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Recent Developments in Automated Traffic Enforcement

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Municipalities across the country have been implementing automated traffic enforcement ordinances. In some cases, these are in conjunction with state enabling legislation. In other cases, municipalities are taking the lead. Either way, automated traffic enforcement programs have been facing legal challenges in both state and federal court. Regardless of venue, the challenges typically are based on either federal constitutional principles, or authority to enact the program under state law, specifically the individual state's traffic code.

The baseline analysis of these challenges has already been completed. In *AUTOMATED TRAFFIC ENFORCEMENT SYSTEMS*, 26 A.L.R.6th 179 (2007), Robin Miller summarized the cases which have presented the wide variety of challenges to automated enforcement schemes and addressed some of the earlier cases cited by the courts when decisions were rendered.

What Ms. Miller's article reveals is that federal constitutional challenges to automated enforcement have been uniformly unsuccessful. Instead, the successful challenges are the ones that challenge the authority of the municipality to enact the automated enforcement ordinance under state law. And, typically, the authority challenges are successful where the state court finds that the state's traffic code seeks uniform traffic enforcement throughout the state. State courts have found that automated enforcement programs inherently conflict with uniformity provisions in state traffic codes because automated enforcement programs use different enforcement procedures, resulting in "patchwork liability" throughout the state. This can still be problematic where a "civil penalty" is sought against the owner of the car, rather than the driver, but where no points on licenses are assessed.

However, since the publication of the A.L.R. article four cases have been decided: *In re Red Light Photo Enforcement Cases*, 78 Cal.Rptr.3d 413 (Cal.App.4th 2008); *Williams v. Redflex Traffic Systems, Inc*., 2008 U.S. Dist. LEXIS 22723 (E.D. Tenn. March 20, 2008); and *Idris, et al. v. City of Chicago, et al.*, 2008 U.S. Dist. LEXIS 3933 (N.D. Ill. January 16, 2008). In addition, the Tennessee Court of Appeals only recently decided the case of *City of Knoxville v. Ronald G. Brown*, Case No. E2007-01906-COA-R3-CV (Tenn. Ct. App. July 30, 2008). For the most part, these cases have stayed true to form, upholding automated enforcement by granting dispositive motions. However, the challenges to automated enforcement continue to proliferate and morph. Consequently, analysis of these four cases is instructive.[1]

[1] *Rhoden v. City of Davenport*, 07-0172, was recently heard by the Iowa Supreme Court. However, that case dealt primarily with Iowa's uniformity provision in its state traffic code. And, *Minnesota v. Kuhlman* (cited *infra*) is a far more comprehensive example of conflict analysis in the context of a uniformity provision than the current opinion in *Rhoden*. When the Iowa Supreme Court rules, that opinion will be worth reviewing.

***In re Red Light Photo Enforcement Cases*, 78 Cal.Rptr.3d 413 (Cal.App.4th 2008)**

This case was actually five coordinated cases in which alleged violators and other taxpayers brought class actions against the municipalities and the contractors seeking declaratory and injunctive relief for violations of the California unfair competition law and waste of local agency funds. Specifically, plaintiffs were contesting the validity of the contingent fee arrangement pursuant to which the vendors are paid a portion of fines collected by the municipalities. 78 Cal.Rptr.3d at 419.

One of the municipalities, West Hollywood, had a provision in its ordinance that actual citations would not be issued to violators for the first thirty days the automated enforcement system operates at a particular intersection. One of the plaintiffs claimed that this failure constituted "waste" pursuant to the California Code of Civil Procedure §526(a). The court disposed of this claim in one paragraph, noting that the taxpayers lacked standing because "[a]ny noncompliance with the grace period…did not pertain to the expenditure of public funds, a prerequisite of a taxpayer waste cause of action." *Id*. at 424.

