

IN THE SUPREME COURT OF FLORIDA
Case No. SC16-1976

District Ct. no.: 2D15-2303 & 2271; Trial Ct. no.: 13-2014-TR-000A36-9OZE-00

LOUIS A. TORRES JIMENEZ

Appellant / Trial Court Defendant

v.

STATE OF FLORIDA,
by and through the CITY OF AVENTURA,

Appellee / Trial Court Plaintiff,

and the FLORIDA ATTORNEY GENERAL,
PAMELA JO BONDI,

Appellee / Intervener

INTERVENER/APPELLEE, PAMELA JO BONDI'S,

JURISDICTIONAL ANSWER BRIEF

ON PETITION TO INVOKE JURISDICTION TO REVIEW CERTIFIED
QUESTIONS FROM THE THIRD DISTRICT COURT OF APPEAL

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RECEIVED, 12/08/2016 02:18:34 PM, Clerk, Supreme Court

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Statement of the Facts and Case

A large number of dangerous red light violations are captured by infraction detectors¹ (hereinafter “camera”) each year. *See* Petitioner’s Appendix to Jurisdictional Brief (hereinafter cited to as “A.”) 4. Yet, despite the safety benefit, the court in the case of *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014), found that the City of Hollywood’s camera program illegally delegated tasks to its camera vendor, American Traffic Solutions (hereinafter “ATS”) with unfettered discretion. A. 3-4, & 22. In the aftermath of the *Arem* decision, the Attorney General felt compelled to intervene in this case and others as a matter of great importance, statutory interpretation and involving a constitutional issue. The Attorney General intervened to support the State’s position as argued by the City of Aventura.² A. 2. The central issue in this case is contained in the trial court’s first certified question to the District Court and the District Court’s first certified question to this Court. A. 4, 13 & 29. Simply put, the issue is whether a review of

¹ As defined by section 316.003(87), an infraction detector is: “A vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar”

² The prosecution of the trial court case was handled by the City of Oldsmar for the trial court Plaintiff, the State of Florida. Legally, even though the State of Florida was the Plaintiff, the city that issues the traffic citation takes charge of the prosecution for non-criminal traffic infractions. § 316.008(2), Fla. Stat.

images by an agent of the city was permitted by the Florida Legislature in section 316.0083(1)(a), Florida Statute. *Id.* The courts were also asked to decide whether an automated computer system, without human intervention, mailing out traffic citations and transmitting citation data to the clerk of court was an illegal delegation of power. A. 25-28.

Based on the evidence, the trial court agreed with the State that there was no unfettered discretion being exercised by ATS as argued by the Appellant/Defendant below. A. 16, 18, 20 & 24. However, the trial court granted the motion to dismiss which allowed the Third District Court of Appeal to accept jurisdiction to answer the trial court's certified questions as a matter of great importance. A. 13-14; § 34.071, Fla. Stat. Furthermore, a case which has parallel issues, *City of Oldsmar and Attorney General v. Tammy Vo Trinh*, was accepted by the Second District Court of Appeal as a matter of great importance when the *Trinh* trial court also disagreed with *Arem* but granted the Appellant/Defendant below's motion to dismiss and certified questions to the district court. *City of Oldsmar and Attorney General v. Tammy Vo Trinh*, 41 Fla. L. Weekly D2435 (Fla. 2d DCA Oct. 28, 2016).

The defendants that received traffic citations, Ms. Trinh and Mr. Jimenez, are both represented by Gold and Associates, doing business as, The Ticket Clinic. This firm also represented Mr. Arem. Now that Ms. Trinh and Mr. Jimenez have

lost their appeals in the Second and Third Districts, they are both seeking review by of this Court. *See Tammy Vo Trinh v. City of Oldsmar, et al.* No. SC16-1978 (Fla. S. Ct. Oct. 2016).

Based on a fuller understanding of the process as presented by a witness from the camera vendor, American Traffic Solutions (hereinafter “ATS”) and the introduction into evidence of the business rules in this case and in *Trinh*, the trial courts and appellate courts found there was no unfettered discretion and no illegal delegation of tasks to ATS. A. 3, 6 & 8; *Trinh*, 41 Fla. L. Weekly D2435. In *Arem*, the court found, based on a skeleton record, that there was unfettered discretion given to ATS by the City of Hollywood because there was no evidence otherwise.³ A. 22.

Summary of the Argument

This Court has discretion whether to accept review. However, there is good reason to decline to exercise discretion for review. The Attorney General would be satisfied if this Court allowed time for the Fourth District Court of Appeal to review a new case which has all the missing facts that were missing from the *Arem* record which would allow the Fourth District to deal with the *Arem* opinion itself.

³ The City and the Attorney General are not stating that the City of Hollywood did not have business rules or did not have the same protocols in place with ATS but just that the *Arem* court was unaware of the business rules and how they functioned because they were not within the *Arem* record. The limited record is what gave the *Arem* court a view of the program that departed from reality.

