IN THE
SUPREME COURT OF FLORIDA

CITY OF HOLLYWOOD,

Petitioner,

vs.

CASE NO.: SC15-236
L.T. Case No.: 4D12-1312

ERIC AREM,

Respondent.
_____/

Respondent's Answer Brief on Jurisdiction

On Discretionary Review from a Decision of the Fourth District Court of Appeal

Louis C. Arslanian
Counsel for Respondent, Eric Arem

5800 Sheridan Street
Hollywood, Florida 33021
(954) 922-2926 Tel.
arsgabriela@comcast.net
Florida Bar No. 801925

Table of Contents

Table of Authorities

Other Authorities

Statement of Case and Facts

The Fourth District Court of Appeal considered issues of first impression by way of answering questions certified to be of public importance from the county court in and for Broward County regarding §316.0083, Fla. Stat.- more specifically, whether the statute "authorize[d] a municipality to delegate and have a private vendor ["ATS"] actually issue Florida Uniform Traffic Citations," and whether dismissal would be a proper remedy.

The county court found the red light enforcement program of the City of Hollywood ["the City"] did not comply with the statutes by improperly delegating tasks to ATS, and determined that §316.0083(1)(a) required the citation be issued by the traffic infraction enforcement officer ["TIEO"]. The Fourth District concluded: i) the City's outsourcing to ATS of its "statutorily mandated obligation to issue uniform traffic citations for red light violations is *contrary to the plain wording of the Florida Statutes*;" and ii) the "City's improper delegation of authority in this case renders the citation void at its inception." App. at 2.

Based on the record, the panel determined ATS, the vendor: decides which cases the TIEO reviews; initially determines who is subject to prosecution for a red light violation; obtains all information to complete the citation; creates the actual citation; issues the citation; and transmits the citation data to the court. App. at 8.

In its analysis, the panel cited to various authorities from this Court setting forth various well-established principles regarding statutory interpretation,[1] the history of Florida traffic law, and provisions in sections enacted to limit municipalities so as to create a uniform, statewide traffic control system[2] prior to stating the standard upon which the statutes should be interpreted:

> Whether the City has the authority to outsource the issuance of these citations, or to outsource any other duty, must therefore be derived *from the plain wording of the statutes*. App. at 6.

The panel, highlighting key phrases from §316.0083(1)(a), §316.650(3)(c) and §316.640(5) [a TIEO in a municipality must: be an employee of the sheriff's or police department; successfully complete a program; and be physically located in the county of the police or sheriff's department] [App. 6-7], concluded the applicable statutes were clear and unambiguous. Under the plain meaning of these statutes, the panel concluded only law enforcement officers and traffic enforcement officers have the legal authority to issue citations for traffic infractions. App. at 7. The panel found the legislature did not authorize a private vendor to issue citations, even though it did authorize a private vendor to review of information, stating:

---

[1] Courts should strive to effectuate the Legislature's intent, first looking to the statute's plain language; and when a statute is clear and unambiguous, courts will not look beyond the statute's plain language. App. at 4.

[2] The panel cited to statutory authority, Section 316.007 and *Masone v. City of Aventura*, 147 So. 3d 492 (Fla. 2014) mandating that municipalities had no authority in traffic matters "unless authorized by the legislature." App. at 4-6.

> Had the legislature intended to allow for delegation of this authority or responsibility, just as it expressly allowed for delegating review of traffic infraction detector information by employees or agents under section 316.0083(1)(a), it could have easily done so. Under the clear wording of the statute, it did not. App. at 7.

Despite the City's request, the panel did not certify any questions of great public importance to this Court.

Summary of the Argument

Since this is a case of first impression regarding the statutory authority granted to a municipality and its agent, a private vendor, regarding red light camera infractions, the Fourth District's interpretation or conclusion cannot possibly be in conflict with any interpretation by another district court of appeal or this Court.