Based on the fact that the sensors for automated red light enforcement calculate the speed of the vehicles, the same plaintiff also claimed that automated red light enforcement violated the California speed trap law. California Vehicle Code §40801. That statute states: "[n]o peace officer or other person shall use a speed trap in arresting, or participating or assisting in the arrest of, any person for any alleged violation of this code nor shall any speed trap be used in securing evidence as to the speed of any vehicle for the purpose of an arrest or prosecution under this code." *Id*. "Speed trap" is defined as a "particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance." *Id*. at §40802. As ingenious as this argument was, the court was not swayed, stating: "[t]he City of West Hollywood, however, established that it did not use evidence of vehicle speed gathered in conjunction with the red light systems to prosecute any *speeding* charges." 78 Cal.Rptr.3d at 424 (emphasis in original).

The plaintiff then complained that his constitutional and statutory privacy rights were infringed upon by disclosure of certain information to the automated enforcement vendor. Section 1808.21 of the California Vehicle Code states that "[a]ny residence address in any record of the [DMV] is confidential and shall not be disclosed to any person, except a court, law enforcement agency, or other governmental agency…" *Id*. However, the Vehicle Code had been amended "to specifically allow governmental agencies to contract out aspects of the operation of their automated traffic enforcement systems…" *Id*.

While contingent fee arrangements for automated enforcement are no longer allowed under California law (and thus there is no taxpayer waste to be

restrained), the court still addressed whether such arrangements were valid. The court found that there was no "actual bias from the contingent fee arrangements and that the contingent fee arrangements were not void as against public policy." *Id*. at 427-435. In so doing, the court rejected arguments that the vendor was rigging the timing of the traffic signals or otherwise manipulating the number of violations. Further, the court absolved the vendor of choosing intersections based on profitability rather than increasing safety as the contractor ultimately acceded to the city's request to place cameras at dangerous intersections, rather than those with the most red light violations. *Id*.

Although this case is California law specific, the discussion of contingent fee arrangements is instructive. Contingent arrangements with automated traffic enforcement vendors are a common way for municipalities to have violators fund installation and operation of the system rather than taxpayers. Thus, it is important to have this issue in mind when implementing an automated enforcement program so that steps may be taken in advance to inoculate the program against such charges.

***Williams v. Redflex Traffic Systems, Inc., et al.*, 2008 U.S. Dist. LEXIS 22723 (E.D. Tenn. March 20, 2008)**

Judy Williams brought an action under 42 U.S.C. §1983 based on receiving a $50 fine under the City of Knoxville, Tennessee's automated red light enforcement program. Plaintiffs' amended complaint set forth six theories: (1) violation of procedural due process under the Fourteenth Amendment to the U.S. Constitution; (2) violation of the Tennessee Open Records Act; (3) outrageous conduct or intentional infliction of emotional distress; (4) negligence or gross negligence under the Governmental Tort Liability Act; (5) civil conspiracy; and (6) vicarious liability. 2008 U.S. Dist. LEXIS 22723 at *7. Under the Knoxville ordinance, after plaintiff's car was photographed running a red light, plaintiff had the option of paying the $50 fine (but receiving no points on her driver's license), or completing an Affidavit of Non-Responsibility and naming the driver, or scheduling a hearing for a court processing fee of $67.50. *Id*. at *7-8. Plaintiff refused to select any of these options—she failed to pay the fine or request a hearing. *Id*. at *8.

Knoxville (and Redflex, the vendor operating the automated system) responded by challenging the plaintiff's standing to bring the suit. The court agreed that plaintiff lacked standing. Specifically, the court held that "because the plaintiff has failed to use the process provided to her, she cannot show that she has suffered injury because of the insufficiency of the process provided." *Id*. at *11. "Plaintiff does not have standing to challenge the conduct of defendants because she has failed to show that '[she] personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant…and that the injury is likely to be redressed by a favorable decision.'" *Id*. at *11-12 (*quoting Shavitz v. City of Highpoint*, 270 F.Supp.2d 702, 710 (M.D. N.C. 2003)). Since Williams never sought a hearing in Municipal Court, she

failed to utilize the process afforded her and has not suffered an injury as a result of deficient process. *Id*. at *12. Plaintiff's additional argument that the Knoxville ordinance violated the Fair Debt Collection Practices Act was also dismissed as the citation was not an attempt to collect on a "debt" recognized under the Act. *Id*. at *15.