Of course, the Attorney General would be pleased to defend the extensive factual record and well-reasoned district court decision if this Court accepts jurisdiction.

Argument:

I. This Court has discretion whether to accept review of this case.

The Attorney General has not changed her opinion that this case and the *Trinh* case involve matters of great importance. She also agrees with the *Jimenez* trial court below, and the Third District Court of Appeal below that found that the camera vendor, ATS, was not given unfettered discretion by the city to perform the delegated ministerial and secretarial tasks of reviewing images, mailing citations, and transmitting citations to the court. A. 2-4, 24 & 25-28.

Thus, while this Court has discretion to review the certified question presented by the Third District Court, this Court also has the discretion to deny review in favor of letting the Fourth District Court of Appeal have an opportunity to review a case that has a complete record that contains business rules and the facts that were never placed before the Fourth District Court of Appeal in the *Arem* record. *Murphy v. Fla. Dep't of Transp.*, 769 So. 2d 1040 (Fla. 2000). In certain respects, the *Arem* court should not be faulted because its opinion was based on a limited record while this case was distinguished on a substantial amount of facts not within the *Arem* record. A. 3, 23, & 25. Herein, the ATS witness testified that ATS processors sort out images based on the business rules, and a computer mailed and

transmitted citations based on an automated process. A. 6, 17-19 & 25-28.

Every court in which the Attorney General has appeared on these issues has agreed with the cities and the Attorney General that the contracts entered into by the cities with ATS do not illegally delegate tasks to ATS with unfettered discretion. *State v. Langham*, 23 Fla. L. Weekly Supp. 149b (Fla. Duval Cty. Ct. June 10, 2015); *State v. Meador*, 22 Fla. L. Weekly Supp. 1079b (Fla. Polk Cty. Ct. Mar. 3, 2015); *State v. Devine*, 23 Fla. L. Weekly Supp. 593a (Fla. Polk Cty. Ct. Oct. 27, 2015); *State v. Trinh*, 23 Fla. L. Weekly Supp. 553b (Fla. Pinellas Cty. Ct. Sept. 30, 2015); *State v. Jimenez*, 23 Fla. L. Weekly Supp. 571c (Fla. Dade Cty. Ct. Sept. 25, 2015). The orders in *Langham*, *Meador*, and *Devine*, rejected the *Arem* defense outright, while two of the trial court orders, in *Trinh* and *Jimenez*, stated that the courts found no unfettered discretion and disagreed with *Arem* as it would apply to the facts in the cases before them, but granted the motions to dismiss. *See Trinh*, 23 Fla. L. Weekly Supp. 553b and *Jimenez*, 23 Fla. L. Weekly Supp. 571c. The *Trinh* and *Jimenez* trial courts then certified questions to the Second and Third Districts, respectively. This allowed the State to appeal and obtain district court opinions. A. 2; *See also, Trinh*, 41 Fla. L. Weekly D2435. In every case in which the Attorney General has intervened, in which the business rules and ATS's protocol not before the *Arem* court are revealed, the courts have rejected the *Arem* analysis. *See Langham; Meador; Devine, Trinh; and Jimenez.*

II. There are distinguishing facts between the case *sub judice* and *Arem*.

One significant distinguishing factor between the *Arem* case and the *Trinh* and *Jimenez* cases is the difference in the language of the contracts. A. 7-8, & 22-23; *Oldsmar and Attorney General v. Tammy Vo Trinh*, 41 Fla. L. Weekly D2435, pp. 6-8 (Fla. 2d DCA Oct. 28, 2016). Reading the *Arem* opinion, the Hollywood contract language that was quoted by the *Arem* court states:

*3. 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. *365 If the Vendor determines that the standards are not met, the image shall not be processed any further.*

A. 22; *Arem* at 364-65 (Emphasis in original). This block quote by the *Arem* court shows that the court was under the impression that the standard used by ATS to make a determination was a city ordinance rather than business rules. *Id.* Also, according to the quoted language placed in italics by the *Arem* court, the court believed that ATS was to determine in its sole discretion whether “the requirements of the Ordinance” were met. *Id.* Also, footnote 2 in *Arem* specifically states, “If the vendor unilaterally determines in its own discretion that either a violation did not occur or that the City would not be able to sustain its burden of proof . . . the information is never transmitted”. A. 23-24; *Id.* at 365. However, it is clear in this case, based on testimony and the Aventura contract, instead of

deciding whether there was a violation of an ordinance, ATS was being directed by the contract and the City's business rules to merely sort images that **clearly did not show** a violation. A. 7-8. And, in reality based on the evidence in this case, the ATS processors are merely placing the images into two difference queues based on what the police department wants the officers to review first. A. 17-21. The sorting is not based on what is a "violation" but rather how the business rule directs the processor to sort the image. *Id.* It is easy to see how this case is distinguished by comparing Aventura's 2008 contract that pre-dated the passage of the Mark Wandall Traffic Safety Act with the 2010 Aventura contract language put in place after the passage of the Wandall Act. The relevant clause in the Aventura contract in 2008, is the exact language that was quoted by the *Arem* court. *Arem* at 364-365. The 2008 Aventura contract and the Hollywood contract in *Arem* states:

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.

