

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2014

CITY OF HOLLYWOOD, a political subdivision of
the **STATE OF FLORIDA**,
Appellant,

v.

ERIC AREM,
Appellee.

No. 4D12-1312

[April 23, 2014]

Appeal from the County Court for the Seventeenth Judicial Circuit,
Broward County; Terri-Ann Miller, Judge; L.T. Case No. 11-68287T140A.

Edward G. Guedes and Samuel I. Zeskind of Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L., Coral Gables, for appellant.

Jason T. Forman of Jason T. Forman, P.A., Fort Lauderdale, for
appellee.

CONNER, J.

The City of Hollywood appeals an order granting Eric Arem's motion to dismiss a red light camera prosecution against him entered by the county court in Broward County. The county court certified the following questions of great public importance pursuant to section 34.017, Florida Statutes (2011) and Florida Rule of Appellate Procedure 9.160(d):

1. Does Florida Statute 316.0083(1)(a) authorize a municipality to delegate and have a private vendor actually issue Florida Uniform Traffic Citations, when notices of violation, (also issued by the vendor), are not complied with, where the only involvement of the traffic infraction enforcement officer in the entire process is to push a button saying "Accept" after having viewed the image of an alleged violation electronically transmitted by the vendor?
2. Does Florida Statute 316.650(3)(c) permit a traffic infraction

enforcement officer to delegate to a non-governmental entity, such as a private vendor of a municipality, his or her statutory duty to electronically transmit a replica of traffic citation data to a court having jurisdiction over the alleged offense or its traffic violations bureau?

3. And if the answer is in the negative to either question, is dismissal the appropriate remedy?

We accept discretionary review pursuant to Florida Rules of Appellate Procedure 9.030(b)(4)(A) and 9.160. We consolidate the first two questions posed by the county court. By answering the reframed question of great public importance, we find it unnecessary to address the third question. We hold that the county court erroneously interpreted sections 316.0083(1)(a) and 316.650(3)(c), Florida Statutes (2011) and erred by dismissing the case after concluding that the county court did not have jurisdiction to entertain the prosecution.¹

Factual and Procedural Background

The City operates a red light camera enforcement program using cameras and a traffic enforcement officer. As allowed by law, the City's program produces uniform traffic citations by electronic means. § 316.650(1)(c), Fla. Stat. (2011).

To assist the City in implementing its red light camera enforcement program, the City entered into a contract with American Traffic Solutions, Inc. ("ATS"), a private vendor, located outside of Florida. Pursuant to that contract, ATS provides the City with, among other things, cameras and a computerized system through which the City's traffic enforcement officer can review the recorded images of potential violations and make individual determinations of whether to enforce such potential violations. Upon personal review of a potential violation, if the traffic enforcement officer makes the decision to enforce a violation, the computer program provided by ATS enables the officer to authorize enforcement by clicking a digital "accept" button. The ATS computer program then handles the printing and mailing of the notice of violation. If neither of the two options to avoid the issuance of the uniform traffic citation (discussed further below) are pursued, then ATS generates the uniform traffic citation, which bears a computer generated signature for the traffic enforcement officer and the

¹ In this opinion, we address the 2011 version of both statutes. Both statutes were amended while this case was pending. However, the changes to the applicable statutes would not change our analysis or the answer to the reframed question of great public importance.

officer's badge number. ATS then 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.

The City's red light camera system observed a car registered to Arem failing to comply with a red light signal. The traffic enforcement officer reviewed the recording of the violation and pressed the "accept" button to initiate enforcement. ATS sent the notice of violation. Arem did not respond to the notice. ATS generated a uniform traffic citation, sent it by certified mail to Arem, and electronically transmitted the replica of the citation data to the county court clerk.

Arem denied the violation and a trial was held. After hearing testimony from the traffic enforcement officer, the county court dismissed the case and entered a written order which found that the City's traffic enforcement officer:

was not personally "providing by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense..." as required by Florida Statute 316.650(3), but was merely hitting the "accept" button to begin the process of generating a Notice of Violation (NOV) The testimony also showed that although the [traffic enforcement officer] believed that ATS was communicating with the Clerk of Court once the [uniform traffic citation] was issued, the [traffic enforcement officer] had no personal knowledge of the communication, what information was sent to the Clerk, and when it was done. Further, no testimony was ever elicited to prove that, even as of the date of the hearing, this statutory provision has yet ever been complied with.

