

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

STATE OF FLORIDA,

Appellant,

v.

PATRICIA C. BALABU STREDEL,

Appellee.

CASE NO.: 2013-CV-61-A-O

Lower Case No.: 2013-TR-11864-A-A

On Appeal from the County Court
For Orange County
Judge Steven Jewett

Georgiana Holmes, Esq.
Assistant County Attorney
Attorney for Appellant

Robert Sauerheber, Esq.
Attorney for Appellee

Before THORPE, MURPHY, APTE

PER CURIAM.

FINAL ORDER REVERSING COUNTY COURT

Appellant, the State of Florida, seeks review of the traffic court's order dismissing a citation that had been issued to Appellee as a result of a red-light camera. The trial court determined that because the citation had been electronically transmitted to the court by a private contractor and not a traffic enforcement officer, it failed to meet the requirements of Florida's red-light camera statute. As the question at issue is one of statutory interpretation, the Court's review is de novo. *GTC, Inc. v. Edgar*, 967 So. 2d 781, 785 (Fla. 2007).

Pursuant to the Mark Wandall Act, section 316.0083, Florida Statutes, counties are permitted to operate automated cameras to enforce traffic signals; notices of violation for running red lights may be issued as a result. Upon receipt of a notice of violation, the registered owner of the

vehicle has thirty days to pay the ticket or to file an affidavit describing a statutorily allowed defense. If the owner does neither, the county may issue a uniform traffic citation to that owner. The citation is electronically transferred to the county court for resolution.

Appellee was issued a uniform traffic citation for a red-light violation. A copy of her citation was electronically transferred to the county court by American Traffic Solutions (ATS), a private vendor under contract with Orange County to administer the red-light camera system.

Appellee challenged the traffic citations on the basis that only a traffic enforcement officer, and not a private vendor, has authority to issue citations and transfer them to the court. She relied on the language of section 316.650(3)(c), Florida Statutes, which reads in relevant part,

(c) If a traffic citation is issued under s. 316.0083, the traffic infraction enforcement officer shall provide by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 days after the date of issuance of the traffic citation to the violator.

At a hearing held on August 1, 2013, Ellie Cardenas, a certified Orange County traffic enforcement officer, testified that she reviewed the photos and videos provided by ATS of Appellee's alleged red-light infraction. Cardenas stated that she was the one who made the decision that a traffic infraction had occurred. Once she pressed an "accept" button to indicate an infraction, ATS took care of transmitting the information to the court. The trial court concluded because the citation was sent to the court by the private contractor, it failed to meet the statutory requirement that it be issued by a traffic enforcement officer. The court dismissed the citation.

After trial court rendered its decision, the Fourth District Court of Appeal issued a ruling addressing the question of what private vendors are authorized to do under the red-light camera statute. It found that

Although section 316.650(3)(c) clearly states that "the traffic infraction enforcement officer shall *provide* by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense," we do not construe "provide" to mean that the traffic enforcement officer must be the last person to press the computer keys that transmit the traffic citation data directly to the clerk of court. § 316.650(3)(c), Fla. Stat. (emphasis

added). We construe the legislature's intent in using the term “provide” to mean that: (1) the traffic enforcement officer must be involved in the process of transmission as the decision maker; that is, the one who decides whether the citation is to be transmitted to the clerk of court, and (2) the traffic enforcement officer must assure that the appropriate data is sent since a paper document will not be received by the court.

City of Hollywood v. Arem, 39 Fla. L. Weekly D831 (Fla. 4th DCA 2014). (Emphasis in original).

The Court concluded,

Does Florida Statute 316.0083(1)(a) authorize a municipality to enter into a contract with a private vendor to supply cameras, computer equipment and programs, and services to

...

(3) electronically deliver a replica of the traffic citation data to the court, where the traffic enforcement officer makes the decision to prosecute, after reviewing images of the violation generated by a traffic infraction detector. . . ?

We answer the reframed question in the affirmative.

While the appellate mandate in *Arem* has not yet issued, and the case is at this point only persuasive rather than binding authority, the Court agrees with the reasoning of *Arem* that the critical factor is not who pushes the “send” button, but who is deciding whether the button should be pushed. There was testimony here that it was the traffic enforcement officer who made the decision to issue the traffic citation to Appellee.

The decision of the county court is therefore **REVERSED**. The traffic ticket is reinstated and the matter **REMANDED** for further proceedings.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 26th day of August, 2014.

/S/

JANET C. THORPE
Presiding Circuit Judge

MURPHY and APTE, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished to **Georgiana Holmes, Esq.**, Assistant County Attorney, 201 S. Rosalind Avenue, Third Floor, P.O. Box 1393, Orlando, Florida 32802-1393; and **Robert Sauerheber, Esq.**, P.O. Box 1944, Orlando, Florida 32802-1944, on the 28th day of August, 2014.

/S/ _____
Judicial Assistant