

DAILY BUSINESS REVIEW

Red-light cameras get green light from court

Case: City of Aventura v. Masone

Case no.: 3D10-1094

Topic: Motor Vehicles

Opinion Issued: Nov. 30, 2011

Court: 3rd District Court of Appeal

Authoring Judge: Judge Angel A. Cortiñas

Dissenting Judge: Judge Leslie B. Rothenberg

Lawyers for Appellant: Edward G. Guedes and

Michael S. Popok, Weiss Serota Helfman

Pastoriza Cole & Boniske, Coral Gables

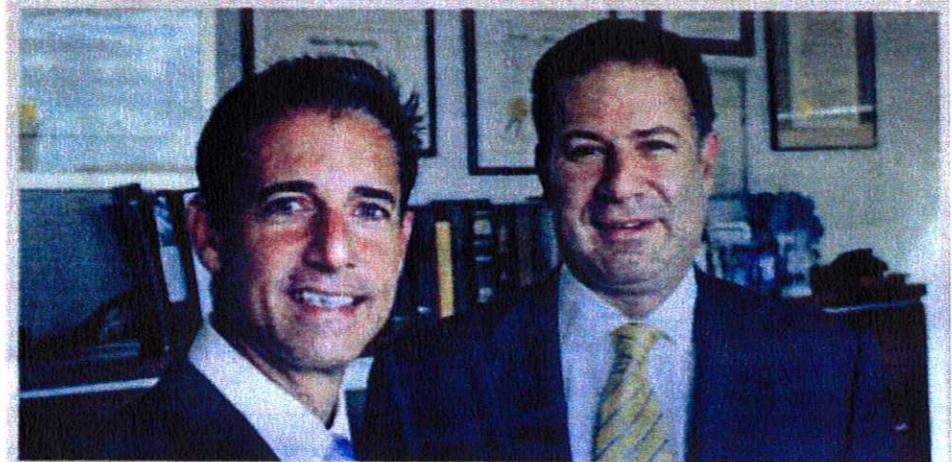
Lawyers for Appellee: Bret Lusskin, Bret

Lusskin P.A., Hallandale; Bard D. Rockenbach

and Andrew A. Harris, Burlington &

Rockenbach, West Palm Beach

Holding: A municipality may use traffic cameras to issue red-light infractions under its broad home-rule powers and the specific authority granted by Florida's Uniform Traffic Control Law.



J. ALBERT DIAZ

Edward G. Guedes and Michael S. Popok argued that Aventura was within its state-granted powers to use cameras to ticket red-light infractions.

Anyone who has caught the glimpse of the flash or who has received a red light violation in the mail may understand the sinking feeling that Masone likely felt. Unlike the eyes of the police, the strategically perched enforcement cameras don't blink. And they can now be found at an increasing number of Florida intersections.

After Richard Masone received two violations within three days from red-light cameras, he filed a declaratory relief action in the Miami-Dade Circuit Court to challenge the City of Aventura's authority to use the devices. He argued that the city ordinance impermissibly tread on an area of law that only the Florida Legislature could regulate.

But the city argued the Legislature made room in the statutory scheme for municipalities to supplement statewide traffic control laws. The city bolstered its argument by pointing out that the penalties were merely code infractions — they were non-criminal, non-moving violations. The trial court was not persuaded and found that the ordinance directly conflicted with Florida Statute section 316.007.

Conducting a constitutional and statutory analysis to reach its decision, the 3rd DCA reversed the trial court.

Under Florida's Constitution, municipalities are afforded broad home rule powers to legislate their own affairs, so long as the state or county has not expressly pre-empted the subject. The rationale is that municipalities are better situated to address their own particular needs — like identifying dangerous intersections ideal for enforcement cameras.

Against this backdrop, Masone bore the burden of convincing the courts that Aventura's ordinance was pre-empted by existing state law. He could not carry that burden.

"Because there is no provision in the Uniform Traffic Control Law that expressly pre-empts or conflicts with the Ordinance necessary to overcome the City's exercise of its broad home rule powers, we find the Ordinance valid under Florida law," Judge Angel A. Cortiñas wrote for the majority.

The ordinance mandates that a traffic-control review officer examine the images prior to issuing any violation. The recipient of a violation can appeal to the city by requesting an administrative hearing before one of the city's special masters. Any adverse decision from a special master may then be appealed to the circuit court. The ordinance does not prevent law enforcement officers from issuing citations under the FUTCL. Therefore, the 3rd DCA found, the city ordinance supplemented statewide traffic control laws — they did not conflict with each other.

Nor do the statewide traffic-control laws pre-empt the ordinance. There was no express pre-emption; nor could they be "classified as being so pervasive that they completely occupy the field."

Dissenting, Judge Leslie B. Rothenberg wrote the ordinance was both pre-empted and in conflict with Florida law. While municipalities may regulate, restrict or monitor traffic, the FUTCL does not grant municipalities the authority to enforce, punish or create different standards of proof or penalties. The city, by creating its own special masters, violated the Florida Constitution because the special masters were not established by the Legislature.

Judge Rothenberg's dissent offered a blunt assessment: "The city is essentially utilizing the state's uniform traffic control devices (traffic lights), approved and regulated by the state for enforcement of the state's uniform traffic laws, to punish violators through the city's own enforcement program and to pocket the revenues it collects for its own benefit."

The majority's opinion underscores that enforcement cameras have become a fixture in the arsenal available for enforcement of traffic laws. As of July 1, 2011, the Mark Wandall Traffic Safety Act, which falls within the Uniform Traffic Control Law, expressly pre-empts municipal regulation. Nonetheless, the act simply creates "a statutory scheme for statewide regulation which in no way invalidates such existing programs."