Automated traffic enforcement systems have been described as methods of traffic enforcement so fundamentally different from traditional methods of enforcement that they have significantly altered citizens' basic expectations. The two principal systems in use in the United States are photo-radar, which detects vehicles that are exceeding the speed limit, and red light cameras, which capture images of vehicles crossing an intersection against a red light. In addition to contentious political debates, automated traffic control systems have inspired a variety of legal challenges. For example, in Agomo v. Fenty, 916 A.2d 181, 26 A.L.R.6th 767 (D.C. 2007), the court held that neither the large sums of money involved in the administration of an automated system, nor the statutory rebuttable presumption that a motor vehicle was in the custody, care, or control of the registered owner at the time of a traffic offense detected by an automated system, violated the constitutional due process rights of the owner of a motor vehicle. This annotation collects and analyzes all the federal and state cases challenging a governmental body's operation of an automated traffic enforcement system or an assessment of a penalty upon a motor vehicle owner or driver for a violation of traffic laws detected by such a system.

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I. Preliminary Matters

§ 1. Scope

This annotation collects and analyzes all the federal and state cases challenging a governmental body's operation of an automated traffic enforcement system or an assessment of a penalty upon a motor vehicle owner or driver for a violation of traffic laws detected by such a system.

Some opinions discussed in this annotation may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed herein.

§ 2. Summary and comment
Automated traffic enforcement systems (which are sometimes called automated vehicle identification systems) have been described as methods of traffic enforcement so fundamentally different from traditional methods of enforcement that they have significantly altered citizens' basic expectations. The two principal systems in use in the United States are photo-radar, which detects vehicles that are exceeding the speed limit, and red light cameras, which capture images of vehicles crossing an intersection against a red light.

While widespread use of such systems is indeed a modern phenomenon, some states employed equipment that was at least partially automatic much earlier. Massachusetts experimented with a "photo-speed recorder" as early as 1909, not long after commercial automobile production had begun in the United States. The photo speed recorder consisted of a camera, synchronized with a stopwatch, that took pictures of a speeding vehicle at measured time intervals. The speed of the vehicle was determined by a mathematical calculation based on the reduction in size of the vehicle in the photograph as it moved farther away from the camera.

In the 1950s, New York state employed first a "phototraffic camera" and later a device called a "Foto-Patrol." The "phototraffic camera" took two photos, at a set time interval apart, of a moving vehicle. The distance traveled by the car in that interval, measured from a fixed point, was the basis for a mathematical computation of the vehicle's speed. A "Foto-Patrol" employed two parallel tapes, 36 inches apart, that were cemented to the roadway across the lane of traffic and then connected to a camera and strobe light. When an automobile passed over the tapes at less than a preset speed, nothing happened, but when a vehicle passed at a greater speed, the light flashed and a photograph of the license plate was taken.

These early devices all depended on measuring the distance traveled by a motor vehicle in a certain amount of time (or, conversely, the time it took a vehicle to traverse a set distance). The development of police radar in the late 1940s and early 1950s allowed for more sophisticated speed measurement systems. The public was not wholly sanguine about this technological advancement. In an article headlined "Big Brother Is Driving," Time magazine characterized police radar as being "as invisible as the Thought Police in Orwell's chiller 1984." Modern photo-radar equipment was first used in 1986 in the two Texas towns of La Marque and Friendswood, although due to popular opposition it was quickly removed from both. Conversely, Paradise Valley, Arizona, which followed in September 1987, continues to use photo-radar today. Although by 1998 photo-radar was described as "one of America's hottest new trends in traffic control," currently only 29 communities in 13 states are using photo-radar systems. (Note that, although photo-radar is considered an automated system, a police officer is often present while the equipment is operational.) Some jurisdictions require an officer's presence.

Red light cameras came into use somewhat later. It appears that the first American city to adopt these systems was New York in early 1994. Red light cameras have gained greater acceptance than photo-radar, however. Currently over 200 communities in 23 states have installed these traffic control devices.

The extent to which red light cameras prevent accidents has been disputed. A recent study by the Federal Highway Administration of seven jurisdictions that employ these systems found a significant decrease in right-angle crashes (a 24.6% decrease in crashes and a 15.7% decrease in definite injuries), but also a significant increase in rear-end crashes (a 14.9% increase in crashes and a 24% increase in definite injuries). The latter effect is presumably due to motorists' hitting the brakes when they suddenly remember, or recognize, the camera's presence. Because there would be three times as many injuries from right-angle collisions as there would be from rear-end collisions in the absence of the cameras, the combined effect was a 4.8% reduction in the total number of injuries, although there was virtually no change in the total number of crashes.

Notably, several states restrict or prohibit the use of photo-radar, red light cameras, or both. Automated traffic enforcement systems have been rejected in a number of public votes.
In addition to contentious political debates, automated traffic control systems have inspired a variety of legal challenges. In a number of cases, such systems have been challenged as denying constitutional due process to a motor vehicle owner or operator cited for a violation of traffic laws based on the use of the automated system. However, such challenges on the ground of the financial incentives allegedly created by the operation of the system (§ 4), the manner in which a notice of an alleged violation of the traffic laws detected by the system was served upon the alleged violator (§ 5), a presumption of the liability of a motor vehicle's registered owner established under an enactment providing for or regulating the operation of the system (§ 6), or miscellaneous other grounds (§ 7) have all failed, at least under the circumstances.

In other challenges to an automated traffic control system, the courts have held, under the circumstances, that a local ordinance providing for such a system did not conflict with a state constitutional home rule provision (§ 8), while another local ordinance was found to conflict with a state statute (§ 9). In other cases, courts have held, under the circumstances, that a state statute providing for or regulating an automated traffic enforcement system did not conflict with a state constitutional home rule provision (§ 10) or another state statute (§ 11). A state or local enactment providing for or regulating an automated traffic enforcement system has been held, under the circumstances, not to violate the constitutional prohibition of unreasonable searches and seizures (§ 12) or the constitutional right to equal protection (§ 13).

In cases challenging a conviction, or the imposition of financial liability, for a violation of the traffic laws detected by an automated traffic enforcement system, the courts have held that, under the circumstances, the trial court judgment was (§ 14), or was not (§ 15), supported by the evidence.

In other actions against a governmental entity employing an automated traffic enforcement system, the courts have been called upon to determine, under the circumstances, how funds collected through the operation of the system were to be disbursed (§ 16) and whether a citation issued for the violation of traffic laws detected by such a system was valid (§ 17).

In one case, the court held that, under the circumstances, a private company maintaining an automated traffic control system did not violate a statute requiring governmental operation of such a system (§ 18).

§ 3. Practice pointers

In examining the statutory authorization for an automated traffic enforcement system, practitioners defending a motorist charged with a traffic violation allegedly detected by the system need to differentiate between legislative conditions for the operation of the system or the issuance of a citation, on the one hand, and the elements of the offense defined by the legislation, on the other. A claim that the governmental body operating the automated system failed to comply with the statutory conditions for its operation, or for issuing a citation, may be irrelevant on the issue of the motorist's liability for the offense. Thus, the appropriate time to challenge the existence of the conditions precedent to the issuance of the citation may be in a pretrial motion aimed at the efficacy of the charging instrument.

It may be improper to raise by demurrer a claim that the statute authorizing the system is unconstitutional. Conversely, by pleading guilty and failing to raise constitutional issues during the hearing on the alleged violation, or by failing to respond to the citation at all, the motorist may be precluded from challenging the automated system's constitutionality in a separate action, particularly where the statute provides an avenue for review of the decision rendered in the hearing.

If the motorist challenges the statute in the hearing on his or her violation and is unsuccessful, there will be no second bite at the apple in federal court.

II. Actions Against Governmental Unit Employing Automated Traffic Enforcement System

A. Validity of Enactment Establishing Or Regulating Automated Traffic Enforcement System
1. Violation of Right to Due Process

§ 4. Financial incentives allegedly created by system

The courts in the following cases determined whether, under the circumstances, financial incentives allegedly created by the operation of an automated traffic enforcement system denied constitutional due process to a motor vehicle owner or operator cited for a violation of the traffic laws based on the use of the automated system.

Granting a motion for summary judgment by the defendant city and city officials in an action by a motor vehicle owner who was issued a citation under the city's red light camera system, the court, in Shavitz v. City of High Point, 270 F. Supp. 2d 702, 179 Ed. Law Rep. 723 (M.D. N.C. 2003), order vacated on other grounds, 100 Fed. Appx. 146, 189 Ed. Law Rep. 71 (4th Cir. 2004), held that neither the city's red light camera ordinance, nor the state statute authorizing municipalities to employ red light camera systems, violated the vehicle owner's federal or state constitutional right to due process, despite the vehicle owner's assertion that the two private companies that maintained the system had a financial interest in the outcome of adversary hearings in which vehicle owners challenged their liability under the statute. All that the evidence had shown, the court concluded, was that the companies participated in hearings only to the extent of supplying, if needed, the original photographs taken by the system and serving, also only when needed, as expert witnesses in explaining the operation of the system. The mere fact that an administrative or adjudicative body derived a financial benefit from fines or penalties that it imposed, the court declared, was not, in general, a violation of due process. This was true, the court explained, except in instances where the decisionmakers stood to gain substantial, personal pecuniary benefits from their adjudicative decisions. The court also noted that only a fraction of the citations issued under the red light camera system were contested, so that, in any case, the vast majority did not involve a hearing.