Thus, the City can only argue that the panel employed an improper *method* of statutory interpretation to attempt to present a conflict. However, while the City concedes that the Court, in *Masone*, "did not recede from well-established rules of statutory construction," and contends that this case "should be determined under long-accepted principles of statutory construction," the Fourth District only applied these very well-established rules of statutory construction in looking to "the plain wording of the statutes" to conclude that: i) only traffic infraction enforcement officers, not a private vendor, were authorized to issue traffic citations; and ii) while the statute authorized the vendor to review of traffic infraction detector information, the statute did not authorize the vendor to issue citations.

The panel merely applied *Masone* correctly to conclude ATS had no authority to issue citations where: a) various provisions show that only a TIEO, not a vendor, can issue citations; b) §316.640 requires a TIEO to be an employee in the county of the municipality's police department; and c) *Masone* held that municipalities were preempted by state law "unless expressly authorized by the legislature." Since the panel could not find any statute expressly authorizing a municipality to delegate this authority or permitting a private vendor to issue citations, *Masone* was correctly applied. No conflict can be shown by the City.

Contrary to the City's position, the panel did state why dismissal was warranted- the citation was void, because it was issued by a private entity, ATS, possessing no legal authority to issue citations, thereby warranting dismissal. The cases cited by the City all deal with procedural defects in charging documents ***issued by the proper person having authority*** which are merely voidable.

Masone holds that dismissal is the proper remedy where a traffic citation is issued by a person or entity lacking authority from the legislature. Since ATS had no authority to issue a citation, only a proper TIEO had such authority; and, dismissal was proper under *Masone*. No conflict has been presented.

The City has failed to show that the decision expressly affects a class of constitutional or state officers. ATS and the City's police department are not

constitutional or state officers. The allegation by the City that "sheriffs administer these programs for many local governments" [Brf. at 5, n. 1] is not of record.

Argument

I. THIS IS A CASE OF FIRST IMPRESSION AND CANNOT BE IN EXPRESS CONFLICT WITH ANY OTHER DECISIONS.

The City cannot argue that the Fourth District's actual interpretation or conclusion is in conflict with any decision from another district court of appeal or this Court, because the case was one of first impression. The City notes that its request for certification of questions of public importance was denied. The matter is not properly before the Court. See concurring opinion, Pariente, C. J. in *State v. Barnum*, 921 So. 2d 513, 533 (Fla. 2005).[3] The City has not presented with any reason to deviate from this principle regarding the limited jurisdiction of the Court.

II. THE FOURTH DISTRICT DID NOT MISAPPLY *MASONE*, BUT INSTEAD INTERPRETED THE STATUTES AT ISSUE UNDER PROPER, WELL-ESTABLISHED PRINCIPLES THEREBY NEGATING ANY CLAIM OF CONFLICT.

Since the City cannot present a conflict resulting from the *actual* statutory interpretation or conclusion, the city contends that the Fourth District utilized the

[3] Controversies over interpretations of statutes often percolate in the district courts over a period of time, and we have discouraged district courts from certifying as questions of great public importance first-time interpretation of statutes since we prefer to see these controversies develop in the district courts to enable us to make the most informed decisions. . . Even in those cases in which district courts address the issue in written opinions, the issue generally does not reach us unless and until there is certified interdistrict conflict or express and direct interdistrict conflict.

wrong *method* of statutory interpretation. In an attempt to present a conflict, the City contends the Fourth District created an express and direct conflict with *Masone* by "fashioning a new principle" and/or "injecting a layer" of strict construction into statutory interpretations. The City claims "[t]his case should be determined under long-accepted principles of statutory construction," and "[t]he Fourth District's decision turns those canons on their head." A review of the decision reveals no conflict on this alleged basis.

