 2010, the Legislature passed the Mark Wandall Traffic Safety Act, which authorized local governments to use traffic infraction detectors to supplement red light enforcement. *See* Ch. 2010-80, Laws of Fla. (partly codified at 316.0083, Fla. Stat.). In order to bring its program into compliance with the new statutory requirements, the City amended both its ordinance and its contract with ATS.

[3] Subsequently, this Court held that the City's Ordinance was expressly preempted by state law. *See Masone v. City of Aventura*, 147 So. 3d 492 (Fla. 2014).

R2:233; 5:853; 8:1520. The 2010 amendment to the contract limits the vendor's review of the image data:

> Vendor shall act as City's agent for the limited purpose of making an initial determination of whether the recorded images should be forwarded to an authorized employee to determine whether an infraction has occurred and shall not forward for processing those recorded images that clearly fail to establish the occurrence of an infraction.

R2:246; 8:1520.

The Vendor's Initial Review of Images and the Business Rules Questionnaire

Under the City's program, when a possible violation occurs, a 12-second video and two still photographs (the A-shot and B-shot) are captured and placed into a data file that is uploaded to a server. R2:556–58; 8:1520. Next, ATS processors review the data files and sort the images into two queues within the database. The first queue is the officers' working queue; a traffic infraction enforcement officer (TIEO) reviews every event in that queue to determine whether probable cause exists to issue a notice of violation and citation. R7:1383–85; 8:1522. The second queue is referred to as the non-working queue; it contains all the images that ATS processors, implementing the City's directives, have not placed into the officers' working queue. R7:1314, 1384–85; 8:1520–22.

The vendor's review and sorting of the images into the two queues is governed by the Business Rules Questionnaire, R7:1367, 1375, 1376, 1377, 1380, 1383-85, which was developed by the City's police department. R7:1233–34;

8:1521. The Business Rules "define[] the criteria the City's police have established" to review the images. R8:1521. ATS processors are required to follow the Business Rules, which instruct them on how to sort the images within the database. R7:1314, 1382; 8:1520–22. The purpose of the Business Rules is to remove any independent judgment or discretionary decision-making by an ATS processor from the review process. R7:1243, 1249, 1258, 1369, 1380–82; 8:1522.

The Business Rules "are fairly straight forward and call for the majority of the images to be forwarded." R8:1521. For example, the Rules require the forwarding of images where:

- on straight through and left turns, the images show the entire vehicle crossed the stop line while the light was red.
- the vehicle's front tires were behind the stop line when the light turned red, but a subsequent image shows the front tires moved onto or slightly over the line.
- as in this case, a vehicle turned right during a red light at an intersection where no-right-turn-on-red signs are posted.

R8:1521–22.

On the other hand, certain images are not placed in the working queue. For example, images where an emergency vehicle with activated emergency lights drives through a red light, or images where the license plate is unreadable. *Id.*

When a camera misfires and produces unusable black screen images, or a video in which the offending vehicle's license plate is blocked by another vehicle, or whenever the Business Rules dictate, the processor is required to place the video into the non-working queue. R7:1381–82, 1384-85; 8:1522. As a result of this sorting process, City officers review about 5,000 images that are placed in the working queue each month, R8:1520, while several thousand images every month are placed in the non-working queue. *Id.* This sorting process keeps the City's officers from having to review many unusable images, thereby conserving officer time and making the program more cost-effective. R7: 1257–58, 1290; 8:1520.

The Vendor's Processors Are Trained to Follow the Business Rules

"ATS processors receive extensive training prior to being certified to process the images." R7:1369–70; 8:1522-23. Processors have one week of classroom instruction and eight weeks of one-on-one practice training during which 100% of the work is audited to ensure the processor is following the Business Rules. R7:1369–72; 8:1522–23. ATS processors are certified at the end of the training period based on their ability to follow those rules. R7:1370. Importantly, processors are trained that if there is any doubt about how to apply the Business Rules or sort the images, the processor is *required* to place the event into the officers' working queue because the processor is *not allowed* to make a personal decision as to how the images should be sorted. R7:1382–83; 8:1523,

1528. During training and afterwards, processors perform their review in front of two side-by-side computer screens. R7:1377; 8:1522. One screen contains the Business Rules and the other displays the images for review. *Id.* This assists processors when checking the images against the Rules. R7:1370–71, 1377.

