

YOU'VE GOT MAIL: ANALYZING THE CONSTITUTIONALITY OF SPEEDING CAMERAS IN *CITY OF MOLINE ACRES V. BRENNAN*, 470 S.W.3D 367 (MO. 2015)

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I. INTRODUCTION

Imagine you open your mailbox, and inside, you find a speeding ticket. The ticket indicates that a camera caught you exceeding the speed limit, and either you pay the fine, or the ticket will be sent to the local courthouse for further proceedings. We live in an age defined by technological advancements; one in which you can open your mailbox and find a speeding ticket, generated by an automated traffic enforcement system, waiting inside. St. Louis, Missouri utilizes such a system, which has produced \$48 million in revenue by issuing traffic citations through the mail.¹ States rely on first class mail to deliver photo-radar citations.² As technology has advanced, the use of photo-radar and red light cameras by local municipalities has continually increased throughout the United States.³ As of October 2015, 426 communities have initiated red light camera programs, while 142 communities have programs using photo-radar cameras to penalize speeding violations.⁴

The general public's opinion on the use of photo-radar cameras has been negative.⁵ Although the Missouri Court of Appeals has heard cases involving the constitutionality of red light cameras,⁶ neither the Missouri Court of Appeals, nor the Missouri Supreme Court had issued an opinion

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1. Joe Conlon, *A Missouri Citizen's Guide to Red Light Cameras*, 80 MO. L. REV. 197, 218 (2015).
2. Andrew Askland, *Photo Radar Enforcement: A Brief Stall on a Slippery Slope*, 19 B.U. J. SCI. & TECH. L. 1, 3 (2013).
3. Insurance Institute for Highway Safety, Highway Loss Data Institute, *Red Light Running*, http://www.iihs.org/iihs/topics/laws/automated_enforcement (last visited Mar. 22, 2017).
4. *Id.*
5. Askland, *supra* note 2, at 6.
6. *See e.g.*, *Ballard v. City of Creve Coeur*, 419 S.W.3d 109 (Mo. Ct. App. 2013); *Damon v. City of Kansas City*, 419 S.W.3d 162 (Mo. Ct. App. 2013); *City of Kansas City v. Jordan*, 174 S.W.3d 25 (Mo. Ct. App. 2005).

on the constitutionality of the use of speeding cameras to detect drivers violating the speed limit. However, in August 2015, the Missouri Supreme Court issued a ruling on a case involving an ordinance on speeding cameras in *City of Moline Acres v. Brennan*, and it held the ordinance to be unconstitutional.⁷

This Note argues the Missouri Supreme Court correctly held the ordinance unconstitutional because it did not comply with the notice requirements of the Due Process Clause under the State Constitution. Additionally, it argues the court wrongly analyzed the presumption that an automated traffic enforcement system ordinance is allowed to create and wrongly held that the city's ordinance did not conflict with state law. Section II reviews the historical background of the use of photo-radar and red light cameras and the legal background of the use of automated traffic enforcement systems, where the Missouri Court of Appeals has struggled to determine what constitutes a constitutional ordinance for this advanced technology.

Section III examines *City of Moline Acres v. Brennan* and the complex analysis the court provided in rendering its decision on the issues of presumptions, notice, point assessments for traffic violations, and the argument the ordinance conflicts with state law. Section IV analyzes how the Missouri Supreme Court wrongly decided the ordinance did not conflict with state law and wrongly decided the presumption issue. In addition, it analyzes how this decision modified existing state law on the use of automated traffic enforcement systems and reinforced the notice requirements for traffic citations, including those sent through the mail.

II. BACKGROUND

A. The History of Automated Traffic Enforcement Systems

Automated traffic enforcement systems use cameras to capture vehicles committing traffic violations. After reviewing the images, law enforcement sends the vehicle owner a citation in the mail.⁸ Generally, there are two different types of enforcement systems. The first form of enforcement system used was the red light system, which placed cameras at intersections to record red light violations.⁹ The second type of enforcement system is the photo radar system, which increased in use in the 1990s, after the advancement of digital photography.¹⁰ Photo-radar systems

7. *City of Moline Acres v. Brennan*, 470 S.W.3d 367, 378 (Mo. 2015).