In interpreting statutory provisions, the county court reasoned:

A plain reading of this statute demonstrates the intent of the legislature. Florida Statute 316.650(3)(c) requires that a traffic enforcement officer . . . provide the required information to the Clerk, not a third party vendor. The City's argument that the ATS is authorized to make such communication with the Clerk is unpersuasive to the Court. . . . Therefore, here it has become that a third party non-governmental entity rather than a governmental one which in essence is conferring upon a court the jurisdiction to hear a matter, contrary to the provision of the statute.

The procedure employed by the City of Hollywood in this case is also actually contrary to Florida Statute 316.0083(1)(a) which provides in pertinent part:

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. []

What appears to have occurred in this case is that the traffic infraction enforcement officer [] reviewed the information from the traffic infraction detector, and the [uniform traffic citation] was issued by a vendor, ATS, the agent for the City of Hollywood.

(emphasis in original).

Legal Analysis

The county court's dismissal of the case based on its interpretation of sections 316.650(3)(c) and 316.0083(1)(a), Florida Statutes (2011), is reviewed *de novo*. *Hill v. Davis*, 70 So. 3d 572, 575 (Fla. 2011).

Section 316.0083, Florida Statutes, known as the Mark Wandall Traffic Safety Program ("the Act"), authorizes local governments to use red light cameras to enforce violations of sections 316.074(1) and 316.075(1)(c)1; both of which prohibit the running of red lights. *See* Ch. 2010-80 §§ 6, 7 Laws of Fla.; § 316.008(8)(a), Fla. Stat. (2011). The Act specifically authorizes the use of traffic infraction enforcement officers ("traffic enforcement officers") to enforce red light violations. § 316.0083(1), Fla. Stat. (2011).

If the City wishes to pursue a violation under the Act, within thirty days after the violation, a notification of the violation must be sent by first class mail to the registered owner of the motor vehicle involved in the violation. § 316.0083(1)(b)1.a., Fla. Stat. (2011). The notice of violation must give the registered owner two options to avoid the issuance of a traffic citation: (1) pay a penalty of \$158 or (2) furnish an affidavit in compliance with section 316.0083(1)(d) to establish that the registered owner is not responsible for the violation.² *Id.* If the registered owner does not comply

² The notice must also advise that the registered owner has a right to review the photographic or electronic images or the streaming video evidence which constitutes a rebuttable presumption against the owner of the vehicle that the

with either of the options within thirty days after the notice is sent, a uniform citation may be issued. § 316.0083(1)(c)1.a., Fla. Stat. (2011). The original citation must be mailed to the registered owner by certified mail. *Id.* Within five days after the date of issuance of the citation to the registered owner, the traffic enforcement officer must provide, by electronic transmission, a replica of the traffic citation data to the court having jurisdiction over the alleged offense or the appropriate traffic violations bureau. § 316.650(3)(c), Fla. Stat. (2011).

A uniform traffic citation charging a red light violation may be issued either by a law enforcement officer or a traffic enforcement officer. See §§ 316.640, 316.0083(3), Fla. Stat. By statute, a traffic enforcement officer 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. § 316.640(5)(a), Fla. Stat.

Section 316.650(3)(c) provides:

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.

(emphasis added).

Section 316.0083(1)(a) provides, in relevant part:

A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible. 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.

(emphasis added).

The county court interpreted these statutes to require the traffic

owner was the driver of the vehicle at the time of the violation. § 316.0083(1)(b)1.b., Fla. Stat. (2011).

enforcement officer to personally issue the uniform traffic citation and to personally supervise the transmission of the citation data directly to the court. Because the county court believed that the City's red light enforcement program had not complied with the statutes, by delegating these tasks to ATS, the City's agent and third-party vendor, the case was dismissed. The county court concluded that the procedures used by the city did not properly confer it jurisdiction over the case.

On appeal, the City argues that the county court's ruling was based on an unreasonably narrow reading of sections 316.0083(1)(a) and 316.650(3)(c), Florida Statutes. The City also argues that the county court incorrectly concluded that the procedures used did not confer jurisdiction to entertain the violation proceedings.³ We agree with both arguments.