The *Williams* court also inserted some rather unfortunate language with respect to the substance of plaintiff's constitutional claims. Citing *Minnesota v. Kuhlman*, 729 N.W.2d 577 (Minn. 2007), the court observed that there were "obvious due process considerations existing where the state is allowed to shift the burden of proof in a criminal case on one of the elements of the crime to the defendant." *Id*. at *13.[2] The *Williams* court thereafter stated, *in dicta*, that the question was whether the punishment was civil or criminal, because such decision would determine whether a lesser due process was allowable. *Id*. at *13.

However, the *Williams* court seemingly read the *Kuhlman* decision well beyond its intended meaning. The Minnesota Supreme Court had the opportunity to strike down automated enforcement under a due process analysis and balked and instead struck the ordinance on pre-emption grounds. The court likely balked because it wanted to preserve the option for the state legislature to adopt enabling legislation for automated enforcement state wide. Had they ruled that automated enforcement was a due process violation, such legislation would have been impossible. *See generally, Kuhlman*, 729 N.W.2d 577.

***Idris, et al. v. City of Chicago, et al.*, 2008 U.S. Dist. LEXIS 3933 (N.D. Ill. January 16, 2008)**

This case challenged the Chicago automated enforcement ordinance. The Chicago ordinance imposes a $90 fine for violations and provides only a limited number of defenses. The ordinance is an owner liability ordinance and the fact that the individual owner charged can demonstrate that he/she was not driving is not a defense (Idris was out of the country at the time his violation). Plaintiffs alleged federal constitutional violations as well as violations of certain state laws. Specifically, plaintiffs claimed that the Chicago ordinance violated equal protection because: (1) it provided a defense to car dealerships and manufacturers, but not to other vehicle owners (i.e., that a car caught running a red light was formally leased to another person); and (2) the ordinance provides for a lesser penalty than the same conduct would garner under Illinois state law. 2008 U.S. Dist. LEXIS 3933 at *6. The plaintiffs claimed that the Chicago ordinance violated substantive due process because it is arbitrary and capricious to penalize an owner whether or not they actually violated the red traffic signal. *Id*. at *17-18. Finally, plaintiffs raised the following procedural due process violations: (1) admission of hearsay evidence (photos by the automated cameras); (2) allowing the City to withhold exculpatory evidence; (3) not providing owners the opportunity to cross-examine the custodian of the images; (4) denial of a jury

[2] See 26 A.L.R. 6th 179, §9 (2007) for a more in depth discussion of *Kuhlman*.

trial; and (5) admission of evidence that would be inadmissible under Illinois State law. *Id*. at *24-25.

As to the equal protection claims, defendants initially argued that the plaintiffs did not have standing. *Id*. at *6-7. The court disagreed, however, holding that the plaintiffs suffered injuries in the form of having paid, or being ordered to pay, fines of $90. *Id*. at *7. The court then addressed the substantive challenges. As to the exception for vehicle dealers and manufacturers, the court applied the rational basis test and determined that the City's reason for the exception was valid—that lessors of cars have turned over regular possession and use to lessees whereas car owners still retain principle responsibility for the car. *Id*. at *12. The court next rejected plaintiffs' argument that the ordinance was merely a revenue generator that did not further the legitimate purpose of deterring traffic violations. *Id*. at *13. Finally, the court addressed the differing punishments under state law. In rejecting this claim, the court determined that the ordinance does not treat similarly situated people differently. Moreover, the laws are not enforced in a discriminatory manner. *Id*. at *15. Instead, according to the court, plaintiffs appeared to be claiming a double jeopardy issue. But, since the ordinance only assesses "civil" fines, there is no valid claim of double jeopardy. *Id*. at *16.