8. See Robin Miller, Annotation, *Automated Traffic Enforcement Systems*, 26 A.L.R.6th 179 (2007).

9. *Id.*

10. Askland, *supra* note 2, at 1.

are used along roadways to capture photos of vehicles exceeding the speed limit.¹¹

Mechanisms for capturing the driver of a vehicle committing a speeding violation were developed over a century ago.¹² The use of “photo-speed recorders” began in Massachusetts in 1909 to capture images of locomotives.¹³ The recorders took two images, seconds apart from each other.¹⁴ After reviewing the images, police could determine whether the locomotive was exceeding the speed limit.¹⁵ After law enforcement began using these cameras, the first lawsuit was initiated over the use of the traffic enforced recorders, and the validity of the recorders was upheld.¹⁶

As technology advanced, the use of photo-radars increased.¹⁷ Police-radars developed during the 1940s, and wide-spread use became common among law enforcement.¹⁸ During the 1950s, New York adopted similar technology to what Massachusetts had used prior, to utilize the cameras on roadways to catch drivers speeding in the absence of a law enforcement officer.¹⁹ A suit was brought to challenge the timing of the technology in *People v. Hildebrandt*.²⁰ The photo-traffic camera took two images of the defendant’s vehicle, but there was no proof offered that the defendant was the driver of the vehicle at that time.²¹ The New York Court of Appeals ruled there was no presumption that the operator of the vehicle was the owner.²² The court reinforced the seriousness of traffic violations in cases of misdemeanors and felonies, and thus, held that the offense should be proven beyond a reasonable doubt.²³

The *Hildebrandt* court acknowledged the safety benefits of using photo-radar cameras to capture vehicles speeding.²⁴ Photo-radar cameras, for example, eliminate the need for immediate pursuit of traffic violators.²⁵ Nevertheless, the court ruled there is not enough proof of the owner’s identity to establish a presumption.²⁶ There is no instance in which the

11. Miller, *supra* note 8.

12. See Joel O. Christensen, *Wrong on Red: The Constitutional Case Against Red-Light Cameras*, 32 WASH. U. J. L. & POL’Y 443, 451–52 (2010).

13. *Id.* at 452.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. Miller, *supra* note 8.

19. Christensen, *supra* note 12, at 452.

20. *People v. Hildebrandt*, 126 N.E.2d 377, 378 (N.Y. 1955).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 379.

25. *Id.*

26. *Id.*

court can presume the owner of the vehicle is the driver.²⁷ The court further reinstated their position by stating: “We all know that many a passenger car is customarily driven at various times by various persons, we know that many a person owns more than one passenger automobile”²⁸

In 1979, in *City of Kansas City v. Oxley*, the Missouri Supreme Court addressed the issue of reasonable doubt in a case involving a driver speeding, ruling there was not enough evidence to prove the driver exceeded the speed limit.²⁹ The court recognized that an individual cannot be convicted of a speeding offense without a finding of guilt beyond a reasonable doubt.³⁰ To prove guilt beyond a reasonable doubt, the evidence must be sufficiently substantial and capable of being found by a reasonable trier of fact.³¹

In the 1980s, photo-radar systems, similar to the systems used today, were developed.³² The first system was used in Texas in 1986, but it was removed due to public opposition.³³ Arizona adopted a similar photo-radar system in 1987, which it still uses today.³⁴ Although some states do not allow the use of photo-radar systems, many states have adopted these systems to further public safety.³⁵

Red light cameras also came into use in the early 1990s.³⁶ In 1992, New York utilized the first red light camera enforcement system to address a rise in traffic accidents.³⁷ In Missouri, the city of Arnold was the first municipality to use red light cameras at intersections.³⁸ Other Missouri municipalities soon began using red light camera systems as well.³⁹ The use of speeding cameras began to spread from 2009 to 2013, and currently, some states are experiencing a drastic change in legislation on the permissibility of photo-radar ordinances.⁴⁰

27. *Id.*

28. *Id.* (noting that in the state of New York there are “at least one million more automobile operators’ licenses than passenger automobile registrations,” suggesting the owner of the vehicle cannot be presumed to be the driver).

29. *City of Kansas City v. Oxley*, 579 S.W.2d 113, 117 (Mo. 1979).

