

Third District Court of Appeal

State of Florida

Opinion filed June 24, 2020.
Not final until disposition of timely filed motion for rehearing.

Nos. 3D19-523 & 3D19-524
Lower Tribunal Nos. 14-TR-000A36ADOE00 &
16-TR-000A36ADOE00

City of Aventura, etc., et al.,
Appellants,

vs.

Lee Stein,
Appellee.

Appeals from the County Court for Miami-Dade County, Steven Leifman, Judge.

Ashley Moody, Attorney General, and Christopher M. Sutter, Assistant Attorney General (Fort Lauderdale); Weiss Serota Helfman Cole & Bierman, P.L., and Edward G. Guedes, Samuel I. Zeskind, and Eric S. Kay, for appellants.

Gold & Associates P.A., d/b/a The Ticket Clinic, and Louis Arslanian (Hollywood), for appellee.

Before SALTER, LOGUE, and GORDO, JJ.

LOGUE, J.

The City of Aventura and the Attorney General of Florida appeal a decision of the county court dismissing a traffic citation that charged Lee Stein with illegally turning right at a traffic signal on red. 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.

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. This difference means some cities have police officers review more images for probable cause than other cities. 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.

Stein's argument cannot be reconciled with the reasoning and holdings of the prior decisions of this court and the Florida Supreme Court upholding the same

Aventura red light guidelines that Stein challenges here. 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”).

As explained below, the guidelines are instructions each city gives its red light vendor regarding the contractual task of sorting camera images: they do not define traffic violations and are not traffic laws that apply to the driving public. The variations in levels of red light traffic enforcement that result from different guidelines do not violate the requirement that traffic laws be uniform. Chapter 316 recognizes there will be different levels of local traffic enforcement. For example, it leaves to each city the decision whether, where, and how to deploy red light cameras. In the final analysis, the fact that other violators in other cities may not receive citations is not “a matter about which those cited for a violation have authority to complain.” Jimenez II, 246 So. 3d at 230 (quoting Jimenez I, 211 So. 3d at 173 (Wells, J., specially concurring)).

BACKGROUND

A. Aventura’s Red Light Camera Program

In 2010, the Legislature enacted the Mark Wandall Traffic Safety Program Act. Chapter 2010-80, Laws of Fla., codified at § 316.0083, Fla. Stat. Named in honor of Mark Wandall, whose wife was nine months pregnant when he was killed

by a driver who ran a red light, the Wandall Act authorizes local governments to use cameras to enforce traffic signals. See § 316.0083, Fla. Stat. In doing so, the Wandall Act also permits local governments to use vendors to conduct a preliminary review of images obtained from the cameras. Id. (“This paragraph does not prohibit a review of information from a traffic infraction detector by an authorized employee or agent of the department, a county, or a municipality before issuance of the traffic citation by the traffic infraction enforcement officer.”).

Stein’s challenge focuses on the guidelines that Aventura gives its Vendor to sort red light camera images prior to police review for probable cause.¹ In Jimenez II, the Supreme Court explained Aventura’s sorting process as follows:

[T]he Vendor sorts the information and images generated by the system into two databases: a “working” database that the City police review to decide whether to issue a citation and a “non-working” database that the City police do not review for that purpose. 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. The non-working database remains available and is occasionally accessed by the police for other investigations.

Each month, approximately 5,000 images are sorted into the working database and 3,000 are sorted into the non-working database. The police sergeant who oversees the City’s review testified that the City would be

¹ The Wandall Act uses the term “traffic infraction enforcement officer” which includes sworn police officers. § 316.0083 (1)(a), Fla. Stat. We use “police officer” for ease of reference and because Aventura uses sworn officers for this purpose.

overwhelmed if it was required to review all images generated by the system.

To sort images, the Vendor conducts a review that includes (1) confirming workable images exist (and the camera did not simply misfire); (2) examining the images to verify the license plate of the subject vehicle is legible; (3) using the license plate number in an automated process to obtain the identifying information of the registered owner from the Florida Department of Motor Vehicles; (4) confirming the capture of date, time-of-day, speed, and timing-of-light data; (5) checking the “A” shot, which is a still photograph showing the vehicle approaching the intersection; (6) checking the “B” shot, which shows the vehicle in the intersection; and (7) checking the twelve-second video clip that shows the vehicle approaching and traveling through the intersection. The Vendor can pause the video and view it frame by frame.

