

IN THE COUNTY COURT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA
TRAFFIC DIVISION

CASE NO.: 16-TR000 A36AD0E00

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

CITATION NO.: A36AD0E

Plaintiff,

v.

LEE STEIN,

Defendant.

**FINAL ORDER GRANTING AMENDED MOTION TO DISMISS
AND CERTIFYING QUESTIONS OF GREAT PUBLIC IMPORTANCE**

THIS CAUSE, having come before the Court upon Defendant's "Amended Motion to Dismiss and Motion to Declare the Municipalities' Red Light Program Invalid under §§316.0076, 316.075, 316.002 and 316.008 and Other Relief," and the Court having reviewed the file and evidence, heard testimony, and heard argument of counsel and being fully advised in the premises, finds:

On November 21, 2014, the Defendant, Lee Stein ("Stein"), was captured running a red-light by a red-light camera in the City of Aventura (the "City"). Stein was cited for a violation of section 316.075(1)(c)1, Florida Statutes (2008) (steady red-light, failure to stop.)¹ Stein entered a plea of not guilty and filed a Motion to Dismiss. This Court entered an Order denying the Motion to Dismiss, however, a stipulated order was subsequently entered vacating the denial of the Motion to Dismiss. On April 21, 2017, Stein filed an "Amended Motion to Dismiss and

¹ As in *Jimenez v. State*, 246 So. 3d 219 (2018), the red-light camera program in the City is administered by American Traffic Solutions ("ATS").

Motion to Declare the Municipalities' Red Light Program Invalid under §§316.0076, 316.075, 316.002 and 316.008 and Other Relief" (the "Amended Motion to Dismiss"). The Amended Motion to Dismiss argues that the City's creation and use of a Business Rules Questionnaire ("BRQ") violates Florida Statutes by making local traffic rules and regulations without legislative authority, and further that the BRQ violates section 316.0076, Florida Statute (2010), which expressly preempts all regulation of red-light cameras to the state (the "BRQ/Preemption Issue").

Section 316.0076, Florida Statutes (2010) (Regulation and use of cameras) provides that "[r]egulation of the use of cameras for enforcing the provisions of this chapter is expressly preempted to the state." (emphasis added). Further, Section 316.002, Florida Statute (1971) provides that:

It is the legislative intent in the adoption of this chapter to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities. The Legislature recognizes that there are conditions which require municipalities to pass certain other traffic ordinances in regulation of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities. Section 316.008 enumerates the area within which municipalities may control certain traffic movement or parking in their respective jurisdictions. This section shall be supplemental to the other laws or ordinances of this chapter and not in conflict therewith. It is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter. (emphasis added).

While this section states the legislative intent for uniformity, it also recognizes conditions which require municipalities to pass certain other traffic ordinances. The areas which the municipalities may control are enumerated in section 316.008, Florida Statute (2011). Section 316.008(8) provides, in part, that:

(a) A county or municipality may use traffic infraction detectors to enforce s. 316.074(1) or s. 316.075(1)(c)1, when a driver fails to stop at a traffic signal on streets and highways under its jurisdiction under s. 316.0083.

* * *

(c) Pursuant to s. 316.0083, a county or municipality may use traffic infraction detectors to enforce s. 316.074(1) or s. 316.075(1)(c)1. when a driver fails to stop at a traffic signal on state roads under the original jurisdiction of the Department of Transportation when permitted by the Department of Transportation. (emphasis added).

Section 316.008(8) merely allows a local entity to use red light cameras to enforce sections 316.074(1) and 316.075(1)(c)1, nothing more. It simply permits local entities to, in addition to using police officers to enforce state law, to now also use red light cameras to enforce state law. Under section 316.008, local entities are not authorized to do anything other than enforce sections 316.074(1) and 316.075(1)(c)1, in a uniform manner. These sections provide, in part, as follow:

Section 316.074 (Obedience to and required traffic control devices), Florida Statutes (1999) provides that:

(1) The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto, placed in accordance with the provisions of this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

Section 316.075(1)(c)1, Florida Statutes (2008) (Traffic control signal devices) provides that:

Steady red indication.