Affirming summary judgment for the defendant District of Columbia in an action by two registered owners of motor vehicles who were issued tickets by the district's automated traffic enforcement system for moving violations by the owners' vehicles, the court, in Agomo v. Fenty, 916 A.2d 181, 26 A.L.R.6th 767 (D.C. 2007), held that the large sums of money involved in the administration of the automated system did not create a biased adjudication process in violation of motor vehicle owners' right to due process under the Fifth Amendment. The owners alleged that the financial profit from the fines imposed by the system created the possibility of a tainted tribunal, as the District of Columbia had a financial incentive to enter determinations of liability against the vehicle owners in order to generate enough revenue to fulfill the monthly contract amount guaranteed to the private company that administered the system, and the private company had an incentive to impose liability so as to increase its revenue. Considering the private company first, the court held that, as the company did not make determinations of liability, any financial compensation it received had no effect on the adjudicatory process. Liability was imposed, the court reasoned, by operation of the statutory scheme, not by the company's conduct in issuing the citation. The company merely made factual determinations about violations of speed or red-yellow light laws, the court observed, and those determinations were reviewed by a district police officer who decided whether a ticket should be issued. The owners did not dispute, the court noted, that all citations contained information on the process for challenging liability, either through live hearings or submission of affidavits. That most people chose to admit liability and pay the fine without availing themselves of this process, the court declared, did not change the fact that ultimate liability in a contested case was imposed only after a hearing examiner or judge reviewed evidence of the violation as well as any challenges to its validity or other statutorily prescribed defenses. Also rejecting the assertion that the district's budgetary obligation to the private company tainted the impartiality of the district's adjudicatory tribunals, the court said that the hearing examiners and judges who made the ultimate liability determinations in automated system cases had no direct connection to the district or its budget. The owners' contention was tantamount to arguing, the court commented, that all judges employed by the district were biased in civil suits in which the district was a party, simply over concern that the district might fall into a budget deficit. The owners had not suggested, nor was there any evidence, the court stated, that the salaries of the individual hearing examiners or judges were contingent upon findings of liability, or that their salaries were directly affected in any way by the state of the district's budget.

§ 5. Manner of service of notice of violation
The courts in the following cases determined whether, under the circumstances, the manner in which a notice of an alleged violation of the traffic laws detected by an automated traffic enforcement system was served upon the alleged violator denied constitutional due process to the motor vehicle owner or operator cited for the violation.

Affirming the defendant's conviction for speeding, which was based on a violation detected by a photo-radar unit, the court, in State v. King, 199 Or. App. 278, 111 P.3d 1146 (2005), held that the service of a citation issued on the basis of photo-radar by first-class mail to the registered owner of the vehicle did not deprive the owner of due process under the 14th Amendment, even though the state's photo-radar statute did not require the use of certified or registered mail. In general, the court explained, due process was a flexible concept that called for such procedural protections as the particular situation demanded. To determine what procedural protections were required in a particular context, the court continued, the applicable factors were those articulated in Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976): (1) the private interest that would be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Evaluating these factors, the court concluded that: (1) the effect on the private interest potentially affected by the official action authorized by the statute was not grievous and was pecuniary in nature; (2) state law permitted a court to relieve a defendant from a default judgment upon a showing that the defendant's failure to appear was due to mistake, inadvertence, surprise, or excusable neglect; and (3) service of citations issued under the statute by first-class mail rather than by more expensive means furthered the legislature's interest in providing for a cost-efficient method of achieving the aims of the legislation. Next addressing the defendant's assertion that the identity of the individual driving the vehicle at the time of the detection did not necessarily follow from the identity of the registered owner of the vehicle, the court reasoned that this potential problem existed no matter how the citation was served. Moreover, the court observed, the legislature enacted a number of safeguards concerning the use of photo-radar: (1) The equipment was required to be operated by a uniformed police officer in a marked police vehicle on the site; (2) the actual speed of the vehicle was required to be displayed within 150 feet of the location of the photo unit; (3) signs warning of the use of photo-radar were to be posted on all major routes within the jurisdiction; and (4) the citation was required to be mailed to the registered owner within six business days of the alleged violation, and the registered owner was given 30 days from the date the citation was mailed to respond to it.

Affirming the defendant's conviction for speeding based on a citation issued pursuant to the photo-radar statute, the court, in State v. Weber, 172 Or. App. 704, 19 P.3d 378 (2001), held that the trial court did not err in denying the defendant's motion for a judgment of acquittal based on precharge delay, although the citation was not mailed to the defendant until a week after the alleged violation occurred. The defendant contended that the delay impaired her ability to defend herself because she could no longer remember where she was going or why she was speeding. That delay, she argued, was "inherent in the photo-radar process itself" because an alleged offender was not stopped at the time and, thus, had no occasion to fix the incident in her mind by the presence of "lights sirens and [a] looming officer." For a precharging delay to give rise to a due-process violation, the court stated, a defendant was required to show both that the delay substantially prejudiced his or her right to a fair trial and that the delay was done intentionally to gain a tactical advantage. Even assuming that a defendant in traffic court could validly assert due process rights under the 14th Amendment to the United States Constitution, the court reasoned, the defendant had failed to establish that any such violation occurred here. There was, on this record, the court concluded, no indication that the state intentionally delayed issuing the citation to gain a tactical advantage. Rather, the court said, the record showed that a police officer issued the citation as soon as he received the developed photographs seven days later from the private company that provided the photo-radar equipment.

Comment

Of course, the governmental body issuing the citation must comply with the statutory requirements for service of the citation. If it does not, any penalty assessed against the vehicle owner or operator may be void. See Tonner v. Paradise Valley Magistrate's Court, 171 Ariz. 449, 831 P.2d 448 (Ct. App. Div. 1 1992) (under the state rules of civil procedure, a summons and complaint were permitted to be served by first-class mail along with two copies of a notice and acknowledgment of receipt of summons and complaint and a postage-paid return envelope, but service was not complete until the acknowledgment of receipt was executed;
where the vehicle owner did not respond to the citation mailed to him, the city’s recourse was to continue the owner’s hearing and serve the complaint by some other authorized method).

§ 6. Presumption of liability of motor vehicle's registered owner

The courts in the following cases determined whether, under the circumstances, the presumption of the liability of a motor vehicle's registered owner established under an enactment providing for or regulating the operation of an automated traffic enforcement system denied constitutional due process to the vehicle owner after a violation of the traffic laws by the owner's vehicle was detected by the use of the automated system.

Granting a motion for summary judgment by the defendant city and city officials in an action by a motor vehicle owner who was issued a citation under the city's red light camera system, the court, in Shavitz v. City of High Point, 270 F. Supp. 2d 702, 179 Ed. Law Rep. 723 (M.D. N.C. 2003), order vacated on other grounds, 100 Fed. Appx. 146, 189 Ed. Law Rep. 71 (4th Cir. 2004), held that neither the city's red light camera ordinance, nor the state statute authorizing municipalities to employ red light camera systems, violated the vehicle owner's federal or state constitutional right to due process, despite the fact that, under the ordinance, a vehicle owner was presumed liable for a violation recorded by the system, and the vehicle owner had the burden of proving that he or she was not operating the vehicle at the time of the violation. The threshold issue, the court said, was whether the statute and ordinance were criminal or civil in nature. Under Hudson v. U.S., 522 U.S. 93, 118 S. Ct. 488, 139 L. Ed. 2d 450, 162 A.L.R. Fed. 737 (1997), the court explained, in determining whether a penalty was criminal or civil, courts were to engage in a two-prong, multi-factor test. First, the court stated, a court needed to ask whether the legislature, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other. Second, the court continued, if the legislature intended a civil penalty, a court then needed to ask whether the statutory scheme was so punitive in either purpose or effect as to transform what was clearly intended as a civil remedy into a criminal penalty. Applying the first prong of the test, the court determined that, in establishing the penalizing mechanisms, the legislative bodies plainly indicated an express preference for a civil label. Turning to the second prong, the court stated that, under Kennedy v. Mendoza-Martinez, 372 U.S. 144, 83 S. Ct. 554, 9 L. Ed. 2d 644 (1963), seven factors were relevant: (1) whether the sanction involved an affirmative disability or restraint; (2) whether it had historically been regarded as a punishment; (3) whether it came into play only on a finding of scienter; (4) whether its operation would promote the traditional aims of punishment-retribution and deterrence; (5) whether the behavior to which it applied was already a crime; (6) whether an alternative purpose to which it might rationally be connected was assignable for it; and (7) whether it appeared excessive in relation to the alternative purpose assigned. Evaluating these factors, the court did not find the requisite "clearest proof" that the statutory scheme was so punitive as to negate the legislative intention to deem it civil. Thus, the court concluded, the vehicle owner's due process assertion failed because it was premised entirely on an assumption that the statute and ordinance were criminal in nature. The allocation of the burden of proof in civil cases, the court declared, was irrelevant to constitutional questions of procedural due process.

