

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY,
FLORIDA

KELLI KRISTINE HASTINGS,

CASE NO.: 2015-CV-000049-A-O

Appellant,

v.

CITY OF ORLANDO,

Appellee.

Appeal from the Final Administrative Order
of the Traffic Infraction Administrative Court
of the City of Orlando, Florida.

Kelli Kristine Hastings, Esq.,
for Appellant.

Victoria Cecil Walker, Esq., Assistant City Attorney,
for Appellee.

Before RODRIGUEZ, J., CARSTEN, and SCHREIBER, J.J.

PER CURIAM.

**FINAL ORDER VACATING FINAL ADMINISTRATIVE ORDER AND DISMISSING
NOTICE OF VIOLATION**

Appellant, Kelli Kristine Hastings ("Hastings"), appeals the Hearing Officer's Final Administrative Order, rendered on February 27, 2015, upholding a traffic infraction violation resulting from captured video and images of Hastings' vehicle violating a red-light traffic signal. This Court has jurisdiction under section 316.00831(5)(f), Florida Statutes (2014), and Florida Rule of Appellate Procedure 9.030(c)(1)(C). For the reasons set forth below, we reverse the hearing officer's decision to uphold the violation; vacate the Final Administrative Order; and

dismiss the Notice of Violation against Hastings.

Facts

On December 12, 2014, one of Appellee's, the City of Orlando ("the City"), traffic infraction detectors, commonly referred to as red-light cameras, captured Appellant's, Kelli Kristine Hastings ("Hastings"), vehicle entering an intersection in violation of the applicable red-light traffic signal. Subsequently, the City issued a "Notice of Violation Red Traffic Signal Violation" to Hastings. She elected to challenge the Notice of Violation and on February 27, 2015, appeared for a hearing before the Traffic Infraction Administrative Court of the City of Orlando.

At the hearing, Officer Charles Jones, a Traffic Infraction Enforcement Officer ("TIEO") for the City, presented his account of the red-light camera infraction and demonstrated via video and photograph, Hastings's vehicle passing through the intersection unlawfully. On cross-examination, Hastings questioned TIEO Jones about the City's private vendor, called American Traffic Solutions, or ATS. According to TIEO Jones, ATS maintained the City's equipment, reviewed video recordings received from the City's red light cameras, and sent the City "videos based on - - the parameters that [the City] set Basically, [the City] . . . ha[s] a set of rules" and indicates to ATS to forward all videos or images that meet those rules. (Hr'g. Tr. 5:5-9).

In response to Hastings's cross-examination, TIEO Jones indicated that ATS employees were not viewing the videos and images to "figure out if there would be some possibility of a violation before they send it to [the City]"; rather, ATS employees were instructed to determine whether "an event occurred." (Hr'g. 5:24). However, TIEO Jones indicated that an event occurs when "the light turned red, and the vehicle entered into the intersection." (Hr'g. 6:14-16).

According to TIEO Jones, following this screening process, ATS forwards the videos/photos that meet the City's designated criteria to the City, and a TIEO reviews them to determine whether a violation occurred. Concerned that TIEOs such as Jones were merely "rubber stamping the company," the Hearing Officer asked Jones to provide an estimate of how many of the forwarded videos/photos ultimately result in the issuance of a violation. (Hr'g. Tr. 9:22-10:21). TIEO Jones responded that the City ultimately rejects "maybe 20 percent" of the videos/photos because they do not evidence violations of section 316.00831; while the assigned TIEO generally accepts and issues notices of violations approximately 80 percent of the time. (Hr'g. Tr. 10:8-17).

In Hastings's case, ATS forwarded images of her vehicle passing through an intersection despite the red-light signal, to the City. Although there was no testimony regarding who physically sent the Notice of Violation to Hastings, TIEO Jones signed the notice of violation. Additionally, the notice included a "Certificate" indicating that TIEO Jones "inspect[ed]" the images depicted on the notice and found a violation. The notice also contained addresses and logos belonging to the City. Beyond TIEO Jones's testimony indicating that the City contracted with ATS, there was no evidence presented regarding the extent of the relationship, or the particulars of the contractual arrangement, between the City and ATS.

At the close of the evidence, Hastings motioned for dismissal of the violation based upon ATS's role in its issuance. The hearing officer denied the motion on both procedural and substantive grounds, ultimately found substantial evidence to support the violation, and accordingly, upheld the violation. The following relevant colloquy ensued:

MS. HASTINGS: Thank you, Your Honor. My argument would be just simply that the - - by allowing - - by contracting with a private vendor to screen these videos prior to issuing a ticket, that it's a violation of the plain language of

the statutory provision, which - - because it's a delegation of the police power to a private company.

