

>> HEAR YE HEAR YE HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
INVOCATION SHALL BE HEARD.
GOD SAVE THE UNITED STATES, THE
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.
>> SUPREME COURT OF FLORIDA, YOU
MAY PROCEED.
>> GOOD MORNING, WELCOME TO THE
FLORIDA SUPREME COURT.
A NUMBER OF GROUPS VISITING HERE
TODAY.
IS HAMPSON MIDDLE SCHOOL HERE?
LATE FOR SCHOOL.
HOW ABOUT THE LATE COUNTY ESSAY
DAYS.
ARE THEY HERE?
LATE FOR SCHOOL.
A LITTLE BIT MORE.
OKAY.
WELCOME.
THE LEADERSHIP SAINT PETE, THERE
YOU GO.
WELCOME TO THE FLORIDA SUPREME
COURT'S.
WE ARE HERE FOR THE SESSION, I
TAKE IT.
YOU WILL BE GOING ACROSS THE
STREET TO THE LEGISLATURE AND SO
ON.
YOU GET TO HEAR ORAL ARGUMENTS
TODAY SO HOPEFULLY YOU WILL FIND
THEM INTERESTING.
THANK YOU.
WE JUST HAD A GROUP COME IN.
WHO MIGHT YOU BE?
LAKE COUNTY ESSAYS?
FANTASTIC.
ON THIS SIDE.
COMING IN.
FANTASTIC.
THEN WE HAVE ONE MORE GROUP,
UNIVERSITY HIGH SCHOOL.
ARE YOU HERE?
ARE THEY IN THE LIBRARY AS WELL?
SOME FOLKS COMING IN?
THE FOUR GROUPS ARE VISITING,
WELCOME TO ALL OF YOU.
THE FIRST CASE THIS MORNING ON

THE DOCKET IS JIMENEZ VERSUS
STATE OF FLORIDA.

WHENEVER YOU ARE READY, COUNSEL.
>> GOOD MORNING, MAY IT PLEASE
THE COURT, STEPHEN ROSENTHAL,
LEWIS JIMENEZ.

THIS APPEAL CHALLENGES THE
CONSTITUTIONALITY OF THE CITY'S
USE OF RED LIGHT CAMERAS FOR
ENFORCEMENT OF TRAFFIC LAWS WAS
THE WAY THE CITY HAS CHOSEN TO
STRUCTURE ITS RED LIGHT CAMERA
ENFORCEMENT PROGRAM DEPENDS ON
AN ASSERTION OF MUNICIPAL POWER
THAT DOESN'T EXIST BECAUSE THE
LEGISLATURE DIDN'T AUTHORIZE IT
AS IT MUST IN AREAS THAT WERE
PREEMPTED TO THE STATE.

THERE ARE TWO DIFFERENT
CONSTITUTIONAL EXCESSES THE CITY
HAS ENGAGED IN AND I WILL REFER
TO THEM IN SHORTHAND TODAY IS
THE DELEGATION PROBLEM AND LOCAL
STANDARDS PROBLEM.

THE DELEGATION PROBLEM, BRIEFLY
STATED, THE CITY'S PROGRAM
DELEGATES TO A PRIVATE VENDOR,
AND AGENT A FUNCTION BEYOND WHAT
THE LEGISLATURE CONFERRED.

THE CITY ARGUES THE WORD REVIEW
IN THE STATUTE IS UNRESTRICTED
SUCH THAT THE PRIVATE AGENT HAS
THE ABILITY TO CONDUCT A
SUBSTANTIVE, THE CAMERA IMAGES
AND MAKE A DECISION, A
SUBJECTIVE DECISION BUT BASED ON
STANDARDS THAT THEY CONFIRMED --

>> DID I HEAR YOU SAY AT THE
BEGINNING THE CITY DOES NOT HAVE
ITS AUTHORITY BECAUSE IT IS
PREEMPTED BY THE STATE?

>> YES, YOUR HONOR.

>> WHAT EXACTLY PREEMPTS, WHAT
STATE STATUTE PREEMPTS THIS KIND
OF ACTION BY A CITY.

>> THE WORD REVIEW.

THE PREEMPTIVE FORCE FOR
PURPOSES OF SUBSTANTIVE REVIEW
DEPENDS ON YOUR ACCEPTANCE OF
OUR ARGUMENT THE WORD REVIEW IN

THE STATUTE IS AMBIGUOUS.
BY ITSELF IT MEANS EVALUATE OR
EXAMINE THE DEFINITION FROM THE
DICTIONARY TO EXAMINE BUT
DOESN'T SAY FOR WHAT PURPOSE.
>> STANDARDS SET BY THE CITY BY
WHICH THIS IS DONE.
>> YES THERE IS.
>> WHAT IS WRONG WITH THOSE
STANDARDS?
>> THOSE STANDARDS ARE
PERMISSIBLE BECAUSE THEY ARE
SUBSTANTIVE STANDARDS THE CITY
HAS CHOSEN TO USE IF THE
LEGISLATURE THROUGH THE STATUTE,
THROUGH THIS WORD REVIEW
EMPOWERED THE CITY TO DO A
SUBSTANTIVE REVIEW SO IT COMES
BACK TO THE MEANING OF REVIEW.
>> I AGREE THAT YOU RAISED IN
THIS COURT, MADE THE ARGUMENT
BELOW THAT REVIEW WAS AMBIGUOUS
SO LET'S -- GOING OVER WHAT
EXACTLY ARE THE FACTS HERE, THE
AGENT FIRST LOOKS TO SEE IF THE
IMAGES ARE USABLE, CORRECT?
YOU HAVE NO PROBLEM WITH THAT.
AND THEN THEY PUT THE IMAGES IN
TWO DATABASES, WORKING AND
NONWORKING.
THE NONWORKING ARE FOR THE
IMAGES THAT ARE NOT USABLE OR
IMAGES THEY ASCERTAIN TO NOT
MEET FOR THE WHERE THE TIRES
ARE, THE STOP SIGN, STANDARDS
THEY ARE FOLLOWING.
BECAUSE YOU SAID IT IS
UNFETTERED AND THEY CAN DO WHAT
THEY WANT.
THEY PUT CERTAIN IMAGES THERE
AND SEND THE REST TO THE CITY.
IN THIS CASE THE CITY'S
TESTIMONY IS OF IMAGES THAT ARE
SEND, THEY DON'T JUST
RUBBERSTAMP.
THEY LOOK AT THEM AND 65% TO 70%
OF THE CASES, THEY FIND PROBABLE
CAUSE, THEY REJECT 30%.
MY QUESTION ON THIS IS IT WOULD
BE DIFFERENT, IF THERE WAS A

PROGRAM SENT UP WHERE THE AGENT WAS MAKING THE DECISION ON PROBABLE CAUSE AND THERE WAS NO INDEPENDENT REVIEW BY THE CITY, THERE MIGHT BE A GOOD ARGUMENT THAT THERE WOULD BE DELEGATION OF POLICE POWER TO MAKE AN ARREST.