Affirming summary judgment for the defendant District of Columbia in an action by two registered owners of motor vehicles who were issued tickets by the district's automated traffic enforcement system for moving violations by the owners' vehicles, the court, in Agomo v. Fenty, 916 A.2d 181, 26 A.L.R.6th 767 (D.C. 2007), held that the rebuttable presumption, arising under the district statutes establishing the system, that the vehicle was in the custody, care, or control of the registered owner, so that liability would be vicariously imposed unless the owner rebutted that presumption, did not violate the owner's right to due process under the Fifth Amendment by shifting the burden of proof to the owner. Finding it clear that moving violations under the automated system imposed only civil liability in the form of a modest fine, the court stressed that analysis under the rubrics of criminal law was inappropriate. A strong presumption of constitutionality inhered in legislative enactments, the court declared, and there was a heavy burden on a party seeking to overturn one. The United States Supreme Court had long held, the court observed, that, on their face, systems of vicarious liability that imposed civil liability were not contrary to the notions of due process. The extension of the doctrine of liability without fault to new situations to attain a permissible legislative object was not so novel in the law or so shocking "to reason or to conscience," the court stated, as to afford in itself any ground for the contention that it denied due process of law. It was entirely rational, the court ruled, to presume that a vehicle was in the custody, care, or control of its registered owner. A presumption was valid so long as it did not preclude a defense, the court reasoned, and it was clear that the statutes establishing the automated system provided ample leeway for registered owners to...
rebut the presumption by identifying a third-party driver. That the legislature had chosen to require specified means of rebutting the presumption did not invalidate it, the court declared, as the public had a right to expect that a vehicle owner who voluntarily surrendered control of his or her vehicle to another was in the best position to know the identity and competence of the person to whom the vehicle was entrusted.

See People v. Hildebrandt, 308 N.Y. 397, 126 N.E.2d 377, 49 A.L.R.2d 449 (1955), set out more fully in § 15, in which the court suggested that due process would be violated by a rebuttable presumption that a motor vehicle owner was operating the vehicle at the time of an infraction detected by an automated system. However, since the state speeding statute contained no such presumption, the court found it unnecessary to decide the question.

Affirming a trial court determination that the registered owner of a motor vehicle violated a state traffic control statute, based upon photographs of her vehicle taken by a photo-radar unit, the court, in State v. Dahl, 336 Or. 481, 87 P.3d 650 (2004), held that the rebuttable presumption established by Or. Rev. Stat. Ann. § 810.439(1)(b), that the registered owner of a motor vehicle was the driver of the vehicle when a photo-radar citation was issued, did not violate the owner's due process rights. In order to take advantage of the presumption, the court noted, the state was required to prove two predicate facts—that the defendant was the registered owner of the car and that the state "issued and delivered" the citation in accordance with state law. The Due Process Clause required the state to prove each element of a crime beyond a reasonable doubt, the court explained, but that requirement did not extend to civil actions, such as this one. Also rejecting the vehicle owner's assertion that the presumption violated due process because the connection between the predicate fact (that the defendant was the registered owner) and the presumed fact (that the defendant was driving) was too tenuous, the court declared that, under Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 96 S. Ct. 2882, 49 L. Ed. 2d 752, 4 O.S.H. Cas. (BNA) 1361, 1976-1977 O.S.H. Dec. (CCH) ¶20833, 1 Fed. R. Evid. Serv. 243 (1976), in a civil case it was only essential that there be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from the proof of another not be so unreasonable as to constitute a purely arbitrary mandate. Concluding that the presumption in § 810.439(1)(b) satisfied this standard, the court found that the legislature's determination that the registered owner was driving his or her car was not so unreasonable as to be purely arbitrary. Rather, the court reasoned, it was rational for the legislature to assume that registered owners commonly drove their own cars. Of all the conceivable purposes for which a person might register ownership of a vehicle in the state (including, for example, resale, investment, or display as a collector's item), the court stated, use of the vehicle for transportation exceeded all others. The legislature reasonably could select proof of ownership, the court concluded, as the point at which the burden shifted to the registered owner to prove that he or she was not driving at the time a photo-radar citation was issued.

See State v. King, 199 Or. App. 278, 111 P.3d 1146 (2005), review denied, 339 Or. 544, 125 P.3d 750 (2005), set out more fully in § 5, in which the court held that the service of a citation issued on the basis of photo-radar by first-class mail to the registered owner of the vehicle did not deprive the owner of due process under the 14th Amendment, despite the assertion that the identity of the individual driving the vehicle at the time of the detection of the violation did not necessarily follow from the identity of the registered owner of the vehicle.

§ 7. Other alleged bases for violation of due process

[Cumulative Supplement]

Considering alleged due-process violations other than those discussed in §§ 4 to 6, the courts in the following cases determined whether, under the circumstances, the operation of an automated traffic enforcement system denied constitutional due process to the owner or operator of a motor vehicle whose violation of the traffic laws was detected by the use of the automated system.

Granting a motion for summary judgment by the defendant city and city officials in an action by a motor vehicle owner who was issued a citation under the city's red light camera system, the court, in Shavitz v. City of High Point, 270 F. Supp. 2d 702, 179 Ed. Law Rep. 723 (M.D. N.C. 2003), order vacated on other grounds, 100 Fed. Appx. 146, 189 Ed. Law Rep. 71 (4th Cir. 2004), held that neither the city's red light camera ordinance, nor the state statute authorizing municipalities to employ red light camera systems, violated the vehicle owner's federal or state constitutional right to due process, despite the vehicle owner's assertions that: (1) the hearing process unlawfully denied a vehicle owner an opportunity to confront and cross-examine witnesses against
him or her; (2) the printed appeal form severely, unreasonably, arbitrarily, and capriciously limited the right to present issues on appeal; (3) the hearings were closed; (4) the methods by which hearing officers were selected and trained destroyed their ability to perform impartially; (5) the system's photographic technology failed more often than not; (6) vehicle owners were required to pay an appeal bond prior to any formal adjudication of guilt or financial responsibility; and (7) the statute and the ordinance failed to provide for a system of indigent appeals. Some of these claims, the court said, such as the assertion that vehicle owners were denied an opportunity to confront and cross-examine witnesses against them, failed because they were largely dependent on protections associated only with criminal due process. Other assertions, the court explained, such as the allegedly closed nature of the hearings, failed because they were wholly unsupported by the evidence. As to the contention that the appeal form limited the right to present issues on appeal, the court observed that, in practice, the city permitted citation recipients to attach separate sheets setting forth additional grounds of appeal. Finally, the court declared, since an appeal in forma pauperis was a privilege and not a right, the city's refusal to grant indigents the right to appeal did not offend requirements of due process.

Affirming the dismissal of a motor vehicle owner's action challenging the constitutionality of his conviction for a photo-radar speeding violation, the court, in Holst v. City of Portland, 152 Fed. Appx. 588 (9th Cir. 2005), cert. denied, 126 S. Ct. 1782, 164 L. Ed. 2d 518 (U.S. 2006), held that the city's photo-radar procedures did not violate due process, where state law guaranteed a hearing, provided a statutory defense when traffic control devices were improperly installed, gave notice to violators that a police officer could testify, and allowed for discovery of evidence.

CUMULATIVE SUPPLEMENT

Cases:

Affirming the dismissal of an action by three registered motor vehicle owners seeking a writ of prohibition against a city's operation of its automated-camera traffic control system, the court, in State ex rel. Scott v. Cleveland, 112 Ohio St. 3d 324, 2006-Ohio-6573, 859 N.E.2d 923 (2006), held that the city ordinance establishing the system was not in conflict with the state constitutional Home-Rule Amendment, Ohio Const. Art. XVIII, § 3, which authorized Ohio municipalities to "exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Thus, the court said, a municipality was permitted to regulate in an area such as traffic whenever its regulation was not in conflict with the general laws of the state. The city ordinance, the court explained, represented the city's attempt to regulate on the subject of local traffic.

Observation

In State ex rel. Scott v. Cleveland, 112 Ohio St. 3d 324, 2006-Ohio-6573, 859 N.E.2d 923 (2006), discussed above, the motor vehicle owners challenged an ordinance enacted by the City of Cleveland. Motor vehicle owners in other Ohio cities have challenged those cities' automated traffic enforcement systems in cases that have not, at least as yet, yielded a decision on the merits. See State ex rel. Sferra v. Girard, 2006-Ohio-1876, 2006 WL 988079 (Ohio Ct. App. 11th Dist. Trumbull County 2006)
(unreported opinion; an action seeking a writ of prohibition against enforcement by the City of Girard of its automated traffic enforcement system was dismissed because the action challenged a legislative, rather than a judicial, act, and only the latter would sustain an application for a writ of prohibition) and Mendenhall v. City of Akron, 2006 WL 3469999 (N.D. Ohio 2006), certified question accepted, 112 Ohio St. 3d 1468, 2007-Ohio-388, 861 N.E.2d 143 (2007) (an action challenging an automated mobile speed enforcement system established by the City of Akron; the district court noted several similar pending cases and certified the question to the Ohio Supreme Court).