A representative of the Vendor testified that the Vendor’s task when reviewing images was to filter out images that were “useless.” A clear example, she explained, is where a camera simply misfired and failed to record an image. Other examples are where the light displays green or where images fail to capture a vehicle’s license plate number. These images were useless, she testified, because “the police cannot do anything with them.” But other images are determined to be useless based on the specific and detailed contract language and City guidelines.

Jimenez II, 246 So. 3d at 222-23 (quoting Jimenez I, 211 So. 3d at 161).

Aventura’s guideline for the line of demarcation was used by the Supreme Court to explain how the guidelines work. This discussion is relevant because Stein challenges Aventura’s line of demarcation. As explained:

[G]uideline 4.1 concerns the line of demarcation, which means the boundary of the intersection. This is the line used to evaluate the “A” shot, which is the photograph that

shows the vehicle approaching the intersection. In reviewing this guideline, one must keep in mind that if the front tires of a vehicle crossed the boundary and entered the intersection when the light is still displaying green, the vehicle obviously is not running a red light. Conversely, if the front tires had not yet reached this line when the light displays red, the vehicle would appear to be running a red light (assuming the vehicle does not immediately stop within the edge of the intersection and wait for a green light). All of the City intersections containing red light cameras have painted stop lines.

Jimenez II, 246 So. 3d at 223 (quoting Jimenez I, 211 So. 3d at 162-63).

After the Vendor sorts the images, the Supreme Court explained, the images are reviewed by a police officer to determine whether probable cause exists to issue a citation:

The officers decide to issue a citation based on the images in the same manner they decide to issue a roadside citation. If, after reviewing the photographs, video, and other information, the officer decides to issue a citation, the officer clicks the “accept” button on the screen. By doing so, the officer authorizes his or her electronic signature and badge number to appear on the notice and citation. The officer’s review and determination in this regard is far from a mere rubber stamp. As the trial court expressly found, “[o]f the images reviewed by the City’s police officers, only between sixty-five percent (65%) and seventy percent (70%) are approved as a violation.”

Jimenez II, 246 So. 3d at 223 (quoting Jimenez I, 211 So. 3d at 163).

B. Stein’s Ticket and the County Court Proceedings.

Stein was issued a citation for “failure to stop at a red traffic signal” at 9:35 am on August 6, 2014, at the intersection of Northeast 191st Street and Biscayne

Boulevard. The citation referred to section 316.075(1)(c), which prohibits illegal right turns on red; section 316.074(1), which prohibits failure to obey traffic signals; and section 316.0083, which authorizes municipalities to use red light traffic cameras. The citation contained three photographs of a Lexus automobile showing (1) the license plate, (2) the traffic light and the vehicle's front tires immediately before the tires reached the stop bar, and (3) the traffic light and the vehicle's back tires after the tires passed the stop bar. The last photograph also showed the sign prohibiting right turns on red. At oral argument, counsel for Aventura and Stein both agreed that Stein's alleged offense was making a right turn on red at an intersection where a sign is posted prohibiting right turns on red.

Stein pleaded not guilty and moved to dismiss his citation. In his motion, he did not contest that the images showed probable cause that he violated the governing statutes. Instead, he argued his citation was illegal because the guidelines Aventura issued to the Vendor to conduct the preliminary sorting: (a) were preempted local traffic laws under the Uniform Traffic Code, Chapter 316 of Florida Statutes; (b) resulted in different levels of local enforcement that violated the uniformity requirement of Chapter 316; and (c) used lines of demarcation and speeds for turns on red that conflicted with the governing statutes. In support of his uniformity

argument, Stein compiled a meticulous record, which set forth the guidelines for 16 cities in Miami-Dade County.²

Stein's evidence indicated that different cities provided somewhat different guidelines to the Vendors for sorting images. Stein focused on two guidelines: the line of demarcation and the speed while turning right on red. Aventura and 13 other cities in Miami-Dade County instructed the Vendor to use the stop line when sorting the images while Homestead instructed the Vendor to use "Behind the Prolongation of the Curb" and Key Biscayne "Behind the crosswalk." Regarding speeds, Aventura instructed the Vendor to put images into the working database for probable cause review if the driver took the right turn on red at a speed of 15 mph or more while West Miami chose 10 mph and Key Biscayne chose 25 mph.