"[L]egislative intent is the polestar that guides a court's statutory construction analysis." *Kingsway Amigo Ins. Co. v. Ocean Health, Inc.*, 63 So. 3d 63, 66 (Fla. 4th DCA 2011) (quoting *Knowles v. Beverly Enters.-Fla., Inc.*, 898 So. 2d 1, 5 (Fla. 2004)). In discerning legislative intent, courts must first look to the statute's plain language. *Id.* In doing so, even where the relevant statutory language appears to be unambiguous, a plain meaning analysis should not be used when to do so would clearly defeat the legislature's intent. *Barber v. State*, 988 So. 2d 1170, 1172 (Fla. 4th DCA 2008). As such, the legislature's "*intent must be given effect even though it may contradict the strict letter of the statute.*" *Knowles*, 898 So. 2d at 6. (emphasis in original) (citing *State v. Webb*, 398 So.2d 820, 824 (Fla. 1981)); see also *Byrd v. Richardson-Greenshields Sec., Inc.*, 552 So. 2d 1099, 1102 (Fla. 1989) ("As the Court often has noted, our obligation is to honor the obvious legislative intent and policy behind an enactment, even where that intent requires an interpretation that exceeds the literal language of the statute.").

"Where possible, courts must give full effect to *all* statutory provisions and construe related statutory provisions in harmony with one another." *Knowles*, 898 So. 2d at 6 (emphasis in original) (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992)). Moreover, Florida law cautions that a court "should not interpret a statute in a manner resulting in unreasonable, harsh, or absurd consequences." *Fla. Dep't of Env'tl. Prot. v. ContractPoint Fla. Parks, LLC*, 986 So. 2d 1260, 1270 (Fla. 2008) (citing *State v. Atkinson*, 831 So. 2d 172, 174 (Fla. 2002)); see also *State v. Burris*, 875 So. 2d 408, 414 (Fla. 2004) ("A statute's plain and ordinary meaning controls only if it does not lead to an unreasonable

³ The City also argues that the county court erred in dismissing the case because dismissal was an inappropriate remedy. We do not address that issue.

result.”); *DR Lakes Inc. v. Brandsmart U.S.A. of W. Palm Beach*, 819 So. 2d 971, 974 (Fla. 4th DCA 2002) (“It is well-established in Florida that statutes, even where clear, should not be interpreted to produce absurd results.”).

We are satisfied that a fair reading of sections 316.650 and 316.0083, Florida Statutes (2011) supports the conclusion that the legislature intended to create a streamlined process through which red light traffic infractions may be resolved. That intent is supported by allowing a camera, rather than an officer, to initially capture or observe a potential violator run a red light, and also by the fact that the Act provides that Florida counties and municipalities may establish their case-in-chief by presumption. See § 316.0083(1)(e), Fla. Stat. (2011) (creating “a rebuttable presumption that the motor vehicle named in the report . . . was used in violation” of a red light). The Act further provides for the rebuttable presumption that the registered owner of the vehicle caught running the red light was actually driving that vehicle. See § 316.0083(1)(b)1.b., Fla. Stat. (2011); see also *State v. Arrington*, 95 So. 3d 324, 327 (Fla. 4th DCA 2012) (recognizing this presumption). The county court’s interpretation of the relevant statutory provisions appears to defeat the legislature’s intent for a streamlined process.

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.

Arem contends that the county court did not construe the statutes to require that the traffic enforcement officer *personally* transmit the data to the clerk of court, as such would be unreasonable. Rather, he argues that the county court properly interpreted both statutory sections to mean that the City could not outsource “the sole method” of conferring jurisdiction.