1. 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. *The driver of a vehicle which is stopped at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience to a steady red signal may make a right turn, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, except that municipal and county authorities may prohibit any such right turn against a steady red signal at any intersection, which prohibition shall be effective when a sign giving notice thereof is erected in a location visible to traffic approaching the intersection. (emphasis added).*

In *Masone v. City of Aventura*, 147 So. 3d 492 (Fla. 2014), local ordinances imposed different penalties than those imposed by the state for red light violations. In arguing that the ordinances were valid, Aventura and Orlando relied on the specific power provided to local authorities by section 316.008(1)(w) for “[r]egulating, restricting, or monitoring by security devices.” *Id.* at 494. However, the Florida Supreme Court disagreed with their position holding that, “Chapter 316 could not be clearer in providing that local ordinances on a ‘matter covered by’ the chapter are preempted unless an ordinance is ‘expressly authorized.’” *Id.* at 496. The Florida Supreme Court in *Masone* held that the ordinance could not be sustained as a valid exercise of municipal authority. In the instant case, the rules and regulations in the BRQ are akin to the ordinance in *Masone*. Accordingly, as with the ordinance in *Masone*, the rules and regulations in the BRQ, which are not uniform with state law can be sustained as a valid exercise of municipal authority only if they are—as the express preemption provision of section 316.007 requires—expressly authorized by statute.

On May 3, 2018, the Florida Supreme Court issued its opinion in *Jimenez v. State*, 246 So. 3d 219 (2018), which held that:

The Legislature has expressly authorized local governments to allow traffic enforcement officers to issue citations for traffic infractions captured by red light cameras. As part of this express authorization, the Legislature has permitted a local government’s agent to review information from red light cameras *for any purpose* short of making the probable cause determination as to whether a traffic infraction was committed. (emphasis added)

Id. at 230. The concurring opinion by now Chief Justice Canady further illustrates the Court’s broad ruling:

[t]he statute in no way precludes a local government from contracting with a third-party vendor to provide assistance in screening images from red light cameras *in any way* the local government sees fit other than authorizing the vendor to issue citations. (emphasis added).

Id. at 231.

The opinion in *Jimenez* does not specifically mention the BRQ/Preemption Issue.² “The issue before the Court [in *Jimenez*] involves the meaning of the word ‘review’ as used in section 316.0083(1)(a), Florida Statutes (2014).” *Id.* at 225. The rephrased certified question in *Jimenez* was stated as follows:

Does a local government have the authority under section 316.0083(1)(a), Florida Statutes to contract with a private third part 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?

Id. at 221. The Florida Supreme Court in *Jimenez* held that:

[S]ection 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.

Id. at 231. This is quite different from the issues raised in the instant case, preemption and uniformity of the BRQs.³ The opinion in *Jimenez* is not a *carte blanche* authorization by the Florida Supreme Court of the utilization by local governments of “non-uniform” written guidelines in their BRQs.

² It is not clear if this failure to expressly address the issue was because the Court believed that the issue was not worthy of discussion, *see Bowles v. D. Mitchell Invs., Inc.*, 365 So. 2d 1028, 1029 (Fla. 3d DCA 1978) (The Court’s failure to reference a point raised in the briefs is simply an expression that it was not worthy of discussion.), or whether the Court was aware that the issue was never raised in the trial court below and not properly before the court. *See Bueno v. Wokman*, 20 So. 3d 993, 998 (Fla. 4th DCA (2009)). (“[A]n appellate court cannot employ the tipsy coachman rule where the lower court has not made factual findings on an issue and it would be inappropriate for an appellate court to do so.”).