30. *Id.* at 115 (citing *State v. Gregory*, 96 S.W.2d 47, 52 (Mo. 1936)).

31. *Id.*

32. Miller, *supra* note 8.

33. *Id.*

34. *Id.*

35. *Id.*

36. Conlon, *supra* note 1, at 197.

37. *Id.*

38. *Id.* at 198.

39. *Id.*

40. See Matthew S. Maisel, *Slave to the Traffic Light: A Road Map to Red Light Camera Legal Issues*, 10 RUTGERS J. L. & PUB. POL’Y 401, 431–32 (2013).

B. Context for Regulation: Opposition to the Use of Photo-Radar Systems

The country is divided on whether traffic enforcement systems are effective.⁴¹ The authority to create ordinances stems from the power of a state and municipality to enact ordinances that promote the general welfare and safety of its citizens.⁴² Many municipalities rely on their states' police power to justify their authority to utilize photo-radar cameras.⁴³ States differ about how to regulate automated traffic enforcement systems.⁴⁴ Some states use this technology to detect and deter speeding.⁴⁵ Thirteen states prohibit the use of photo-radar cameras to penalize vehicles detected speeding.⁴⁶ Eight states either permit or limit their use, and twenty-eight states have no laws on photo-radar cameras.⁴⁷

The states that currently prohibit the use of photo-radar cameras include: New Hampshire, New Jersey, West Virginia, Mississippi, Wisconsin, South Carolina, Montana, Maine, Arkansas, Nevada, Utah, Texas, and South Dakota.⁴⁸ In 2014, South Dakota completely banned photo-radar and traffic cameras throughout the state, making it the largest ban on traffic enforcement systems in the country.⁴⁹ This regulation was in response to assertions that photo-radar cameras violate the right to travel under the Privileges and Immunities Clause of the Fourteenth Amendment by one state fining citizens of another state through the use of speeding cameras.⁵⁰

Currently, twelve states operate photo-radar cameras in at least one area of the state.⁵¹ Missouri has no laws on photo-radar cameras or red light cameras.⁵² On roadways maintained by the State, there are programs

41. Christopher K. Walker, *Red-Light Cameras: How States Jeopardize Safety by Manipulating Yellow-Light Intervals to Earn a Quick Buck*, 7 J. LEGAL TECH. RISK MGMT. 222, 264 (2014).

42. *Id.* at 236.

43. Maisel, *supra* note 40, at 404.

44. Governors Highway Safety Association, *Speed and Red Light Camera Laws*, http://www.ghsa.org/html/stateinfo/laws/auto_enforce.html (last updated Oct. 2015).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. THE COUNCIL OF STATE GOVERNMENTS, *SPEED & RED LIGHT CAMERA LAWS 2* (Apr., 2014) http://knowledgecenter.csg.org/kc/system/files/CR_RedLightCameras.pdf. The ban was a result of criticisms over the large fines drivers received, up to \$300, for passing through a speeding zone, and citizens were without a remedy to challenge these fines. Steven Nelson, *South Dakota will Shield Residents from Out-of-State Traffic Cameras*, U.S. NEWS & WORLD REPORT L.P. (Apr. 1, 2014), <https://www.usnews.com/news/articles/2014/04/01/south-dakota-will-shield-residents-from-out-of-state-traffic-cameras>.

50. Paul McNaughton, *Photo Enforcement Programs: Are They Permissible Under the United States Constitution*, 43 J. MARSHALL L. REV. 463, 472 (2010).

51. Governors Highway Safety Association, *supra* note 44.

52. *Id.*

for both enforcement systems that are organized and administered by the Missouri Department of Transportation (MODOT).⁵³ In Illinois, local use of photo-radar cameras are limited to particular locations, such as construction zones and toll roads.⁵⁴ Additionally, Illinois requires a local ordinance for the use of red light cameras.⁵⁵

Starting in 2012, Maryland conducted an investigation on the use of photo-radar cameras, and it found there was an error rate of approximately ten percent, for all of the photos taken.⁵⁶ In fact, one camera in Baltimore issued more error tickets than accurate ones.⁵⁷ Maryland has stopped the use of the cameras until the problem can be fixed.⁵⁸

