

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: SC20-1335
DCA NUMBER: 3D19-523, 3D19-524
L.T. NUMBERS: 14-TR-000A36ADOE00
16-TR-000A36ADOE00

LEE STEIN

Petitioner,

v.

CITY OF AVENTURA and
FLORIDA ATTORNEY GENERAL

Respondents,

PETITIONED FOR DISCRETIONARY REVIEW FROM THE THIRD
DISTRICT COURT OF APPEAL AND THE COUNTY COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY,
FLORIDA

RESPONDENT FLORIDA ATTORNEY GENERAL'S
JURISDICTIONAL BRIEF

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INTRODUCTION

The Florida Third District Court of Appeal (“3rd DCA) in the matter of *City of Aventura, etc., et al. v. Lee Stein* reversed the ruling of the trial court and remanded the case. As the 3rd DCA did not certify any questions to the Florida Supreme Court, the Petitioner now seeks discretionary review as he contends that the opinion conflicts with the opinions issued by the Supreme Court in *Jimenez v. State*, 246 So.3d 219 (2018) [“*Jimenez II*”] and *Masone v. City of Aventura*, 147 So.3d 492 (2014) [“*Masone*”].

Florida Rule of Appellate Procedure 9.120(d) sets forth the requirements concerning jurisdictional briefs. “The petitioner’s brief, limited solely to the issue of the supreme court’s jurisdiction and accompanied by an appendix containing only a conformed copy of the decision of the district court of appeal, shall be served within 10 days of filing the notice.”¹

The petitioner has turned his jurisdictional brief into an argument as to the merits of the case, as seen in his conclusion, where he focuses solely on his opinion

¹ The Committee notes go on to state: “The jurisdictional brief should be a short, concise statement of the grounds for invoking jurisdiction and the necessary facts. It is not appropriate to argue the merits of the substantive issues involved in the case or discuss any matters not relevant to the threshold jurisdictional issue. The petitioner may wish to include a very short statement of why the supreme court should exercise its discretion and entertain the case on the merits if it finds it does have certiorari jurisdiction.”

of the case and not on the basis of jurisdiction for this court. Accordingly, his petition should be denied on that basis.

Nonetheless, it is clear that the Supreme Court should deny the petition for discretionary review. The Third District Court of Appeal entered an opinion consistent with the precedent set forth by the Supreme Court in its opinion in *Jimenez II*. The 3rd DCA opinion may be distinguished from the *Masone* opinion in that the guidelines between vendor and municipality as to how videos are sorted are not ordinances that punish or fine motorists in contradiction with statute. As there is no direct and express conflict with these opinions, the Supreme Court should deny the petition for discretionary review as lacking jurisdiction.

The Petitioner's jurisdictional brief will be referenced as "PB".

The Appendix presented by the Petitioner will be referenced as "A" and will use the page numbers of the district court of appeals opinion.

RESTATEMENT OF THE CASE AND FACTS

Respondent does not agree with the statement of facts as presented by the Petitioner. The Petitioner has misrepresented the findings of this Court in earlier decisions as "facts" and improperly presents multiple arguments in its Statement of Case and Facts (PB 1-4). Pursuant to Florida Rules of Appellate Procedure 9.210(c),

Respondent submits the following as its Restatement of the Case and Facts as they pertain to the jurisdictional question.²

Lee Stein was issued with a traffic citation in the City of Aventura for illegally turning right on red at a traffic signal. Probable cause for the citation was based on photographs from the City's red-light camera program, which is serviced by American Traffic Solutions, Inc., a City vendor. (A 2)

In moving to dismiss, Stein did not contest that the red-light camera pictures showed probable cause that he committed the infraction. Instead, he contended Aventura's red-light camera program violates Florida Statutes due to Aventura's use of certain guidelines. These guidelines are instructions Aventura gives its Vendor to sort images into different databases before the images are reviewed by police officers for probable cause. Different local governments give their vendors different guidelines. Stein contended the guidelines are akin to local traffic ordinances preempted under Chapter 316 of Florida Statutes. He also contended that the differences in guidelines means that violators may be more likely to escape citations in some cities than other cities. This variation in enforcement, Stein argues, makes Aventura's red-light camera program violate the statutory requirement that there be uniform traffic laws. (A 2) The trial court agreed with Stein, dismissing the case and certifying questions to the Third District Court of Appeal for review.

² Additional facts and details of the lower court arguments may be found in the 3rd DCA opinion (A 2-9).