THAT DID NOT HAPPEN HERE.

>> IT DID IN A DIFFERENT WAY THAN YOU ARE THINKING.

LET ME HIT WHAT YOU SAID AND WHY I DISAGREE.

YES, IT IS TRUE THOSE STATISTICS, THE CITY TRAFFIC INFRACTION ENFORCEMENT OFFICER, THE OTHER THING IS A MOUTHFUL DOES DO A REVIEW AND WEEDING OUT 30% OF THE ONES THAT ARE IN THE REVIEW QUEUE, THE REVIEW PILE. BUT THEY ARE PUTTING ABOUT 40% INTO THE DISCARD PILE.

>> WHAT THAT WORKS WITH IS, TO LOOK AT, THE CLIENT IS A VIOLATOR, ASSERTING THE CLIENT DID NOT COMMIT A TRAFFIC VIOLATION.

MORE PEOPLE SENT OVER, A PROTECTION ARGUMENT, I DON'T GET

--

>> IS IN A MISERY LOVES COMPANY?

>> TO ANSWER BOTH OF THOSE QUESTIONS, THE CITY IS EXERCISING POWER, PUTTING 40% OF THE CASES IN THE DISCARD PILE IN THE NON-REVIEWED Q WHICH AN OFFICER DOES NOT REVIEW.

THAT IS THE TESTIMONY FROM SERGEANT BURNS.

>> DON'T THEY HAVE THE ABILITY TO DO SO?

AREN'T THOSE ALSO SEND AND AVAILABLE IF FOR WHATEVER REASON SOME OFFICER DECIDED THEY HAD SOME TIME AND WANTED TO LOOK THROUGH THOSE, THOSE ARE AVAILABLE.

>> THEY ARE AVAILABLE BUT NOT POSSIBLE TO BE REVIEWED BECAUSE OF THE TESTIMONY IN THIS CASE,

THE CITY WOULD BE OVERWHELMED WITH THE VOLUME OF CASES.

>> IMPOSSIBLE MANWISE, THEY ARE POSSIBLE BECAUSE THEY ARE THERE AND YOU COULD IN FACT BE THERE.

>> IF YOU HAD THE MANPOWER TO DO IT, THAT IS CORRECT.

BACK TO THE STANDING POINT.

>> LET'S SAY THIS IS A RED LIGHT CAMERA, THIS IS ENFORCEMENT OF THE TRAFFIC LAWS.

A LOT OF PEOPLE RUN RED LIGHTS AND CAUSE FATALITIES.

EVERY MUNICIPALITY DECIDE HOW TO USE THEIR MANPOWER, WITH GOING TO PUT AN OFFICER AT THE BUSIEST INTERSECTIONS BUT THEY ARE NOT GOING TO PUT THEM THERE ALL THE TIME AND THEY ARE NOT GOING TO PUT THEM IN EVERY INTERSECTION AND MAYBE A CITY OF MIAMI BEACH MAY DO IT DIFFERENTLY THAN VENTURA AND TALLAHASSEE SO THAT MEANS EVERY DAY IN THIS STATE THERE ARE RED LIGHT VIOLATORS GOING IN DETECTED IN THOSE CITIES THAT HAVE NO RED LIGHT CAMERA BECAUSE THEY DON'T HAVE THE MANPOWER TO CATCH EVERYBODY. THAT IS UNDER THE POLICE POWER, THAT IS NOT UNIFORM BECAUSE THE MANPOWER FOR THE ENFORCEMENT IS NOT UNIFORM SO I SPENT SO MUCH TIME TRYING TO UNDERSTAND YOUR ARGUMENT, AND SEE WHERE THE CONSTITUTIONAL ARGUMENT IS BUT I AM NOT GETTING YOUR STANDING TO ASSERT THAT THEY ARE NOT PUTTING MORE PEOPLE INTO THE VIOLATOR PILE.

>> LET ME TRY TO ARTICULATE IT HERE AND SEE IF I CAN MAKE IT CLEARER.

WITH RESPECT TO STANDING AT WHAT THE CONSTITUTIONAL ISSUE IS, THE STANDING ISSUE, AND WE WERE PHOTOGRAPHED MAKING -- THE SIGN MAKES WHITE ON RED.

AND SENT TO THE REVIEW PILE, NOT THE DISCARD PILE FOR LACK OF A

BETTER WORD.

>> IT IS UNCONSTITUTIONAL
BECAUSE IT IS PREEMPTIVE?

>> AND TWO RESPECTS.

THERE WERE 22 CONSTITUTIONAL
DEFECTS IN THIS FILTER THROUGH
WHICH EVERY CASES PAST, ONE,
THAT THE PREEMPTION FROM THE
WORD REVIEW WHICH IN THE CONTEXT
OF THE STATUTE CANNOT BE READ IN
THE UNDERSTATED MANNER IN WHICH
THE CITY AND STATE SAY.

I CAN GET TO THAT.

THE SECOND ONE IS THEY HAVE
ADOPTED THEIR OWN LOCAL
STANDARDS AGAINST THE PREEMPTIVE
STATE REGIME.

>> WHY ISN'T IT REASONABLE TO
ASSUME IF THE STATUTE SAYS THE
LAW ENFORCEMENT OFFICER HAS TO
MAKE PROBABLE CAUSE TO
TERMINATION BUT THE CITY CAN
CONDUCT A REVIEW THROUGH AN
AGENT.