§ 9. Conflict between local ordinance and state statute

The following authority determined whether, under the circumstances, a local ordinance providing for an automated traffic enforcement system was invalid as conflicting with a state statute.

In an action by several home rule cities challenging Colo. Rev. Stat. Ann. §§ 42-4-110.5, 42-3-112(14), which regulated the manner in which cities were permitted to use automated vehicle identification systems to enforce traffic laws, the court, in City of Commerce City v. State, 40 P.3d 1273 (Colo. 2002), affirmed a trial court decision holding that ordinances enacted by the cities implementing such systems were in conflict with, and thus superseded by, the state statutes. The test to determine whether a conflict existed, the court said, was whether the home rule city's ordinance scheme authorized what the state legislation forbade, or forbade what the state legislation authorized. Finding that each city's ordinance conflicted with one or more provisions of the state statutes, the court ruled that: (1) the 90-day service requirement in § 42-4-110.5(2)(a)(II) conflicted with one city's one-year statute of limitations; (2) two of the cities permitted the issuance of citations detected by automated systems without the signage dictated by § 42-4-110.5(2)(d)(I); (3) the traffic codes of two of the cities permitted the issuance of a citation for any speeding violation detected by the automated system, which conflicted with the requirement in § 42-4-110.5(4)(a) that cities mail warnings to certain first-time traffic violators; (4) the codes of three of the cities permitted fines greater than the maximum fines imposed by § 42-4-110.5(4)(b) and § 42-4-110.5(4.5); (5) the charter and code of two of the cities permitted those cities to contract with automated system vendors and to compensate those vendors in a way contrary to § 42-4-110.5(5); and (6) three cities' ordinances, either expressly or implicitly, contemplated that the cities would have access to state motor vehicle records to determine the identities and addresses of drivers detected by the automated system, which conflicted with the requirement in § 42-3-112(14) that cities comply with the provisions in § 42-4-110.5 or face restrictions on their access to state records.

The Supreme Court of Minnesota in State v. Kuhlman, 729 N.W.2d 577 (Minn. 2007), affirming State v. Kuhlman, 722 N.W.2d 1 (Minn. Ct. App. 2006), review granted, (Dec. 12, 2006) and aff'd, 729 N.W.2d 577 (Minn. 2007), held that city ordinances for photo-enforcement of traffic control signals, making a motor vehicle owner guilty of a petty misdemeanor if the vehicle is photographed running a red light, conflict with state traffic regulations requiring uniformity and statewide application of traffic regulations, and also conflict with state traffic regulations by allowing for photo enforcement of red-light violations, by penalizing the vehicle owner rather than the driver, and by creating a rebuttable presumption that the owner was the driver of the motor vehicle, and thus, the ordinances were invalid, as preempted.

See State ex rel. Scott v. Cleveland, 112 Ohio St. 3d 324, 2006-Ohio-6573, 859 N.E.2d 923 (2006), affirming the dismissal of an action by three registered motor vehicle owners seeking a writ of prohibition against a city's operation of its automated-camera traffic control system, in which the court stated that it was unclear whether the city ordinance establishing the system conflicted with Ohio Rev. Code Ann. § 4521.05, which set forth the jurisdiction of parking-violations bureaus established pursuant to Ohio Rev. Code Ann. § 4521.04.

See Bentley v. West Valley City, 2001 UT 23, 21 P.3d 210 (Utah 2001), in which motor vehicle owners who paid fines after being cited for speeding based on a city's use of photo-radar sought to recover those fines in a civil action, and in which the court held that the owners did not present either statutory or common-law authority justifying recovery for the cities' alleged violation of Utah Code Ann. § 41-6a-608, which established restrictions on the use of photo-radar. It simply was not compatible with the rule of law, the court said, that a legal proceeding could be maintained without an allegation of a cause of action that was cognizable at law.
CUMULATIVE SUPPLEMENT

Cases:

City ordinance allowing the use of cameras to monitor and enforce red light infractions did not conflict with state statutes establishing uniform traffic control laws, as required to overcome city's exercise of its broad home rule powers; statute requiring officer's "observation" of commission of a traffic infraction applied only to specific officers issuing citations for infractions under Uniform Traffic Control Law, ordinance involved issuance of notices only of non-criminal, non-moving violations, and all alleged infractions under ordinance were recorded and reviewed by officers for accuracy. West's F.S.A. Const. Art. 8, § 2(b); section 316.007, Florida Statutes; West's F.S.A. § 316.640(5)(a). City of Aventura v. Masone, 2011 WL 5964359 (Pla. Dist. Ct. App. 3d Dist. 2011).

Ordinance establishing automatic traffic enforcement (ATE) system through which city leveled civil penalties against owners of vehicles that failed to obey red light traffic signals or violated speed laws was not irreconcilable with, and therefore not impliedly preempted by, state statutes that established substantive standards relating to speeding and obeying traffic signals, established mechanisms of enforcement, and provided a uniform citation and complaint for criminal infractions relating to rules of the road. I.C.A. §§ 321.235, 321.236, 805.6, 805.8A. City of Davenport v. Seymour, 755 N.W.2d 533 (Iowa 2008) (citing annotation).

City's administrative proceeding to challenge ticket generated by automated traffic control system for running red light was inconsistent with statutory requirement that violations of municipal ordinances would be heard and determined only before divisions of the circuit court, and, thus, administrative proceeding upholding photo ticket was void; statutes allowed administrative adjudication only for parking and other nonmoving violations in state's two largest cities. V.A.M.S. §§ 479.010, 479.011. City of Springfield v. Belt, 2010 WL 711154 (Mo. 2010).

City ordinance that created automated speed-limit enforcement system imposing civil liability on violators did not conflict with state speed-limit statute but merely supplemented it, and thus did not exceed city's home rule powers under State Constitution; ordinance did not change speed limits established by state law or change the ability of police officers to cite offenders for traffic violations. Const. Art. 18, § 3; R.C. §§ 4511.07, 4511.21(A). Mendenhall v. Akron, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008).

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§ 9.5 Conflict between city's contract and state statute

[Cumulative Supplement]

The following authority determined whether, under the circumstances, a city's contract with a red light enforcement camera provider was invalid as conflicting with a state statute.

CUMULATIVE SUPPLEMENT

Cases:

"Cost Neutrality" provision of city's contract with red light enforcement camera provider violated the statute providing that such providers may not be paid based on the number of citations generated, where the provision limited city's obligation "to the extent of gross cash received by the City" from citations; therefore, the obligation might never have to be paid if insufficient citations were issued. West's Ann.Cal.Vehicle Code § 21455.5(g)(1). People v. Daugherty, 199 Cal. App. 4th Supp. 1, 130 Cal. Rptr. 3d 837 (App. Dep't Super. Ct. 2011).

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§ 10. Conflict between state statute and state constitutional home rule provision

The following authority determined whether, under the circumstances, a state statute providing for or regulating an automated traffic enforcement system was invalid as conflicting with a state constitutional home rule provision.

In an action by several home rule cities challenging Colo. Rev. Stat. Ann. §§ 42-4-110.5, 42-3-112(14), which regulated the manner in which cities were permitted to use automated vehicle identification systems to enforce traffic laws, the court, in City of Commerce City v. State, 40 P.3d 1273 (Colo. 2002), affirmed a trial court decision holding that the statutes did not unconstitutionally infringe on the cities' powers under the state constitutional home rule provision, Colo. Const. Art. XX, § 6. To determine whether a matter was of statewide or purely local concern, the court explained, four factors should be considered: (1) the need for statewide uniformity of regulation; (2) the impact of municipal regulation on persons living outside the municipal limits; (3) historical considerations, specifically whether the matter was one traditionally governed by state or by local government; and (4) whether the Colorado Constitution specifically committed the matter to state or local regulation. Finding that both the cities and the state had important interests at stake, the court said that the state's interests included the uniform regulation of automated vehicle identification systems, a method of traffic enforcement so fundamentally different than traditional methods of enforcement that it significantly altered Colorado citizens' basic expectations. In addition, the court explained, the extraterritorial impact was clear: the two cities that had already implemented automated systems ticketed a high number of nonresidents. Moreover, the court continued, given the practicalities of our commuter culture and our integrated highway system, many Colorado drivers regularly drove through multiple jurisdictions, increasing the impact on Colorado's citizens as a whole. On the other hand, the court declared, the cities had an interest in regulating traffic on their local streets and assuring that those streets were safe for their citizens. The cities also had an interest, the court said, in enforcing fines against those who broke local traffic laws and in controlling their municipal courts. Concluding that the regulation of automated vehicle identification systems to enforce traffic laws was a matter of mixed state and local concern, the court stated that both home rule cities and the state legislature were permitted to adopt legislation, so that the challenged state statutes did not violate the state constitutional home rule provision.

§ 11. Conflict between state statutes

The following authority determined whether, under the circumstances, a state statute providing for or regulating an automated traffic enforcement system was invalid as conflicting with another state statute.

