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New Red Light Camera Case Stops More than Just Traffic

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In an October 15, 2014, ruling, the Fourth District Court of Appeal struck down the City of Hollywood's procedure for processing citations initiated by red light cameras.¹ At issue was the level of control that third party vendors can have over the process. The court found this level to be no more than what the applicable Florida statutes explicitly convey. If a municipality's procedure exceeds the strict boundaries of these statutes, the appropriate remedy is the dismissal of citations processed in such a manner. Although this holding is not yet final, as it is pending a rehearing, municipalities that outsource the handling of red light camera related violations—especially those under the Fourth District's jurisdiction in Palm Beach, Broward, St. Lucie, Martin, Indian River, and Okeechobee Counties—must pay particular attention to this issue and revisit their own procedures on the matter sooner rather than later.

The alleged red light infraction that prompted this litigation occurred on August 17, 2011. Subsequently, a citation was issued to the offending car's owner, which was then dismissed at trial. The City of Hollywood appealed the dismissal to the Fourth District who originally ruled in Hollywood's favor. However, on rehearing, the court reversed its own decision and issued the October 15, 2014, ruling which found Hollywood's procedures regarding the issuance and processing of citations arising from red light cameras to be in violation of Florida law. Following this recent opinion, the City of Hollywood has filed a motion for a second rehearing. The holding will not be considered final until the Court rules on the City's Motion.

The crux of this controversy is the specific tasks that Hollywood delegated in connection with its red light enforcement program. Hollywood contracted the private vendor American Traffic Solutions ("ATS") to perform the initial review of footage from red light cameras located within the municipality. If the company deemed footage to be suggestive of a violation, it would then forward it to a Hollywood traffic infraction enforcement officer ("TIEO") for approval. If the TIEO clicked "accept," ATS was then authorized to print and mail a notice of violation to the automobile's registered owner. If the owner did not elect an option which avoided the issuance of a traffic citation, ATS would then mail the resulting citation, complete with the TIEO's badge number and computer-generated signature, to the vehicle's registered owner and electronically transmit a replica of the citation's data to the county court.

¹ See *City of Hollywood v. Arem*, No. 4D12-1312, 2014 WL 5149159, (Fla. 4th DCA Oct. 15, 2014).

Citing, *Masone v. City of Aventura*,² a recent Florida Supreme Court case supporting a strict, by the letter of the law, interpretation of Florida's traffic statutes, the Fourth District found that Hollywood's arrangement violated the statutes regulating the usage of red light cameras.³ Section 316.650(3)(c), Florida Statutes, stated:

If a traffic citation is issued under s. 316.0083, [the statute authorizing local governments to use red light cameras,] 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 after the date of issuance of the traffic citation to the violator.

The court implied that since ATS, instead of a TIEO, provided a replica of the traffic citation data to the court, the city's procedure did not conform with section 316.0083, Florida Statutes.⁴

Further, and perhaps even more importantly, section 316.640(5)(a), Florida Statutes, permits TIEOs to issue tickets for infractions captured by red light cameras; however, "the statute does not authorize a private vendor to issue citations, either expressly or impliedly."⁵ While section 316.008(3) states that a third party can perform "a review of information from a traffic infraction detector" prior to the issuance of a citation, the court found that ATS' role in this case—specifically, its selecting the information that was, or was not, made available for the officer's consideration—went beyond review and instead constituted the actual issuance of a ticket.⁶ "In Florida, only law enforcement officers and

2 Nos. SC12-1471, SC12-644, 2014 WL 2609201, (Fla. June 12, 2014).

3 Although the *Arem* court reviewed the 2011 version of the statutes, which have since been amended, it is not likely that the court's ruling would have been different under the current version.

4 It is not clear whether Hollywood's purported noncompliance with section 316.650(3)(c) alone would be enough to strike down the city's program. The court addressed the statute in connection with Hollywood's other statutory violations and declined to address the city's behavior pursuant to 316.650(3)(c) independently.

5 *Arem*, 2014 WL 5149159, at *5.

6 In this regard, the *Arem* decision quoted the following provision of Hollywood's contract with ATS and found that it afforded the vendor too much authority: "The Vendor [ATS] 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 Demonstrat[ing] a violation of the Ordinance. If the Vendor determines that the standards are not met, the image shall not be processed any further."

traffic enforcement officers have the legal authority to issue citations for traffic infractions, which means only law enforcement officers and traffic enforcement officers are entitled to determine who gets prosecuted for a red light violation.”⁷

Law enforcement agencies should immediately review their procedures to ensure strict compliance with Florida law authorizing the use of red light cameras and private vendors. Only law enforcement and traffic enforcement officers should be reviewing potential violations, can determine who to cite, and have the authority to issue citations. Any violation determinations or citations issued by private vendors may be invalid. Noncompliance with the statutory requirements could result in a significant number of dismissed citations and a corresponding reduction in revenue.

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⁷ *Id.* at *4; *see also* FLA. STAT. §§ 316.0083(3), .640 (2011).