LEGISLATURE CHOSE TO USE A BROAD
WORD TO GIVE AUTHORITY TO SET
STANDARDS TO THE CITIES, THAT
SEEMS LIKE THE ONLY REASONABLE
READING OF THAT STATUTE.

>> THEY DON'T HAVE AN OFFICER
REVIEWING IMAGES THAT ARE PUT IN
THE DISCARD PILE.

>> THE STATUTE EXPRESSLY
AUTHORIZES REVIEW BY AN AGENT.

>> THE STATUTE DOES NOT ALLOW
THE AGENT TO MAKE THE ULTIMATE
DECISION ABOUT WHETHER IT SHOULD
BE ENFORCED OR NOT AND THAT IS
WHAT IS HAPPENING.

IF YOU LOOK AT 316640 WHICH IS
THE PROVISION --

>> YOU TO FIND PROBABLE CAUSE IN
YOUR CLIENT'S CASE?

>> AN OFFICER DID.

>> THE PROBLEM IS THE SYSTEM THE
CITY HAS SET UP HAS CREATED A
SITUATION WHERE 40%, 3000 A
MONTH OF THE CASES ARE NOT
REVIEWED BY AN OFFICER, NO
PROBABLE CAUSE DETERMINATION.

>> EVEN IN A SITUATION WHERE THERE IS A CLEAR -- THEY WERE NOWHERE NEAR THE LINE WHEN THE CAMERA WENT OFF THAT NEEDS TO BE VIEWED BY AN OFFICER.

>> THE ANSWER IS IN THE STATUTE. LET ME GET TO THIS PART.

>> THAT SAYS WHAT?

>> THE ENFORCEMENT OF THE TRAFFIC LAWS, ENFORCEMENT OF THE TRAFFIC LAWS OF THE STATE IS VESTED AS FOLLOWS: ENFORCEMENT POWER, SUB 5 A WHICH WAS ADDED INTO THE TENS OF THE TRAFFIC INFRACTION ENFORCEMENT OFFICER FOR PURPOSES OF THE RED LIGHT CAMERAS MAY ISSUE A TRAFFIC CITATION.

THEY VESTED POWER IN THE TRAFFIC ENFORCEMENT OFFICER, THE OFFICER HAS AN POWERED MODISH POWER TO ENFORCE TO MAKE A JUDGMENT CALL WHETHER OR NOT SOMETHING IS OR IS NOT A VIOLATION OF THE TRAFFIC LAWS.

WITH RESPECT TO PEOPLE REVIEWED BY THE OFFICER I CAN SEE THEY ARE DOING IT PROPERLY.

WITH RESPECT TO THE OTHER SET OF PEOPLE THEY ARE CONFERRING THAT POWER, DELEGATING IT TO A PRIVATE VENDOR IN CONTRAVENTION OF THE STATUTE AND THAT IS THE FUNDAMENTAL PROBLEM.

OF THE WORD REVIEW, THE WORD REVIEW CANNOT BE UNRESTRICTED BECAUSE IT WOULD ALLOW --

>> IT IS NOT UNRESTRICTED.

IT IS NARROWLY DEFINED BY THE CITY'S DIRECTIVE AS TO HOW THEIR MINISTERIAL AGENT SHOULD SCREEN OUT IMAGES THE CITY DOESN'T WANT TO REVIEW.

>> RESPECTFULLY THE CITY, AS A BLANKET MATTER OF ITS POLICY WHICH IT HAS HERE, OFFICERS DON'T NEED TO REVIEW THE CASES, SET IN THE DISCARD PILE.

>> THEY DID NOT DO THAT EITHER BECAUSE THE OFFICERS CAN REVIEW

THE DISCARD PILE.

>> THE EVIDENCE IN THIS RECORD IS THEY CANNOT.

THEY DON'T AND THEY CAN'T BECAUSE OF MANPOWER.

IF YOU STEP BACK THE REASON THEY ARE DOING THIS, I DON'T WANT TO GET AWAY FROM THE WORDS OF THE STATUTE THE STATUTE IF RED THE WAY WE ARE PROPOSING IN A LIMITED FASHION WHICH ACCORDS CLEARLY FROM THE LEGISLATIVE HISTORY IN REFERENCE TO THE TOE ENFORCEMENT REGIME WHICH WAS ON THE BOOKS AND SPOKE IN TERMS OF REVIEW FOR PURPOSES OF CLARITY OF THE IMAGES, THAT MAKES SENSE.

>> IT IS A DIFFERENT SCHEME.

>> THIS IS SOMETHING DIFFERENT, HOW YOU CAN GET A BOOTSTRAPPING HERE WHEN THEY USE THIS UNRESTRICTED TERM, REVIEW, IT PUZZLED ME.

IF THEY USE AN UNRESTRICTED TERM, SEEMS TO ME THE MOST NATURAL UNDERSTANDING OF THAT WOULD BE THEY CAN REVIEW FOR ANY PURPOSE SHORT OF THE TERMINATION THAT PROBABLE CAUSE EXISTS AND A CITATION SHOULD BE ISSUED.

THE OFFICER HAS TO DO THAT BUT I CAN'T SEE IN THE STATUTORY SCHEME WHY THIS WOULD BE RESTRICTED IN THE WAY YOU ARE SUGGESTING.

YOU HAVE TO ADD WORDS IN THE TEXT TO REACH THE CONCLUSION YOU ARE SUGGESTING.

>> WE DON'T HAVE TO ADD WORDS ANYMORE THAN THEY HAD WORDS. THE UNADORNED WORD REVIEW OF INFORMATION FOR A TRAFFIC INFRACTION DETECTOR IS ALL THEY GAVE US.

>> REVIEWED FOR SOME PURPOSE. IF YOU ARE SAYING PURPOSE IS LIMITED.

>> THE PURPOSE IS AMBIGUOUS.

>> IT PROVIDES ANY WARRANT FOR THAT SPECIFIC LIMITATION THAT

YOU SAY IS THERE.