Affirming summary judgment for the defendant District of Columbia in an action by two registered owners of motor vehicles who were issued tickets by the district's automated traffic enforcement system for moving violations by the owners' vehicles, the court, in Agomo v. Fenty, 916 A.2d 181, 26 A.L.R.6th 767 (D.C. 2007), held that the rebuttable presumption, arising under the district statutes establishing the system, that the vehicle was in the custody, care, or control of the registered owner, so that liability would be vicariously imposed unless the owner rebutted that presumption, did not conflict with the clear and convincing standard of proof required by D.C. Code § 50-2302.06(a). The latter statute, the court said, provided that no infraction shall be established except by clear and convincing evidence. The owners, the court explained, confused proof of the violation with the imposition of liability. The statutory mechanism for assessing liability once an infraction had been established, the court declared, in no way affected the requirement that the district prove the commission of a traffic infraction by clear and convincing evidence. The automated system, the court said, accurately captured and recorded traffic violations.

Affirming a trial court determination that the registered owner of a motor vehicle violated a state traffic control statute, based upon photographs of her vehicle taken by a photo-radar unit, the court, in State v. Dahl, 336 Or. 481, 87 P.3d 650 (2004), held that the rebuttable presumption established by Or. Rev. Stat. Ann. § 810.439(1)(b), that the registered owner of a motor vehicle was the driver of the vehicle when a photo-radar citation was issued, did not conflict with Or. Rev. Stat. Ann. § 153.076(2), which required the state to prove each element of a traffic offense by a preponderance of the evidence. Questioning whether any conflict existed, the court said that § 810.439(1)(b), by identifying a specific situation in which the burden of persuasion shifted

to the defendant, carved out an exception to § 153.076(2). To the extent, however, that a conflict existed, the court reasoned, the specific statute controlled over the general. The specific exception set out in § 810.439(1)(b) thus applied, the court ruled, despite the state's general statutory obligation to prove a violation by a preponderance of the evidence.

§ 11.2. Violation of statute prohibiting use of speed traps to secure evidence as to speed of vehicle for prosecution

[Cumulative Supplement]

The following authority considered whether an automated red light traffic enforcement system violated a statute prohibiting the use of speed traps to secure evidence as to the speed of a vehicle for prosecution.

CUMULATIVE SUPPLEMENT

Cases:

City's use of automated red light traffic enforcement systems did not violate statute prohibiting use of speed traps to secure evidence as to the speed of a vehicle for prosecution, even though enforcement systems measured the time it took for vehicles to travel between a pair of electromagnetic sensors in a traffic lane, and performed speed calculations used to document alleged red light violations; city did not use such evidence to prosecute speeding charges. West's Ann.Cal.Vehicle Code §§ 40801, 40802(a)(1). In re Red Light Photo Enforcement Cases, 78 Cal. Rptr. 3d 413 (Cal. App. 4th Dist. 2008), review granted and opinion superseded, 84 Cal. Rptr. 3d 37, 193 P.3d 281 (Cal. 2008).

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[END OF SUPPLEMENT]

§ 11.4. Violation of DMV privacy statute

[Cumulative Supplement]

The following authority considered whether an automated red light traffic enforcement system violated a DMV privacy statute.

CUMULATIVE SUPPLEMENT

Cases:

Disclosure to private contractors responsible for operation of automated red light traffic enforcement systems, of Department of Motor Vehicles (DMV) information including home addresses of registered owners of vehicles photographed by the systems, did not violate DMV privacy statute, since private contractors in red light cases were an arm of law enforcement agencies. West's Ann.Cal.Vehicle Code § 1808.21(a); Veh.Code, § 21455.5. In re Red Light Photo Enforcement Cases, 78 Cal. Rptr. 3d 413 (Cal. App. 4th Dist. 2008), review granted and opinion superseded, 84 Cal. Rptr. 3d 37, 193 P.3d 281 (Cal. 2008).

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[END OF SUPPLEMENT]

§ 12. Prohibition of unreasonable searches and seizures

The following authority determined whether, under the circumstances, a governmental entity's use of an automated traffic enforcement system was invalid as conflicting with the constitutional prohibition of unreasonable searches and seizures.

Affirming a judgment for the defendants, a town and certain individuals who apparently were town officials, the court, in McNeill v. Town of Paradise Valley, 44 Fed. Appx. 871, R.I.C.O. Bus. Disp. Guide (CCH) ¶10321 (9th Cir. 2002), held that summary judgment for the town was proper because sending a traffic citation to the registered owner of a vehicle based on the
photo-radar system did not constitute a seizure under the Fourth Amendment. A "seizure" under the Fourth Amendment, the court explained, required an intentional acquisition of physical control.

§ 12.5. Constitutional privacy challenge

The following authority considered whether an automated red light traffic enforcement system gave rise to a constitutional privacy challenge.

CUMULATIVE SUPPLEMENT

Cases:

The manner by which private contractors responsible for operation of automated red light traffic enforcement systems obtain Department of Motor Vehicles (DMV) records including home addresses of registered owners of vehicles photographed by the systems does not give rise to a constitutional privacy challenge couched in a taxpayer waste cause of action, since such records are confidential, and are required to be destroyed in a manner that will preserve the confidentiality of any person included in the record after six months or final disposition of a citation. Vehicle Code § 21455.5; West's Ann.Cal.C.C.P. § 526a. In re Red Light Photo Enforcement Cases, 78 Cal. Rptr. 3d 413 (Cal. App. 4th Dist. 2008), review granted and opinion superseded, 84 Cal. Rptr. 3d 37, 193 P.3d 281 (Cal. 2008).

§ 12.7. "Taking" within meaning of Fifth Amendment

The following authority adjudicated whether an automatic traffic camera system effected a per se "taking" within the meaning of the Fifth Amendment.

CUMULATIVE SUPPLEMENT

Cases:

City's automatic traffic camera ordinance, which authorized the installation of automatic enforcement cameras to photograph motorists who ran red lights or sped through designated locations, did not effect a per se "taking" within the meaning of the Fifth Amendment; the ordinance did not operate to seize or otherwise impair an identifiable fund of money, namely, funds from motorists' bank accounts, but, rather, merely imposed an obligation on a party to pay a $100.00 fine on the happening of a contingency, and motorists, on receiving the traffic citations, paid the money demanded without protest or appeal. U.S.C.A. Const.Amend. 5. McCarthy v. City of Cleveland, 2010 WL 4453614 (6th Cir. 2010).

§ 13. Right to equal protection

The following authority determined whether, under the circumstances, a state statute or local enactment providing for or regulating an automated traffic enforcement system was invalid as conflicting with the constitutional right to equal protection.
Granting a motion for summary judgment by the defendant city and city officials in an action by a motor vehicle owner who was issued a citation under the city's red light camera system, the court, in Shavitz v. City of High Point, 270 F. Supp. 2d 702, 179 Ed. Law Rep. 723 (M.D. N.C. 2003), order vacated on other grounds, 100 Fed. Appx. 146, 189 Ed. Law Rep. 71 (4th Cir. 2004), held that neither the city's red light camera ordinance, nor the state statute authorizing municipalities to employ red light camera systems, violated the vehicle owner's federal or state constitutional right to equal protection. The owner contended that the enactments created two classes of offenders who were alleged to have violated the same statute and committed the same conduct: one class was afforded a trial, and the other class was not. Ruling that the owner had not identified any fundamental right allegedly abridged by the statute or ordinance, nor had he alleged membership in any suspect class, the court said that the proper standard for review was whether there was a rational relationship between the disparity of treatment and some legitimate governmental purpose. Declaring that the owner fell far short of surmounting the formidable presumption of validity bestowed upon the statute and ordinance by the rational basis review standard, the court said that one needed not look any further than the evidence the owner himself had presented, which indicated there was public disagreement over whether the classification he had identified was rationally related to the government's legitimate objective of promoting safety. The fact that such a disagreement existed, the court reasoned, was an obvious indication that a "reasonably conceivable state of facts" must have existed to cause the legislative bodies to conclude that creating these two classes of violators for purposes of enforcing state traffic laws would promote public safety. The owner's personal disagreement with these facts, the court commented, was of no consequence.

CUMULATIVE SUPPLEMENT

Cases:

Motorists caught by District of Columbia automatic camera system as driving 30 miles per hour over the posted limit were not similarly situated to motorists caught by police officers, for purposes of putative class action alleging violation of the equal protection clause of the Fourteenth Amendment in the fact that motorists caught by camera were not subject to automatic arrest as those caught by an officer were; police officers who witnessed speeding had probable cause to arrest the driver, but when a vehicle was photographed, there was no probable cause to believe that the owner of the vehicle was in fact the driver. U.S.C.A. Const.Amend. 14. Dixon v. District of Columbia, 2010 WL 4852364 (D.D.C. 2010).

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[END OF SUPPLEMENT]

B. Sufficiency of Evidence to Support Conviction Based on Use of Automated Traffic Enforcement System

§ 14. Evidence held sufficient

The following authority held that, under the circumstances, a conviction, or the imposition of financial liability, for a violation of the traffic laws detected by an automated traffic enforcement system was supported by the evidence.