The trial court agreed with Stein that these variations established that Aventura's red light camera program violated the statutes. The trial court concluded that Aventura's guidelines are "akin" to ordinances that "delineate[] what is or is not a violation of state statutes regarding right turns on red" and were therefore preempted under Chapter 316. The trial court also noted Chapter 316 of Florida Statutes was enacted "to make uniform traffic laws to apply throughout the state and

² The cities were Homestead, Medley, Key Biscayne, Cutler Bay, North Miami Beach, Florida City, Miami Gardens, Surfside, West Miami, Sweetwater, Bal Harbor, Opa-Locka, Miami Springs, Coral Gables, and Miami. The details of Aventura's guidelines were provided in Jimenez I and Jimenez II.

its several counties and uniform traffic ordinances to apply in all municipalities.” § 316.002, Fla. Stat. “How,” the trial court asked, “is a driver to know that the guidelines . . . vary from municipality to municipality?” Accordingly, the trial court dismissed Stein’s citation.

In doing so, the trial court certified to this court the following questions to be of great public importance:

1. Did the Florida Supreme Court’s opinion in Jimenez v. State, 246 So. 3d 219 (2018) address the non-uniformity caused by the application of different rules and regulations chosen by the various municipalities in their [guidelines], or did the Court focus solely upon the scope of the review process itself?
2. Does the Florida Supreme Court’s opinion in Jimenez v. State, 246 So. 3d 219 (2018) preempt the use of different rules and regulations chosen by the various municipalities in their [guidelines], when such rules and regulations differ from municipality to municipality and from state law?
3. Whereas review of information from traffic infraction detectors by an authorized employee or agent is expressly provided for by section 316.0083, Florida Statute (2013), given the fact that the various municipalities are utilizing non-uniform [guidelines] which apply rules and regulations that are akin to local ordinances and are not expressly authorized by statute and often vary from municipality to municipality and from state law, are such [guidelines], including that utilized by the City of Aventura, preempted by state law?

Aventura and the Attorney General timely appealed.

ANALYSIS

We accept jurisdiction. Art. V, § 4(b)(1), Fla. Const.; § 26.012(1)(c), Fla. Stat.

However, we rephrase the certified questions as set forth below.

A. Whether Aventura’s guidelines are “akin” to local traffic ordinances and therefore preempted under Chapter 316?

We begin our analysis by noting the trial court correctly observed that the Legislature expressly prohibited “any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of [Chapter 316].” § 316.002, Fla. Stat. (emphasis added). We would therefore agree with the trial court that the guidelines are preempted if, in fact, the guidelines are akin to ordinances.

An ordinance “is a regulation of a general and permanent nature and enforceable as a local law.” § 166.041, Fla. Stat. The guidelines here are Aventura’s directions to its red light vendor pursuant to a contract. Their function is to instruct the Vendor in its ministerial task of sorting images into working and nonworking databases. “The [guidelines] are designed to avoid wasting the [police officers’] time in reviewing events that cannot be prosecuted for one reason or another or that the City has determined it does not wish to review for possible red light violations.” City of Oldsmar v. Trinh, 210 So. 3d 191, 206 (Fla. 2d DCA 2016) (upholding a similar red light camera program), approved, Jimenez, II, 246 So. 3d at 231.

The guidelines thereby preserve police resources by limiting the universe of images reviewed by a police officer to only those images likely to yield a finding of probable cause. For example, in Aventura as of the time of Jimenez I, of the 8,000

images generated a month by red light cameras; the guidelines culled out 3,000 so that only 5,000 images had to be reviewed by a police officer. Jimenez II, 246 So. 3d at 222. Instructions given by one party to a contract to another party to a contract do not normally rise to the level of an ordinance merely because one party is a municipality. Thus, Stein may be correct that the guidelines constitute “rules,” but they fall far short of traffic rules imposed by the City on the driving public.