After Training, a Processor's Work is Monitored and Audited

After training, ATS supervisors regularly monitor the processor's daily work. R7:1373; 8:1523. Random statistical samples are taken, which indicate with 90% accuracy a processor's compliance with the Business Rules. R7:1396; 8:1523. Audits are conducted on video events in both the officer's working and non-working queues. R7:1374; 8:1523. If a processor's audit score falls below 90% accuracy in applying the Business Rules, he or she must be retrained. R7:1373–74; 8:1523. The audit scores are fed into a processor's weekly and monthly score cards, which affect annual merit raises. R7:1374; 8:1523. Unacceptable audit scores could lead to a processor being terminated. R7:1375, 1397; 8:1523.

The City Has Tools for Determining Whether Accurate Sorting Is Occurring

The City has multiple ways to check whether ATS is following the Business Rules. For example, ATS provides multiple reports to the City, the City has access to all pertinent information, the officers review the work that is sent, and feedback is provided when the work is not done the way the City wants it done. R7:1389–90.

The cities that contract with ATS typically check in with the vendor on a weekly basis. *Id.*

Among other ways of determining that ATS processors are following the Business Rules, the City's traffic infraction enforcement officers have access to both queues. R7:1385–86; 8:1522. Officers can review the non-working queue and provide feedback to ATS if video events have not been categorized properly. R7:1385–86. Furthermore, a report screen displays to the officer the reasons why a video was not placed in the working queue by a processor. R7:1251–52; 8:1522. Aventura's Sergeant Burns testified that when he reviewed video events that had not been placed in the working queue, he did not find any errors by ATS processors. R7:1315–17.

The City's Officer Determines Whether to Issue a Citation and Directs the Vendor's Computer to Print, Mail, and Transmit Data

When an officer logs into the database, he or she reviews the images in the working queue to determine probable cause for a violation based on the exact same criteria the officer would use to perform a roadside traffic stop. R7:1258–59, 1334, 1346, 1383–84, 1425; 8:1523. No notice of violation and no citation are ever sent to a vehicle owner unless the officer reviews the video and makes a probable cause determination. R7:1311.

Statistically, the City's officers reject approximately 30% to 35% of the videos in the working queue and the officers find probable cause that a violation

occurred for approximately 65% to 70% of the videos. R7:1251; 8:1523, 1529. If the officer determines there is probable cause, the officer pushes an "accept" button on the computer screen, which action 1) places the officer's electronic signature and badge number on the notice of violation and 2) instructs the ATS computer system to print and mail the notice of violation. R8:1523–24.

When a notice of violation is sent, the owner may either pay a fine, furnish an affidavit naming the person who had care, custody or control of the vehicle, request an administrative hearing, or await a traffic citation to contest the case in county court. *See* § 316.0083(1)(b)1.a. If there is no response to the notice of violation within the statutory period of 60 days, the ATS computer software automatically prints and mails the traffic citation to the owner of the vehicle without any human interaction. R8:1523–24, 1529. Thus, the only time a notice of violation and a traffic citation are sent is when the enforcement officer determines probable cause exists and the officer pushes the "accept" button. R4:866 ("Within seven (7) days of receipt, the City shall cause the Authorized Employee [the Officer] to review the Infractions Data and to determine whether a Notice of Violation shall be issued . . . ."). Only an officer with a user ID and password has access to review images and push the "accept" button. R7:1384.

Once the officer pushes the "accept" button, there is no human interaction or decision-making by any ATS employee—the process is entirely automated.

R7:1261–62, 1420, 1444; 8:1522, 1524. A computer program, based on the officer's command, prints and mails the notice of violation and then, if necessary, the citation while transmitting the citation data to the court. This is the same protocol used when roadside traffic citations are transmitted to the court. R7:1433–37; 8:1524–25. To be entitled to deposit citation data into the court's website, ATS was required to become an authorized E-citation vendor with the State of Florida and be authorized by the clerk of court. R7:1434–35; 8:1524.

The County Court's Ruling and Certification of Questions to the District Court

The Miami-Dade County Court determined it was bound by the Fourth District's decision in *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014), and was required to dismiss Jimenez's citation. R8:1527. However, the court expressed disagreement with the *Arem* decision. *Id.* Specifically, the court highlighted the fact that the Fourth District had before it a record that "did not contain any evidence of what procedures were in place" governing the pre-screening process in that case. *Id.* at 1528. Therefore, the record before the *Arem* court did not show that the Business Rules were in place or explain how ATS processors were trained and monitored to follow those rules. R8:1527–28; 7:1450–51; 6:1111. In contrast, the trial court in this case had held a full evidentiary hearing, and it found that "the uncontroverted facts" show that ATS processors operate under strict directives provided by the City of Aventura in its Business

Rules. *Id.* "These guidelines make it clear that the *sole*, *unilateral*, and *unfettered* decision making found unacceptable in *Arem* does not exist in this case." *Id*. at 1529.

