International Municipal Lawyers Association
www.imla.org

IMLA NEWS
Issue 15 – August 14, 2014

## Traffic: State's Appropriation of Auto Following Repeated DUI Arrests Does Not Violate Due Process Where Plaintiff Did Not Promptly Request Judicial Determination

## *Booker v. City of Saint Paul*, No. 13-2747 (8th Cir. Aug. 7, 2014).

Where the State has provided a means of challenging automobile forfeitures, a repeated DUI offender who failed to make a timely request for judicial determination of his forfeiture could not demonstrate a due process violation.

On May 30, 2011 Gerald Booker was arrested for driving under the influence ("DUI"). He received seven years' probation. This was Booker's fourth arrest for DUI within ten years, leaving his vehicle subject to Minnesota's forfeiture rule, Minn. Stat. § 169A.63, Subdiv. 1(e)(1). The officers provided Booker with a Notice of Seizure and Intent to Forfeit, which provided that forfeiture was "automatic unless within 30 days of receipt of this form [he] demand a judicial determination of this matter," and that "if [he] d[id] not demand judicial review exactly as prescribed . . . [he would] lose the right . . . and lose any right [he] may have to the described property." As for the process, the state law allows a person to file a civil complaint with the court where the seizure took place, wherein he alleges that the seizure was improper, his interest in the vehicle, and raises affirmative defenses. While there are fees associated with this process, they may be waived by a showing of necessity. Booker pleaded guilty and was sentenced, but failed to challenge the seizure for seven months.

After being told the vehicle could not be recovered due to his failure to act, Booker filed suit, arguing the statute does not provide enough due process. The District Court subsequently granted summary judgment for the City. Booker timely appealed.

**HELD**: The Eighth Circuit affirmed the District Court, holding the Minnesota forfeiture law provides adequate due process.

**DISCUSSION**: Booker argued that the government was required to afford defendants an automatic pre-seizure hearing and an automatic post-deprivation hearing after seizing a vehicle, and that the $320 filing fee to challenge the seizure was constitutionally unreasonable. The City countered that the availability of a judicial determination satisfied due process, and pointed out that Booker had been given a probable cause hearing on his DUI.

The Court evaluated the procedural due process challenge under the *Eldridge test*, wherein courts look to "(1) the nature and weight of the private interest affected by the challenged official action; (2) the risk of an erroneous deprivation of such interest as a result of the summary procedures used; and (3) the governmental function involved and state interests served by such procedures, as well as the administrative and fiscal burdens, if any, that would result from the substitute procedures sought."

As for the private interest, Booker looked to *Coleman v. Watt*, 40 F.3d 255, 260 (8th Cir. 1994), for the proposition that a seven-day delay for a post-deprivation hearing with regard to a vehicle seizure is constitutionally unreasonable. However, the Circuit Court found that *Coleman* was inapposite because Booker, unlike the plaintiff in *Coleman*, sat on his rights for seven months before requesting a hearing. Booker failed to provide any evidence that, had he requested a prompt hearing, he would have been denied one.

The second factor, the risk of erroneous deprivation, was likewise not present because probable cause for a DUI must be established promptly - a task made easier with chemical testing. Here, Booker had undergone chemical testing proving his blood alcohol level was above the legal limit and had promptly received a probable cause hearing, undermining his claim of erroneous deprivation.

Third, the City argued that the government's interest in these cases was substantial since it protects public safety by keeping habitually intoxicated drivers off the road. Booker countered that this argument was invalid, given that intoxicated drivers are pulled off the road immediately once arrested. The court found in favor of the City on this issue, noting that repeat DUI offenders, like Booker, are unlikely to be deterred from driving just by having a suspended license. As for the second prong of this element, the substitute procedures, the Court found Booker's suggestion – to immediately hold a probable cause hearing every time Minnesota seizes a vehicle - would be burdensome given the increased costs in terms of courts, defendants, prosecutors, and judges. Balancing the three factors, the Court found Minnesota provided enough procedural due process under the current scheme, particularly by allowing those who want to challenge a seizure to obtain an independent judicial determination upon request.

http://media.ca8.uscourts.gov/opndir/14/08/132747P.pdf (last accessed August 14, 2014)