The 3rd DCA found that Stein’s arguments could not be reconciled with the reasoning and holdings of the prior decisions of 3rd DCA and the Florida Supreme Court upholding the same Aventura red light guidelines that Stein challenged. *State ex rel. City of Aventura v. Jimenez*, 211 So. 3d 158 (Fla.3d DCA 2016) (hereinafter “*Jimenez I*”), aff’d sub nom., *Jimenez v. State*, 246 So. 3d 219 (Fla.2018) (hereinafter “*Jimenez II*”). The court explained that the guidelines are instructions each city gives its red-light vendor regarding the contractual task of sorting camera images and that they do not define traffic violations and are not traffic laws that apply to the driving public. (A 3) The 3rd DCA reversed the decision of the trial court and remanded the case.

A motion for rehearing en banc was denied and no questions were certified by the 3rd DCA.

SUMMARY OF THE ARGUMENT

The discretionary jurisdiction of the Florida Supreme Court is based upon Article V Section 3(b)(3) of the Florida Constitution. The Florida Supreme Court lacks jurisdiction in this matter. While the cases cited by the Petitioner are accurate for what they stand for, the Petitioner mischaracterizes the 3rd DCA opinion as being in express and direct conflict with decisions by the Supreme Court. Contrary to the arguments made by the Petitioner, there has not been a decision entered by the appellate court that conflicts with the rulings of other appellate courts or the Supreme

Court. In fact, the Opinion entered by the 3rd DCA is consistent with the Supreme Court's decision in *Jimenez II*. The trial court certified questions to the 3rd DCA. However, the 3rd DCA found contrary to the trial court and reversed and remanded the case. No certified questions were entered by the 3rd DCA for the Supreme Court as the appellate court followed the precedent set by the Supreme Court in *Jimenez II*.

The opinion entered by the 3rd DCA may be distinguished from the decision in the case of *Masone v. City of Aventura* in that the guidelines at issue in this matter are not local ordinances and are not the direct enforcement or punishment for violations captured by the red light cameras.

As the opinion of the 3rd DCA is consistent with *Jimenez II* and may be distinguished from *Masone*, there is not a conflict between the opinion and other court decisions. Therefore, the Supreme Court lacks jurisdiction for discretionary review and should deny the petition.

ARGUMENT

I. Bases to Determine Jurisdiction

The jurisdiction of the Florida Supreme Court is based upon Article V Section 3(b) of the Florida Constitution. The section pertinent to the argument made by the Petitioner is subsection (3), which states that the Supreme Court “[m]ay review any

decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.”

Discretionary jurisdiction as applied here is specifically set in Florida Rule of Appellate Procedure 9.030(a)(2)(a), which states:

- (2) Discretionary Jurisdiction.** The discretionary jurisdiction of the supreme court may be sought to review:
- (A) decisions of district courts of appeal that:
 - (i) expressly declare valid a state statute;
 - (ii) expressly construe a provision of the state or federal constitution;
 - (iii) expressly affect a class of constitutional or state officers;
 - (iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;
 - (v) pass upon a question certified to be of great public importance; or
 - (vi) are certified to be in direct conflict with decisions of other district courts of appeal;

The opinion issued by the Third District Court of Appeal in this case did not expressly declare valid a state statute or expressly construe a provision of the state or federal constitution. The opinion did not expressly affect a class of constitutional or state officers. The Third District did not pass upon a question certified to be of great public importance or certified to be in direct conflict with decisions of other courts of appeal. While Petitioner contends that the opinion of the 3rd DCA in this case expressly and directly conflicts with a decision by another district court of

appeal or with the supreme court on the same question of law, Respondents argue that the opinion of the 3rd DCA is consistent with the opinion of this Court in *Jimenez II* and can be distinguished from this Court's ruling in *Masone*. As such, the action before this Court should be dismissed for lack of jurisdiction.

II. The Opinion of the 3rd DCA is consistent with the precedent of this Court in *Jimenez II*.

The Petitioner makes numerous statements alleging that the 3rd DCA opinion conflicts with that of the Supreme Court in *Jimenez II*. On pages 2 and 3 of his brief, the Petitioner creates a conclusion that he attributes to the Supreme Court detailing the effect of the guidelines on the processing of camera images. In quoting from *Jimenez II*, at the ellipses, the Petitioner omits that “Each image placed in the non-working database is reported, and the reason for placing the image in the non-working database is explained by the Vendor on a report screen. The report screen is periodically reviewed by the sergeant in charge of the City's review.” *Jimenez II* at 222. This negates the creative assertion of the Petitioner as the Supreme Court also did not state that the police never review images in the non-working queue.