Arem buttresses his argument that the methods used by the City are not compliant with “the sole method” of conferring jurisdiction by pointing

to section 316.640(5)(a), Florida Statutes, (2011) a statutory provision not cited in the county court's order. Section 316.640(5)(a) provides in part that "[t]he traffic infraction enforcement officers must be physically located in the county of the respective sheriff's or police department." Arem argues that because the traffic enforcement officer does nothing between pressing the "accept" button after reviewing the visual recording of the violation and appearing in court to give testimony, ATS, an out of state entity, is the one issuing the required notice of violation and uniform traffic citation and transmitting the replica of the citation data to the court. Stated another way, Arem argues, and the county court agreed that, jurisdiction over the enforcement proceeding was never obtained by the county court because the *method* employed by the City to prosecute the violation was not the *proper method* for conferring jurisdiction. On appeal, Arem also seeks affirmance by presenting arguments based on the underlying premise that the procedures used by the City are an improper delegation of police powers. Arem's arguments come from two directions: (1) ATS, not the traffic enforcement officer, is the one who issues the citation, and (2) the procedures used allow ATS to control who receives a red light violation.

The Citation as a Charging Document to Confer Jurisdiction and Delivery to the County Court

Except for criminal violations, any person prosecuted for a violation of Chapter 316, Florida Statutes (2011) is charged with a noncriminal infraction and must be cited for the infraction. § 318.14(1), Fla. Stat. (2011). Noncriminal traffic infraction cases are civil actions at law within the jurisdiction of county courts. *Nettleton v. Doughtie*, 373 So. 2d 667, 668 (Fla. 1979). Thus, prosecutions for red light violations are civil actions at law.

"All citations for traffic infractions shall be by uniform traffic citation as provided in section 316.650, Florida Statutes, or other applicable statutes or by affidavit." Fla. R. Traf. Ct. 6.320.⁴ The Florida Department of Highway Safety and Motor Vehicles is responsible for preparing and

⁴ Former Florida Traffic Court Rule 6.165 was replaced by the current rule in 1982. See *In re Florida Rules of Practice & Procedure for Traffic Courts*, 410 So. 2d 1337, 1339 (Fla. 1982). Rule 6.165 provided: "All *prosecutions for criminal traffic violations by law enforcement officers* shall be by uniform traffic citation as provided for in section 316.650, Florida Statutes . . . or by affidavit, information or indictment as provided for in the Florida Rules of Criminal Procedure." (emphasis added). In *Hurley v. State*, 322 So. 2d 506, 507 (Fla. 1975), the supreme court rejected the contention that prosecution by traffic ticket constituted an unconstitutional delegation of prosecutorial authority to the police.

providing a printed form designated as a uniform traffic citation to every traffic enforcement agency in Florida. See § 316.650(1)(a), Fla. Stat. The citation is a paper document which must be signed by a law enforcement officer or traffic enforcement officer who is initiating the prosecution. *Uniform Traffic Citation Procedures Manual*, Fla. Dep't of Highway Safety & Motor Vehicles, § 4-A, <http://www.flhsmv.gov/ddl/utc/> (follow "Section 4A – Procedures" hyperlink). The citation must include the officer's badge number. *Id.* Instead of printed forms provided by the Department, traffic enforcement agencies are permitted to produce uniform traffic citations by electronic means, so long as the citation is consistent with the traffic court rules (meaning that the format is the same as the Department's version of the citation). § 316.650(1)(c), Fla. Stat. (2011).

Except for citations issued pursuant to section 316.1001 (toll violations) or 316.0083 (red light enforcement), upon issuing a citation, the officer must give a *copy* to the violator and the *original* must be delivered to the court having jurisdiction over the violation within a specified number of days.⁵ § 316.650(3)(a), Fla. Stat. (2011). However, the failure to deliver the original citation to the court within the statutory time limits is not a jurisdictional prerequisite. *Loper v. State*, 840 So. 2d 1139 (Fla. 1st DCA 2003) (explaining that "failure to file a traffic citation with the court within five days after issuance . . . was not a jurisdictional prerequisite to . . . prosecution") (citing *State v. Hancock*, 529 So. 2d 1200 (Fla. 5th DCA 1988)).

The initiation of prosecutions for red light violations pursuant to section 316.0083 differs from the usual traffic infraction prosecutions in three respects: (1) there are notice requirements prior to the issuance of the uniform traffic citation; (2) the *original* citation, rather than a copy, is mailed to the violator and a *replica* of the citation data is delivered to the court electronically; and (3) the time period for delivering the replica of the citation data to the court is shorter than the delivery of the original citation to the court in other prosecutions.⁶ § 316.0083(1)(b)1.,(1)(c), Fla. Stat. (2011).