Moreover, the trial court found that the evidence made it "abundantly clear" that ATS serves only as a technical apparatus in mailing out the citations, and it is the City and its officer that is issuing the citation—not the vendor. *Id.* at 1529–30. Similarly, the trial court found that "the process by which red light camera E-citations are transmitted is no different than how all other E-citations are transmitted when an officer issues the [citation] roadside." *Id.* at 1532. The statute at issue requires that the officer provide the data to the clerk of court; and, under the City's program, "this is accomplished by the officer's affirmative actions," so the fact that the vendor's computer program transmits the data "does not violate the statute." *Id.*

Although the trial court held it was bound by *Arem* to dismiss Jimenez's citation, it certified three questions of great public importance to the Third District Court of Appeal. *Id.* at 1532–33.

The Third District Answers the Certified Questions and Rejects Jimenez's Claims

Both the City and the Attorney General invoked the Third District Court of Appeal's discretionary jurisdiction to review the county court order, R6:1100, 1168, and the Third District accepted jurisdiction. Order Accepting Jurisdiction,

City of Aventura v. Jimenez, Nos. 3D15-2271 & 3D15-2303 (Fla. 3d DCA Nov. 19, 2015).

The Third District answered the certified questions from the county court and unanimously rejected Jimenez's claims regarding the legality of the City's red light camera program. In response to the first question, which involved the vendor's sorting of images, the court held that ATS's initial review of the images did not involve the "exercise of unfettered discretion." 211 So. 3d at 166. Accordingly, the City's program did not exceed its statutory authority under section 316.0083, Florida Statutes.

The Third District distinguished *Arem*: "While the vendor in *Arem* was the same one involved in the instant case, any similarity between the facts of the two cases ends there"—"there was a different contract, there were no standards or guidelines promulgated by the municipality, the Vendor determined probable cause, and the City officer merely acquiesced in the Vendor's determination." *Id.* at 168.

In answering the second certified question from the county court, which involved the vendor's printing and mailing of notices and citations, the Third District rejected Jimenez's argument that section 316.0083(1)(a), Florida Statutes, requires the officer who issues a citation to actually print and mail the citation. 211 So. 3d at 170. The Third District agreed with the county court that Jimenez's

argument "conflates the non-delegable discretionary power to make the decision to issue the citation with the delegable clerical and ministerial task of delivering the citation." *Id.* Accordingly, the City's Program complied with the statutory requirements.

With regard to the third certified question, which addressed the use of the vendor's server to transmit citation data to the clerk of court, the Third District held that section 316.650(3)(c), Florida Statutes, did not indicate any legislative intent to "bar law enforcement from using third-party software and servers to accomplish these ministerial and clerical tasks." 211 So. 3d at 171.

Ultimately, the Third District unanimously rejected Jimenez's challenge to the City's Program. By a 2-1 vote, the Third District certified three questions of great public importance:

1. Does the review of red light camera images authorized by section 316.0083(1)(a), Florida Statutes (2014), allow a municipality's vendor, as its agent, to sort images to forward to the law enforcement officer, where the controlling contract and City guidelines limit the Vendor to deciding whether the images contain certain easy-to-identify characteristics and where only the law enforcement officer makes the determinations whether probable cause exists and whether to issue a notice of violation and citation?

2. Is it an illegal delegation of police power for the vendor to print and mail the notices and citation, through a totally automated process without human involvement, after the law enforcement officer makes the determinations that probable cause exists and to issue a notice of violation and citation?

3. Does the fact that the citation data is electronically transmitted to the Clerk

> of the Court from the vendor's server via a totally automated process without human involvement violate section 316.650(3)(c), Florida Statutes (2014), when it is the law enforcement officer who affirmatively authorizes the transmission process?

211 So. 3d at 171–72.

In a special concurrence, Judge Wells explained that, although she agreed with the majority's answering of the county court's certified questions and the disposition of the case, she "would not . . . certify this matter to the Florida Supreme Court as a matter of exceptional importance as I do not believe this matter is of such import as to warrant further review." 211 So. 3d at 174–75 (Wells, J., specially concurring.). In her view, the proper course was to certify conflict with *Arem. Id.* at 175. Three months later, the Second District in *Trinh* found there to be a conflict with *Arem.* 210 So. 3d at 208.

Jimenez sought discretionary review in this Court, which accepted jurisdiction. *See* Order Accepting Jurisdiction, No. SC16-1976 (Fla. May 16, 2017).