A. 22; *Arem* at 364-65. The change in the Aventura contract language adapted immediately after the Wandall Act was passed shows a clear intent to comply with the act and to delineate what services were actually being performed.

The Aventura 2010 contract language was changed to read:

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.

A. 7 (Emphasis in opinion.) It is important to note that the contract language in *Arem* may have predated the Wandall Act passed in 2010. A. 7. Prior to 2010, there were no state red light camera statutes and the cities relied upon their own ordinances to determine a violation. *Masone v. City of Aventura*, 147 So.3d 492 (Fla. 2014). *Arem* had a limited record which did not include business rules, ATS witness testimony, and it appeared that ATS processors had sole discretion to decide whether an ordinance was violated. A. 7, 23 & 25. This was not consistent with reality, but it was the limited record the *Arem* court had rely upon to reach its decision. However, in this case, ATS processors are not deciding whether an ordinance was violated. Pursuant to statute, it is the infraction detector that first electronically detects whether a vehicle passed the stop line when the light was red and not an ATS processor. *See above*, n. 1: § 316.003(87). The ATS processors are just a link in the chain that place the images received from the infraction detectors into two queues based on the City's business rules. A. 17-21 One queue has all the images the police department wants the officers to review for a probable cause determination, whereas the other queue has images the police department has determined it does not want its officers to review but are available for review if

desired. A. 5 & 23. According to the new contract, the processors are not deciding whether a violation occurred based on an ordinance but instead are saving an officer time by sorting images based on the image “**clearly fail[ing] to establish the occurrence**”. A. 7-8. The ATS processors are merely sorting images based on the directions in the police department’s business rules. A. 17-21. Thus, images, such as, when a camera fails and there is a black screen that does not show a picture and clearly fails to be useful, the image is placed into the second non-working queue which can be reviewed by an officer if so desired. A. 5-6 & 17. Another example is when the offending vehicle’s license plate is blocked by a second vehicle, the image clearly cannot be used. (Without having a license plate number obtain the vehicle registration, there is no way of knowing the address where the citation should be mailed.) Thus, all the images that the city’s police department listed in the city’s business rules that the department did not want officers to review are placed in the second queue. This system saves officer man hours (A. 5-6) and this was contemplated by the Florida Legislature when enacting section 316.0083(1)(a), Florida Statute. A. 3-5 & 16. The statute specifically states:

(1)(a) 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**.

§ 316.0083(1)(a), Fla. Stat. (Emphasis added.) So, not only did the Florida

Legislature contemplate that an agent (the camera vendor) would perform a review, the Legislature acknowledged that it is only after the camera vendor's review that the officer exercises discretion to issue the traffic citation. *Id.* The contract, ATS witness testimony and the business rules clarified what services were actually being performed by ATS for the City and they distinguish this case from *Arem*. A. 23 & 25.

A processor looking at a picture to see whether a tire is on or over the line when the light is red is ministerial. A. 16-17; *Trinh*, 41 Fla. L. Weekly D2435 at 27. The tire is or is not on the line or over the line when the light turns red. If there is any question in an ATS processor's mind as to which queue to place the image, the processors are trained that they are to automatically place the image into the officer's working queue. A. 17-18.

The Fourth District in *Arem* did not have the substantial amount of facts that were within the record before the District Court. A. 23 & 25. Therefore, it is reasonable to assume that the *Arem* court would have come to a different conclusion had it had the facts that were within this case or the *Trinh* case.

Conclusion

This Court has discretion whether or not to accept jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla. R. App. P. 9.100(l), in that it was prepared in Times New Roman 14-point font.

/s/ Robert Dietz

Robert Dietz
Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 8, 2016, a true copy of the above was filed through the Florida e-filing portal that will serve copies on Edward Guedes, Esq., and Samuel I. Zeskind, Esq., of Weiss Serota Helfman Cole & Bierman, P.L., counsel for the State of Florida, by and through the City of Oldsmar, at eguedes@wsh-law.com, szeskind@wsh-law.com, and szavala@wsh-law.com; and to Ted L. Hollander, Esq., of Gold and Associates, P.A., d/b/a The Ticket Clinic, Louis C. Arslanian, Esq., Marc A. Wites, Esq., Stephen F. Rosenthal, Esq., counsel for Appellant Trinh / ticketed Defendant below, at tedhollander@theticketclinic.com; arsgabriela@comcast.net, mwites@wklawyers.com, and srosenthal@podhurst.com.

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