

Summary of legal decisions concerning automated enforcement

as of February 2008

Camera or automated enforcement is a method of using technology to photograph violations of traffic law. Cameras are aimed at vehicle tags and, in some states, drivers and tags. Video is rarely used in camera enforcement programs, so overwhelmingly, red light and photoradar camera enforcement does not use surveillance cameras that indiscriminately record everything in view. No photograph is taken in the absence of a violation. Red light cameras are triggered by sensors embedded in the road when a driver enters the intersection against the light. Speed cameras are triggered when a driver's speed, measured by radar, exceeds a specified speed, usually well above the speed limit. Jurisdictions choose the speed that activates the camera. Similarly, they choose how long after the light turns red that the camera is activated. This enables officials to ensure that only unambiguous violations are photographed. Citations are mailed to the registered owners of the vehicles when a review of the photographs demonstrates that an offense has occurred. Typically, the offense is civil and a fine is the only consequence. Drivers are given a hearing to contest the citations.

The following sections summarize decisions dealing with a variety of issues relevant to camera enforcement. Because many camera enforcement laws treat violations as the equivalent of parking tickets, decisions on parking tickets are included.

Decriminalization

Can a local jurisdiction enact an ordinance creating a civil offense with the same elements as an offense that is criminal under state law?

In 1987, the Illinois legislature authorized municipalities to decriminalize parking violations and substitute a civil penalty system which handled parking citations administratively. Chicago did so in 1990. Under the Chicago ordinance, the ticket was prima facie evidence of a violation. The ticket could be contested at an administrative hearing held by lawyers hired by the city, with appeal to the county circuit court. The maximum fine was \$100.

The ordinance was challenged as a violation of due process under two theories. First, the plaintiffs claimed that because parking violations have traditionally been treated as criminal offenses, they may not be reclassified as civil and the procedural safeguards afforded criminal defendants may not be reduced.

The court noted that "nothing in the due process clause forbids the reclassification of criminal offenses as civil violations. ... A criminal fine of \$100 is much less severe than many incontestably civil penalties, so if the state decides to convert it to a civil penalty there is no reason to impose the safeguards of criminal procedure. It is extraordinarily common, moreover, for a statute to carry both civil and criminal penalties. ... And even if ... some weird ratchet decreed that once a criminal penalty, always a criminal penalty, nothing in the constitution prevents a state from relaxing the conventional safeguards of the criminal process in tandem with a lightening of the penalties." *Van Harken v. City of Chicago*, 103 F.3d 1346 (7th Cir. 1997).

In a red light camera case, the court cited *Van Harken*, finding that the North Carolina state camera enforcement statute and the High Point ordinance created a civil offense. Consequently, the court upheld the ordinance against a challenge under due process. *Shavitz v. City of High Point*, 270 F.Supp 2d 702 (Middle Dist. N.C. 2003). *Shavitz'* challenges included the presumption that the registered owner of the vehicle drove the vehicle when the offense occurred; that the hearing violated the confrontation clause;

that the appeal form was inadequate; that the hearing officers were not sufficiently impartial; that the contractors were engaged in the unauthorized practice of law; that the appeal bond was excessive and violated rights of indigents; and that the presumption and \$50 fine constituted an unlawful taking.

The Ohio Supreme Court concluded that Akron's ordinance imposing a civil, not criminal, sanction on speeding in a school zone did not conflict with state law under which it was a criminal offense. The court noted, "[t]his argument [that decriminalization creates a conflict with state law], However, reflects a fundamental misunderstanding of the actual effect of the Akron ordinance. The ordinance does not change the speed limits established by state law or change the ability of police officers to cite offenders for traffic violations. After the enactment of the Akron ordinance, a person who speeds and is observed by a police officer remains subject to the usual traffic laws. Only when no police officer is present and the automated camera captures the speed infraction does the Akron ordinance apply The Akron ordinance complements rather than conflicts with state law." *Mendenhall et al. v. City of Akron et al.*, Ohio Supreme Court, Slip Opinion No. 2008-270. <http://www.supremecourtsohio.gov/rod/newpdf/0/2008/2008-Ohio-270.pdf>

Procedural adequacy

Is an administrative hearing in which photographs are offered as proof of the offense sufficient to comply with the requirements of due process?