>> THE ONLY WARRANT IN THE TEXT IS STRUCTURE OF THE SCHEME WHERE IMAGES FROM THE CAMERA ARE THE CENTRAL AND ONLY EVIDENCE USED TO ASSESS WHETHER SOMEONE DINNER DIDN'T VIOLATE THE TRAFFIC LAW. THE IMAGE IS CRITICAL FOR THE WORKING OF THE SCHEME, A REBUTTABLE PRESUMPTION YOU DID VIOLATE IF IT SHOWS YOU CROSSED THE LINE AFTER THE LIGHT TURNED RED.

IT IS CRITICALLY IMPORTANT, CRITICALLY THERE FOR IMPORTANT THAT IT BE VISIBLE, THE CAMERA DIDN'T MISFIRE.

EVEN THE ATTORNEY GENERAL'S BRIEF SAYS IT IS CRITICAL TO HAVE USABLE IMAGES.

EVEN THE OFFICERS AND VENDOR IN THIS CASE DO WHAT THEY CALL A PRE-REVIEW TO WEED OUT THINGS WHERE THE CAMERA MISFIRED, IT WAS BLACK, BLACK SCREEN, THE LICENSE TAG WASN'T VISIBLE, CAN PROSECUTE UNDER THIS REGIME. THAT IS A PERFECTLY PLAUSIBLE UNDERSTANDING OF WHAT IT MEANT BY REVIEW.

IF YOU ACCEPT IT IS AT LEAST AMBIGUOUS THEY COULD HAVE MET, UNRESTRICTED OR AT LEAST BROAD REVIEW.

>> THE GENERAL PRINCIPLE WITH AN UNRESTRICTED TERM EMPLOYED, IT HAS AN UNRESTRICTED MEANING. UNLESS THERE IS SOMETHING IN THE CONTEXT THAT PROVIDES A BASIS FOR IMPLYING A SPECIFIC RESTRICTION AND I'M STRUGGLING TO FIND THAT.

>> THE STEP I WOULD URGE YOU TO TAKE, THERE IS NO MODIFIER ON THE WORD REVIEW.

BUT THAT DOESN'T MEAN NO HOLDS BARRED UNRESTRICTED, YOU HAVE TO LOOK AT THE CONTEXT AND IS AMBIGUOUS, IT IS AMBIGUOUS, AT LEAST AMENABLE TO TWO DIFFERENT

MEETINGS WHICH WE HAVE BOTH BEEN ARGUING ABOUT.

AND IT IS THERE.

THERE IS TO SAY NO.

AND 006.

AND NOWHERE TO BE MENTIONED IN THE STATUTE.

THE RECORD SHOWS FROM THE APPENDIX WE PUT IN 46 DIFFERENT JURISDICTIONS THAT USE AMERICAN TRAFFIC JURISDICTIONS.

AND A TRAFFIC VIOLATION.

>> THE CITY --

>> A TRAFFIC VIOLATION.

>> NO WHITE ON RED.

>> YOU ARE COMPLAINING BECAUSE THE RULE SAYS IF WE ARE GOING ON A RED LIGHT, 15 MILES.

AND WHAT HAPPENED HERE.

>> THE THIRD DCA RECOGNIZED HAS BEEN WAIVED, MISTER JIMENEZ IN THE TRAFFIC COURT CHALLENGED THE CONSTITUTIONALITY OF THIS PROGRAM, THE WAY THE CITY WAS OPERATING ITS PROGRAM.

THAT ISSUE IS BEFORE THE COURT, BUT AS TO MISTER JIMENEZ WAS HE PREJUDICED?

WITH ANY CITIZEN PREJUDICED OR HARMED?

IS A LOCAL GOVERNMENT EXERCISING POWER THAT THE LEGISLATURE HAS NOT CONFERRED UPON IT.

I WOULD TO MEET EVERY CITIZEN SUBJECTED TO A LOCAL GOVERNMENT EXERCISING POWER BEYOND THAT WHICH IT HAS CONSTITUTIONALLY HAS BEEN HARMED TO BRING THE ISSUE TO THIS COURT'S ATTENTION. AS I SAID AT THE BEGINNING, EVEN MISTER JIMENEZ --

>> I AM STRUGGLING, IF HE VIOLATED THE STATUTE I DON'T SEE WHAT HE HAS TO COMPLAIN ABOUT BECAUSE THEORETICALLY SOME OTHER PEOPLE WHO YOU THINK MIGHT HAVE VIOLATED THE STATUTE I DRAGGED INTO THE NET.

ANY MORE THAN SOMEONE WHO GET STUFF FROM SPEEDING CAN COMPLAIN

BECAUSE SOMEBODY PASSED ME AND YOU DIDN'T STOP HIM.

>> LET ME BRING YOUR ATTENTION TO THE CASE OF THE CITY OF FORT LAUDERDALE VERSUS DARR DECIDED A FEW TERMS AGO WHICH IS ILLUSTRATIVE OF THE POINT.

THERE WAS A SITUATION AND THE RED LIGHT CAMERA STATUTE THAT HAPPENED TO DEAL WITH EXTRA PROTECTION CHALLENGE FOR SOMEONE WHO WAS A SHORT-TERM RENTER AND BEFORE THE STATUTE HAD BEEN AMENDED THEY ISSUE A NOTICE OF VIOLATION WITH 30 DAYS, THERE IS A TWO TIERED PENALTY SYSTEM UNDER THE STATUTE, \$158 FOR THE NOTICE OF VIOLATION.

IF YOU PAID IN THE WINDOW IT DOESN'T GO UP TO A \$277.

MRS. DARR WAS A RENTER AND BECAUSE OF THE WAY IT WORKED, SENT A TICKET TO THE RENTAL AGENCY AND UNDER THAT SCHEME, VIOLATION OF EQUAL PROTECTION, 277, NOT 158.

WHAT IS THE REMEDY THIS COURT RULED.

THEY DIDN'T SAY SHE HAS NO STANDING TO CHALLENGE THAT BECAUSE SHE VIOLATED THE RED LIGHT LAW.

IT DIDN'T SAY SHE SHOULD STILL PAY THE 150 A DOLLAR FINE WHICH IS APPROPRIATE TO HER.