In addition, Maryland found that with each citation given out, the vendors of the photo-camera radars were paid.⁵⁹ There are many states which allow private contractors to be involved in the photo-radar enforcement system.⁶⁰ These vendor contracts limit the flexibility states have to address citizens' concerns with photo-radar programs.⁶¹ Florida decided to address the issue by establishing certain objectives to encourage municipalities to enact ordinances that do not give direct or indirect incentives for vendors.⁶²

A common criticism of photo-radar traffic enforcement systems is the difficulty in determining who the actual driver of the vehicle was at the time of the speeding violation.⁶³ As a result, states are forced to make the owner of the vehicle liable for the violation.⁶⁴ Additionally, there is a concern with impartiality in issuing speeding tickets using photo-radar systems.⁶⁵ For example, the vehicles that do not receive citations are vehicles registered to a corporation, rental vehicles, towing vehicles, and vehicles that have their license plates covered.⁶⁶ Critics have argued the presumption that the owner is automatically liable for the traffic citation

53. *Id.*

54. *Id.*

55. *Id.*

56. THE COUNCIL OF STATE GOVERNMENTS, *supra* note 49, at 5.

57. *Id.* The cameras were erroring in the speed the vehicles were being photographed. *Id.* As a result, 70,000 drivers were wrongly charged for speeding tickets in 2012 at an amount of \$2.8 million. *Id.*

58. *Id.*

59. *Id.*

60. McNaughton, *supra* note 50, at 469.

61. Askland, *supra* note 2, at 4.

62. See THE COUNCIL OF STATE GOVERNMENTS, *supra* note 49, at 4–5.

63. McNaughton, *supra* note 50, at 468.

64. *Id.*

65. Askland, *supra* note 2, at 4.

66. *Id.*

violates the owner's rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment.⁶⁷

Finally, there is a concern of using ordinances to generate revenue, versus the promotion of public welfare and safety.⁶⁸ Cities across the country use traffic camera ordinances as a means of promoting public safety, as well as generating revenue.⁶⁹ In St. Louis, in 2013, red light cameras generated over \$4 million in revenue.⁷⁰ The United States Department of Justice (DOJ) issued a 2015 report on the Ferguson Police Department, including findings regarding the use of citations to generate revenue.⁷¹ The DOJ reported that Ferguson Police Department's priority, in the past several years, has been to increase revenue through the use of fines and fees of traffic violations.⁷² In deciding whether a municipality has established a valid ordinance, the court must determine the purpose of the statute, and distinguish whether the statute was designed to generate revenue under the tax power, or designed to regulate for the public safety under the police power.⁷³ Although some states have opposed photo enforcement systems, many states are in favor of the use of red light and speeding cameras.

C. Basis for Regulation: Current Photo-Radar Ordinances in Missouri

The increase in speed-related accidents and fatalities prompted Missouri's use of photo-radar cameras.⁷⁴ From 2011 to 2013, there were 419,680 traffic accidents in Missouri.⁷⁵ Of those accidents, 2,161 were fatal, and 38.3% of the fatal accidents involved drivers who were speeding.⁷⁶ One of the goals of the MODOT 2016 Safety and Performance Plan is to decrease speed-related fatalities by 2016.⁷⁷ To accomplish this goal, MODOT encouraged citations and warnings for speed limit

67. McNaughton, *supra* note 50, at 470 (discussing the argument that automated enforcement cameras are an infringement on the right to travel, because photo-radar cameras and red light cameras capture and issue tickets to out-of-state drivers).

68. Conlon, *supra* note 1, at 199.

69. *Id.* at 200.

70. *Id.*

71. UNITED STATES DEPARTMENT OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 13 (Mar. 4, 2015, 5:33 PM), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

72. *Id.* at 9.

73. *Ballard v. City of Creve Coeur*, 419 S.W.3d 109, 121 (Mo. Ct. App. 2013) (citing *Automobile Club of Mo. v. City of St. Louis*, 334 S.W.2d 355, 363 (Mo. 1960)).

74. See MISSOURI DEPARTMENT OF TRANSPORTATION, 2016 HIGHWAY SAFETY AND PERFORMANCE PLAN 81 (2015), <http://contribute.modot.mo.gov/safety/documents/FY16HSPand405.pdf>.