As to plaintiffs' substantive due process claim that the defenses available to owners were inadequate, the court applied the rational basis standard. The defendants argued that the ordinance was rationally related to deterring traffic violations and promoting traffic safety. *Id*. at *19. Plaintiffs maintained that the ordinance was overbroad because it placed liability on the owner, even when the owner was not driving at the time of the violation. *Id*. at *20. The court agreed with defendants, citing cases which subjected the owner of a car to forfeiture or other penalty based on ownership of the car, and not active violation of the law. *Id*. (*citing Bennis v. Michigan*, 516 U.S. 442 (1996); *Towers v. City of Chicago*, 173 F.3d 619 (7th Cir. 1999)).

Finally, the court addressed plaintiffs' procedural due process claims. In rejecting these claims, the court found *Van Harken v. City of Chicago* persuasive. 103 F.3d 1346 (7th Cir. 1997). In that case, the Seventh Circuit addressed the City's administrative scheme for enforcing parking violations. *Idris*, 2008 U.S. Dist. LEXIS at *25. Alleged violators were not allowed to cross-examine the officer who issued the ticket nor call witnesses. *Id*. at *25-26. The Seventh Circuit determined that the amount of the fine being so small justified the truncated procedure afforded. *Id*. at *26 (*citing Van Harken*, 103 F.3d at 1351). Considering *Van Harken*, the court found plaintiffs procedural due process complaints unavailing, even the argument that plaintiffs are entitled to a jury trial. *Id*. at *27.

The court declined to exercise supplemental jurisdiction over plaintiffs' state law claims.

***City of Knoxville v. Ronald G. Brown,* Case No. E2007-01906-COA-R3-CV (Tenn. Ct. App. July 30, 2008).**

In this case, the City of Knoxville prosecuted Ronald Brown for violating its automated enforcement ordinance, which is an owner liability ordinance. Brown challenged the validity of the ordinance, claiming that the ordinance imposes a criminal fine, and therefore is *ultra vires*. Brown also argued that the ordinance violates due process, equal protection and the right against self-incrimination. The court rejected all of these arguments.

First, the court determined that the fine was in fact civil in nature, being only $50. *See City of Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001). The nominal fifty-dollar fine was low enough that a jury trial was not constitutionally required. Tenn. Const. Art. VI, §14. The court determined that although the fine was intended to be punitive and deterrent and certain constitutional safeguards were triggered, the City of Knoxville nonetheless had the authority to enact the ordinance.

As to the constitutional challenges, these were summarily rejected. Brown first argued that the ordinance violated his due process rights by creating an impermissible presumption of guilt against the owner of the vehicle that can be rebutted if the owner sets forth who was driving the vehicle at the time of the violation. The court disagreed with Brown's characterization, finding instead that the ordinance makes the owner responsible, regardless of who was driving. The court stressed that at all times the City has the burden to prove each element of its case. The ordinance merely allows the owner to shift the responsibility for the violation to the actual driver under certain circumstances.

Similarly, Brown's Fifth Amendment complaint was dismissed. The court found:

> Defendant likewise argues that City Code § 17-210 violates his fifth amendment privilege against self-incrimination. According to Defendant, the City Code requires him to violate his fifth amendment privilege by forcing him to establish that someone else was driving his vehicle. Again, this misses the point. City Code § 17-10 does not make the driver of the vehicle liable. Rather, it is the owner of the vehicle who is responsible for a red light violation, regardless of who actually was driving. The City must prove its case regardless of whether Defendant testifies or files an affidavit, etc. Simply because vehicle owners are permitted to shift liability by establishing someone else was in control of their vehicle at the time of the violation does not amount to a fifth amendment violation.

Court's Order, p. 12.

Finally, Brown alleged an equal protection violation because the citation was mailed to the owner rather than the "guilty party." However, as the court had already noted, the "guilty party" by ordinance is the owner. Thus, this challenge was also rejected.