³ The uniformity discussion and the application of underinclusivity in *Jimenez* does not address the issue of uniformity with regard to the utilization of “non-uniform” written regulations by various municipalities and their application of these regulations which differ from state law.

The substantive issue of preemption was not expressly addressed in *Jimenez*. The Florida Supreme Court in *Jimenez* recognized the validity of local governments contracting with private vendors to review and sort information from red light cameras. While the Florida Supreme Court also reviewed the method of choosing alternate solutions or guidelines through the utilization of BRQs, the problems caused by the adoption of different rules and regulations and disparate treatment of drivers by the various municipalities was not addressed.

How is a driver to know that the guidelines of the BRQs vary from municipality to municipality? For example, in regard to right turns by position or speed: Aventura's BRQ provides that a person is subject to a citation for making a red turn on red at a speed of 15 miles per hour or greater; Key Biscayne - 25 miles per hour or greater; and, West Miami 10 miles per hour or greater. Regarding the line of demarcation: Aventura's BRQ defines the line of demarcation as "Behind the Stop Line;" Key Biscayne - "Behind the Cross Walk;" and, Homestead - "Behind the Prolongation of the Curb."⁴ The *Jimenez* decision was focused on the ministerial issue of the method of enforcement rather than the substantive issue of uniformity and preemption.

Attached to the Amended Motion to Dismiss was a Chart, which detailed the differences between 16 municipalities' BRQs in Miami-Dade County, which also vary in part from state law.⁵ See Chart attached hereto. This evidence was not before the Court in *Jimenez*. The Chart illustrates that the municipalities, through their BRQs, have carved out exceptions to state law concerning red-light cameras. Foremost among these exceptions are the chosen speed in

⁴The other thirteen municipalities provide for "Behind the Stop Line."

⁵ Additionally, the BRQs for each of the municipalities were before the Court and Stein argued the issues of uniformity and preemption at the trial level. These issues were not argued at the trial level in *The State of Florida v. Jimenez*, 23 Fla. L. Weekly Supp. 571c, (Fla. 11th Cir. Ct. 2015).

determining violations in regard to right turns on red and the different lines of demarcation. There is nothing “uniform” in the operation of the various red-light camera programs. Different threshold speeds for right turns on red (ranging from 10 mph to 25 mph) have been chosen. Different lines of demarcation have been chosen. Different positioning of vehicles relative to that chosen line of demarcation have been selected. As pointed out in the instant case, the municipalities operate under non-uniform rules.⁶ The Legislature has expressly set forth the line of demarcation in section 316.075(1)(c)1. Similarly, the Legislature has delineated what is or is not a violation of state statutes regarding right turns on red. Because of the non-uniformity of the BRQs of the various municipalities, a person driving through the various municipalities, including Aventura, is unaware of and subject to being in violation of the differing rules and regulations, many of which also differ from municipality to municipality and from state law.⁷

The nonuniformity of Aventura’s BRQ which differs from other municipalities and from state law violates the uniformity provision in section 316.002 and preemption clause in section 316.0076. The instant case appears to present an issue of first impression, which this Court certifies to the Third District Court of Appeal.

WHEREFORE it is ORDERED AND ADJUDGED that:

Based upon the above, this Court GRANTS the Amended Motion to Dismiss. Due to the nature of this matter, this order is hereby stayed pending disposition of the following Certified Questions by the Third District Court of Appeal.

⁶ Additionally, these rules and regulations are not enacted by the local governmental entity in a traditional manner but often are established by the decisions of local police officers.

⁷ An opinion finding that the BRQs are preempted because of their non-uniformity and intrusion into areas covered by state law would not lead to the invalidation of section 316.0083, Florida Statute (2013), the Mark Wendall Traffic Safety Program, rather it would only lead to the invalidation the offending BRQs.

