

Fla. Supreme Court Will Tackle Red Light Camera Controversy

By [Nathan Hale](#)

Law360, Miami (May 17, 2017, 5:36 PM EDT) -- The Florida Supreme Court will review a lower court's approval of a South Florida city's use of a private vendor in its red light camera ticketing process, although it dismissed a driver's claims that the decision conflicted with another court's findings rejecting the practice.

Luis Torres Jimenez's appeal of the Third District Court of Appeal's ruling for the city of Aventura will be closely watched. Municipalities' red light camera programs have impacted more than 1 million motorists and spawned dozens of lawsuits across the state, as well as a \$200 million class action that is currently stayed in federal court in Miami.

In its order Tuesday accepting jurisdiction, the Florida Supreme Court indicated that the justices voted 5-0 against Jimenez's argument that the Third District's findings last year conflicted with the Fourth District's 2014 decision in *Arem v. City of Hollywood*, but voted 4-1 that the high court should take up three questions certified by the appeals court as issues of great public importance.

Counsel for Jimenez applauded the court's decision despite its rejection of his conflict argument.

"We are pleased with the Florida Supreme Court's decision to review the case on the basis that it involves an issue of great public importance," Ted Leopold of [Cohen Milstein Sellers & Toll PLLC](#) said in a statement. "Several cities and counties around our state utilize red light cameras and it is appropriate that our state's highest court will consider and finally resolve whether or not they have the right to do so."

Edward G. Guedes of [Weiss Serota Helfman Cole & Boniske PL](#), who is representing Aventura, said the city is eager to present its arguments that succeeded before the Third District and noted that the high court's finding of no conflict confirms its position that the Jimenez and *Arem* decisions can co-exist.

"We've always taken the position that the *Arem* court reached the decision it did because it lacked sufficient record evidence about how these red light camera programs actually operate," Guedes said.

The first of the three certified questions before the Supreme Court asks whether the state law authorizing red light cameras allows a private vendor to review and sort red light camera images before sending them to the municipality, where the controlling contract and the municipality's guidelines limit the review to "easy-to-identify characteristics" and where only the law enforcement officer determines whether probable cause exists and whether to issue citations, according to the Third District's opinion.

The two other questions ask whether the statute allows the vendor to handle certain duties, such as printing and mailing tickets and transmitting citation data to the clerk of the court, through the use of fully automated systems after local law enforcement has reached a decision to issue a ticket.

Despite rejecting the conflict argument, the Supreme Court's review of Jimenez's case could still determine the overall legality of these red light camera enforcement programs.

Jimenez, who was cited for making an illegal right turn at an intersection with a red light, challenged the role of employees of the city's private vendor, [American Traffic Solutions Inc.](#), in the ticketing process, arguing that Aventura improperly delegated its police powers in violation of the red light camera statute, according to case records.

The Miami-Dade County trial court ruled in Jimenez's favor, based on the Fourth District's decision in *Arem*, but certified the three questions of great public importance.

The Third District accepted jurisdiction over those questions and reversed the trial court's ruling in favor of the city, finding that **ATS'** review and sorting of red light camera images before they are reviewed by city traffic enforcement officers complied with the statute because it was carried out in accordance with the contract and guidelines in it.

The appeals panel also ruled in the city's favor on the other questions, saying those duties were ministerial and the city was allowed to delegate them to ATS.

In finding that Jimenez's case was distinguishable from *Arem*, the Third District noted that the language in the two cities' contracts with ATS differed. Hollywood's contract said ATS agents were required to review camera and video images and make an initial determination of whether the data was suggestive of a violation in deciding which images to forward to traffic enforcement officers, whereas Aventura's contract said ATS was prohibited from forwarding "for processing those recorded images that clearly fail to establish the occurrence of an infraction," according to Jimenez's brief.

Jimenez argued that difference was indistinguishable.

The pending federal class action consolidated several state and federal cases filed by motorists in Florida, Georgia and Alabama. In their February 2015 master complaint, the plaintiffs accused more than 80 municipalities and counties and vendors ATS, **Xerox State & Local Solutions Inc.** and Gatso USA Inc. of unlawfully charging drivers with red light traffic violations.

U.S. District Judge Federico Moreno **stayed the case** pending an appeal on a motion to dismiss before the Eleventh Circuit, but he has left the case on pause, likely to see if the Florida Supreme Court would weigh in. Guedes, who is representing the municipalities in that case, said he expects that to continue.

Jimenez is represented by Stephen F. Rosenthal of **Podhurst Orseck PA**, Marc A. Wites of **Wites & Kapetan PA** and Theodore Leopold of Cohen Milstein Sellers & Toll PLLC.

The city of Aventura is represented by Edward G. Guedes and Samuel I. Zeskind of Weiss Serota Helfman Cole & Boniske PL.

The state of Florida is represented by Robert Dietz of the Attorney General's Office.

The case is *Jimenez v. State of Florida et al.*, case number SC16-1976, in the Supreme Court of Florida.

--Editing by Emily Kokoll.