The second claim by the plaintiffs in *Van Harken* was that the procedures for adjudicating parking tickets under the Chicago ordinance were inadequate even for civil proceedings. Specifically, they argued that the procedure should have required the officer who issued the ticket to be present at the hearing; that the hearing officer should not have been permitted to cross examine the drivers; and that the hearing officers were not sufficiently independent because they worked at the pleasure of the City's Director of Revenue. The court dismissed these allegations, citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), for the proposition that a cost-benefit analysis is required to determine the process that is due in a given case. The court noted the high cost of requiring the citing officer to be present compared to the cost of an adverse decision in the few cases in which an officer's presence would affect the outcome of the hearing. The court noted that there is no absolute right of confrontation in civil cases and that the hearing officer's subpoena power provided a safeguard in cases in which an officer's presence appeared necessary. *Van Harken v. City of Chicago*, 103 F.3d 1346 (7th Cir. 1997).

On the issue of the independence of the hearing officers, the court noted that they were hourly employees who only worked when there were cases to be heard and that their compensation did not depend on the outcomes of the hearings they handled.

The *Van Harken* state constitutional claims were decided by the Illinois Court of Appeals. Even though the Illinois due process provisions provide broader protection than that afforded by the U.S. Constitution, in *Van Harken II*, the court nonetheless upheld the Chicago ordinance under claims that it violated the separation of powers and due process provisions of the Illinois Constitution. *Van Harken v. City of Chicago*, 713 N.E.2d 754 (Ill. 1999).

Separation of powers, delegation

Does the use of administrative hearing officers in contested cases violate the separation of powers doctrine or constitute an improper delegation? Does the use of contractors constitute an improper delegation where the law requires that the government "operate" the camera enforcement system?

The claim that camera enforcement violated the separation of powers doctrine was raised in *Van Harken II*, cited above. The court said that both legislative and judicial power resides in administrative agencies. It noted that the overlap does not violate the separation of powers doctrine provided that administrative actions are subject to judicial review. *Van Harken v. City of Chicago*, 713 N.E.2d 754 (Ill. 1999).

California courts addressed a delegation issue. Former Cal. Veh. Code § 21455.5 required the government to operate the camera enforcement program. Because the contract provided that the city

retained the right to oversee and control the functioning of the system and to evaluate the contractor's performance, for the purpose of § 21455.5, the court said that the city operated the system. *Leonte v. ACS State and Local Solutions*, 19 Cal. Rptr. 3d 879; 2004 Cal. App. LEXIS 1791.

Equal protection

Is the equal protection clause violated when persons prosecuted under traditional enforcement have trial rights while those cited via camera enforcement do not?

The *Shavitz* court held that absent the involvement of a fundamental right or a suspect classification, the proper standard for evaluating an equal protection claim is the rational basis test. Finding that there is a rational basis [promoting public safety] for the creation of the two classes of violators, the court upheld the red light camera ordinance. *Shavitz v. City of High Point*, 270 F. Supp. 2d 702 (Middle Dist. N.C. 2003).

A review of the briefs in *State v. King*, 111 P.3d 1146 (Or. 2005), indicates that *King* claimed that distinguishing between resident drivers and non-resident drivers violated equal protection. The court dismissed this claim without discussion.

Presumption

Is it permissible to authorize the use of a citation to prove a violation?

Under the following circumstances, a citation may be used to prove a violation occurred: the citation must (1) contain the information mandated by the law or ordinance; (2) the issuer of the citation must certify the accuracy of the information by signing the citation; (3) the recipient of the citation must be afforded a chance to provide rebuttal evidence at a hearing; and (4) the hearing officer must have subpoena powers. *Van Harken v. City of Chicago*, 906 F.Supp. 1182, 1195-1196 (Ill. 1995); *City of Chicago v. Hertz Commercial Leasing Corp.*, 375 N.E.2d 1285 (Ill. 1978).

Does it violate due process to create a rebuttable presumption that the vehicle in violation of a traffic law was driven by its owner?