Reversing an intermediate appellate court's judgment for a motor vehicle owner in her action to nullify a $75 civil assessment for failure to stop at a red light, which was recorded by one of the defendant city's red light cameras, the court, in City of Wilmington v. Minella, 879 A.2d 656 (Del. Super. Ct. 2005), held that the appellate court erred in holding that the owner's cross-examination of a technician regarding the calibration of the camera was sufficient to overcome the city's prima facie case. At the hearing, the city produced one witness, a "systems tech supervisor" for the private company that maintained the city's red light camera system. He explained the procedure for installing a camera, how it was attached to a set of wires embedded in the street, how a technician retrieved the film, and how the film was developed. He also testified that, once the pictures were developed, a company representative examined them to make sure any violations were not the result of some action set in motion by an emergency vehicle. The vehicle owner cross-examined the technician, primarily on the issue of the calibration of the camera and the red light. She did not testify or offer any witnesses, exhibits, or affidavits. The appellate court's ruling was an error of
law, the court declared, because, by statute, the legislature created a presumption that, if the governmental entity satisfied the elements of the presumption, created a prima facie case. Here, the court noted, the trial court found the evidence sufficient to establish a prima facie case. The legislature, the court stated, also specified the evidentiary means by which a motor vehicle owner could rebut the presumption of being the violator. One was to show by affidavit that he or she was not the operator of the vehicle photographed, the court said, while the other was to show that he or she failed to stop because of an emergency vehicle or being in a funeral procession. The vehicle owner did neither, the court stated, nor did she produce any relevant evidence. She never disputed, the court observed, that she was the operator of the vehicle or that she went through the red light. Nor did she present any evidence, the court continued, she was compelled to go through the red light because of an emergency vehicle or because she was in a funeral procession. The appellate court, therefore, judicially established a nonstatutory means of rebuttal, the court reasoned, by permitting questions about calibration to overcome a statutory presumption. The purpose of the courts, the court declared, was to give effect to the literal meaning of an unambiguous statute, such as the one in this case.

See Com. v. Buxton, 205 Mass. 49, 91 N.E. 128 (1910), in which the court overruled the defendant automobile operator's exceptions to the admission of a "photo-speed recorder" that police officers used to determine that the automobile was exceeding the speed limit, and evidence of the result of experiments performed using the device and intended to demonstrate its accuracy. The evidence as to the accuracy of the chronometer, an essential component of the recorder, justified a finding by the trial judge, the court ruled, that the evidence was sufficient to permit him to submit the question of the chronometer's accuracy to a jury. Moreover, the court declared, the evidence was sufficient to warrant a finding by the jury that the chronometer was a correct recorder of time.

Affirming the conviction for speeding of a driver who was clocked by an automated device known as the "Foto-Patrol," the court, in People v. Pett, 13 Misc. 2d 975, 178 N.Y.S.2d 550 (Police Ct. 1958), held that a photograph of the defendant's license plate number impressed with a code representing the recorded speed of his vehicle, and expert testimony as to the scientific principles underlying the device, along with evidence that an expert inspected the device the evening before the defendant was apprehended, and that another expert had developed the film containing the photograph of the license number, and that further tests had been made to determine the accuracy of the "Foto-Patrol" immediately before and after the defendant was apprehended, plus the corroboration of a police officer as to his independent observation of the defendant's speed, was sufficient to establish the defendant's guilt beyond a reasonable doubt. The defendant suggested that, as this device had never been used and there were no other decisions upholding its accuracy, he should be acquitted. Disagreeing, the court replied that there was a first time for everything. We had passed the horse and buggy days, the court remarked, and we were living in a new era. The court also rejected the defendant's assertion that a speed measurement taken over three feet, as did the "Foto-Patrol," was inherently unreliable. While ruling that expert testimony was essential, the court found that the state had presented such proof.

Affirming a trial court determination that the registered owner of a motor vehicle violated a state traffic control statute, based upon photographs of her vehicle taken by a photo-radar unit, the court, in State v. Dahl, 336 Or. 481, 87 P.3d 650 (2004), held that the trial court did not err in denying the owner's motion to dismiss, although no evidence identified her as the driver, as the trial court reasonably could find that she was the registered owner of the car and that the state issued and delivered the citation as required by state law. If the trial court found those predicate facts, the court explained, then Or. Rev. Stat. Ann. § 810.439(1)(b), establishing a rebuttable presumption that the registered owner of a motor vehicle was the driver of the vehicle when a photo-radar citation was issued, directed the trial court to find that the owner was the driver unless she proved otherwise. Aided by the presumption, the court ruled, the evidence was sufficient to avoid a motion to dismiss.

Observation

In State v. Dahl, 336 Or. 481, 87 P.3d 650 (2004), discussed above, the vehicle owner did not challenge, and the court did not address, the intermediate appellate court's holding that a police officer's comment during cross-examination at the owner's hearing, that he assumed that the owner was the driver because she did not submit a certificate of innocence as permitted by state law, did not violate the owner's Fifth Amendment right against self-incrimination, and did not form part of the basis for the trial court's determination, which might have violated the owner's right under Or. Rev. Stat. Ann. § 153.076(4) not to be required to be a witness in the trial of any traffic violation. See State v. Dahl, 185 Or. App. 149, 57 P.3d 965 (2002), decision aff'd, 336 Or. 481, 87 P.3d 650 (2004).
Affirming the defendant's conviction for speeding, which was based on a violation detected by a photo-radar unit, the court, in State v. King, 199 Or. App. 278, 111 P.3d 1146 (2005), review denied, 339 Or. 544, 125 P.3d 750 (2005), held that the trial court did not err in denying the defendant's motions for a judgment of acquittal based on the insufficiency of the evidence produced by the state in its case in chief, although the defendant claimed that there was no evidence that the citation was ever mailed to him in a timely fashion, or that the actual speed of his vehicle was displayed within 150 feet of the location of the photo-radar detection device, as the state was not required to prove those facts as part of its prima facie case. What was required to prove at trial a violation of a statute enacted by the legislature, the court declared, was a question of legislative intent subject to the usual rules of statutory construction. Observing that Or. Rev. Stat. Ann. § 810.439(1)(a) provided that "[a] citation for speeding may be issued on the basis of photo-radar if the following conditions are met," and that the statute then listed seven conditions, the court said that the two purported deficiencies in the state's proof asserted by the defendant found their basis in two of those conditions. It was clear, however, the court emphasized, that the legislature, when it enacted a statute prohibiting certain conduct, knew how to add elements to an offense or to create a defense or an affirmative defense to an offense. Here, the court concluded, the legislature chose to make the conditions listed in § 810.439 conditions precedent for the issuance of a citation, rather than elements of the state's case.

Observation

In State v. King, 199 Or. App. 278, 111 P.3d 1146 (2005), review denied, 339 Or. 544, 125 P.3d 750 (2005), discussed above, the court asked when, then, in the course of the prosecution of a traffic violation did the legislature intend that challenges under Or. Rev. Stat. Ann. § 810.439(1)(a) could be raised? The appropriate time to challenge the existence of the conditions precedent to the issuance of the citation, the court concluded, was in a pretrial motion aimed at the efficacy of the charging instrument.

CUMULATIVE SUPPLEMENT

Cases:

Under the statutory presumptions that a printout of an image or of computer information is an accurate representation of the image or computer information, photographs taken by an automated traffic enforcement system (ATES) were properly presumed to be accurate and authenticated, where the defendant accused of failing to stop at a red signal light failed to produce any evidence casting doubt on the accuracy or reliability of the photographs. West's Ann.Cal.Evid.Code §§ 1401(a), 1552, 1553; West's Ann.Cal.Vehicle Code § 21453(a). People v. Goldsmith, 2011 WL 933567 (Cal. App. Dep't Super. Ct. 2011).

§ 15. Evidence held insufficient

The following authority held that, under the circumstances, a conviction, or the imposition of financial liability, for a violation of the traffic laws detected by an automated traffic enforcement system was not supported by the evidence.

Affirming the trial court's acquittal of the four defendants, who were charged with speeding, the court, in Municipality of Anchorage v. Baxley, 946 P.2d 894 (Alaska Ct. App. 1997), held that, even if the Double Jeopardy Clause did not prevent the court's review of the verdicts, a reasonable fact-finder could have concluded that the municipality failed to prove its case, which was based wholly on photo-radar evidence. The municipality's case rested on the credibility of the photo-radar witnesses, the court said, and the trial court magistrates, who heard the witnesses testify, were in a much better position to determine their credibility. In general, the court remarked, the credibility of witnesses was exclusively a question for the fact-finder.