On this point, however, the trial court concluded the guidelines served to “determin[e] . . . violations in regard to right turns on red” or “delineated what is or is not a violation of state statutes regarding right turns on red.” This conclusion is at odds with the Supreme Court’s determination that the 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)).

The guidelines do not change the elements of the statutory offense of illegally turning right on red. Consider, for example, Aventura’s guideline that instructs the Vendor to place into the working database images (and the related data from speed sensors) that indicate a driver turned right on red at 15 mph or more. Assume a driver makes a right hand turn on red in Aventura at 16 mph. If captured by the camera,

this fact means only that the Vendor will place the driver's images in the working database for police review. It does not mean the driver will receive a citation. The police officer reviewing the event decides if there is probable cause under the governing statutes. Aventura's police officers find probable cause in only sixty-five to seventy percent of the events they review. Jimenez II, 246 So. 3d at 223. Thus, Aventura's 15 mph guideline does not define a violation. It only instructs the Vendor in which database to sort the event.³

It is certainly true that, under Aventura's guidelines, right hand turns on red of less than 15 mph are not sorted into the working database and are not reviewed by the police for probable cause. As discussed in more detail below, the circumstance that some violators may escape the city's enforcement net is not "a matter about which those cited for a violation have authority to complain." Jimenez II, 246 So. 3d at 230 (quoting Jimenez I, 211 So. 3d at 173-74 (Wells, J., specially concurring)). The key point is that, under Aventura's red light camera program, no one gets a citation unless a police officer determines that there is probable cause the driver violated the governing statutes.

³ For this reason, we reject Stein's arguments that guidelines setting mile-per-hour limits or identifying lines of demarcation to be used by the Vendor change the elements of what constitutes an illegal turn on red or otherwise violate the substantive terms of the statutes governing right turns on red.

In sum, we answer the first rephrased question in the negative. The guidelines are not local traffic ordinances preempted under Chapter 316 because they are not traffic laws that apply to drivers on the road. They are instructions the city gives its red light vendor regarding the contractual task of sorting camera images.⁴

B. Whether Aventura’s guidelines violate the requirement that traffic laws be uniform throughout the State because different cities may have more, or less, strict levels of red light camera enforcement?

The trial court correctly observed that the purpose of Chapter 316 was “to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities.” § 316.002, Fla. Stat. But the trial court erred in assuming the requirement that traffic laws be uniform also meant that the police resources committed to traffic enforcement, and particularly to red light traffic enforcement, must be uniform.

⁴ On appeal, Stein also argues the guidelines are regulations and therefore preempted by the statutory language that “[r]egulation of the use of cameras for enforcing the provisions of this chapter is expressly preempted to the state.” § 316.0076, Fla. Stat. (emphasis added). For the reasons the guidelines are not ordinances, they are also not regulations. Moreover, this provision was enacted as part of the Wandall Act, Chapter 2010-80, § 3, Laws of Fla, codified at § 316.0083, Fla. Stat., which also authorized local governments to give vendors guidelines. *Jimenez II*, 246 So. 3d at 230-31 (holding “section 316.0083(1)(a) authorizes a local government to contract with a private third-party vendor to review and sort information from red light cameras, in accordance with written guidelines provided by the local government, before sending that information to a trained traffic enforcement officer who determines whether probable cause exists and a citation should be issued.” (emphasis added)). We decline to read the Wandall Act as preempting what the Supreme Court said it authorized.

It is unrealistic to expect government to deploy enough police to catch every violator of the laws, including the traffic laws. Jimenez II, 246 So. 3d at 230 (noting “even without the use of red light cameras, traffic enforcement officers cannot be present at every intersection. As a result, there will inevitably be traffic infractions that go undetected and uncited.”). That is why the “amount of resources and personnel to be committed to the enforcement [of a particular law]” is a “policy decision of the city” not generally subject to review by the judiciary. Carter v. City of Stuart, 468 So. 2d 955, 957 (Fla. 1985); see also Wong v. City of Miami, 237 So. 2d 132, 134 (Fla. 1970) (holding a city had discretion to decide how to allocate limited police resources when responding to a civil disturbance because “inherent in the right to exercise police powers is the right to determine strategy and tactics for the deployment of those powers.”).