THE COURT BELOW DISMISSED IT BECAUSE IT WAS AN UNCONSTITUTIONAL ACTION IN THIS COURT AFFIRMED THE DISMISSAL OF THE RELATE CITATION EVEN THOUGH SHE WAS CAUGHT ON CAMERA.

EVEN THOUGH MISTER JIMENEZ WAS CAUGHT ON CAMERA DOING SOMETHING IMPROPER BECAUSE HE DIDN'T OBEY THE SINUS AND YOU CAN'T MAKE WEIGHT ON RED HERE.

THE PROGRAM --

>> YOU ARE DEEP INTO YOUR REBUTTAL.

26 SECONDS LEFT, YOU'RE WELCOME

TO CONTINUE.

>> I WILL TAKE THAT TIME.

>> GOOD MORNING, MISTER CHIEF JUSTICE.

MAY IT PLEASE THE COURT, SOLICITOR GENERAL, I'M APPEARING ON BEHALF OF THE OFFICE OF THE ATTORNEY GENERAL.

I'M PLEASED TO BE JOINED BY COUNSEL'S TABLE, BY MISTER SAM ON THE RIGHT AND MISTER AND GET US WHO WILL PRESENT A HUMAN ON BEHALF OF THE CITY OF EVENTURA AND I'M JOINED BY MISTER ROBERT DIETZ, ASSISTANT ATTORNEY GENERAL WHO HANDLED THIS MATTER IN THE PROCEEDINGS BELOW AND RENTED TO THINK WERE SERVICE TO THE STATE IN CONNECTION WITH THESE CASES.

OF IT IS AGREEMENT OF COURT I WOULD LIKE TO TAKE 10 MINUTES AND START OUT BY ADDRESSING THE BIG PICTURE QUESTION JUSTICE. HE OPPOSED TO DISTANT WISHED OPPOSING COUNSEL AND THAT IS AT BOTTOM, STRIPPED OF LEGAL TECHNICALITIES, WHAT IS THE PROBLEM?

WHAT IS THE CONSTITUTIONAL VIOLATION HERE?

THE ANSWER IS THERE IS NONE AS APPLIED TO MISTER JIMENEZ.

MISTER JIMENEZ GOT A TRAFFIC TICKET FOR RUNNING A RED LIGHT. IT IS UNDISPUTED THAT HE RAN THE RED LIGHT.

IT IS UNDISPUTED THAT THE CITY OF AVENTURA PRODUCED COMPETENT EVIDENCE CONCLUSIVELY AND UNAMBIGUOUSLY ESTABLISHING THE RED LIGHT VIOLATION, TALKING ABOUT DOCUMENTARY EVIDENCE, PHOTOGRAPHIC EVIDENCE, VIDEO EVIDENCE AND TESTIMONIAL EVIDENCE FROM OFFICER CASTRO WHO ISSUED THE CITATION.

AND AS JUSTICE. HE POINTED HOUSE AND JUDGE WELLS EMPHASIZED, THE PROCEEDING BELOW, AT BOTTOM THE

ARGUMENT MISTER JIMENEZ IS MAKING, A THEORETICAL POSSIBILITY THERE MIGHT BE OTHER PEOPLE OUT THERE WHO MAY HAVE COMMITTED A RED LIGHT INFRACTION WHO HAVE NOT BEEN TICKETED. AS JUDGE WELLS CORRECTLY CONCLUDED, THAT FAILS ON ITS OWN TERMS.

EVEN IF IT IS RIGHT, IT DOES NOTHING TO ESTABLISH THE INVALIDITY OF MISTER JIMENEZ'S CITATION.

JUSTICE. HE --PARIENTE YOU TERMED THE LACK OF STANDING AND THAT IS ONE WAY TO CONCEPTUALIZE IT BUT IN OTHER WAYS, MISTER JIMENEZ GOT A TICKET AND HE HAS STANDING TO CHALLENGE THE ISSUANCE OF THAT TICKET.

>> I CAN UNDERSTAND THE VENDOR BEING ABLE TO FERRET OUT IF THE SCREEN IS TOTALLY BLACK AND YOU CAN'T SEE ANYTHING.

I WILL FERRET OUT IF THE CAMERA MISFIRES BUT DOES THE VENDOR, SHOULD THE VENDOR HAVE THE AUTHORITY TO MAKE A JUDGMENT CALL ABOUT JUST WHERE ON THE LINE THE CAR IS, OR HOW CLOSE TO THE LINE THE CAR IS.

ISN'T THAT SOMETHING THAT SHOULD BE LEFT TO THE JUDGMENT OF THE OFFICER?

>> THAT IS A GREAT QUESTION AND THE ANSWER IS THE CITY OF AVENTURA'S RULES EXPRESSLY DIRECT THE OUTSIDE VENDOR TO FORWARD THE IMAGES TO THE POLICE OFFICER AND THE POLICE DEPARTMENT IF IT CIRCUMSTANCES POSITIVE IN YOUR HYPOTHETICAL IT IS ANYTHING EVEN REMOTELY RESEMBLING A CLOSE CALL.

IF YOU HAVE THE TIRES SLIGHTLY OVER THE LINE IT IS UNDISPUTED, WE HAVE TRIAL COURT FINDINGS TO THIS EFFECT IN THE RECORD THAT HAVE BEEN UNCHALLENGED ON APPEAL, UNDISPUTED THAT IN THAT

SCENARIO POSITED IN YOUR HONOR'S HYPOTHETICAL, THAT HAS TO GO TO THE POLICE OFFICER.

MORE PORTLY, HERE'S THE FUNDAMENTAL POINT.

THIS IS ALL ABOUT AS FAR AS THE NONDELEGATION PROBLEM IS CONCERNED ABOUT THE EXERCISE OF THE STATE'S POLICE POWER AND THAT POLICE POWER IS RELEVANT HERE IS THE POWER TO ISSUE A CITATION, TO SAY TO SOMEONE I VIOLATED STATE LAW AND IN SOME KIND OF ENFORCEMENT ACTION, IN THE RECORD OVER THE COURT, UNCHALLENGED ON APPEAL.

ONLY ONE PERSON CAN MAKE A DETERMINATION OF PROBABLE CAUSE TO BELIEVE A VIOLATION HAS TAKEN PLACE AND THE ISSUANCE OF A CITATION.