The utilization of different BRQs in the various municipalities across the state, which often differ from state law, can result in differing decisions depending on which municipality issues the uniform traffic citation. Because the opinion in *Jimenez* did not expressly rule on the BRQ/Preemption/Uniformity Issue, this Court, as requested by the parties, certifies the following re-phrased questions to the Third District Court of Appeal as a matter of great public importance that will affect numerous citizens in the uniform administration of justice:

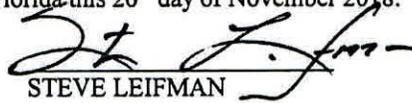
Did the Florida Supreme Court's opinion in *Jimenez v. State*, 246 So. 3d 219 (2018) address the non-uniformity caused by the application of different rules and regulations chosen by the various municipalities in their BRQs, or did the Court focus solely upon the scope of the review process itself?

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 BRQs, when such rules and regulations differ from municipality to municipality and from state law?

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 BRQs 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 BRQs, including that utilized by the City of Aventura, preempted by state law?

To avoid the non-uniform application of state law through the various BRQs, it is suggested that uniform standards be adopted to avoid further litigation. This order in no way contradicts the decision in *Jimenez*, which this Court recognizes as good law.

DONE and ORDERED in Miami-Dade County, Florida this 26th day of November 2018.


STEVE LEIFMAN
County Court Judge

Copies furnished to: All counsel of record

JUDGE STEVEN LEIFMAN
COUNTY COURT JUDGE

ATS CATEGORIES	ATS SUGGESTED CHOICES	13) Miami Springs	14) Coral Gables	15) Miami (Pre-2015)	16) Aventura
3.5 Option Fields	Posted Speed Yes/No Actual Speed Yes/No	Posted – Yes Actual – Yes	Posted – No Actual – Yes	Posted – No Actual – Yes	Posted - No Actual - Yes
3.6 Are Warning Signs Needed? If yes, where?	1. Yes 2. No	Yes All locations	Yes (Not Specified)	Not asked	Not Asked
4.3 Line of Demarcation	1. Behind the Stop Line 2. Behind Prolongation of Curb 3. Behind the Cross Walk 4. Behind Whichever Line is First	Behind the Stop Line	Behind the Stop Line	Behind the Stop Line	Behind the Stop Line
4.4 A Shot (Position of Front Tires - If Front Tires Are ON or OVER The Line of Demarcation)	1. Yes 2. Yes only if video shows tires were Behind line when light turned red 3. No	No	No	Pass to Police if Video shows tires were behind the line when light turned Red	Pass to Police if Video shows tires were behind the line when light turned Red
4.5 If Line is not Visible	1. Yes 2. Yes only if video shows tires were Behind the line when light turned red 3. No	No	No	Not asked	Not asked
4.6 B Shot (Position of Vehicle – Straight and Left Turns)	1. Vehicle stops after line, but does not complete through intersection 2. Back tires crossed line 3. Entire Vehicle crosses the line 4. Vehicle completed through intersection	Vehicle completed through Intersection	Vehicle completed through Intersection	Entire Vehicle crosses Line of Demarcation	Entire Vehicle crosses Line of Demarcation
4.7(1) Are Right Turns Reviewed?	1. Yes 2. No	Yes	Yes	No	Yes
4.7(2) Right Turns by Position and/or Speed	1. Vehicle stops after line, but does not go through intersection 2. Vehicle did not come to a full complete stop on a right turn 3. Vehicle slow-rolled but is going ___ MPH or greater	Vehicle slow-rolled but is going 13 MPH or greater (Edited 6/1/16)	Vehicle did not come to a full stop on a Right Hand Turn (Deleted 5/15)	N/A	Vehicle did not come to a full complete stop before turning right
4.7(3) Right Turn – Light Red, turns Green	1. Yes 2. No	Yes	No	N/A	Vehicle slow-rolled but is going 15 MPH or greater
7.1 Does the Ordinance Require Additional Customer prosecutor Review prior to Police/ Sheriff issuing Citation?	Yes/No	No	No	No	