SUMMARY OF THE ARGUMENT

This Court should answer the first certified question in the affirmative, answer the second and third certified questions in the negative, and approve the Third District's decision.

With respect to the first certified question, the Third District correctly concluded that the vendor's initial review process falls well within the "review" expressly authorized by section 316.0083(1)(a). Moreover, the initial review

process undertaken by ATS processors constitutes a valid delegation of a nondiscretionary, ministerial task. After this ministerial screening process has occurred, it is the City's officer who reviews the working queue of usable images and makes a determination as to whether probable cause exists to issue a notice of violation. The City therefore retains all discretion over the exercise of its police powers.

The second and third certified questions focus on the vendor's role in printing and mailing the notices of violation and citations, and the vendor's role in transmitting citation data to the clerk of court. Because these aspects of the City's program are delegated clerical and ministerial tasks that fully comport with Chapter 316, this Court should answer the remaining certified questions in the negative. There is no support for Jimenez's position that every ministerial and clerical activity relating to red light traffic infractions must be expressly and specifically authorized in Chapter 316.

Finally, if this Court determines that the City delegated ministerial tasks to its vendor in contravention of Chapter 316, the proper remedy is not dismissal of Jimenez's traffic citation. Even if there is some defect in the ministerial process by which the City issued Jimenez's citation, there is no substantive defect in the actual citation, and there is no actual prejudice to Jimenez or his rights.

STANDARD OF REVIEW

The Third District's certified questions present issues of statutory interpretation and other issues of law subject to de novo review. *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 194 (Fla. 2007). This Court is bound by the trial court's factual findings so long as they are supported by competent, substantial evidence. *Scott v. Williams*, 107 So. 3d 379, 384 (Fla. 2013).

ARGUMENT

I. THE CITY'S RED LIGHT CAMERA PROGRAM, WHICH INCLUDES THE USE OF "AGENTS" TO "REVIEW" RED LIGHT CAMERA IMAGES, FALLS WELL WITHIN THE EXPRESS STATUTORY GRANT OF AUTHORITY SET OUT IN SECTION 316.0083.

A. LEGAL BACKGROUND

Enacted in 2010, the Mark Wandall Traffic Safety Act authorizes counties and municipalities to use cameras in the enforcement of traffic laws. Ch. 2010-80, Laws of Fla. (partially codified at § 316.0083, Fla. Stat.). In signing the Act, then-Governor Crist noted that, statistically, traffic signal infractions were the third highest cause of traffic-related injuries and the sixth highest cause of traffic-related fatalities. Press Release, Executive Office of the Governor, *Governor Crist Signs Legislation Creating the Mark Wandall Traffic Safety Act* (May 18, 2010). Faced with an "opportunity to make [the State's] roads safer and more secure for Floridians and visitors," Governor Crist signed the legislation to "further empower[] law enforcement to combat red light running in Florida." *Id.*

Prior to the Wandall Act, local governments throughout the State had been enacting red light camera programs through local ordinances. *See* Fla. H.R. Fin. & Tax Council, CS for CS for HB 325 (2010) Staff Analysis 5 (Apr. 19, 2010) (noting that between 2008 and 2010, approximately 50 municipalities had enacted red light camera ordinances).[4] However, such local ordinances, including the City of Aventura's, were challenged and ultimately held invalid by this Court in *Masone v. City of Aventura*, 147 So. 3d 492 (Fla. 2014).

Specifically, this Court held that ordinances in operation prior to the 2010 effective date of the Wandall Act were invalid because they were preempted by state law. *Masone*, 147 So. 3d at 496–97. The *Masone* majority determined that Florida's Uniform Traffic Control Law, Chapter 316, Florida Statutes, "could not be clearer in providing that local ordinances on 'a matter covered by' the chapter are preempted unless an ordinance is 'expressly authorized' by the statute." *Id.* (citing § 316.007, Fla. Stat. (2008)). Because the two ordinances at issue in that case—enacted by the cities of Aventura and Orlando—provided for the punishment of red light infractions, they "relate[d] to matters 'covered by' chapter

[4] The Staff Analysis is available at http://flhouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0325e.FTC.doc&DocumentType=Analysis&BillNumber=0325&Session=2010.

