

IN THE COUNTY COURT  
OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

vs.

S. [REDACTED] ADAMS,  
P. [REDACTED] DUGAN,  
C. [REDACTED] ORTIZ,

Case #: 05-2012-TR-029763-AXXX-XX  
Case #: 05-2012-TR-034455-AXXX-XX  
Case #: 05-2013-TR-003866-AXXX-XX

Defendants.

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**ORDER GRANTING**  
**DEFENDANTS' MOTIONS TO DISMISS RED LIGHT CAMERA**  
**INFRACTIONS DUE TO UNLAWFUL CONTRACT**

THIS CAUSE came to be heard upon the Defendant's Motion to Dismiss Red Light Camera Infractions due to Unlawful Contract dated November 12, 2013 and heard February 21, 2014. The City of Cocoa Beach represented by David S. Bergdoll, Esquire and the Defendants being represented by Sean Cuttshall, Esquire, and the Court having heard testimony, considered the evidence, the argument of counsel and being otherwise fully advised in the premises, the Court finds as follows:

Defense argued that the contract entered into between the City of Cocoa Beach and American Traffic Solutions (ATS) violates Fla.Stat. §316.0083(1)(b)4 and/or Fla.Stat. §318.15(15)(d). These statutes provide that "a manufacturer or vendor may not receive a fee or remuneration based upon the number of violations detected for the use of a traffic infraction detector".

Defense argues that Amendment 1, section 13 of the contract violates the aforementioned statutes. This "flexible payment plan" section guarantees that the City of Cocoa Beach will recover enough revenue to cover the monthly fee established in the contract. The contract guarantees that if sufficient funds are not recovered, then ATS will reduce its monthly fee, and the shortfall is tolled until time to repay. The provision provides that if at the end of the term of the contract, that

shortfall is not repaid by the City of Cocoa Beach, that amount will be forgiven by ATS, and ATS agrees to waive its right to recover any outstanding balance.

This contractual provision is similar to other provisions which have been found to be unlawful and contrary to statute. Specifically, in *State v. Machiavellopalet*, Broward County Court Judge DeLuca found that a similar contract entered into between the City of Sunrise and American Traffic Solutions was unlawful because the flexible payment plan provision violated Fla. Stat. §316.0083 (1)(b)4. In *State v. Casey et al*, an En Banc panel of nine (9) County Court Judges in the Orlando area ruled that numerous contracts, including some by ATS, involved similar unlawful cost protection provisions in violation of Fla. Stat. §316.0083(1)(b)4. In this En Banc decision, the court relied upon the below listed Daugherty decision and found that the cost neutrality provision in the agreement between the City of Orlando and its vendor, Laser craft, was unlawful.

In *People v. Daugherty*, 130 Cal. Rptr. 3d 837 (Superior Court, Napa County, App. Div. 2011), the court found that a similar provision was unlawful because it violated the California vehicle code's prohibition against these type of provision. The Daugherty court aptly articulated how the cost neutrality provision works:

To illustrate, if only one citation was issued every month for the period of the contract, Redflex would never receive the full monthly payment it would otherwise receive if there were sufficient citations issued to cover the monthly fixed fee. In other words, Redflex's full payment is dependent on the issuance of a sufficient number of citations. The more citations issued, the more Redflex would receive, up to the cap. That type of arrangement has been prohibited by the legislature's broad prohibition of payments based on the number of citations generated, and cannot be upheld. *Daugherty* at 840.

This court expressly finds that the contract between ATS and the City of Cocoa Beach is unlawful. This Court finds that the appropriate remedy for the contractual violation is dismissal of

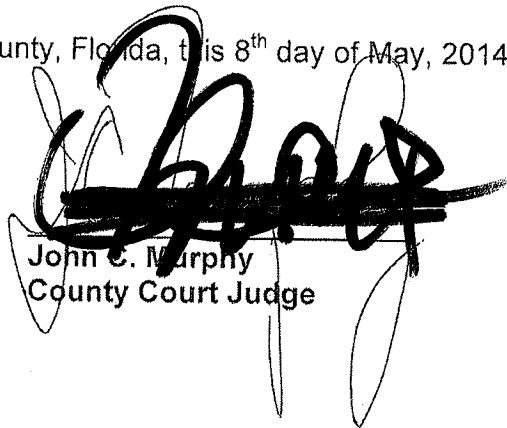
State v. Adams,  
State v. Dugan,  
State v. Ortiz,

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the traffic infractions. Dismissal is required because the unlawful contract gives incentive to ATS to generate violations so that it will receive the full payment outlined in the contract. See *State v. Adams*, 19 Fla. L. Weekly Supp. 744a (Broward County Court, May 2012)

**ORDERED AND ADJUDGED** that the Defendants' Motions to Dismiss Red Light Camera Infractions due to Unlawful Contract are **GRANTED**.

**DONE AND ORDERED** in Viera, Brevard County, Florida, this 8<sup>th</sup> day of May, 2014.



John C. Murphy  
County Court Judge

cc:

David S. Bergdoll, Esquire  
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Sean Cutshall, Esquire  
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