>> THERE ARE WORDS THAT HAVE BEEN THROWN AROUND IN THE BRIEFS AND SOME OF THE OPINIONS, AND ALSO THE OPINION OF THE SECOND DISTRICT AND THE FOURTH DISTRICT, THE SECOND DISTRICT CASE WAS DISMISSED, CERTIFIED CONFLICT FROM THE FOURTH DISTRICT.

THE USE OF THE TERM UNFETTERED DISCRETION.

AND THE THIRD REJECTED, CLERICAL AND MINISTERIAL.

DISCRETION, AND THE VENDOR IS DOING, AND

>> WHAT IS THE LEGAL STANDARD ENUNCIATED WITH THIS COURT THAT GOVERNS THE QUESTION, AND WHERE THE UNFETTERED DISCRETION COMES INTO PLAY.

AND THE COUNTY OF ST. JOHN'S, IT IS OKAY FOR THERE TO BE SOME DELEGATION OF POLICE POWER, SO LONG AS IT IS NOT UNFETTERED DISCRETION.

AND THAT IS THE STANDARD THAT I ADHERE TO AND ARTICULATED BY THIS COURT.

WHAT ARE THESE PROCESSORS DOING?

THE FINDING OF THE TRIAL COURT JUDGE ACCEPTED BY THE THIRD DCA THAT ATS PROCESSORS ARE ENGAGED IN A CLERICAL AND MINISTERIAL TASK.

TAKING CLEAR POOLS APPLYING THEM TO PARTICULAR SITUATIONS.

>> IF IN DOUBT, SEND IT OVER, SEEMS TO ME, THIS IS A WAY TO SABOTAGE RED LIGHT CAMERA CASES TO SEND EVERY USABLE IMAGE, WHETHER THERE IS A VIOLATION, THE CITIES CANNOT PRACTICE ANY VIOLATIONS TO BE OVERWHELMED, THAT IS THE PRACTICAL SIDE ABOUT IT.

JUSTICE QUINCE'S QUESTION, IF THE TIRES ARE OVER THE LINE, THAT IS DISCERNIBLE, YOU SAY THAT IS MINISTERIAL, CLERICAL OR DOES IT INVOLVE ANY DISCRETION.

>> I SUPPOSE IT REQUIRES A EXAMINATION, AND THE TIRES BEHIND THE LINE, PAST THE LINE AND IS YOUR HONOR POINTS OUT IT IS NOT CLEAR IF IT IS A CLOSE CALL THESE RULES SPECIFICALLY REQUIRE THE ATS PROCESSORS TICKET IN A BOX, DON'T HAVE TO FIGURE OUT IF THERE'S A VIOLATION.

>> IN ANOTHER CITY, IF THERE IS IN DOUBT DON'T SEND IT. IS THERE STILL ANY KIND OF VIOLATION, AS THEY SAY, IF ANOTHER CITY SAYS I DON'T WANT THE ONES THAT ARE UNCLEAR, DON'T WANT YOU TO SEND ME THE ONES THAT ARE CLEAR, STILL MAKE THE DECISION.

IS THAT, IS THERE SOMETHING THAT WOULD BE INAPPROPRIATE ABOUT THAT?

>> IT IS NOT THE SITUATION, MY IMMEDIATE REACTION, MORE PROBLEMATIC, AS FAR AS IT WOULD EXACERBATE UNDERENFORCEMENT, DON'T KNOW WHAT IT WOULD GIVE RISE TO.

>> UNDERENFORCEMENT, THE SAME

THING IF THE CITY SAYS I AM NOT GOING TO PUT AN OFFICER AT THIS INTERSECTION, THERE IS UNDERENFORCEMENT, THAT IS THE PROBLEM.

YOU CAN'T ENFORCE 100% VIOLATIONS OF PEOPLE RUNNING RED LIGHTS.

>> YOUR HONOR IS EXACTLY RIGHT, IT IS NOT A PROBLEM TO BE SOLVED BY JUDICIAL REWRITING OF STATUTORY TEXT AND INVALIDATION.

>> YOU MAY NOT KNOW THE ANSWER BECAUSE IT MAY NOT BE ON THE RECORD, IS THERE ANY INDICATION HOW THE VENDOR IS COMPENSATED?

>> I HAVEN'T SEEN ANY SUCH REFERENCE TO THE MECHANISM OF COMPENSATION IN THE RECORD AND MAY ANSWER THAT QUESTION.

>> TO FOCUS ON ONE ADDITIONAL POINT, JUSTICE QUINCE, YOU BEGAN YOUR COLLOQUY WITH DISMISSED OPPOSING COUNSEL, WHAT IS THE SOURCE OF PREEMPTION HERE.

>> THE ANSWER IS THE TERM REVIEW, 16.0083 SUBSECTION ONE PARAGRAPH A.

THAT TEXT SAYS THIS PARAGRAPH SHALL NOT PROHIBIT THE REVIEW OF INFORMATION BY A TRAFFIC INFRACTION ENFORCEMENT DETECTOR, FOR PURPOSES OF THE ISSUANCE OF A CITATION.

AND A STRAIGHT INTERPRETATION.

AND OTHER REASONS, THANK YOU.

>> MAY IT PLEASE THE COURT, AND WOULD GET US ON BEHALF OF THE CITY OF AVENTURA.

ON THE PREMISE OF MISTER JIMENEZ'S APPEAL, THE CITY UNDER THE CURRENT STATUTORY SCHEME, AND I WOULD POSITIVE TO THIS COURT, AND CONTEMPLATES THAT KIND OF DETERMINATION AND SELECTIVE ENFORCEMENT.

THERE IS NOTHING THAT REQUIRES THERE BE A RED LIGHT CAMERA AT EVERY INTERSECTION.