316." *Id.* at 497. Because the ordinances were not "expressly authorized" under Chapter 316, they were therefore preempted. *Id.*

Importantly, this Court noted the line of demarcation drawn by the Wandall Act's effective date. *Id.* at 494 ("At issue . . . is the operation of ordinances prior to July 1, 2010, the effective date of the Mark Wandall Traffic Safety Act . . . ."). Because the Act expressly authorizes the use of red light traffic infraction detectors by local governments, counties and municipalities may enact red light camera programs under the authority of the Act subject to certain statutory requirements. *Id.*

In relevant part, the Act provides that "[r]egulation of the use of cameras for enforcing the provisions of [Chapter 316] is expressly preempted to the state." § 316.0076, Fla. Stat. However, the Act expressly permits a county or municipality to "authorize a traffic infraction enforcement officer . . . to issue a traffic citation for a violation of [a traffic control signal device]." *Id.* § 316.0083(1).[5] Significantly, the Act's operative paragraph "does not prohibit a review of information from a traffic infraction detector by an authorized employee or agent

[5] A traffic infraction enforcement officer "may issue a traffic citation under [section] 316.0083." § 316.640(5)(a), Fla. Stat. "[A]ny sheriff's department or police department of a municipality may designate employees as traffic infraction enforcement officers," however, "[t]he traffic infraction enforcement officers must be physically located in the county of the respective sheriff's or police department." *Id.*

of the department, a county, or a municipality before issuance of the traffic citation by the traffic infraction enforcement officer." *Id.*

If a citation is issued under section 316.0083, Florida Statutes, "the traffic infraction enforcement officer shall provide by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 days" of issuing the citation. *Id.* § 316.650(3)(c).

The present case challenges the red light camera program the City of Aventura enacted under the express provisions of the Wandall Act. In addition to the Third District's decision below, two other district courts have addressed the validity of programs under the Act. In *Arem*, the Fourth District held the City of Hollywood's program invalid because it improperly delegated police powers to a private vendor. 154 So. 3d at 365. However, the Second District, noting that the court in *Arem* "did not have the benefit of the testimony of a representative from [the vendor] to explain how the . . . program worked," disagreed with the Fourth District's decision and concluded that the City of Oldsmar's red light camera program was valid: "[T]he power to determine whether a red light violation has occurred and the ultimate decision to issue a notice of violation and a UTC remains with the City. Thus, there has been no unauthorized delegation of police power."

City of Oldsmar v. Trinh, 210 So. 3d 191, 205 (Fla. 2d DCA 2016). The Second District certified conflict with *Arem*. *Id.* at 208.

B. ANALYSIS

The first certified question asks this Court to determine whether the express language of section 316.0083(1)(a), which authorizes an "agent" of the local government to "review" images captured by a red light camera, allows the initial review and sorting of images by ATS processors that is occurring under the City's red light camera program. This Court should answer that question in the affirmative. As detailed below, the Third District correctly concluded that the vendor's initial review process, which was ministerial in nature and involved no exercise of discretion, fell well within the "review" expressly authorized by section 316.0083(1)(a).

Although acknowledging that the language of section 316.0083 authorizes local governments to "outsource a limited review function" to designated agents, Initial Br. at 23, Jimenez attacks the City's initial review and sorting process on two grounds. First, he asserts that the term "review" is ambiguous, and that under tools of statutory construction, this Court should interpret it to restrict ATS processors to conducting a limited "first-tier review" to merely ensure the images meet the minimum requirements (that is, to ensure the camera captured two images or video of the rear of a vehicle including the license tag and the traffic signal).

Initial Br. at 23–25. Under Jimenez's interpretation, "review" cannot include a ministerial application of the City's detailed and nondiscretionary Business Rules to sort the images into one of two queues within the database. Initial Br. at 26. Second, Jimenez faults the initial review and sorting process as an unconstitutional and preempted exercise of power by the City, arguing that the City's program is not expressly authorized by the Wandall Act. *See* Initial Br. at 36–45.

In essence, however, both of Jimenez's claims turn on whether the "review" by an "agent" expressly authorized in section 316.0083 applies to the City's program here. For preemption to apply, it is necessary to identify a conflict between municipal action and a state statute. *See Thomas v. State*, 614 So. 2d 468, 470 (Fla. 1993) ("Municipal ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute."). If section 316.0083(1)(a) permits the initial review of images that is occurring here, then the City is acting under express statutory authority and there is no preemption.

There is no dispute that the Legislature expressly authorized the use of an "agent" to initially "review" red light camera images. § 316.0083(1)(a), Fla. Stat. And as the Third District noted, Jimenez has "conceded that the term 'review' . . . connotes not just viewing, but also some modicum of assessment." 211 So. 3d at 165. Before this Court, Jimenez continues to acknowledge that the term authorizes not just a viewing—but also a screening—of those images by an agent. Initial Br.

at 24, 25. Over the course of several pages, Jimenez relies on dictionary definitions and other provisions from Chapter 316, Initial Br. 19–22, to conclude that "review" is ambiguous, and the meaning of the word "by itself sheds no light on the intended *purpose*" of the Legislature's inclusion of the word. Initial Br. at 22 (emphasis in original). But Jimenez's approach to divining legislative intent would have this Court overlook the proverbial forest amidst the trees.