The Oregon photoradar law gives the state the benefit of a presumption that the registered owner is the violator if the state proves that a civil citation was properly issued and delivered to the registered owner of the vehicle. The presumption was upheld in *State v. Dahl*. The Supreme Court of Oregon held that the state may rely on a statutory presumption to prove a traffic violation. 87 P.3d 650 (Or. 2004). Two issues regarding the presumption were raised. The first was whether the rule allowing a presumption to shift the burden of proof to a defendant in a civil offense applies to a speeding offense. The court upheld the presumption, noting that a traffic violation is civil. It relied on state law that defines a crime as "an offense for which a sentence of imprisonment is authorized" or "a felony or a misdemeanor." ORS 161.515. Because the state showed that the citation was properly issued and delivered to the registered owner, the court concluded that it was permissible to shift the burden to the defendant to present an alternative that is more probable than the presumption. "The Due Process Clause poses no impediment to shifting the burden of persuasion to the defendant on one element of a traffic violation." *Dahl*, 87 P.3d 650, 655 (Or. 2004).

The defendant's second argument was that because people sometime drive vehicles they do not own, the connection between ownership and the violation was too weak to survive due process scrutiny. Again, the court relied on the civil nature of the violation to uphold the presumption, quoting from a 1976 U.S. Supreme Court decision, "to avoid a due process violation in a civil case, 'it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and the inference of one fact from the proof of another shall not be so unreasonable as to be a purely arbitrary mandate.'" *Dahl* quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, (1976), quoting *Mobile, J. & K. C. R. R. v. Turnipseed*, 219 U.S. 35 (1910). The court concluded, "[t]he legislature's determination that the registered owner was driving his or her car is not "so unreasonable as to be a purely arbitrary mandate. Rather, it was rational for the legislature to assume that registered owners commonly driver their own cars. ... [T]he legislature reasonably could select proof of ownership as the point at which the

burden shifts to the registered owner to prove that he or she was not driving." *Dahl*, 87 P.3d 650, 655 (Or. 2004).

State v. Clay, 29 P.3d 1101 (Or. 2001), is a case in which even though the state failed to prove the person cited was the registered owner, it tried to invoke the presumption on other grounds. The state unsuccessfully argued that the photoradar law imposed a duty on the officer to issue the citation to the registered owner and that therefore the state was the beneficiary of a presumption that the duty was performed. The Supreme Court of Oregon held that the state could not avail itself of the presumption that the defendant was driving when the photoradar image was taken without proving the predicate fact that the defendant was the registered owner.

A District of Columbia trial judge relied in part on tort doctrine to uphold the presumption that the driver was the registered owner. The court combined an individual challenge and a taxi company's challenge to the District of Columbia photoradar and red light camera laws in *Agomo v. Williams*, No. 02-000 6520, 2003 D.C. Super. LEXIS 31 (Super. Ct. D.C. June 12, 2003). Citing *Mathews v. Eldridge*, 424 U.S. 319 (1976) and *Mobile, J. & K. C. R. R. v. Turnipseed*, 219 U.S. 35 (1910), the judge upheld the presumption. The opinion noted that in civil cases, the owner of a vehicle is liable for the negligence of any person driving the vehicle with the owner's consent and that vehicle owners are routinely held liable for parking infractions and abandoned vehicles.

In a memorandum opinion, the Ninth Circuit Court of Appeals upheld the Portland photoradar program against unspecified due process challenges, holding that "Portland's photoradar procedures comport with Oregon law, which guarantees a hearing, provides a statutory defense when traffic control devices are improperly installed, gives notice to violators that a police officer can testify, and allows for discovery of evidence. The court cited *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1110 (9th Cir. 2005) for the proposition that civil sanctions require only adequate notice and an opportunity to be heard. *Holst v. City of Portland*, No. 04-35496 2005 U.S. App. LEXIS 22652 (9th Cir. 2005).

A review of the briefs in *State v. King*, 111 P.3d 1146 (Or. 2005), indicates that *King* challenged the presumption that the registered owner was the driver. The court dismissed this claim without discussion.

Conflict of laws and preemption

Is a state camera enforcement law invalid because it differs from traditional speed law?