CITIES HAVE TO PICK.
THIS INTERSECTION IS MORE
DANGEROUS THAN THAT ONE.
WE HAVE MORE ACCIDENTS, ISSUES
WITH PEDESTRIANS.
WE ARE GOING UNDER THE SCHEME,
NOT PUT A CAMERA OVER THERE.
THAT ACT OF SAYING WE DON'T WANT
TO LOOK AT WHAT IS HAPPENING AT
THE OTHER INTERSECTION, WE WANT
TO LOOK AT WHAT IS HAPPENING AT
THIS INTERSECTION IS THE KIND OF
SELECTION PROCESS THAT IS
INHERENT IN LAW ENFORCEMENT.
THERE IS A FUNDAMENTAL FLAW TO
THE LINCHPIN OF MISTER JIMENEZ'S
ARGUMENT AND THIS IS FROM THEIR
REPLY BRIEF WHERE THEY SUGGESTED
THEY ARGUED IT AGAIN BEFORE THE
COURT THAT SOMEHOW THE PROCESS
WINDOWS DOWN AND SOMEHOW FORCE
THE POLICE OFFICER'S ABILITY FOR
ENFORCEMENT, AND SIMPLY AND
DEMONSTRABLY INCORRECT.
THE RECORD IS UNDISPUTED THAT
ALL OF THE EVENTS WHETHER THEY
ARE CATEGORIZED BEEN WORKING YOU
ARE NONWORKING QUEUE ARE
AVAILABLE TO THE POLICE TO
REVIEW.
IT IS THE POLICE IN THE EXERCISE
OF THEIR DISCRETION HOW MUCH
TIME THEY WANT TO SPEND GOING
THROUGH THE NONWORKING QUEUE.
>> WAS THERE SOMETHING IN THE
RECORD THAT SOMETIMES THE
NONWORKING QUEUE WAS USED FOR
POLICE PURPOSES?
>> ABSOLUTELY, JUSTICE QUINCE.
SERGEANT BURNS, THE
ADMINISTRATOR OF THE PROGRAM
TESTIFIED HE HAS ON MULTIPLE
OCCASIONS GONE INTO THE WORKING
QUEUE AND OBTAINED INFORMATION
FROM THOSE EVENTS IN CONNECTION
WITH OTHER INVESTIGATIONS.
SERGEANT BURNS ALSO TESTIFIED
THAT HE REGULARLY REVIEWS THE
REPORT CAMERA VENDOR GENERATES
EVERY MONTH THAT EXPLAINS, WHY

DID EVENTS MEAL UP IN THE
NONWORKING QUEUE?

>> WE HAVE A RAM OUT THERE AND
THE SECOND DISTRICT CASE OF
TREND.

THIS CASE SHOULD HANG ON WHETHER
THE CITY IS LOOKING AT THE
NONWORKING QUEUE OR NOT.

YOU MADE A VERY GOOD POINT ABOUT
THE ENFORCEMENT AS LONG AS IT IS
NOT DISCRIMINATORY.

THE WHOLE DRIVING WITH BLACK AND
SEE WHO IS IN THERE AS LONG AS
THERE IS NO HINT OF
DISCRIMINATION OR OTHER IMPROPER
MOTIVE DOES IS HANG ON WHETHER
THE CITY HAS ACCESS OR SHOULD
SPEND ITS TIME LOOKING AT THE
NONWORKING QUEUE.

>> IT IS IMPORTANT.

I THINK IT IS INTELLECTUALLY
CONCEPTUALLY IMPORTANT.

THE NONWORKING QUEUE WERE NOT
ACCESSIBLE WHICH IS NOT OUR
SITUATION BUT IF IT WERE, IT
MIGHT PRESENT AN ISSUE BUT THE
UNDISPUTED RECORD.

>> WHAT WOULD BE THE ISSUE?

WHY IS IT ANY DIFFERENT THAN IF
THE RED LIGHT CAMERA THE VENDOR
INSTALLS ISN'T WORKING FOR A DAY
SO THERE IS NO -- EVERYONE HAS
-- WE WOULD SAY MOST FLORIDIANS
OBEY THE TRAFFIC LAWS.

IN TERMS OF THIS WHOLE THING WE
ARE ASSUMING EVERYONE IS GOING
TO OBEY THE LAW WAY. THERE'S A
CAMERA OR NOT BUT WHAT DOES IT
MATTER IF HE COULD ESTABLISH OR
TWO DAYS RED LIGHT CAMERA WASN'T
WORKING?

>> YOUR HONOR IS HITTING ON A
FUNDAMENTAL PROBLEM THAT CIRCLES
BACK TO ORIGINAL CONCERNS OF
WHAT IS THE BEEF?

WHY ARE YOU COMPLAINING BECAUSE
OF YOUR PEOPLE PERHAPS ARE NOT
BEING CITED AND MAYBE GETTING
AWAY WITH RUNNING THE RED LIGHT
AND CANDIDLY, THAT HAPPENS

THOUSANDS OF INTERSECTIONS --
>> YOU MADE A DEAL SAYING THEY
WORK AT THESE -- THEY COULD LOOK
AT THEM.

>> IT HEIGHTENS THE QUESTION.
THEY ARE SUGGESTING SOMEHOW THAT
THE USE OF THE BE ARGUE
REPRESENT AN EXERCISE OF POLICE
DISCRETION IN ALLOCATING EVENTS
INTO TWO CUES IS SOMEHOW
PROHIBITED.

I'M SUGGESTING IT IS NOT BECAUSE
THE FACTUAL PREMISE OF THE
ARGUMENT IS WRONG.

THE NONWORKING QUEUE IS
AVAILABLE, I WAS TRYING TO DO
THINGS THE ARGUMENT BECAUSE IT
IS UNSUPPORTED BY THE RECORD.

>> OF THE SECOND DISTRICT THINKS
THE RIM IS IN CONFLICT WITH
THEIR DECISION, AND JUDGE WELL
THOUGHT IT WAS IN CONFLICT IT
LOOKS LIKE THE CERTIFY QUESTION
WAS VERY NARROW WHICH SAYS, I
THINK WE ALL AGREE, POLICE HAVE
TO DETERMINE PROBABLE CAUSE,
CAN'T BE DONE BY THE VENDOR.
SHORT OF THAT, IT MAKES SOME
BROAD STATEMENTS THEY CAN'T DO
ANYTHING BUT WHAT MISTER
ROSENTHAL IS SAYING.

IT SEEMS TO BE IN CONFLICT
DESPITE THE EFFORTS TO
DISTINGUISH IT WITH BOTH THIS
CASE AND THE SECOND DISTRICT
CASE.