The Petitioner then goes on to misinterpret the “definitive conclusions” reached by this Court in *Jimenez II*, stating that certain images are “always” placed in the non-working queue and a driver not meeting guidelines will “never” receive a citation, words that were not used by the Court in its opinion. Petitioner then

proceeds to claim that the 3rd DCA's opinion in *Stein* was in express and direct conflict with this Court. The Petitioner's arguments continue along these mistaken concepts, insisting that this Court stated that "the police never review images placed in the non-working queue". (PB 7)

The contentions of the Petitioner conflict with what was actually stated by the 3rd DCA and the Supreme Court in *Jimenez II*. "[t]he vendor's decision to place images into the working database "does not amount to determining whether those drivers . . . have violated the law. That determination, as the record before us confirms, is left solely to traffic infraction enforcement officers." Jimenez II, 246 So. 3d at 230 (quoting Jimenez I, 211 So. 3d at 173-74 (Wells, J., specially concurring))." (A 11)

The opinion of the 3rd DCA is consistent with the opinion issued by this Court in *Jimenez II*. Based on his continued misinterpretation of the *Jimenez II* opinion, the Petitioner attempts to create conflict where there is none, stating that the 3rd DCA was wrong in finding that the guidelines were not local traffic ordinances. Petitioner then states the 3rd DCA improperly concluded that the Legislature expressly authorized the use of local guidelines. However, the statement by the 3rd DCA is consistent with *Jimenez II*, which stated: "The Legislature has expressly authorized local governments to allow traffic enforcement officers to issue citations for traffic infractions captured by red light

cameras. As part of this express authorization, the Legislature has permitted a local government's agent to review information from red light cameras for any purpose short of making the probable cause determination as to whether a traffic infraction was committed.” *Jimenez II* at 230.³

Stein’s challenges to uniformity were addressed in *Jimenez II* and were consistent (and quoted) in the opinion issued by the 3rd DCA in *Stein*: “More importantly, this fundamental premise of Stein’s challenge was emphatically rejected by the Supreme Court in *Jimenez II*. Any lack of uniformity caused by the underinclusive aspect of the guidelines, the Court noted, “is no different than a traffic enforcement officer on the road stopping and citing one individual for exceeding the speed limit, while not citing others doing the same.” *Jimenez II*, 246 So. 3d at 230.” (A 17) The 3rd DCA adopted this position. (A 17-18)

The majority in *Jimenez* concluded that “[B]ased on the foregoing, we conclude that Jimenez's arguments that the City's red light camera enforcement program (A) unlawfully exceeds the grant of authority in section 316.0083(1)(a), and (B) violates the uniformity principle set forth in chapter 316, are without merit.” *Jimenez II* at 230. While framed differently, the Petitioner made essentially the same argument in the *Stein* case. In determining this matter, the 3rd DCA noted

³ The second argument put forth by the Petitioner (PB 9) tries to say that the 3rd DCA is addressing issues not addressed by this Court in *Jimenez II*. The language concerning the legislature is cited above and the 3rd DCA specifically stated that “We decline to read the Wandall Act as preempting what the Supreme Court said it authorized” (A13 n.4)

the binding precedent (A 18) set forth by *Jimenez II* and made its findings consistent with that precedent.

III. The Opinion of the 3rd DCA may be distinguished from the ruling of this Court in the *Masone* case.

The Court in *Masone* held that the cities' ordinances were expressly preempted by state law. The cities had passed ordinances imposing penalties for violations detected by red light cameras. *Masone* at 494.

In this situation, we are not dealing with ordinances. These are guidelines between a municipality and vendor as to the sorting of images that are to be reviewed by traffic enforcement officers for the purposes of enforcement. There is not an ordinance that sets a fine. There is not an ordinance as to any other penalty. The penalty is based upon the uniform traffic laws of the state of Florida.

CONCLUSION

Based upon the foregoing reasons and authorities, this Court should dismiss the action as it lacks jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 3, 2020, a true and correct copy of the foregoing has been filed with the Florida Supreme Court via e-filing and sent by email to counsel of record:

s/CHRISTOPHER M. SUTTER
Christopher M. Sutter
Assistant Attorney General
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing complies with the font requirements of Fla. R. App. P. 9.210(a).

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