This is not a case where, a particular type of statute required a certain method of interpretation, and the Fourth District expressly disregarded the required method, choosing to apply a different method of interpretation, thereby perhaps creating a conflict.[4] Rather, the Fourth District used the term "plain wording of the Florida Statutes" or "plain wording of the statutes" on multiple occasions in its analysis of statutory interpretation to discern legislative intent. These exact "long-accepted principles of statutory construction"[5] demanded by the City were

---

[4] See, for example, *Matte v. Caplan*, 140 So. 3d 686 (Fla. 4th DCA 2014), a case involving interpretation of §57.105, Fla. Stat. (2013). The court noted that statutes in derogation of common law must be strictly construed, and did construe the statute strictly. If the court, instead, expressly construed §57.105 "liberally," then one could argue that the court used the wrong *method* of interpretation.

[5] The Fourth District cited to *Kasischke v. State*, 991 So. 2d 803, 807 (Fla. 2008); *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984); and *Baden v. East-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006) to set forth the "long established principles of statutory construction" [courts: i) strive to effectuate Legislature's intent; ii) must first look to statute's plain language; iii) resort to rules and aids to discern intent from ambiguously worded statutes; and iv) "when the statute is clear and

expressed by the panel at the outset of its analysis, and followed completely in its analysis. The panel did not turn these canons on their head; rather, the panel recited them, and adhered to them. The City has failed to show a conflict.

Further, Arem notes that no decision has been cited by the City, and Arem is not aware of any decision where the Court has accepted jurisdiction, initially, over a district court of appeal's interpretation of a statute, as a matter of first impression, because, as claimed by the City, that particular district court of appeal employed a wrong method of interpretation. Traditionally, the Court will wait until another district court of appeal may announce a different interpretation. Only at that point, will the Court look to the varying interpretations, and resolve the conflict.

A. The Fourth's District's statement regarding this Court's holding in *Masone* is a correct statement of law, and does not create any conflict.

The panel's statement regarding *Masone*[6] is a correct statement of law, and does not create a conflict. While the City is correct that the Court never used the words "strictly construed" in *Masone*, there is no doubt whatsoever that the key point [municipalities are preempted "unless expressly authorized by the legislature"] is absolutely correct. The Court in *Masone* decided that

---

unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent."

[6] "[T]he history of Florida traffic law supports the conclusion that these statutes should be strictly construed to effectuate their purpose, and any attempt by a local government to circumvent chapter 316 either by ordinance or contract is invalid unless expressly authorized by the legislature." App. at 6.

municipalities were preempted and not expressly authorized by the legislature to run a red light camera program prior to the effective date of §316.0083.

The Fourth District, in interpreting §316.0083(1)(a) to determine whether the municipalities could authorize a private vendor to issue traffic citations, looked in part, to §316.640(5)(a), Fla. Stat. (2011).[7] Because of the combination of the ruling in *Masone* [municipalities preempted by state law under Chapter 316 unless expressly authorized by the legislature], and the provisions in §316.640(5)(a) quoted below, the panel correctly applied *Masone* to find that nowhere in the plain language of the statutes had the Legislature authorized private vendors to issue traffic citations. Rather, the only matter "expressly authorized by the legislature" to a private vendor was review of traffic infraction detector information- not actual issuance of traffic citations. No conflict with *Masone* has been shown.

III. THE AUTHORITIES REQUIRING DEMONSTRATION OF PREJUDICE PRIOR TO DISMISSAL WHERE PROCEDURAL DEFECTS ARE PRESENTED DO NOT APPLY HERE AND ARE NOT IN CONFLICT, SINCE THOSE CASES DO NOT INVOLVE SITUATIONS WHERE THE CITATION WAS VOID AT ITS OUTSET BECAUSE IT WAS ISSUED BY AN UNAUTHORIZED PERSON/ENTITY.

In *Masone*, the Court found that citations issued by municipalities prior to the effective date of §316.0083 invalidated all citations as void issued prior to the

[7] The panel wrote: "By statute, a [TIEO] in a municipality must: (1) be an employee of the sheriff's or police department; (2) successfully complete the program as described in the statute; and (3) be physically located in the county of the sheriff's or police department." App. at 7.