The defendant in *Dahl* claimed that the state law establishing procedures for adjudicating traffic citations superseded the state photoradar provision. The court found no conflict. It analyzed the photoradar provision as creating an exception to the earlier provision and cited the rule of statutory interpretation that when there is an apparent conflict between two laws, the more specific law controls. *State v. Dahl*, 87 P.3d 650, 655 (Or. 2004).

The Minnesota Court of Appeals held that a Minneapolis red light camera ordinance was preempted by state law. The state law that preempted the ordinance was the traditional prohibition against entering an intersection against a red light. Minnesota has no state camera enforcement law. *State v. Kuhlman*, No. A06-568, 2006 Minn. App. LEXIS 138 (Minn. 2006), (Minn. Ct. App., Sept. 22, 2006). The Minnesota Highway Traffic Regulation Act expressly preempts local traffic ordinances that are in conflict with state traffic law. The court found that a conflict existed because both the substance and procedural requirements of state and local law must be uniform. Substantively, the ordinance's creation of owner liability "would prevent uniform traffic regulation and would therefore conflict with ... [state law]. ... Minneapolis's regulation would hinder intrastate travel by creating the risk of unexpected liability. ... Minnesota law does not permit individual cities to unilaterally regulate traffic in a way that would create a checkerboard of liability across the state." However, the court was very clear that its holding was narrow, that "[i]t is, however, important to emphasize that our decision does not determine the general validity or invalidity of photo-enforcement of traffic violations. We are presented solely with the question of ... [preemption]." *State v. Kuhlman*, No. A06-568, 2006 Minn. App. LEXIS 138 (Minn. 2006), (Minn. Ct. App., Sept. 22, 2006).

Dedication of revenue from fines was the subject of litigation between the Guilford County Board of Education and the City of High Point, NC. *Shavitz v. City of High Point*, 270 F. Supp. 2d 702 (Middle Dist. N.C. 2003); *rev'd in part*, 204 U.S. App. LEXIS 1104 (4th Cir. 2004); *remanded to* 630 S.E.2d 4 (N.C. 2006). The NC Constitution provides that after deductions up to 10 percent for collection costs, fine revenue is to be turned over to the county Board of Education to support public schools. The High Point ordinance provided that after deduction for cost, the fine revenue was payable to the City of High Point. The federal appellate court remanded the case to the state to decide this state constitutional issue. The North Carolina Court of Appeals held that the proceeds fell under the constitutional provision allocating fines to the counties to defray the cost of public schooling. *Shavitz v. City of High Point*, 630 S.E.2d 4 (N.C. 2006).

The Ohio Supreme Court held that an Ohio municipality does not exceed its home rule authority by passing an ordinance authorizing automated enforcement and a civil sanction for speed and signal violations, provided that the municipality does not alter statewide traffic regulations. The court noted that automated enforcement, supplemented, but did not replace traditional enforcement, that the ordinance specifically stated that no citation issued through automated enforcement would be valid if a traditional citation were issued for the same offense. The court found that sending the citation to the registered owner of the speeding vehicle and providing for a civil, not criminal, penalty were not sufficient to create a conflict with state law. *Mendenhall et al. v. City of Akron et al.*, Ohio Supreme Court, Slip Opinion No. 2008-270. <http://www.supremecourtofohio.gov/rod/newpdf/0/2008/2008-Ohio-270.pdf>

Privacy

Is there a right of privacy sufficient to preclude the use of camera enforcement for traffic offenses?

A District of Columbia trial judge made reference to unspecified privacy concerns and said, "[privacy] concerns are outweighed by the legitimate concerns for safety on our public streets." *Agomo v. Williams*, No. 02-000 6520, 2003 D.C. Super. LEXIS 31 (Super. Ct. D.C. June 12, 2003). Taking a photograph of a vehicle license plate does not violate any privacy right. *Arizona v. Hicks*, 480 U.S. 321 (1987) (police can record serial numbers in plain view); *New York v. Class*, 475 U.S. 106 (1986) (police can move papers covering a vehicle identification number).