ATS CATEGORIES	ATS SUGGESTED CHOICES	9) West Miami	10) Sweetwater	11) Bal Harbour	12) Opa-Locks
3.5 Option Fields	Posted Speed Yes/No Actual Speed Yes/No	Posted - No Actual - Yes	Posted - Yes Actual - Yes	Posted - No Actual - Yes	Posted - Yes Actual - yes
3.6 Are Warning Signs Needed? If yes, where?	1. Yes 2. No	Yes All locations	Yes Prior to monitored Intersection (Edited 6/15)	Yes Prior to monitored Intersection (Edited 5/15)	Yes *Posted Speeds:
4.3 Line of Demarcation	1. Behind the Stop Line 2. Behind Prolongation of Curb 3. Behind the Cross Walk 4. Behind Whichever Line is First	Behind the Stop Line	Behind the Stop Line	Behind the Stop Line	Behind the Stop Line
4.4 A Shot (Position of Front Tires - If Front Tires Are ON or OVER The Line of Demarcation)	1. Yes 2. Yes only if video shows tires were Behind line when light turned red 3. No	Yes, only if video shows tires were BEHIND the line when the light Turned Red	No	No	Yes
4.5 If Line is not Visible	1. Yes 2. Yes only if video shows tires were Behind the line when light turned red 3. No	Yes, only if video shows tires were BEHIND the line when the light turned Red	No	Yes	Yes
4.6 B Shot (Position of Vehicle - Straight and Left Turns)	1. Vehicle stops after line, but does not complete through intersection 2. Back tires crossed line 3. Entire Vehicle crosses the line 4. Vehicle completed through intersection	Entire Vehicle crosses the Line of Demarcation	Entire Vehicle crosses the Line of Demarcation	Entire Vehicle crosses the Line of Demarcation	Vehicle Completed through the Intersection
4.7(1) Are Right Turns Reviewed?	1. Yes 2. No	Yes	Yes (Answered "No")	Yes (except at 2 places)	Yes
4.7(2) Right Turns by Position and/or Speed	1. Vehicle stops after line, but does not go through intersection 2. Vehicle did not come to a full complete stop on a right turn 3. Vehicle slow-rolled but is going ___ MPH or greater	Vehicle slow-rolled but is going 10 MPH or greater	Vehicle slow-rolled but is going 12 MPH or greater	Vehicle slow-rolled but is going 12 MPH or greater	Vehicle slow-rolled but is going 13 MPH or greater
4.7(3) Right Turn - Light Red, turns Green	1. Yes 2. No	No	No	No	Yes
7.1 Does the Ordinance Require Additional Customer prosecutor Review prior to Police/ Sheriff issuing Citation?	Yes/No	No	No	No	No