While conceding that the term "review" encompasses more than just passive viewing of images, Jimenez would cabin that term to allow ATS Processors to review only the images captured by the City's cameras and not the Business Rules, because those constitute "additional information" not contemplated by the statute. Initial Br. at 24. But Jimenez offers no reasonable explanation as to why the Legislature would authorize a review of images, but not permit a local government to provide directions to its agents as to what standards should be applied in that review process.

With regard to preemption of local government action, the judicial branch "must be careful and mindful in attempting to impute intent to the Legislature." *D'Agastino v. City of Miami*, 220 So. 3d 410, 421 (Fla. 2017) (citing *Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996)). Here, the Legislature has expressly authorized an initial review by an agent, and Jimenez has conceded that such a review can include an

evaluation and screening of the images for completeness and usability. Initial Br. at 28 ("It makes perfect sense that the Legislature would authorize local governments to hire a private vendor to screen those images for [the] valuable purpose [of ensuring completeness and usability]."). As the Third District emphasized, in light of these factors, the proper inquiry shifts to whether the review process involves any unlawful delegation of governmental power to enforce traffic infractions that is contrary to what the Legislature has authorized. *Jimenez*, 211 So. 3d at 165, 166 ("[B]ehind the statutory term 'review' is the principle of law that a city's legislative body cannot delegate its legislative function by investing unbridled discretion in an administrative agency, government official, or private party. . . . The question thus becomes whether the Vendor's review in this case involves the exercise of unfettered discretion."). Although Jimenez has waived his unlawful delegation challenge to the City's Program, *see* R1:14–15, by not raising it in his Initial Brief,[6] for purposes of the certified question that this Court has been asked to answer, the Attorney General will address the issue.

Under Florida law, a governmental entity may delegate certain functions or services provided such delegation does not give unfettered discretion to the delegee

[6] *See Hoskins v. State*, 75 So. 3d 250, 257 (Fla. 2011) ("Contrary to Hoskins' representations, this argument was not raised in the initial brief filed here. Accordingly, the claim is barred.").

in exercising governmental power. *See St. Johns Cty. v. Ne. Fla. Builders Ass'n, Inc.*, 583 So. 2d 635, 642 (Fla. 1991) (rejecting a challenge to an ordinance authorizing the school board to spend collected impact fees because "the fundamental policy decisions have been made by the county, and the discretion of the school board has been sufficiently limited" by the ordinance); *see generally Citizens of State of Fla. v. Wilson*, 567 So. 2d 889, 892 (Fla. 1990) (upholding the Public Service Commission's delegation of authority to its staff to approve interim rate increases without a Commission vote because "[t]he Commission specified the conditions for approval, and the staff merely carried out the ministerial task of seeing whether these conditions were met").

Throughout the proceedings below, Jimenez relied heavily on the Fourth District's decision in *Arem*, which held that the City of Hollywood had improperly delegated its police powers when it "outsource[d] to a third-party vendor the ability to make the initial review of the computer images of purported violations and then use its unfettered discretion to decide which images are sent to the [traffic infraction enforcement officer], and which ones are not." 154 So. 3d at 365. In short, the Fourth District viewed the delegation of unfettered discretion in the screening process as a delegation of the city's police power to issue traffic citations. *Id.* The soundness of the *Arem* decision, however, is eroded by the limited record presented in that case. *See Jimenez*, 211 So. 3d at 169 ("In the

Fourth District's *Arem* opinion, there is a total absence of any consideration of guidelines promulgated by the City. In contrast, the record in this case includes guidelines and extensive testimony regarding how the specific City-established guidelines cabin the Vendor's tasks and limit the Vendor to purely ministerial, non-discretionary decisions."); *id.* at 170 ("[W]e agree *Arem* was properly decided given the record as reflected in the *Arem* opinion. Because of the vastly different record in this case, however, we find *Arem* clearly distinguishable."); *Trinh*, 210 So. 3d at 199–200 ("[I]t is unclear whether an ATS representative provided testimony in *Arem* about how the parties operated under their contract. Further, although it appears that the *Arem* court was aware that processors functioned under standards or guidelines, it is unclear to what extent the court reviewed any business rules between the City of Hollywood and ATS in reaching its decision.").