75. *Id.*

76. *Id.*

77. *Id.*

violations.⁷⁸ The goal is to increase citations and warnings by .25% annually.⁷⁹

MODOT issued an automated traffic enforcement plan for the use of red light cameras and cameras for speed violations on the state highway systems.⁸⁰ The following conditions must be met before a speeding camera system can be used:

1. A duly sworn, Peace Officer Standards and Training (POST) certified law enforcement officer shall review and make the determination of any violation. Advanced signing is required and shall be of the type below.
2. The city/county shall conduct a public awareness campaign at least 30 days prior to issuing citations.
3. The city/county will be required to submit an annual report to MODOT for each state highway corridor in such city/county which has automated speed enforcement equipment. The report will be due January 31 and include the following information from the previous year: a. Safety performance b. Citation data.⁸¹

The plan further states that automated enforcement systems for speed violations should be used in construction zones, school zones, and travel safe zones on state highways.⁸²

The authority given to Missouri's local municipalities to develop their own ordinances resulted in litigation. As use of red light ordinances spread, the Missouri Court of Appeals decided *Smith v. City of St. Louis*, addressing both the constitutionality of a red light ordinance and the elements that must be included in the notice sent to violators of the ordinance to protect their due process rights.⁸³ Respondents were sent tickets after violating the city's red light ordinance.⁸⁴ The red light cameras went into use in 2007, and were used to take photos of the vehicle and license plate, but not the face of the driver.⁸⁵ Then, a notice was sent to the owner of the vehicle, stating the owner must either pay the fine or appear in court.⁸⁶

78. *Id.* at 82.

79. *Id.*

80. MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION, OFFICIAL MINUTES 11 (Jan. 12, 2011), <http://www.modot.org/about/commission/documents/2011-01-12MinutesRevisedandAMENDED.pdf>.

81. *Id.* at 12.

82. *Id.*

83. *See Smith v. City of St. Louis*, 409 S.W.3d 404, 407 (Mo. Ct. App. 2013).

84. *Id.*

85. *Id.* at 408.

86. *Id.*

The notice sent to respondent did not meet the standards required under Rule 37.33.⁸⁷ Rule 37.33 is the Missouri Supreme Court statute that lists the requirements of notice for a traffic citation.⁸⁸ The notice must have information, including the information of the court, the individual receiving the citation, and the offense committed, including facts “that support a finding of probable cause to believe the ordinance violation was committed and that the accused committed it.”⁸⁹ The respondent should have received the following information: “(1) The specified fine and costs for the violation; and (2) That a person must respond to the violation notice by: either (A) Paying the specified fine and court costs; or (B) Pleading not guilty and appearing at trial.”⁹⁰ Although the final notice included a court date, the court determined there was a violation of the Due Process Clause, because there was not a court date in the first notice sent to the respondent.⁹¹ The court date listed in the final notice had already passed when the respondent received it.⁹²

In addition, the ordinance created a presumption that the owner of the vehicle was the operator when the violation occurred.⁹³ Law enforcement viewed the photo to determine if there was probable cause that a violation occurred.⁹⁴ The owner could rebut this presumption by a statement that, at the time the violation took place, another individual was driving the vehicle, or the vehicle was stolen at that time.⁹⁵ The court ruled that the respondent admitted guilt when she paid the fee for the violation.⁹⁶

Similarly, in *Damon v. City of Kansas City*, the Missouri Court of Appeals questioned the authority of the State’s police power and the constitutionality of a red light ordinance.⁹⁷ The petitioners argued the purpose of the ordinance was to be used as a “money-making scheme.”⁹⁸ Municipalities have the right to regulate traffic and address the needs of their citizens.⁹⁹ Thus, the court ruled the ordinance was correctly drafted to meet the State’s needs on the issue of traffic regulation.¹⁰⁰ In addressing the police power issue, the court ruled that the State’s police power is not

87. *Id.* at 412.

88. MO. REV. STAT. § 37.33 (2004).

89. *Id.*

90. *Smith*, 409 S.W.3d at 412.

91. *Id.* at 415.

92. *Id.*

93. *Id.* at 408.

94. *Id.*

95. *Id.* at 412.