In Florida, only law enforcement officers and traffic enforcement officers have the legal authority to issue citations for traffic infractions, which means only law enforcement officers and traffic enforcement officers are entitled to determine who gets prosecuted for a red light violation. See §§

⁵ The issuing officer must deposit the original with the court no later than 5 days after issuance. See § 316.650(3)(a),(6), Fla. Stat. (2011).

⁶ Undoubtedly, the legislature has authorized different requirements for enforcement of red light violations because there are technology resources available to capture the event which are not available for other traffic infractions.

316.640 and 316.0083(3), Fla. Stat. (2011). The prosecution requires issuance of a uniform traffic citation as a condition precedent to filing an action to enforce in the county court. By “issuance,” we mean the officer must: (1) assure the uniform citation form contains basic information regarding who is being charged and the violation charged, including date, time, and place; (2) sign the citation; (3) include his or her badge number; and (4) deliver the original or a copy of the citation to the violator in accordance with the applicable statute. In the context of violations other than red light violations, we are aware of no case law in Florida which holds that the officer issuing the citation must participate in how the original citation is delivered to the court in order to confer jurisdiction upon the county court. We see no reason to hold otherwise in the context of red light violations.

In determining whether a uniform traffic citation is a proper charging document that confers jurisdiction upon the county court to entertain enforcement proceedings, what is important is (1) whether it was a law enforcement officer or a traffic enforcement officer who made the decision to issue the citation, as evidenced by a signature, and (2) whether the document properly alleges the infraction. Upon reviewing the procedures employed by the City under its contract with ATS, we are satisfied that it is a traffic enforcement officer who makes the decision to issue the citation. The manner in which the original citation reaches the registered owner and the manner in which the digital version of the charging document reaches the county court does not deprive the county court of jurisdiction to entertain the enforcement proceeding.

Regarding the requirement of section 316.650(3)(c) 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 the statute to require any personal involvement by the officer in the transmission other than to assure: (1) the uniform citation form contains basic information regarding who is being charged and the violation charged, including date, time, and place; (2) the citation is signed (by original or electronic signature); and (3) his or her badge number is included. We see nothing in the statutes which would deprive the county court of jurisdiction if a computer program is designed to provide those assurances once the officer makes the decision to issue a citation.⁷

⁷ Arguably speaking, it may be better practice for a traffic enforcement officer to review a citation and place an original signature on it before the citation is delivered to the violator and a replica is delivered to the court. However, we note

Not all procedural requirements are jurisdictional in the sense that they are indispensable to the acquisition of jurisdiction by the court. Instead, they may be procedural matters of statutory origin that are not essential to the constitutional requirement of due process.

Hancock, 529 So. 2d at 1201. Even if we were to conclude that the City did not comply with all of the procedural steps outlined in sections 316.650(3)(c) and 316.0083(1)(a), so long as (1) an appropriate official made the decision to prosecute and (2) a uniform traffic citation was served on the violator and a replica of the citation data was electronically delivered to the court, then the county court had jurisdiction to entertain the red light violation.

Improper Delegation of Police Powers

Arguably, the county court's order can be read to mean the county court determined the prosecution must be dismissed because the City had impermissibly delegated its police powers to a nongovernmental third party. *Arem* argues that the county court properly dismissed the case on that basis.

Arem's argument again focuses on the assertion that the traffic enforcement officer did not issue the citation because he did nothing in the prosecution of the case between pressing the "accept" button and appearing at the trial. However, our interpretation of the statutes negates the argument that the officer did not issue the citation. In addition, the contract itself negates the argument. Exhibit D to the contract, entitled "Infraction Processing," contains the following paragraph:

7. The City shall cause the Authorized Employee [the City's traffic enforcement officer] to review the Infractions Data and to determine whether a Notice of Infraction shall be issued with respect to each Potential Infraction captured within such Infraction Data and transmit each such

that in the context of a criminal proceeding, in which liberty interests of a defendant are at stake, the failure of the state attorney to sign an information does not deprive the trial court of jurisdiction. *Madry v. State*, 125 So. 3d 972 (Fla. 4th DCA 2013); *Colson v. State*, 717 So. 2d 554 (Fla. 4th DCA 1998). If an *unsigned* information does not deprive the court of jurisdiction in a criminal case, jurisdiction cannot be deprived in a traffic infraction prosecution just because the traffic enforcement officer did not look at the citation and apply an original signature before it was delivered to the violator or a replica was delivered to the court.