ATS CATEGORIES	ATS SUGGESTED CHOICES	5) North Miami Beach	6) Florida City	7) Miami Gardens	8) Surfside
3.5 Option Fields	Posted Speed Yes/No Actual Speed Yes/No	Posted Speed – Yes Actual Speed – Yes	Posted – No Actual – Yes	Posted- No Actual – Yes	Posted - No Actual - Yes
3.6 Are Warning Signs Needed? If yes, where?	1. Yes 2. No	Yes All Intersections Monitored by RLC	Yes All locations	Yes All Camera Locations	Yes All locations
4.3 Line of Demarcation	1. Behind the Stop Line 2. Behind Prolongation of Curb 3. Behind the Cross Walk 4. Behind Whichever Line is First	Behind the Stop Line	Behind the Stop Line	Behind the Stop Line	Behind the Stop Line
4.4 A Shot (Position of Front Tires - If Front Tires Are ON or OVER The Line of Demarcation)	1. Yes 2. Yes only if video shows tires were Behind line when light turned red 3. No	Yes	Yes, only if video shows tires were BEHIND the Line when the light Turned Red	Yes	No
4.5 If Line is not Visible	1. Yes 2. Yes only if video shows tires were Behind the line when light turned red 3. No	No	No	No	No
4.6 B Shot (Position of Vehicle – Straight and Left Turns)	1. Vehicle stops after line, but does not complete through intersection 2. Back tires crossed line 3. Entire Vehicle crosses the line 4. Vehicle completed through intersection	Vehicle completed through the Intersection	Entire Vehicle crosses the Line of Demarcation	Entire Vehicle crosses the Line of Demarcation	Vehicle completed through the Intersection
4.7(1) Are Right Turns Reviewed?	1. Yes 2. No	No (Answered "Yes")	Yes (Answered "No")	Yes (Answered "No")	Yes (Answered "No")
4.7(2) Right Turns by Position and/or Speed	1. Vehicle stops after line, but does not go through intersection 2. Vehicle did not come to a full complete stop on a right turn 3. Vehicle slow-rolled but is going ___ MPH or greater	N/A	Vehicle slow-rolled but is going 10 MPH or greater	Vehicle slow-rolled but is going 12 MPH or greater	Vehicle slow-rolled but is going 12 MPH or greater
4.7(3) Right Turn – Light Red, turns Green	1. Yes 2. No	No	Yes	No	No
7.1 Does the Ordinance Require Additional Customer prosecutor Review prior to Police/ Sheriff issuing Citation?	Yes/No	No	No	No	No

ATS CATEGORIES	ATS SUGGESTED CHOICES	1) Homestead	2) Medley	3) Key Biscayne	4) Cutler Bay
3.5 Option Fields	Posted Speed Yes/No Actual Speed Yes/No	Posted Speed - NO Actual Speed- YES	No Response	Posted Speed - No Actual Speed - Yes	Posted Speed - No Actual Speed - Yes
3.6 Are Warning Signs Needed? If yes, where?	1. Yes 2. No	No	Yes All locations	Yes All locations	Yes All locations
4.3 Line of Demarcation	1. Behind the Stop Line 2. Behind Prolongation of Curb 3. Behind the Cross Walk 4. Behind Whichever Line is First	Behind the Prolongation of the Curb	Behind the Stop Line	Behind the Cross Walk	Behind the Stop Line
4.4 A Shot (Position of Front Tires - If Front Tires Are ON or OVER The Line of Demarcation)	1. Yes 2. Yes only if video shows tires were Behind line when light turned red 3. No	Yes	No	Yes	Yes, only if there is video which shows the tires were BEHIND the light when the light turned red
4.5 If Line is not Visible	1. Yes 2. Yes only if video shows tires were Behind the line when light turned red 3. No	Yes	No	No	Yes
4.6 B Shot (Position of Vehicle - Straight and Left Turns)	1. Vehicle stops after line, but does not complete through intersection 2. Back tires crossed line 3. Entire Vehicle crosses the line 4. Vehicle completed through intersection	Entire Vehicle crosses the Line of Demarcation	Vehicle completed through the Intersection	Entire Vehicle crosses the Line of Demarcation	Vehicle completed through the intersection
4.7(1) Are Right Turns Reviewed?	1. Yes 2. No	Yes	Yes	Yes	No (Answered "Yes")
4.7(2) Right Turns by Position and/or Speed	1. Vehicle stops after line, but does not go through intersection 2. Vehicle did not come to a full complete stop on a right turn 3. Vehicle slow-rolled but is going ___ MPH or greater	Vehicle did not come to a full complete stop. Vehicle slow-rolled but is going 15 MPH or greater	Vehicle slow-rolled but is going 12 MPH or greater	Vehicle slow-rolled but is going 25 MPH or greater	N/A
4.7(3) Right Turn - Light Red, turns Green	1. Yes 2. No	No	Yes	Yes	N/A
7.1 Does the Ordinance Require Additional Customer prosecutor Review prior to Police/ Sheriff issuing Citation?	Yes/No	No	No	No	No