* * *

HEARING OFFICER VOSE: The - - the rules provide that if you're going to file a motion based on that, that you need to file it three days ahead of time to give the City the opportunity to respond. It's not - - it's not fair to any party to have a - - a technical constitutional or procedural motion filed.

However, I don't believe that that's relevant to this particular point, because the way to address that would be to file a motion prior to the hearing to have it decided on the legal basis as opposed to a factual basis.

Factually, it's obvious that you violated the statute. Remember now, it's a civil infraction, and it's not a - - it's not a - - there's no mens rea needed. You don't need to do something wrong or feel like you're doing something wrong.

I'm very familiar with this intersection. I see these all the time here. It's - - it's obvious that you were following right along - - here, let's see it one more time.

Look at that. That's a Mini Cooper, and I know they're - - they're - - they're small, and they're easy to operate - - well, easy, that's probably why you have one. They're sufficient and easy to operate. You - - you could have stopped. Either you didn't see it or just decided to go on through, and that's what most people do. We see the amber light, and when we - - I, for example - - one of the things that's changed my driving pattern since doing this is that I start counting to myself when I see that amber light to help me slow down so that - - because you can tell sometimes, if you're going too fast, and you're trying to make a safety decision, if you're going too fast, and you start counting as you slow down, and you realize by, say, three, you can't get the car stopped, you probably will run the light, just because you'd rather pay \$158 than get killed by somebody smashing into the rear of you.

In this situation, I - - I don't see any safety reason there not to stop. That car wasn't too close behind you. The speed limit - - many times at this intersection, people are going through there, like - - like they're trying to get to the hospital. But factually, I can only come to one conclusion, that you violated the law and you committed the infraction, and - -

MS. HASTINGS: I would just like to move sua sponte to dismiss. I mean, I don't know if you didn't consider the motion to dismiss procedurally just because it wasn't filed three days before. I don't recall seeing anything in the procedure.

HEARING OFFICER VOSE: Yeah. There is - - it's in the procedure that you have to file it 72 hours, I believe, the minimum before.

MS. HASTINGS: Okay.

[THE CLERK]: It's five days prior to the hearing date. All motions must be submitted - -

MS. HASTINGS: Okay.

[THE CLERK]: - - five days prior to - -

HEARING OFFICER VOSE: And I was giving you the benefit of the doubt and giving you 72 hours.

MS. HASTINGS: I'd like to go ahead and move. I understand that that means you may deny the motion, but I want to make a formal motion.

HEARING OFFICER VOSE: Well, the - - the problem is is *[sic]*, of course, that the City has not had an opportunity to review it and to respond to it. It's basically not timely filed. And I - - I don't think it's fair to do it that way.

Now, of course, you can, in theory, I guess, appeal it to the Circuit Court and make the same motion which, most probably, you would - - would be a better forum for you to try that.

MS. HASTINGS: I just want the record to be clear.

HEARING OFFICER VOSE: I - - I don't personally see a - - well, personally or legally see a problem with the delegation. I don't think it does violate the statute. I think it's - - it's - - because the final decision to make that - - in other words, if someone doesn't get charged because a private company has weeded out, you don't have standing to challenge the - - it's not really unequal protection, because the issue is whether or not you committed the violation, not whether or not somebody else did or didn't commit the violation.

So I will deny that motion - -

MS. HASTINGS: Thank you.

HEARING OFFICER VOSE: - - and say that you perhaps may want to raise it in appellate form, if you wish to. So I'm going to find you committed the infraction. . . .

(Hr'g. Tr. 11:11-16:3).

Arguments on Appeal

Hastings maintains that the City improperly delegated its police powers to ATS in violation of sections 316.0083 and 316.650, Florida Statutes (2014), by permitting ATS employees to pre-screen photos, determine whether certain criteria have been met, and then send those allegedly suggestive of a violation to the City for further action. Hastings relies on the Fourth District Court of Appeal's decision in *City of Hollywood v. Arem*, wherein the Court affirmed dismissal of a red-light camera citation because it deemed the City of Hollywood's arrangement with ATS for the issuance of citations an improper delegation of the city's police power. 154 So. 3d 359, 361 (2014), *cert. denied*, 168 So. 3d 224 (Fla. 2015).

The City counters that, the *Arem* decision is inapplicable here because the "ruling was largely based on specific language contained in the contract between the city of Hollywood and ATS." (Br. 8) We disagree. Although the *Arem* Court had the benefit of specific contractual language outlining the arrangement between ATS and the City of Hollywood, the circumstances presented here are almost identical to that in *Arem* and generate the same result: contrary to Florida law, the City is effectively delegating its power to issue notices of violations to a private vendor, ATS.