determination to Vendor [ATS] using the software or other applications or procedures provided by Vendor on the Vendor System for such purpose. VENDOR HEREBY ACKNOWLEDGES [sic] AND AGREES THAT THE DECISION TO ISSUE A NOTICE OF INFRACTION SHALL BE THE SOLE UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "NOTICE OF INFRACTION DECISION") AND IN NO EVENT SHALL VENDOR HAVE THE ABILITY OR AUTHORIZATION TO MAKE A NOTICE OF INFRACTION DECISION.

(capitalization in original). This paragraph makes it clear that the traffic enforcement officer exclusively decides whether to initiate a prosecution by issuing a notice of violation, which leads to the issuance of a citation if no response is received. There is no delegation of authority for ATS to make the decision to issue a citation.

Arem also argues that because ATS does the initial screening of the images which are sent to the traffic enforcement officer, the City has in essence given an unauthorized entity prosecutorial discretion, an improper delegation of police power. We disagree with Arem's argument for two reasons.

First, section 316.0083(1)(a) specifically states that its provisions do 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." We do not construe "an authorized employee or agent of the department" to refer to the traffic enforcement officer. Such a construction would be illogical since a traffic enforcement officer would not know a violation occurred without reviewing the recorded images.⁸ Instead, we construe "an authorized employee or agent of the department" to refer to persons *other than* the traffic enforcement officer. There is logic for such a provision. If the cameras and computer equipment cannot supply a sufficient visual image of a violation, there is no point in sending the investigation to the official who makes the filing decision.

Second, Exhibit D to the contract entitled "Infraction Processing,"

⁸ If the language "authorized employee or agent of the department" was intended to refer to the traffic enforcement officer, the need for "does not prohibit" would suggest the officer could rely on hearsay statements in deciding whether to initiate a prosecution.

contains the following paragraph:

3. The Vendor [ATS] shall make the initial determination that *the image meets the requirements of the ordinance and this agreement, and is otherwise sufficient to enable the City to meet its burden of Demonstration a violation of the Ordinance. If the Vendor determines that the standards are not met, the image shall not be processed any further.*

(emphasis added). The contract requires ATS to send the images and information regarding the violation to the traffic enforcement officer if certain standards are met. The contract does not give discretion to ATS to withhold sending information if the standards are met. The procedures under the contract are analogous to the discretion law enforcement officers have as to whether there is enough evidence to send a potential criminal law violation to the state attorney's office for prosecution.

A significant portion of Arem's argument about improper delegation of police powers focuses on ATS's ability to divert prosecutions because it does the preliminary screenings. We note that ATS and its employees are not public servants; ATS is a commercial enterprise. We doubt it would be in ATS's financial interest to withhold sending images that are sufficient for prosecution.

Having determined that the county court erred in dismissing the prosecution, we reverse and remand for the county court to vacate the order of dismissal and reinstate the proceedings. We reframe the first two questions of great public importance posed by the county court into one question:

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

- (1) issue notices of violation,
- (2) deliver a uniform traffic citation to the violator printed by the vendor with the traffic enforcement officer's electronically generated signature and badge number, and
- (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, by pushing a digital “accept” button appearing in the computer program provided by the vendor to the municipality?

We answer the reframed question in the affirmative. We decline to answer the third question posed by the county court.

Reversed and remanded.

TAYLOR, J., concurs.

KLINGENSMITH, J., dissents with opinion.

KLINGENSMITH, J., dissenting.

The primary issue presented here is whether the City of Hollywood can outsource to a third-party for-profit vendor its statutorily mandated obligation to issue uniform traffic citations for red light camera violations, or to outsource its duty to provide them to the court to invoke jurisdiction. For the reasons set forth below, I dissent from the majority’s opinion.