In the present case, based upon a more thorough record than that in *Arem*, under the City's program, the initial review process undertaken by ATS processors constitutes a valid delegation of a nondiscretionary, ministerial task. As determined by both the trial court and the Third District, and borne out by the record, *see supra* 6–12, ATS processors are trained to operate under the City's Business Rules, which provide detailed, nondiscretionary standards that guide the review process, *see* R2:254–83.

Notably, the purpose of the Business Rules is to remove any independent judgment or discretionary decision-making from the review process. R7:1243, 1249, 1258, 1369, 1380–82; 8:1522. The Business Rules "are fairly straight forward," R8:1521, and provide nondiscretionary standards that focus on easily ascertainable information. R2:254–83. And "[i]n the few instances where there might be a close call, . . . [the Business Rules] further eliminate[] any discretion by directing that those images must always be placed in the working database for police review." *Jimenez*, 211 So. 3d at 166. "In other words, if there is any doubt, the Vendor will send it to the police for review." *Id.* The review and screening of images is therefore not substantive—the process is "strictly circumscribed by contract language, guidelines promulgated by the municipality, and actual practices, such that the vendor's decisions are essentially ministerial and non-discretionary." *Id.* at 160. Based on the evidence presented below, this ministerial review is not an exercise of police power.

Ultimately, after the ministerial screening process has occurred, it is the City's officer who reviews the working queue of usable images and makes a determination as to whether probable cause exists to issue a notice of violation. *See* R7:1258–59, 1334, 1346, 1383–84, 1425; 8:1523–24. The City therefore retains all discretion over the exercise of its police powers.

Jimenez also attacks the City's Business Rules as deviating from Chapter

316's underlying principle that traffic laws be uniform throughout the state. Initial Br. at 45–48. But the Business Rules in no way rewrite State law, change the elements of any traffic offense, or create non-uniform enforcement. ATS processors review and sort images in accordance with nondiscretionary standards, and the City's officers determine whether the images support a probable cause determination as to whether an infraction has occurred under the statutory standards. Merely because a city can develop its own Business Rules does not mean that there is any lack of uniform enforcement between cities. Every officer in every city continues to be bound by the Florida Statutes in determining whether probable cause exists for a violation. Furthermore, infraction detectors are not the sole means of enforcement. In every city, police officers continue to observe our intersections from patrol vehicles and issue citations pursuant to state statute. Camera observation merely supplements enforcement efforts. § 316.0083(3) ("This section supplements the enforcement of s. 316.074(1) or s. 316.075(1)(c)1.").

Because the Legislature has expressly authorized local governments to delegate an initial review to an agent, and because the City has only delegated to its vendor a ministerial and non-discretionary role in performing that initial review, this Court should answer the first certified question in the affirmative.

II. THE VENDOR'S PRINTING AND MAILING OF NOTICES AND CITATIONS AND THE VENDOR'S TRANSMISSION OF CITATION DATA TO THE CLERK OF COURT ARE DELEGATED CLERICAL AND MINISTERIAL TASKS THAT FULLY COMPORT WITH CHAPTER 316.

The second and third certified questions focus on the vendor's role in printing and mailing the notices of violation and citations, and the vendor's role in transmitting citation data to the clerk of court. Because these aspects of the City's program are delegated clerical and ministerial tasks that fully comport with Chapter 316, this Court should answer the remaining certified questions in the negative.

First, it is not an unlawful delegation of police power to have a vendor print and mail notices and citations after a police officer has determined that probable cause exists to issue a notice of violation and subsequent citation. Because the Legislature expressly authorized the use of an agent in the initial review process and in the installation of the cameras, Jimenez argues, the City is prohibited from delegating any other responsibility to its vendor, no matter how de minimis the task. Initial Br. at 34. The Third District properly rejected this argument, explaining that it "conflates the non-delegable discretionary power to make the decision to issue the citation with the delegable clerical and ministerial task of delivering the citation." 211 So. 3d at 170. Taken to its logical conclusion, the Third District observed, Jimenez's position would "require the officer [issuing the

citation] to affix the stamps, seal the envelopes, and drop the items in the mailbox." *Id.*

In short, there is no support for Jimenez's position that every ministerial and clerical activity relating to the red light traffic infractions must be expressly and specifically authorized in Chapter 316.

Second, with regard to the transmission of citation data from the vendor's servers to the clerk of court, there similarly is no support for Jimenez's assertion that this is an unauthorized use of an agent under section 316.650(3)(c), Florida Statutes. Initial Br. at 35. That provision provides, in relevant part, that if a citation is issued as a result of a red light camera, "the traffic infraction enforcement officer shall provide by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense . . . within 5 days after the date of issuance of the traffic citation to the violator." § 316.650(3)(c), Fla. Stat. The statute is silent as to the specifics of how the electronic data is to be transmitted.