96. *Id.*

97. *See Damon v. City of Kansas City*, 419 S.W.3d 162, 183 (Mo. Ct. App. 2013).

98. *Id.*

99. *Id.*

100. *Id.*

unlimited.¹⁰¹ The petitioners addressed the shortcomings of red light cameras, pointing out that cameras do not have the same capabilities as a police officer, such as the ability to stop a drunk driver who runs a red light.¹⁰²

Finally, the court addressed the assessment of points and the presumption created by the ordinance.¹⁰³ In this case, the notice stated that no points will be assessed for the violation.¹⁰⁴ The ordinance conflicted with state law because it contradicted state law, which requires the assessment of points for a red light violation.¹⁰⁵ On the rebuttal presumption issue, the court stated an ordinance is unconstitutional when the presumption is an element of the crime.¹⁰⁶ Here, the rebuttable presumption was that the owner was the driver at the time of the offense.¹⁰⁷ However, whether the driver was the owner is a “necessary element to a violation of this ordinance.”¹⁰⁸ Thus, the ordinance’s presumption was unconstitutional.¹⁰⁹

After deciding several recent cases on the use of red light cameras, the constitutionality of photo-radar cameras had not been argued before the Missouri Court of Appeals or the Missouri Supreme Court. Then, in *City of Moline Acres v. Brennan*, the Missouri Supreme Court made a decision that would influence the future use of photo-radar cameras throughout Missouri and possibly other nearby states.

III. EXPOSITION OF THE CASE

A. Facts and Procedural Posture

In 2012, the City of Moline Acres adopted an ordinance, City Code § 395.010, that allowed the use of an automated traffic enforcement system to capture vehicles exceeding the posted speed limit and issue tickets to the owners of the vehicles through the mail.¹¹⁰ The defendant was photographed on July 31, 2012, when he exceeded the posted forty-five

101. *Id.* at 184 (citing *City of Kansas City v. Jordan*, 174 S.W.3d 25, 40 (Mo. Ct. App. 2005)).

102. *Id.* at 185.

103. *Id.* at 186–88.

104. *Id.* at 186.

105. *Id.* In Missouri, most moving violations result in points added to your driving record. See DMV.ORG, *DMV Point System in Missouri*, <http://www.dmv.org/mo-missouri/point-system.php> (last updated Mar. 2017). If a certain number of points are obtained in a specific time frame, the driver could face penalties, such as driver’s license suspension. *Id.*

106. *Id.* at 190–91 (citing *Sandstrom v. Montana*, 442 U.S. 510, 523 (1979)).

107. *Id.* at 191.

108. *Id.*

109. *Id.*

110. *City of Moline Acres v. Brennan*, 470 S.W.3d 367, 370 (Mo. 2015).

miles per hour speed limit.¹¹¹ The defendant was photographed traveling at fifty-six miles per hour.¹¹² On August 10, 2012, he was sent a speeding ticket titled, “Notice of Violation.”¹¹³

The notice stated that his vehicle had exceeded the speed limit, and as the owner of the vehicle, he was liable for the speeding violation.¹¹⁴ The notice described the violation as “non-moving” for which no points would be assessed.¹¹⁵ It did not list the time or date of the initial court appearance.¹¹⁶ Additionally, the notice did not add points against the individual’s driver’s license for the violation.¹¹⁷ Instead, it stated: “Full payment before the due date of this Notice will prevent this matter from being referred to the prosecutor for filing of an information in the Moline Acres Municipal Court.”¹¹⁸

To resolve the ticket, the defendant had to mail a check to the City of Moline Acres, call a specified number to pay with a credit card, or use a website to pay online.¹¹⁹ If a payment was not made, the defendant would be issued a summons to appear in municipal court.¹²⁰

The defendant pleaded not guilty, demanded a jury trial, and challenged the validity of the ordinance.¹²¹ He filed a motion to dismiss, alleging the ordinance and notice were unenforceable.¹²² His motion to dismiss contained four separate arguments.¹²³ First, he argued the ordinance contradicted state law by punishing the owner of the vehicle, not the driver.¹²⁴ Second, he argued the ordinance and notice contradicted state law by not assessing points to the driver’s license.¹²⁵ Third, he argued that the ordinance and notice violated his right to due process by shifting the burden of proof to the defendant.¹²⁶ Lastly, the defendant argued that the ordinance and notice violated due process by failing to notify the driver of the date and time of the initial court appearance.¹²⁷

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 370–71.