At issue is the extent of City’s authority under the plain wording of the statute to outsource the issuance of these citations, as well as the outsourcing of other statutory duties. As the majority notes, section 316.0083(1)(a) provides, in pertinent part:

A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible. **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. (2011) (emphasis added). Section 316.650 (3)(c), also provides:

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 five days after the date of issuance of the traffic citation to the violator.

§ 316.650(3)(c), Fla. Stat. (2011) (emphasis added). In its written order following the evidentiary hearing, the trial court granted the motion to dismiss after determining that the statutes required the traffic infraction enforcement officer (TIEO) to file the replica of the citation with the court for the purposes of conferring jurisdiction, and required that the citation be issued by the TIEO and not a third-party vendor. In its written findings of fact, the trial court stated as follows:

The testimony elicited during the trial demonstrated that the Community Service Office[r] (CSO), as the traffic infraction enforcement officer, was not personally “providing by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense...,” as required by Florida Statute 316.650(3)(c), but was merely hitting the “accept” button to begin the process of generating a Notice of Violation (NOV) once she had viewed the video of the alleged infraction and determined that a violation had taken place. Those NOVs that were not paid within thirty (30) days eventually turned into Uniform Traffic Citations (UTC), issued directly by American Traffic Solutions (ATS), a vendor for the City of Hollywood. The testimony also showed that although the CSO believed that ATS was communicating with the Clerk of Court once the UTC was issued, the CSO had no personal knowledge of the communication, what information was sent to the Clerk, and when it was done. Further, no testimony was ever elicited to prove that, even as of the date of this hearing, [sic] that this statutory provision has as yet ever been complied with.

Section 316.640(5)(a), Florida Statutes, permits employees of a sheriff’s department or police department of a municipality, without conveying arrest powers, to become traffic infraction enforcement officers empowered to issue traffic citations under section 316.0083. *However, the statute does not authorize a private vendor to issue citations, either expressly or impliedly.* Although the legislature in section 316.0083(1)(a) did permit cities to delegate the review of information obtained from a traffic infraction detector, it did not permit cities to delegate their authority to issue any resulting traffic citations anywhere in these statutes. The legislature expressly permitted such delegation to the extent that it permitted cities to delegate their responsibility to provide a replica of the traffic citation data by electronic transmission to the court. See § 316.0083(1)(a), Fla.

Stat. (2011). Had the legislature intended to allow for further delegation of authority or responsibility, it could have easily and clearly provided for that in the statute, just as it expressly allowed for delegating the review of traffic infraction detector information by employees or agents under section 316.0083(1)(a). In my view, the majority's opinion rewrites the statute to permit such a delegation of duty where the legislature declined to do so.

The county court made findings of fact for its conclusion that the City has essentially outsourced their statutory responsibilities to an outside third-party vendor. Evidence concerning that process showed that after determining if a violation has taken place, the vendor then forwards the information to the City.⁹ After it is received by the City, the information is given to a TIEO who does nothing more than click an "accept" button on the computer, which then authorizes the City's third-party vendor (located in Arizona) to initiate and complete the process. As result, it is the *vendor* that decides which cases the TIEO gets to review; 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. For all practical purposes, the TIEO merely acquiesces to 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 to the alleged violator by the vendor.¹⁰ This process cannot serve as the functional legal equivalent of the TIEO issuing the citation as required by the statute.

In sum, the language of the statutes cited herein do not grant the City authority to delegate to a third-party vendor the authority to issue such citations, nor do they permit the City to outsource to a vendor the ability to confer jurisdiction upon the court over the citation. By outsourcing its statutory duties to a for-profit, non-governmental corporation located outside the state of Florida, the City has improperly delegated its police powers by way of contract. *Cnty. of Volusia v. City of Deltona*, 925 So. 2d 340 (Fla. 5th DCA 2006); *Cnty. Collection Servs., Inc. v. Charnock*, 789 So. 2d 1109 (Fla. 4th DCA 2001). As such, dismissal is the proper remedy in this case, and I would affirm the county court's ruling.

⁹ If the vendor unilaterally determines in its own discretion that either a violation did not occur or that the City would not be able to sustain its burden of proof if challenged in court, this information is never transmitted to the City.

¹⁰ When ATS creates the citation, it affixes a computer-generated signature of the officer.

* * *

Not final until disposition of timely filed motion for rehearing.