>> YOUR HONOR IS CORRECT.
I FIND MYSELF IN THE UNUSUAL
POSITION OF BEING AN APOLOGIST
FOR THE FOURTH DCA'S DECISION
BUT I THINK IN FAIRNESS TO THE
COURT, THE COURT STRUGGLED WITH
CONCEPTS IT HAD BEFORE IT
BECAUSE IT HAD NO IDEA THERE
WERE PRQ.

THE BUSINESS RULES
QUESTIONNAIRE.

I APOLOGIZE BUT I SHOULD AVOID
ACRONYMS.

THE BUSINESS RULES QUESTIONNAIRE

WAS NOT PART OF THE RECORD BUT THEY HAD NO IDEA THERE WERE THESE GUIDELINES GIVEN BY THE HOLLYWOOD POLICE DEPARTMENT TO THEIR CAMERA VENDOR. IT WAS NEVER INTRODUCED. WHEN THEY COME THE CONCLUSION THE CAMERA VENDOR IS ACTING WITH UNFETTERED DISCRETION MAKING DETERMINATIONS THAT THE CITY IS SIMPLY ACQUIESCING THE DECISIONS THEY CAME TO THAT CONCLUSION BASED ON CONTRACT LANGUAGE AND NOT ON THE ACTUAL OPERATION OF THE PROGRAM AND I THINK THE DCA WHICH HAD THE ENTIRE RECORD BEFORE IT WAS INTRODUCED AS PART OF THE EVIDENTIARY HEARING, RECOGNIZED WHY THE FOURTH DCA CAME TO THE CONCLUSION IT DID, YOU DIDN'T UNDERSTAND HOW THE PROGRAM OPERATED.

>> THE PROBLEM IS CERTIFIED QUESTION FROM COUNTY COURT WAS VERY NARROW, CAN A DELEGATE THE ONLY INVOLVEMENT OF THE TRAFFIC ENFORCEMENT OFFICER PUSHING A BUTTON SAYING ACCEPT AND ALTHOUGH THE CITY MAY HAVE SOME INPUT, DEPENDING ON THE VENDORS DETERMINATION, AND IN SOME TO THE END, WHAT MAKES IT IN CONFLICT IN TWO CASES.

>> I PILOT THE FOURTH DCA DID NOT NEED TO EXPAND ITS DECISION TO OFFER ITS VIEW ON THOSE ITEMS BECAUSE WITH OUTSIDE THE SCOPE OF THE CERTIFY QUESTION FROM THE COUNTY COURT.

>> YOU WERE INVOLVED IN THAT CASE.

>> I WAS INVOLVED IN EVERY RED LIGHT CAMERA CASE IN THE LAST WE 5 YEARS.

>> IS THAT WHY YOU ARE WEARING A RED TIE?

>> THIS COMES DOWN TO A SIMPLE QUESTION, WHAT DOES REVIEW MEAN, WE HAVE A CONTEXT THAT BOTH SIDES AGREE IT DOES NOT ME LOOK

AT YOUR OWN ENJOYMENT.
SOME ASSESSMENT HAS TO BE
CONDUCTED AS PART OF REVIEW.
THEY POSIT A VERY NARROW
PURPOSE, AND SUGGESTING THE
LEGISLATURE CHOSE A BROAD TERM
AND NOT TO RESTRICT IT, DO NOT
LANGUAGE IN THE STATUTE.
IF DOT HAS NOT STEPPED FORWARD
AND SAID THESE ARE THE
LIMITATIONS WE WILL IMPOSE, NONE
OF THAT EXISTS.
WE RESPECTFULLY REQUEST THIS
COURT AFFIRMING ITS ENTIRETY THE
THIRD DCA'S DECISION.
THANK YOU FOR YOUR TIME.
>> I REALIZE I HAVE LIMITED
TIME, THE COURT -- THE CLOCK
WITH ON THE TOTAL TIME BUT I
WILL TRY THE TIME ALLOTTED TO
HIT ON THE KEY POINTS.
WITH RESPECT TO THE QUESTION OF
STANDING AND WHETHER MISTER
JIMENEZ WAS PREJUDICED THE
STANDING AND PREJUDICE ROLE
TOGETHER ON THIS QUESTION, THE
FACT THAT MISTER JIMENEZ WAS
SUBJECTED TO AN UNAUTHORIZED
SCREENING BY VENDORS BECAUSE IT
DOES NOT, THE CITY DID NOT HAVE
THE POWER UNDER THE STATUTE TO
CONFER A SUBSTANTIVE REVIEW.
THAT IS THE BASIS FOR HIM BEING
ABLE TO RAISE THE ISSUES HERE.
>> IF THEY HAD TO SEND EVERY
IMAGE THAT WAS TAKEN AT THE
INTERSECTION YOUR CLIENT WOULD
BE IN THE POSITION HE IS IN
BECAUSE OF THE CLEAR VIOLATOR.
>> BECAUSE HE RAISED THE
CONSTITUTIONAL DEFECT.
THE TEST IS NOT WHETHER HE WAS
JUST OR NOT, THAT IS FROM CASES
THAT DON'T INVOLVE
CONSTITUTIONAL INSULT.
I WOULD SUGGEST THE COURT LOOK
TO ITS DECISION IN METRO DADE
COUNTY AND CHASE FINANCING WHICH
THE COURT SAID IT IS THE DUTY OF
THIS COURT TO ENFORCE THE

CONSTITUTIONAL LIMITATIONS
PLACED ON THE POWER OF POLITICAL
SUBDIVISIONS AND THE APPEALS
OPINION, IN THE REPLY BRIEF.
WHEN THE SAPIENT AN AREA IT
CONFERS AN IMMUNITY ON CITIZENS
FOR UNAUTHORIZED MUNICIPAL
ASSERTIONS THEY DO NOT HAVE
WHICH I SEE MY TIME IS UP.
THE BLANKET EXERCISE OF
DISCRETION IS EFFECTIVELY A
FUNCTIONAL VETO OF STATE LAW
UNDER THE COURT'S DECISION AND
WE ASK THE COURT TO QUASH.