Reversing a motor vehicle owner's conviction for speeding, the court, in People v. Hildebrandt, 308 N.Y. 397, 126 N.E.2d 377, 49 A.L.R.2d 449 (1955), held that there was no proof that the owner was driving his vehicle when a "phototraffic camera" detected that the vehicle was exceeding the speed limit. Rejecting the assertion that there was a "rebuttable presumption" that the owner had been the operator, the court stated that there was no statutory authority, which meant, at least, that the New
York legislature had not disclosed its awareness of a need for such a statutory presumption. Also holding that the proof did not support an inference by the fact trier that the owner was driving the car, the court thought it going much too far to infer the driver's identity from the fact of ownership. We all knew, the court remarked, that many a passenger car was customarily driven at various times by various persons, that many a person owned more than one passenger automobile, and that some owners were not licensed operators. There were outstanding in this state, the court said, at least one million more automobile operators' licenses than passenger automobile registrations. From all of that it followed, the court reasoned, that it was hardly a normal or ready inference or deduction that an automobile speeding along a highway was being driven by its owner, and by no other person. Apparently, the question was a new one, the court said, but that was because speeders were usually pursued and arrested after pursuit, whereas this identity question arose because of the use of a photographic speed recorder, without pursuit or arrest. The device might be efficient and scientifically trustworthy, the court commented, but it took more than necessity to validate a presumption in a criminal case, and here we did not even have a presumption.

Reversing the defendant's conviction for violation of Or. Rev. Stat. Ann. § 811.123, which established the maximum speed limit in an urban area, the court, in State v. Clay, 332 Or. 327, 29 P.3d 1101 (2001), held that the evidence was insufficient to support the conviction, which was based on a violation allegedly detected by a photo-radar unit. The car that the defendant was accused of driving was photographed while exceeding the posted speed limit by 11 miles per hour. A citation for violating the posted speed limit was issued and mailed to her. She received the citation, pled not guilty, and requested a trial. A photograph taken by the radar unit, showing the driver of the vehicle at the time of the offense, was submitted into evidence at the trial. The police officer operating the photo-radar unit testified on cross-examination that he did not stop the car in question; that he had not, to his knowledge, ever met the defendant; and that he did not know the identity of the driver in the photograph. By its terms, the court said, § 811.123 required proof that a particular person was speeding. Because the state had no direct witness who could testify that the defendant was driving the car at the time that the violation was committed, the court reasoned, the state had to rely on the rebuttable presumption provided under state law that the driver of the car was its registered owner. To be entitled to use that presumption, the court stated, the state was required to prove the predicate fact that the defendant was the registered owner of the vehicle. However, the court observed, the state produced no direct evidence that the defendant was the registered owner of the vehicle. The state asserted that, since the defendant admitted receiving the citation in the mail, and the photo-radar statute called for the police officer operating the photo-radar unit to send the citation to the registered owner of the motor vehicle photographed by the unit, the state was entitled to rely on the evidentiary presumption that an official duty had been regularly performed to infer that the defendant was, in fact, the vehicle's owner. Disagreeing, the court reasoned that the statute did not require the officer to issue a citation. In other words, the court explained, the officer had the authority, but not the duty, to issue the citation, if the facts met the conditions set out in the statute. Without the duty, the court declared, there could be no predicate fact that could serve as a basis for applying the presumption. In choosing to issue the citation, the court stated, the officer might have acted entirely within and consistent with the statute's various requirements, but there could be no presumption that he did so.

C. Other Issues

§ 16. Disposition of funds collected through operation of system

The following authority determined how, under the circumstances, funds collected through the operation of an automated traffic enforcement system were to be disbursed or allocated.

In an action between a city and a county board of education, the court, in Shavitz v. City of High Point, 630 S.E.2d 4, 209 Ed. Law Rep. 491 (N.C. Ct. App. 2006), affirmed the trial court judgment insofar as it held that, under N.C. Const. Art. IX, § 7, the city was obligated to pay the "clear proceeds" of its red light camera program to the board of education. The constitutional provision stated that "the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the state, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools." This provision controlled, the court stated, where money was collected for the transgression of both a municipal ordinance and a coordinate state statute. Finding this to be the case with respect to the city's red light camera program, the court observed that the program was specifically authorized by N.C. Gen. Stat. Ann. § 160A-300.1, which merely created an alternative mechanism for enforcement of state traffic laws. The fact that a violation
under the red light camera program resulted in a civil penalty rather than a fine was irrelevant, the court declared, as the nature of the offense committed, and not the method employed by the municipality to collect fines for commission of the offense, was determinative. While the reach of the constitutional provision was limited to that portion of a penalty that accrued to the state, the court reasoned, this mostly historical limitation had been construed to exempt only that portion of a penalty that was due a private citizen who had brought a private action to enforce state law. Turning to the determination of the amount constituting the "clear proceeds" of the program, the court emphasized that only the administrative costs of collecting the funds, and not the costs associated with enforcing the program, were to be excluded. Noting that N.C. Gen. Stat. Ann. § 115C-437 limited the costs of collection to 10% of the total, the court held that the trial court properly ordered the city to pay 90% of the amount collected by its red light camera program to the school board, even though, pursuant to the city's contract with the private company that installed and maintained the system, the city was obligated to pay the company 70% of the funds collected under the program.

Observation

In Shavitz v. City of High Point, 630 S.E.2d 4, 209 Ed. Law Rep. 491 (N.C. Ct. App. 2006), discussed above, the court did hold that the city was not obligated to pay the school board postjudgment interest, and the court vacated the trial court's judgment insofar as it required the payment of such interest.

§ 16.5. Taxpayer waste cause of action to enjoin city's operation of automated traffic enforcement systems

[Cumulative Supplement]

The following authority considered whether a taxpayer waste cause of action could enjoin a city's operation of automated traffic enforcement systems.

CUMULATIVE SUPPLEMENT

Cases:

Taxpayer waste cause of action did not lie to enjoin city's operation of automated traffic enforcement systems, since such operation was authorized by law and generated revenue; such operation was not "wasteful, improvident and completely unnecessary public spending." West's Ann.Cal.C.C.P. § 526a; Veh.Code, § 21455.5. In re Red Light Photo Enforcement Cases, 78 Cal. Rptr. 3d 413 (Cal. App. 4th Dist. 2008), review granted and opinion superseded, 84 Cal. Rptr. 3d 37, 193 P.3d 281 (Cal. 2008).

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[END OF SUPPLEMENT]

§ 16.7. City as subject to writ of mandate

[Cumulative Supplement]

The following authority considered whether a city was subject to a writ of mandate requiring it to address violations of automated traffic enforcement systems.

CUMULATIVE SUPPLEMENT

Cases:

City was not subject to a writ of mandate requiring it to refund fines for red light violations based on evidence from automated traffic enforcement systems, to move to vacate allegedly illegal convictions in the appropriate courts, to report the vacation of the convictions to the Department of Motor Vehicles (DMV) for withdrawal of "points," or to dismiss pending prosecutions, since city lacked authority to do those things as a nonparty to the relevant proceedings; city had no "clear, present duty" pertaining to

§ 17. Validity of citation issued under automated traffic enforcement system

The following authority determined whether, under the circumstances, a citation issued for the violation of the traffic laws detected by an automated traffic enforcement system was valid.

Affirming the defendant's conviction for speeding, which was based on a violation detected by a photo-radar unit, the court, in State v. King, 199 Or. App. 278, 111 P.3d 1146 (2005), review denied, 339 Or. 544, 125 P.3d 750 (2005), held that Or. Rev. Stat. Ann. § 153.045(5), which required that a police officer certify that "officer has reasonable grounds to believe, and does believe, that the person named in the complaint committed the violation specified in the complaint," did not apply to citations issued for speeding violations detected by photo-radar, so that the citation issued to the defendant was valid. According to the defendant, the officer who issued the citation could not have complied with the statute because the only information that the officer had when she issued the citation and signed the certificate was that the vendor of the photo-radar device identified the defendant as the registered owner of the vehicle, and the registered owner and the driver were of the same gender. However, the court explained, § 153.045(5) did not apply to the defendant's case because Or. Rev. Stat. Ann. § 810.439 authorized a procedure for the issuance of citations based on photo-radar "[n]otwithstanding any other provisions of law."

Affirming a judgment imposing a fine on a motor vehicle owner for speeding, based on a citation issued for a violation detected by a city photo-radar unit, the court, in State v. Kolisch, 185 Or. App. 418, 60 P.3d 576 (2002), held that the citation was valid, despite the owner's contention that the city provided insufficient notice of the existence of that photo-radar unit. Or. Rev. Stat. Ann. § 810.438 authorized the city to operate photo-radar, subject to certain conditions. One of those conditions, established in § 810.438(2)(e), was that photo-radar "[m]ay not be used unless a sign is posted announcing that photo-radar is in use. The sign must be on the street on which the photo-radar unit is being used and must be no closer than 100 yards and no farther than 400 yards from the location of the unit." Another statute, Or. Rev. Stat. Ann. § 810.439(1)(a), provided that, "[n]otwithstanding any other provision of law," in the jurisdictions using photo-radar, a citation for speeding may be issued on the basis of photo-radar if seven specified conditions were met. The condition established in § 810.438(2)(e) was not one of these. Approximately 200 yards past the photo-radar unit that detected the owner's violation, there was a sign on the opposite side of the street indicating that a photo-radar unit was in operation. Relying on § 810.438(2)(e), the owner contended that signs needed to be posted on the near side of the street facing traffic before the traffic reached the photo-radar. Disagreeing, the court explained that, due to the "notwithstanding" clause in § 810.439(1)(a), the requirement in § 810.438(2)(e) was not relevant to determining whether a citation was valid.