Under the City's program, the process for printing and mailing notices and citations and transmitting citation data are fully automated processes triggered only by the officer's determination of probable cause to issue a notice of violation. R7:1261–62, 1420, 1444; 8:1522, 1524. If an officer determines probable cause exists, the officer pushes an "accept" button, which action 1) places the officer's electronic signature and badge number on the notice of violation and 2) instructs

the ATS computer system to print and mail the notice. R8:1523–24. If there is no response to the notice of violation within the statutory period of 60 days, the ATS computer software automatically prints and mails the traffic citation to the owner of the vehicle, and ultimately transmits the citation data to the court based solely on the officer having previously authorized such action by determining probable cause and pushing the "accept" button in the database. *Id.* This is the same protocol used when roadside traffic e-citations are transmitted to the court. R7:1433–37; 8:1524–25.

This process fully comports with Chapter 316, and this Court should answer the second and third certified questions in the negative.

III. EVEN IF THE CITY'S DELEGATION OF CERTAIN TASKS TO THE VENDOR WERE CONTRARY TO CHAPTER 316, DISMISSAL OF JIMENEZ'S CITATION IS NOT THE PROPER REMEDY.

Jimenez claims that, in light of the alleged defects in the City's program, the citation he challenges "was void *ab initio*, and should be dismissed." Initial Br. 15; *see id.* at 48-50. That is wrong. Assuming *arguendo* that the City delegated certain ministerial tasks to its vendor in contravention of Chapter 316, any such defects did not adversely affect Jimenez's substantial rights.

Jimenez's own argument shows why. At bottom, Jimenez's complaint is not that the camera images of *his own* infraction were improperly placed in the *working* queue (it is undisputed that he made a right turn during a red light, when

no turn was allowed), but that there is a possibility that some ATS processors could wrongfully place *someone else's* video in the *non-working* queue. As Judge Wells explained in her special concurrence, Jimenez's challenge to the City's initial review and screening process is "no different than that made by an individual issued a speeding ticket who complains that other speeders also were not ticketed." *Jimenez*, 211 So. 3d at 173 (Wells, J., specially concurring). The mere possibility that an ATS processor could improperly place someone else's video into the non-working queue has nothing to do with whether Jimenez committed the infraction which serves as the basis for the challenged citation. Moreover, the ministerial review, mailing, and data transmittal processes have nothing to do with the elements needed to prove a red light violation. In short, Jimenez does not and cannot allege that he has been prejudiced in any way by the alleged legal infirmities of which he complains.

The Wandall Act expressly authorized local governments to employ red light cameras and issue citations for red light violations, *supra* at 18–21, and that is exactly what happened here. A camera recorded Jimenez's red light infraction, an officer reviewed the images and determined probable cause, and a notice and citation were issued. Unlike the impact fee at issue in *Department of Revenue v. Kuhnlein*, which was void from its inception due to the Legislature "act[ing] wholly outside its constitutional powers," 646 So. 2d 717, 726 (Fla. 1994), the

legislature has expressly authorized the City to issue citations of the kind at issue here. Even if there were defects in the process by which that citation arrived at Jimenez's door—and there were not, *see supra* Parts II & III—any such alleged defects did not prejudice Jimenez in any way, and they thus do not warrant dismissal of Jimenez's citation. *See, e.g.*, *Loper v. State*, 840 So. 2d 1139, 1139 (Fla. 1st DCA 2003); *State v. Perez*, 783 So. 2d 1084, 1084-85 (Fla. 3d DCA 1998); *State v. Hancock*, 529 So. 2d 1200, 1201 (Fla. 5th DCA 1988); *see also Jenkins v. State*, 978 So. 2d 116, 129-30 (Fla. 2008) (holding that "the exclusionary rule is not a remedy for a violation" of a statute that did "not expressly provide for exclusion of evidence as a remedy for a violation of the statute," absent violation of constitutional rights for which exclusion is the proper remedy); *State v. Phillips*, 463 So. 2d 1136, 1138 (Fla. 1985) (rejecting challenge to jurisdiction of court based on defective information because "[a]ny defect in the information filed is clearly one of form, not of substance, as evidenced by the fact that both parties were willing and able to proceed to trial in circuit court on the charge of felony petit theft").

CONCLUSION

This Court should answer the first certified question in the affirmative, answer the remaining certified questions in the negative, and approve the Third District's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

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