Purpose of camera enforcement

Opponents of camera enforcement have made the claim that the purpose of camera enforcement is to make money, not to advance safety.

"The plaintiffs argue, without legal support, that the District of Columbia is using the camera system to achieve a financial windfall for the Government. Nothing could be further from the truth. In the District of Columbia the traffic regulations forbid driving through a yellow or red traffic signal. The cameras will not operate, unless there is a malfunction, to photograph vehicles that do not run yellow or red lights. The fact that there are a high number of persons photographed running the traffic signal or operating at excessive speeds is an example of the magnitude of the problem facing city officials" *Agomo v. Williams*, No. 02-000 6520, 2003 D.C. Super. LEXIS 31 (Super. Ct. D.C. June 12, 2003).

Notice

Is mail service addressed to the vehicle's registered owner sufficient?

A District of Columbia court addressed this issue in *Agomo v. Williams* which involved a vehicle registered in Texas. Over a period between September 2001 and March 2002, Agomo's vehicle was photographed while speeding 16 times. Although Agomo received actual notice and appeared at hearings to contest several of the citations, the citations were mailed to an address in Texas where the vehicle was registered. The court stated, "[t]he notices were sent to the address of the registered owner. It is the obligation of the plaintiff, as registered owner, to check for mail sent to him in Texas. Because the notice requires a response within a thirty-day period, it is not unreasonable to expect an owner to check for mail

within this time period." *Agomo v. Williams*, No. 02-000 6520, 2003 D.C. Super. LEXIS 31 (Super. Ct. D.C. June 12, 2003).

A challenge to mail service was brought in Oregon. The court used the *Mathews v. Eldridge* analysis and determined that the balance was struck in favor of the state, that "[s]ervice of citations issued by first class mail rather than by more expensive means furthers the legislature's interest in providing for a cost-efficient method of achieving the aims of the legislation." It also found that a more costly means of providing notice would not be more likely to reach the driver if he or she is not the registered owner of the vehicle. *State v. King*, 111 P.3d 1146 (Or. 2005).

Civil rights and Racketeer Influenced and Corrupt Organization Act claims

Public officials have been sued under federal civil rights law and RICO for their role in camera enforcement programs.

The U.S. Court of Appeals for the Ninth Circuit upheld a judgment in favor of defendants in a case alleging violations of 42 U.S.C. § 1983 and RICO stemming from photoradar citations. *McNeill v. Town of Paradise Valley, Arizona*, 44 Fed. Appx. 871 9th Cir. 2002; *cert. denied* 540 U.S. 874 (2003).

Miscellaneous issues

Fourth Amendment seizure

In a 2002 case, an Arizona camera enforcement program was challenged as involving an unconstitutional seizure. The appellate court found that no seizure is involved in sending a citation issued under a camera enforcement program. *McNeill v. Town of Paradise Valley, Arizona*, 44 Fed. Appx. 871 (9th Cir. 2002); *cert. denied* 540 U.S. 874 (2003).

Contractor credibility

An Alaska trial judge questioned the credibility of the contractors who provided photoradar equipment to the municipality because they had a financial interest in proving the equipment to be reliable. On appeal, the municipality lost because appellate courts are required to defer to trial judges on issues of credibility. *Municipality of Anchorage v. Baxley*, 946 P.2d 894 (Alaska 1997).

Admission of extraneous evidence

May courts or hearing officers consider issues not provided for in camera enforcement laws and ordinances? The Oregon photoradar law provides that seven elements will be considered in trials of photoradar cases. One of the elements is a notice provision requiring a sign within 150 feet of the photoradar unit. In a case in which the sign was on the opposite side of the street, the trial court declined to dismiss the citation. The Oregon Court of Appeals affirmed, noting that the plain language of the act provided that the notice had to be close to the photoradar unit but did not specify on which side of the street the sign had to be. The court held that the trial court acted correctly when it declined to read further requirements into the law. *State v. Kolisch*, 185 Ore. App. 418; 60 P.3d 576 (Or. 2002). Similarly, in *City of Wilmington v. Minella*, the court held that it was error to acquit a driver based on her examination of witnesses on matters that were statutorily irrelevant. 879 A.2d 656 Del. 2005.