Standard of Review

Our review of an administrative agency decision is "limited to the record created before the enforcement board," and ordinarily would involve three inquiries: "(1) whether procedural due process was afforded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings and judgment are supported by competent, substantial evidence." § 162.11, Fla. Stat. (2015); *Bencivenga v. Osceola Cnty.*, 140 So. 3d 1035, 1036 (Fla. 5th DCA 2014). Here, however, because Hastings challenges only the Hearing Officer's legal

analysis, our review is limited to the second inquiry, whether the essential requirement of the law were observed. *See Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 200 (Fla. 2003) (addressing on review an unraised issue, such as procedural due process, is unnecessary). “A ruling constitutes a departure from the essential requirements of law when it amounts to ‘a violation of a clearly established principle of law resulting in a miscarriage of justice.’” *Id.* at 199 (quoting *Tedder v. Florida Parole Comm’n*, 842 So. 2d 1022, 1024 (Fla. 1st DCA 2003)).

The Law

The Mark Wandall Traffic Safety Program, codified at section 316.0083, Florida Statutes (2014), authorizes local governments and municipalities, such as the City of Orlando, to utilize red-light cameras to enforce violations of sections 316.074(1) and 316.075(1)(c)1. Specifically, section 316.0083 permits traffic infraction enforcement officers, or TIEOs, to issue traffic citations for such violations. Although the statute explicitly authorizes TIEOs to issue citations, it also permits at least some involvement of private vendors, or other local government agents, in the process. To this end, the statute provides: “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. (2014) (emphasis supplied).

THE *AREM* CASE

In *City of Hollywood v. AreM*, the Fourth District Court of Appeal was tasked with determining whether a private vendor’s involvement in the issuance of traffic citations pursuant to section 316.0083, constituted “review” as permitted by the statute, or exceeded such capacity so as to constitute an improper delegation of the City of Hollywood’s police power. 154 So. 3d 359, 365 (Fla. 4th DCA 2014), *cert. denied*, 168 So. 3d 224 (Fla. 2015). Ultimately, the Court

held that the City of Hollywood's arrangement with ATS constituted an unlawful delegation rendering the citation issued to Arem "void at its inception" and requiring dismissal. *Id.* at 361.

The City of Hollywood contracted with ATS to provide it with "cameras and a computerized system to review recorded images of red-light violations to determine the occurrence of potential violations." *Id.* The Court outlined the City of Hollywood's citation procedure as follows:

If ATS forwards an image to the City, the TIEO authorizes enforcement by clicking a digital "Accept" button. The ATS computer program then handles the printing and mailing of the notice of violation to the automobile's registered owner. If the cited car owner fails to elect an option that avoids the issuance of a traffic citation, ATS then generates the resulting citation, and inserts a computer generated signature of the TIEO along with the TIEO's badge number. ATS sends the original citation by certified mail to the registered owner, and electronically transmits a replica of the citation data to the county court clerk. After clicking "Accept," the TIEO never actually sees the citation, nor is the TIEO otherwise involved in its issuance.

Id.

After analyzing the purpose of Chapter 316, the Court noted that, although Florida law permitted sheriff's department employees without "arrest powers" to become TIEOs authorized to issue citations and permitted agents of the city to review images generated from red-light cameras, it did not "authorize a private vendor to issue citations." *Id.* at 364 (emphasis omitted). The Court concluded that the City of Hollywood's arrangement with ATS violated Florida law in two respects. *Id.* at 365. First, it was not actually a TIEO issuing the citations, and second, ATS made the initial review of the computer videos and images, determining in its "unfettered discretion" whether and which to forward to the City of Hollywood. *Id.* The Court explained:

For all practical purposes, it is the vendor that decides which cases the TIEO gets to review; it is the vendor who initially determines who is subject to prosecution for a red light violation; it is the vendor that obtains the information necessary for the completion of the citation; it is the vendor that creates the actual citation; it is the vendor that issues the citation to the registered owner of the vehicle; and, it is

the vendor that eventually transmits the traffic citation data to the court. As the trial court found, the TIEO, merely acquiesces in the vendor's decision to issue the citation. The TIEO never sees the actual citation, nor does the TIEO personally sign the citation before it is issued by the vendor to the alleged violator. *Although the City may have some input into who eventually is prosecuted, that decision is wholly dependent upon the vendor's initial determination. Under these circumstances, it cannot be said that this is the legal equivalent of a TIEO issuing the citation, especially when it is the third-party vendor that controls what information is, or is not, made available for the officer's consideration.*

In sum, Florida law does not grant the City any authority to delegate to a private third-party vendor the ability to issue uniform traffic citations. Only the City's law enforcement officers and TIEOs have the authority to issue such citations. *The City also lacks the lawful authority to outsource to a third-party vendor the ability to make the initial review of the computer images of purported violations and then use its unfettered discretion to decide which images are sent to the TIEO, and which ones are not.*

Id. (emphasis supplied).

