Speech: Blinking Headlights to Alert Others About Speed Trap is Protected Speech; Police Enjoined From Taking Action

Elli v. City of Ellisville, No. 4:13CV711 HEA (E.D. Mo. Feb. 3, 2014).

The Federal District Court in Missouri confirms that flashing one's headlights to alert others of a speed trap is protected expression under the First Amendment.

In November 2012 Michael Elli was driving in Ellisville, Missouri when he saw a speed trap ahead. After he passed he flashed his lights at oncoming cars – none of which he suspected or knew to be breaking the law – to indicate each should be cautious. He was then pulled over by an Ellisville police officer for "flashing lights on certain vehicles prohibited warning of RADAR ahead." The officer had no other reasonable suspicion to pull Elli over.

Ellisville ordinance § 375.100 provides that "any lighted lamp or illuminating device upon a motor vehicle other than headlamps, spotlamps, front direction signals or auxiliary lamps which projects a beam of light of an intensity greater than three hundred (300) candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five (75) feet from the vehicle." The rule provides exceptions for buses, mail trucks and the like, but concludes that flashing lights are "prohibited on other motor vehicles, motorcycles and motor-drawn vehicles except as a means for indicating a right or left turn." A citation under this ordinance is a moving violation, adding points to a driver's license, and comes with a $1000 fine. Elli entered a plea of not guilty and, after being ordered to come back to municipal court on a later date, the prosecutor dismissed the charge.

Elli filed for a preliminary injunction, alleging the city's policy of pulling drivers over for flashing headlights at other drivers to warn them to be cautious violated of his First Amendment rights.

HELD: The District Court for the Eastern District of Missouri ruled in favor of the plaintiff, holding pulling over drivers for flashing their headlights violated the driver's free speech rights.

DISCUSSION: The court found that the act at issue was free speech, citing Supreme Court language that if "[a]n intent to convey a particularized message [is] present, and in the surrounding circumstances the likelihood [is] great that the message would be understood by those who viewed it," then the speech is protected. (citation omitted).

The court found that the elements for preliminary injunction (the threat of irreparable harm to the movant; the balance between that harm and the injury that granting the injunction would inflict on the other party; the probability that the movant would succeed on the merits; and the public interest), weighed in favor of Ellis. The City did not assert a substantial argument and stated that the police had discontinued the practice and

enacted a new policy, making the case moot. This position failed to assuage the court's concerns given that City police could enforce Mo. Rev. Stat. § 307.100, which was nearly identical to the local ordinance. In addition, the court pointed out that the City had argued at one point that flashing lights at other drivers may be "illegal interference with a police investigation," which state law provides is a crime. As a result, the City's assurances that it would no longer pull drivers over did not "eliminate the reasonable chilling effect" on speech.

Having found that Ellis' would likely succeed on the merits, the court issued an injunction against the City police taking further action against drivers who blink their headlights to alert of speed traps.

http://online.wsj.com/public/resources/documents/michaelelli.pdf (last accessed Feb. 20, 2014)

Speech: North Carolina License Plate Program Allowing "Pro-Life" Plates but Disallowing "Pro-Choice" Plates is Not Protected Governmental Speech

American Civil Liberties Union v. Tata, No. 13-1030 (4th Cir. Feb. 11, 2014).

In June 2011, the North Carolina General Assembly passed, and the North Carolina Governor signed into law, House Bill 289 which authorized the North Carolina Division of Motor Vehicles to issue, among other specialty license plates, a "Choose Life" plate. The law authorized no pro-choice specialty license plate. In fact, plates bearing slogans such as "Respect Choice" were suggested but repeatedly rejected by the North Carolina General Assembly.

Because North Carolina refused to allow a specialized plate to promote their cause, various North Carolina vehicle owners and the ACLU brought suit in the United States District Court for the Eastern District of North Carolina, claiming First and Fourteenth Amendment violations.

In December 2011, the district court granted a preliminary injunction blocking North Carolina from issuing the "Choose Life" plate. One year later, that court granted summary judgment and permanently enjoined the "Choose Life" plate. The district court held that "sufficient private speech interests are implicated by the specialty license plates to preclude a finding of purely government speech[,]" and that "the State's offering of a Choose Life license plate in the absence of a pro-choice plate constitutes viewpoint discrimination in violation of the First Amendment." North Carolina appealed.

HELD: The Fourth Circuit affirmed, finding that North Carolina's license plate program did not constitute government speech.