Legislature granting authority to municipalities to run a red light camera program. See *Masone* at 498, n. 1, stating that "significant amounts of money that were collected by [the municipalities] . . . must now be returned to the individuals who violated these ordinances." Clearly, the reason why significant amounts of money would need to be returned was because the citations issued by the municipalities prior to legislative authorization [i.e. the effective date of §316.0083] were void.

Contrary to the City's argument, the Fourth District did state why dismissal was appropriate- Arem's citation was void, because ATS possessed no authority from the legislature to issue the traffic citation, only a TIEO did.

Thus, the authorities relied upon by the City, all involving procedural defects [form over substance, insufficient information, or filed late] but issued by the properly authorized person or agency, were not void, but merely voidable, requiring a showing of prejudice by the defendant. These cases involve an entirely different factual and legal situation, and cannot apply here. These authorities are not in conflict, and *Masone* shows that dismissal is proper in such situations.

IV. THE DECISION DOES NOT AFFECT A CLASS OF CONSTUTIONAL OR STATE OFFICERS.

The instant case focuses on the roles of law enforcement officers and a private vendor at the municipality level. The private vendor is certainly neither a constitutional or state officer for obvious reasons, nor are the law enforcement officers of a municipality. *Hakam v. Miami Beach*, 108 So. 2d 608 (Fla. 1959).

The claim that "sheriffs administer these programs for many local governments" is not expressed in the opinion and not of record. Further, this case does not and cannot affect a "class." See *Spradley v. State*, 293 So. 2d 697 (Fla. 1974), decision "must be one which does more than simply modify or construe or add to the case law which compromises much of the substantive and procedural law of this state." See also *Florida State Board of Health v. Lewis*, 149 So. 2d 41 (Fla. 1963), "class" means all of said constitutional or state officers, not some.

Conclusion

The Court does not have jurisdiction over this matter where the City has failed to demonstrate a conflict or other basis. The conclusion of the Fourth District is one of first impression, negating any potential conflict. While dismissal may be improper in matters where a citation is voidable due to procedural defects, the City has failed to show conflict regarding the remedy of dismissal in cases where the infraction was void, because it issued by an entity without authorization.

Further, The City has failed to present any conflict regarding the panel's methods of statutory interpretation. Finally, the Fourth District did not misapply, but followed *Masone* in two key respects: i) dismissal is proper where the citation is void; and ii) finding that a municipality is without authority to delegate the duty to issue citations to a private vendor unless expressly authorized by the legislature.

The Court should decline to accept jurisdiction for all these reasons.

Certificate of Service/Compliance

I HEREBY CERTIFY that a true and correct copy was delivered to: Edward G. Guedes, 2525 Ponce de Leon Blvd., Suite 700, Coral Gables, Florida 33134 to eguedes@wsh-law.com and szavala@wsh-law.com; Jeffrey P. Sheffel, 2600 Hollywood Boulevard, Suite 400, Hollywood, Florida 33020 to jsheffel@hollywoodfl.org; Joseph Hagedorn Lang and Kevin P. McCoy, at P.O. Box 3239, Tampa, Florida 33601-3239 to jlang@cfjblaw.com, jgrayson@cfjblaw.com, tpaecf@cfjblaw.com, kmccoy@cfjblaw.com, and rosborne@cfjblaw.com; Ted Hollander, 1580 S. Federal Highway, Fort Lauderdale, Florida 33316 to TedHollander@theticketclinic.com; and Jason T. Forman, 633 S. Andrews Avenue, Fort Lauderdale, Florida 33301 to attorneyforman@yahoo.com on this 3rd day of March, 2015; and further certify that the font Times New Roman, 14-Point Type was used throughout.

/s/ ***Louis Arslanian***

LOUIS C. ARSLANIAN
5800 Sheridan Street
Hollywood, Florida 33021
(954) 922-2926 Tel.
arsgabriela@comcast.net
FBN 801925