Here, it appears that the City's procedure is almost identical to that in *Arem*. *Id.* Although, there was no explicit testimony as to who issued the Notice of Violation in this case, the notice contained a certificate bearing TIEO Jones' signature and indicating that he inspected the electronic footage of the purported violation. This suggests that TIEO Jones may have issued the notice. Moreover, the addresses and logos contained on the notice belong to the City, further suggesting that the City, rather than ATS, physically mailed the notice to Hastings and perhaps did more than "merely acquiesce[] in the vendor's decision to issue a citation." *Id.*

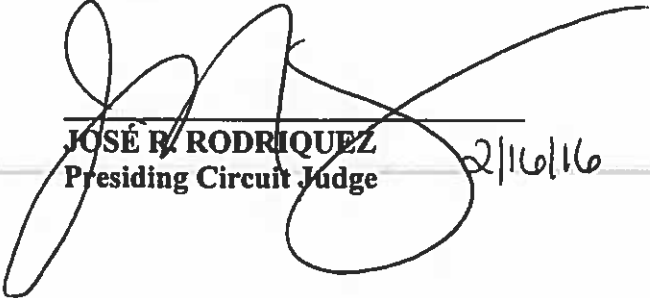
However, even if TIEO Jones physically issued the actual notice of violation, the City's procedure still constitutes an unlawful delegation of police power because the City authorized ATS employees to essentially determine when a violation of sections 316.0074(1) and 316.0075(1)(c)1., Florida Statutes (2014), occurred. *Id.* Here, like in *Arem*, ATS employees pre-screened the electronically generated videos and images and forwarded only those that they determined to be within the City's criteria for doing so. Although this suggests that perhaps ATS

did not possess “unfettered discretion,” as it did in *Arem*, to decide which images to forward to the City, the Court does not know the extent of that discretion, and TIEO Jones’s testimony indicated that the City instructed ATS employees to determine whether an event occurred and then described an event as occurring when “the light turned red, and the vehicle entered into the intersection.” This tracks the statutory language and appears to encourage ATS employees to make the initial judgment as to whether the statute was violated. See § 316.074(1), Fla. Stat. (2014) (“The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto. . .”); § 316.075(c)1., Fla. Stat. (2014) (“Vehicular traffic facing a steady red signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown. . .”).

A “circuit court, when acting in its appellate capacity, must follow the precedent of another district court of appeal where that court has decided the legal issue facing the circuit court and its own district court of appeal has not yet ruled on the issue.” *Omni Ins. Co. v. Special Care Clinic, Inc.*, 708 So. 2d 314, 315 (Fla. 2d DCA 1998). The Fourth District Court of Appeal has decided the legal issue facing this Court, and without contrary authority from the Fifth District Court of Appeal or the Florida Supreme Court, we must adhere to the Fourth District’s interpretation of section 316.0083. See *Arem*, 154 So. 3d at 365. Accordingly, we reverse the hearing officer’s decision to uphold the Notice of Violation; vacate the Final Administrative Order; and dismiss the Notice of Violation against Hastings.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. The Traffic Infraction Administrative Court of the City of Orlando's "Final Administrative Order – Violation Upheld," dated February 27, 2015, is **VACATED**.
2. The Notice of Violation addressed to Appellant, "Kelli Kristin Hastings" and issued on December 15, 2014, is **DISMISSED**.¹



JOSÉ R. RODRIGUEZ
Presiding Circuit Judge

2/16/16

CARSTEN and SCHREIBER, J.J., concur.

¹ The Notice of Violation appears to misspell Hastings's middle name as "Kristin," rather than "Kristine."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished to:

Kelli Biferie Hastings, Esq.
Law Office of Kelli B. Hastings, PLLC
4005 North Orange Blossom Trail
Orlando, Florida 32804

Victoria Cecil Walker, Esq.
Assistant City Attorney
Orlando City Hall
400 S. Orange Avenue
Orlando, Florida 32801

on this 16 day of February, 2016
~~December, 2016~~



Judicial Assistant