III. Actions Against Private Company Providing Or Maintaining Automated Traffic Enforcement System

§ 18. Violation of statute requiring governmental operation of automated traffic control system

The following authority determined whether, under the circumstances, a private company providing or maintaining an automated traffic control system violated a statute requiring governmental operation of such a system.

Affirming the dismissal of an action by two state residents against the private company that provided and maintained a city's red light camera system, the court, in Leonte v. ACS State and Local Solutions, Inc., 123 Cal. App. 4th 521, 19 Cal. Rptr. 3d 879 (2d Dist. 2004), review denied, (Jan. 19, 2005), held that the company did not violate a former state statute providing that "[o]nly a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system." Noting that the statute did not define the term "operate," the court said that the term could encompass a wide array of tasks in connection with an automated traffic control enforcement system, ranging from tasks relating to the daily functioning of the system to the broader power to oversee and control the functioning of the system. The former statute did not indicate, the
the court continued, whether a governmental agency, in cooperation with a law enforcement agency, was required to perform all of the tasks associated with an automated enforcement system, was permitted to perform only some of those tasks, or needed only retain a broader supervisory power, and the legislative history did not illuminate this point. Believing that the statutory purpose of authorizing the use of automated traffic control enforcement systems was best served by a construction of "operate" that allowed a governmental agency to hire private contractors to perform a broad range of functions, the court concluded that the statute did not prohibit a governmental agency from hiring a private company to perform functions in connection with the operation of an automated traffic control enforcement system, provided that the governmental agency retained the right to oversee and control the functioning of the system and thereby ultimately was the system operator. Under the city's contract with the private company, the court stated, the city retained the right to "monitor, evaluate, and provide guidance to the CONTRACTOR in the performance of" the contract, and "the right of access to all activities and facilities operated by the CONTRACTOR under this Agreement" and to "all files, records, and other documents related to the performance of this Agreement." The contract required the company to provide the city with monthly reports providing information on all violations recorded by the system, camera malfunctions, court hearings, and other matters, the court pointed out, and the contract also obligated the company to maintain a database of information concerning each violation, including whether a citation was issued and, if not, why not. The court concluded that these provisions showed that the city retained the right to oversee and control the functioning of the system and therefore operated the system within the meaning of the former statute.

§ 19. Unfair competition law (UCL) action against contractors

[Cumulative Supplement]

The following authority considered whether an unfair competition law action against contractors operating automated red light traffic enforcement systems was supportable.

CUMULATIVE SUPPLEMENT

Cases:

Contingency fee contracts for private contractors responsible for operating automated red light traffic enforcement systems were not void as against public policy, as would support unfair competition law (UCL) action against contractors, absent evidence that contractors had any ability to increase revenue by manipulating its equipment to photograph drivers who entered intersections before lights turned red; contingency fees limited municipalities' financial risks, municipalities retained control over selection of intersections, police departments reviewed contractors' work and made final decisions on probable cause to issue citations, and contractors' expert testimony was limited to technical operation and accuracy of red light systems. West's Ann.Cal.Bus. & Prof.Code § 17200; Vehicle Code § 21455.5. In re Red Light Photo Enforcement Cases, 78 Cal. Rptr. 3d 413 (Cal. App. 4th Dist. 2008), review granted and opinion superseded, 84 Cal. Rptr. 3d 37, 193 P.3d 281 (Cal. 2008).

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[END OF SUPPLEMENT]

§ 20. Class action claims against camera providers

[Cumulative Supplement]

The following authority considered the propriety of class action claims against the providers of automated traffic enforcement cameras.

CUMULATIVE SUPPLEMENT

Cases:
Although driver suffered loss of money from paying traffic citation for running red light as recorded by automated traffic enforcement camera, driver lacked injury in fact required for Article III standing to assert proposed class action claims against camera providers for alleged unfair competition in violation of California law and for unjust enrichment, based on allegedly invalid cost-neutral clauses in contracts between providers, municipalities, and state agencies, since driver had no legally protected interest in breaking law by running red light, and providers had not invaded driver's alleged interests in freedom from incentivized prosecution or freedom from unfair or unlawful business practices. U.S.C.A. Const. Art. 3, § 2, cl. 1; West's Ann.Cal.Veh. Code §§ 21453(a), 21455.5(g)(1); West's Ann.Cal.Bus. & Prof.Code §§ 17200, 17203. Jadeja v. Redflex Traffic Systems, Inc., 2011 WL 499967 (N.D. Cal. 2011).

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[END OF SUPPLEMENT]

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Footnotes

1 See City of Commerce v. State, 40 P.3d 1273 (Colo. 2002).
4 The use of the first known method of speed enforcement dates back to 1902 in Westchester County, New York. This system was composed of three dummy tree trunks set up on the roadside at one-mile intervals. A police officer with a stopwatch and a telephone was concealed in each trunk. As a speeding vehicle passed the first trunk, the hidden police officer telephoned the time to the second police officer, who recorded the time at which the vehicle passed him and then computed its speed for the mile. If the vehicle was exceeding the speed limit, the officer telephoned the third police officer, who proceeded to stop the vehicle by lowering a pole across the road. The “tree trunk” method was subject to hearsay objections in court because officers had to testify regarding the time statements of other officers, as there was no way to observe the vehicle over the entire distance. See Virginia Transportation Research Council, Final Report: Automated Speed Enforcement Pilot Project for the Capital Beltway: Feasibility of Photo-Radar (1992), http://ntl.bts.gov/DOCS/ase.html.
5 It didn't take drivers long to begin formulating explanations for the speed of their vehicles. See Excuse for exceeding speed limit for automobiles, 29 A.L.R. 883, published in 1924.
9 There were earlier trials of such equipment, such as in Arlington, Texas, for a few months in 1976. See U.S. Department of Transportation, National Highway Traffic Safety Administration, Mobile Orbis III Speed Enforcement Demonstration Project in Arlington, Texas, Final Report, Contract No. DOT-HS-346-3-692 (June 30, 1976).
15 See Municipality of Anchorage v. Baxley, 946 P.2d 894 (Alaska Ct. App. 1997) (after deploying and testing a photo-radar unit, the human operator remained to ensure the machine was not vandalized and to reload film as necessary).
20 See, e.g., Ark. Code Ann. §§ 27-52-110, 27-52-111 (photo-radar may be used only within a school zone or at a railroad crossing); Colo. Rev. Stat. Ann. § 42-4-110.5(2)(g) (photo-radar may be used only within a school zone, within a residential neighborhood, or along a street that borders a municipal park); Md. Code Ann., Transp. § 21-809 (photo-radar is authorized for use only in Montgomery County within a school zone or on a highway in a residential district); Nev. Rev. Stat. Ann. § 484.910 (equipment must be held in the hand or installed temporarily or permanently within a vehicle or facility of a law enforcement agency).
See, e.g., N.H. Rev. Stat. Ann. § 236:130 ("highway surveillance" through the use of a camera or any other device is prohibited unless specifically authorized by state statute); N.J. Stat. Ann. § 39:4-103.1 (photo-radar is prohibited); W. Va. Code § 17C-6-7a (use of "traffic law photo-monitoring devices" is prohibited); Wis. Stat. Ann. § 349.02(3) ("photo-radar speed detection" is prohibited).


See State v. King, 199 Or. App. 278, 111 P.3d 1146 (2005), review denied, 339 Or. 544, 125 P.3d 750 (2005) (the trial court did not err in denying the defendant's motions for a judgment of acquittal based on the insufficiency of the evidence produced by the state in its case in chief, although the defendant claimed that there was no evidence that the citation was ever mailed to him in a timely fashion, or that the actual speed of his vehicle was displayed within 150 feet of the location of the photo-radar detection device, as the state was not required to prove those facts as part of its prima facie case; the two purported deficiencies in the state's proof asserted by the defendant found their basis in two of the statutory conditions for the issuance of a citation).


See Bentley v. West Valley City, 2001 UT 23, 21 P.3d 210 (Utah 2001) (by pleading guilty and paying their respective fines, the motorists cited for a traffic offense by the city's photo-radar system admitted to all of the essential elements of the crimes with which they were charged, and they waived all nonjurisdictional defects, including any alleged preplea constitutional violations); Kovach v. District of Columbia, 805 A.2d 957 (D.C. 2002) (a motorist who paid a ticket issued under the district's red light camera program was collaterally estopped from bringing a later action challenging the constitutionality of the program).

See Shavitz v. City of High Point, 270 F. Supp. 2d 702, 179 Ed. Law Rep. 723 (M.D. N.C. 2003), order vacated on other grounds, 100 Fed. Appx. 146, 189 Ed. Law Rep. 71 (4th Cir. 2004) (a car owner cited under the city's red light camera program could not claim that he was denied due process where he simply ignored the citation and failed to avail himself of the process that was offered).

See Structural Components Int., Inc. v. City Of Charlotte, 154 N.C. App. 119, 573 S.E.2d 166 (2002) (an independent action was precluded where the city ordinance establishing the automated system specifically provided that the hearing officer's decision was subject to review in the superior court by proceedings in the nature of certiorari).