Procedure: Speed Camera Tickets Issued Under Maryland State Law Do Not Violate Due Process and Do Not Give Rise to Section 1983 Claim

Snider Int'l Corp., v. Town of Forest Heights, No. 12-2490 (4th Cir. Jan. 7, 2014).

Maryland allows speed cameras in certain places under the Transportation Article § 21-809, including in school zones, some residential areas in Montgomery County, and certain college areas in Prince George's County. These cameras generate electronically-recorded images of cars exceeding the speed limit by 12 miles an hour, and issue civil citations in the amount of $40. The ticket is mailed – first-class mail – to the address of the vehicle's registered owner. Ticketed individuals may contest the results and go to trial, with all the standard procedural protections afforded a defendant at trial, or admit civil liability and just pay the fine.

Between May 2010 and January 2012 the four plaintiffs in this case – Snider International Corporation, Mark Cranford, Stan Brown, and Al Goyburu – received 55 citations via speed camera. The defendants 1) paid some tickets, 2) defaulted on other tickets by neither paying nor contesting the tickets, and 3) contested still other tickets, received an adverse verdict, and then refused to pay. They filed a putative class-action suit against two towns where they received tickets in district court seeking relief under Section 1983 and alleging violations of their Fourteenth Amendment Due Process rights and their rights under the Maryland Constitution. The district court, without ruling on the class, granted summary judgment in favor of the towns. The district court held that 1) it could not enforce violations of state law through Section 1983, 2) that res judicata prevented a judgment in those cases where the defendants defaulted due to nonpayment, and 3) that in instances where the citations were paid, the contents and issuance of the citations violated neither procedural nor substantive due process. The plaintiffs appealed.

HELD: The Fourth Circuit affirmed the district court on all fronts, agreeing that violations of state law cannot give rise to Section 1983 claims and that the issuance and contents of the citations did not violate procedural or substantive due process under the Fourteenth Amendment to the U.S. Constitution.

DISCUSSION: The plaintiffs' state law claim was premised on their argument that the citations did not comply with a Maryland statute, Section 21-809(b), and thus violated their rights under federal law. This was a nonstarter with both the district and Circuit Court because conduct that violates only state law can never give rise to a Section 1983 claim.

Moving on to the procedural due process challenge, the Circuit Court focused on the fact that due process is solely about the process afforded individuals and the purpose it serves to prevent mistaken or unjust deprivations. The two primary features of due

process – notice and opportunity to be heard – are governed by different standards. Notice must be "reasonably calculated to convey information concerning a deprivation." On the other hand, the opportunity to be heard is governed by the *Matthews v. Eldridge* test, wherein a court must undertake "a balancing of the private interest and the public interest, along with 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." The defendants first argued the statute's use of first-class mail, rather than registered mail, to notify individuals of a citation was insufficient notice. The Fourth Circuit handily struck down this argument, spending four to five pages to delve into the general reliability and precedential recognition of first-class mail. The court highlighted the fact that since a 1950 Supreme Court case, mail has been recognized as efficient and inexpensive. The Fourth Circuit found it "difficult" to find a more reasonable way to notify a driver of driving information than using the registration information on file with the transportation agency of a state. The court further noted that the mailing of tickets first-class, even to the plaintiffs, was successful each time thereby proving the reasonableness and efficacy of the method. Finally, the Fourth Circuit indicated that the use of registered mail would not increase the likelihood of actual notice because it does not make mail any more certain to arrive (for that is not the purpose of registered mail).

The plaintiffs' second issue under their procedural due process claim was that the electronic signatures on the citations, which were admissible at trial under the Maryland speed camera law, did not state whether the testimony was based on personal knowledge or information and belief and therefore could not be testimony under oath. The Circuit Court looked to the *Matthews* test here, finding ample opportunity for defendants to be heard and that the procedures provided likely even exceeded constitutional minimums. Defendants in a speed camera case, like the plaintiffs here, were given sufficient notice (as discussed above), the right to go to trial to challenge the penalty, notification of the basis of the penalty, and, at the trial, the ability to call witnesses, rebut state's evidence, and present evidence of their own. As with notice by first-class mail, the Fourth Circuit found it "difficult" to see how any additional process would reduce the chance of an erroneous deprivation. It also noted the state's strong interest in enforcing the traffic laws and the administrative burden the state would face if the court were to add additional procedural safeguards (even if it could come up with additional ones for defendants).

Unlike procedural due process, substantive due process, the third and final argument for the plaintiffs, prevents certain governmental actions despite any procedural fairness that may accompany the action. To violate substantive due process the action must be "unjustified by any circumstance or governmental interest, as to be literally incapable of avoidance by any pre-deprivation procedural protections or of adequate rectification by any post-deprivation state remedies." The Fourth Circuit summarized in one paragraph that the plaintiffs "fail to identify any element of the disputed procedures that equate to egregious official conduct unjustified by the state interest in traffic enforcement." The claim failed.

http://www.ca4.uscourts.gov/Opinions/Published/122490.P.pdf (last accessed on Jan. 23, 2014)

Speech: County Not Liable Under First Amendment for Firing Subcontracted Security Officer Who Reported Off-Site Excessive Force Incident

Reeves v. Horace Graham and Miami Dade County, No. 12-15669 (11th Cir. Jan. 6, 2014).

Dennis Reeves provided security services to Metrorail stations in Miami-Dade County. He was not a government employee, but rather worked for a government subcontractor. While working on night he observed what he interpreted as a police officer using excessive force during a traffic stop across the street from the station. Reeves used his own cell phone to call police dispatch and report this activity – not his employer-issued equipment. He called his supervisor, he testified, only to be relieved of work while he spoke with the internal affairs investigators. Moreover, he testified that it was part of his job to monitor only the sidewalk and street adjacent to the metro station and that his job did not require he report off-premises incidents. Contrary to Reeves on this point, one of his supervisors testified that Reeves was mandated to report "serious" off-premises incidents to his own company so they could alert the proper authorities. It was undisputed that Reeves had to report on-premises criminal activity, by two-way radio to his own company.

Within 15 days of reporting the excessive force incident, Reeves was removed from his job on the order of a mid-level Miami-Dade Transit Agency employee. The contract between the Agency and the private company authorized this mid-level employee to remove Reeves, not his position within the county itself.

Reeves sued the employee that removed him – Horace Graham – and Miami-Dade County alleging retaliatory discharge in violation of the First Amendment. Reeves contended he was fired specifically because he reported the excessive force incident. Graham and the county moved for summary judgment, which the district court granted as to both defendants because Reeves reported the activity "pursuant to his official duties" and not as a citizen. Reeves timely appealed.

HELD: The Eleventh Circuit affirmed the district court, but on the alternative grounds, holding that Graham was entitled to qualified immunity and that Reeves failed to establish municipal liability.

DISCUSSION: Under *Garcetti* the Supreme Court held that "when public employees make statements pursuant to their official duties, the employees are not speaking as