Different guidelines here essentially reflect a commitment of different levels of police resources and therefore different levels of local enforcement. Local governments with guidelines that instruct their vendors to place into the working database only those images most likely to result in probable cause, such as Key Biscayne’s limit of 25 mph, commit less police resources to reviewing images and will have less strict enforcement than those that instruct their vendors to place more images into the working database, such as Aventura’s limit of 15 mph. These variations reflect different balances struck by different communities in the

unavoidable tradeoff between allocating limited local police resources and establishing an acceptable level of local enforcement of a particular law. Carter, 468 So. 2d at 957 (“A government must have the flexibility to set enforcement priorities on its police power ordinances in line with its budgetary constraints. Without the ability to make such choices a government must either pay the high cost of total enforcement or forego the exercise of its police power. Neither option serves the public interest.”). The local conditions that shape local enforcement decisions change not only from city to city but also from time to time within a city. We know of no law, and Stein has cited to none, that holds such a local variation in traffic enforcement is a defense to a traffic citation.

Certainly, Chapter 316 contains nothing that eliminates a local government’s discretion in allocating enforcement resources. In fact, the Wandall Act, which is part of Chapter 316, left to each local government the enforcement discretion whether to deploy red light cameras, how many to deploy, at which intersections to deploy them, whether to use vendors preliminarily to sort images, and what guidelines to provide the vendors regarding such sorting. Jimenez II, 246 So. 3d at 230; Jimenez I, 211 So. 3d at 171; § 316.0083, Fla. Stat. This grant of enforcement discretion cannot be reconciled with Stein’s argument that the guidelines (and consequent levels of enforcement) must be uniform. See, e.g., Carter, 468 So. 2d at 956-57; Wong, 237 So. 2d at 134.

For these reasons, we answer the second rephrased question in the negative. The guidelines do not violate the requirement that traffic laws be uniform throughout the state. The guidelines establish only the subset of red light camera images the city has elected for police review. Local governments have the authority to decide the amount of limited local police resources to allocate to red light camera enforcement even though the result will mean different local governments may allocate different levels of resources and therefore have different levels of enforcement.

C. Whether Stein’s citation violates the statutes because some cities use guidelines that allocate more enforcement resources and catch more traffic violations than others?

Stein does not dispute there existed probable cause for his own citation. He does not claim that Aventura’s guidelines caused him to receive a citation when he should not have received one. Indeed, at oral argument, he could not identify a single hypothetical fact pattern in which Aventura’s guidelines would cause any driver to receive a citation when there was no probable cause that the driver committed a violation as defined in the statutes.

Instead, when Stein complains the guidelines lack uniformity, he ultimately means that he received a citation when other drivers who hypothetically should have received a citation may not have received one. As he repeatedly stated in his Answer Brief, his complaint is that the guidelines amount to a “refusal to issue” a citation; “set forth what definitely and conclusively is not a violation in a particular city;”

provide “conclusively what is not a violation;” and establish that a driver “definitely will not receive a citation.” In passing, we note we disagree with Stein’s characterization of the guidelines in this regard. While the sorting of an image into one database rather than another changes the probability that a driver will receive a citation, there is nothing “definitive” or “conclusive” in such sorting when both databases remain accessible to the police for review.

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. The Supreme Court further explained:

Put another way, the real issue here is that some individuals who may have violated traffic regulations may be screened out of the process because the images of their vehicles were not sent to a [police] officer to determine if a violation has occurred. This argument is no different than that made by an individual issued a speeding ticket who complains that other speeders also were not ticketed.

Jimenez II, 246 So. 3d at 230 (quoting Jimenez I, 211 So. 3d at 173-74 (Wells, J., specially concurring)). The Supreme Court rejected the claim that a traffic citation should be dismissed merely because “[the Vendor] determines certain images [of other drivers] will not be forwarded—i.e., that some drivers will not be ticketed—

because images taken of their vehicles show that they have not exceeded set guidelines.” Id.

Following this binding precedent, we answer the third rephrased question in the negative. A citation does not violate the traffic laws merely because some cities allocate more resources to red light traffic enforcement and catch more violators than others. We have carefully considered the other arguments raised by Stein and find them without merit.

Reversed and remanded.