

Legal Q & A

Automated Law Enforcement Systems, Part I: Traffic Enforcement

By Roger Huebner, General Counsel, IML
Jerry Zarley, Paralegal, IML

86 ILLINOIS MUNICIPAL REVIEW 25, No. 05 (May 2007)

This monthly column examines issues of general concern to municipal officers. It is not meant to provide legal advice and is not a substitute for consulting with your municipal attorney. As always, when confronted with a legal question, contact your municipal attorney as certain unique circumstances may alter any conclusions reached herein.

Technology has rapidly advanced and it has enhanced our abilities in a variety of ways over the last few decades, especially in the areas of safety and security. Surveillance cameras have been around since the advent of video cameras. Now much more sophisticated, they are fairly common in businesses and government facilities, but they are not as of yet as prevalent in homes. However, although not as clear and trustworthy as the more elaborate surveillance systems that are used in businesses and government facilities today, one can simply setup a webcam on his or her home computer, and remotely monitor activity at home via the Internet somewhere else.

Surveillance cameras (whether they produce still photos or video) have found their way into the law enforcement arena and public debate. As a result, we decided that a multi-part series examining the legal issues surrounding automated law enforcement systems would be an appropriate service to municipal officials. At this stage, we are not certain how many columns there will be in this series, or if they will all run concurrently. Whether they run concurrently depends upon the number and degree of importance of other legal issues. However, we decided to begin the series with the issue of traffic enforcement because of the recent and seemingly conflicting court decisions from two other jurisdictions which could possibly end up influencing Illinois law in this area.

Q: What are the decisions in these two cases, and how might they influence Illinois law in the use of surveillance cameras for traffic enforcement purposes?

A: One case, State of Minnesota v. Kuhlman,¹ is out of the Minnesota Supreme Court, which declared that the City of Minneapolis's photo enforcement program at stop-lights conflicted with State statutory law and the due process rights of vehicle owners under State law. The other is an appellate court decision out of Washington D.C., Agomo v. Fenty,² which upheld the District's automated traffic enforcement system. Both parties in court challenges of photo traffic enforcement programs in Illinois are bound to cite the decisions and the rationale in these cases because of their seminal nature.

First, a brief description of a photo traffic enforcement program is in order. Pursuant to

an ordinance, a municipality will place cameras at specific locations to monitor traffic regulations. Cameras do not run continuously; they snap a picture or record a video depicting the offending vehicle, its license plate, and the violation when a sensor indicates that a violation has occurred. The jurisdictional law enforcement authority then sends a citation with a copy of the picture or video to the registered owner of the vehicle via postal mail. Such programs presume that the owner is the violator but they typically provide an opportunity for the owner to show that he or she wasn't the driver at the time of the violation.

In the Minnesota matter, the defendant, Kuhlman, challenged the Minneapolis ordinances that authorized photo enforcement of traffic control signals after he received a citation in the mail from the city's police department for running a red light. The defendant specifically claimed that the city's ordinances were in conflict with State traffic laws, and that the ordinances violated the due process rights of vehicle owners. All three courts in Minnesota (the trial, appellate, and Supreme courts) all agreed with the defendant, and declared the Minneapolis ordinances in violation of Minnesota law.

Although based solely on Minnesota law, Kuhlman is interesting here for a few reasons. Unlike Illinois, there was no enabling statute authorizing municipalities in Minnesota to initiate automated traffic enforcement programs. However, Minneapolis enacted its program based on its home rule powers. Nevertheless, the City's program conflicted with State law because it was not specifically authorized by statute, it violated the statutory requirement of uniform enforcement of traffic violations throughout the State, and it imposed the liability of the red light violation on the vehicle's owner, while the statute imposed the liability for all traffic violations upon the driver. Thus, the City's ordinance violated the due process rights of the vehicle's owner because it presumed that the owner was the driver, and it shifted the burden of proof to the owner to prove that he or she wasn't the driver.

Like Kuhlman, the defendants/appellants in the Washington D.C. matter – *Agomo, et al.* – claimed that the District's automated traffic enforcement (ATE) system conflicted with the District's statutory scheme which typically imposed liability upon the driver. However, the appellate court disagreed because the District's ATE system was authorized by statute, the statute created a rebuttable presumption that the car used in the infraction was in the custody, care, or control of the registered owner, and it imposed vicarious liability on that basis. The appellate court noted that “[v]icarious liability, in and of itself, is merely a legal concept used to transfer liability from an agent (in this case, the car) to a principal (the owner of the car).”³

The appellate court found other District statutes that created a system of vicarious liability through the use of a rebuttable presumption. For example, the District had a statute that held the owner liable for accidents committed by another person if the person was operating the vehicle with the owner's consent. Therefore, the appellate court held that the District's automated traffic enforcement system did not conflict with other statutory traffic provisions in the District's Code.

Unlike Kuhlman, however, the appellants in Agomo argued a due process violation under the Fifth Amendment of the U.S. Constitution claiming that the District's ATE system violated the constitutional right of presumed innocence. However, the appellate court determined that

there was no constitutional violation. Unlike Minneapolis' ordinance which was criminal in nature, the District's automated traffic enforcement system imposed a civil liability, as opposed to criminal liability, upon the vehicle's owner. A system of civil administrative adjudication, rather than criminal proceedings, was established for traffic violations regulated under the District's ATE system.

According to the appellate court in the D.C. matter, it is entirely rational to presume that a vehicle is in the custody, care, or control of its registered owner. In addition, the U.S. Supreme Court has held that a presumption of guilt is valid provided it does not preclude a defense.⁴ It was clear that the District's statute in this case provided ample opportunity for the appellants to rebut the presumption of guilt. "The public has a right to expect that a vehicle owner who voluntarily surrenders control of his vehicle to another is in the best position both to know the identity and competence of the person to whom he entrusts the vehicle. . . ."⁵

The law in Illinois regarding automated traffic enforcement systems as discussed here is more similar to the Washington D.C. matter. Illinois has an enabling statute authorizing municipalities within certain counties to utilize an automated traffic law enforcement system.⁶ HB 1818, which is on the House floor, second reading (as of this writing), and supported by the IML, proposes to expand the number of counties, and municipalities within those counties, who may utilize such systems. However, the municipal use of surveillance cameras to enforce traffic violations is limited to red light violations,⁷ and home rule units are limited by the statute and prohibited from using surveillance cameras for any other type of traffic enforcement, such as speeding.⁸

Like the Washington D.C. statute, the Illinois system also creates a system of vicarious liability through the use of a rebuttable presumption. The Illinois system is civil, rather than criminal, in nature. Upon challenges, it utilizes administrative adjudication proceedings, rather than criminal court proceedings.

¹ No. A06-568 (April 5, 2007).

² No. 03-CV-813 (Feb. 1, 2007).

³ Agomo, slip op. at p. 19.

⁴ See Mobile, Jackson & Kansas City R.R. Co. v. Turnipseed, 219 U.S. 35, 43 (1910).

⁵ Chicago v. Hertz Commercial Leasing Corp., 71 Ill. 2d 333, 346 (1978); cert. denied, 439 U.S. 929 (1978).

⁶ 625 ILCS 5/11-208.6; See also P.A. 94-0795, eff. May 22, 2006.

⁷ 625 ILCS 5/11-208.6(a)-(c).

⁸ 625 ILCS 5/11-208.6(c).