124. *Id.*

125. *Id.* at 371.

126. *Id.*

127. *Id.*

The trial court found for the defendant, holding the ordinance and notice unconstitutional.¹²⁸ The City of Moline Acres appealed, and the appeal was transferred to the Missouri Supreme Court.¹²⁹

B. Majority Opinion

The Missouri Supreme Court considered four issues.¹³⁰ The first issue was whether the ordinance contradicted state law by punishing the owner for the speeding violation.¹³¹ The City of Moline Acres argued the ordinance did not conflict with state law because its purpose was to punish owners for permitting a third party to use the vehicle to exceed the speed limit rather than to punish speeding.¹³² On this issue, the court ruled the ordinance did not conflict with state law.¹³³

The court next addressed the assessment of points.¹³⁴ Brennan argued that, under state law, “at least two points must be assessed for the violation of any speeding law or ordinance.”¹³⁵ The court ruled that the point assessment “is an administrative—and wholly nondiscretionary matter.”¹³⁶ Thus, the ordinance is not automatically invalid because the ordinance is silent concerning the assessment of points.¹³⁷ An ordinance cannot conflict with state law in regard to a matter on which the ordinance is silent.¹³⁸

The court next addressed the burden of proof.¹³⁹ In the city’s ordinance, the identity of the driver was not an element of the violation.¹⁴⁰ Therefore, there was no presumption that the driver of the vehicle at the time of the violation was the owner.¹⁴¹ To constitute a violation, the city had to prove three elements:

- (1) that a vehicle was photographed exceeding the speed limit and (2) that the person charged was the owner of that vehicle, the City also must prove beyond a reasonable doubt (3) that the owner gave the driver the specific

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 372.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.* at 373.

137. *Id.* at 373–74.

138. *Id.* at 374.

139. *Id.*

140. *Id.* at 374–75.

141. *Id.* at 375.

permission to “operate[] [the vehicle] at a rate of speed in excess of the posted speed limit.”¹⁴²

However, there was a presumption that the owner gave the driver permission to exceed the posted speed limit.¹⁴³ The court held the presumption unconstitutional.¹⁴⁴ Even without relying on the unconstitutional presumption, the city can still use this ordinance if there is probable cause to prove the owner gave the driver permission to exceed the speed limit, and at trial, it can be proven beyond a reasonable doubt.¹⁴⁵

In regards to the fourth issue on the notice of the ordinance, the court ruled the notice was unconstitutional, because it violated due process.¹⁴⁶ The notice issued under the ordinance violated Rule 37.33 under the Missouri Ordinance and Traffic Violations because it did not meet the statutory standards.¹⁴⁷ Under Rule 37.33(a), a notice must specifically state that the defendant may respond to the violation by paying the fine and court costs, or by pleading not guilty and appearing at trial.¹⁴⁸

Due process protects individuals by ensuring that a defendant has notice and the opportunity to be heard in court.¹⁴⁹ The purpose of the ordinance was to discourage individuals from using the court system, by allowing traffic violators to pay the fine before the court was notified.¹⁵⁰ This created a shortcut around the judicial system, and allowed the City of Moline Acres to collect money, without judicial oversight.¹⁵¹ The court urged that every violation should be controlled by the court system to ensure that the rights of an individual are protected.¹⁵² The court system should handle and distribute the fines of the offense.¹⁵³ Thus, the court held that the ordinance must be ruled unconstitutional to prevent an individual from being pressured into paying a fine without due process.¹⁵⁴

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at 378.

146. *Id.* at 380.

147. *Id.* at 379–80.

148. *Id.* at 380.

149. *Id.*

150. *Id.*

151. *Id.* at 382.

152. *Id.* at 381.

153. *Id.*

154. *Id.* at 383.

C. The Concurring Opinion

Justice George W. Draper III argued against imposing liability on vehicle owners for moving violations they did not commit.¹⁵⁵ Additionally, he argued that similar ordinances could be used by municipalities for the principal purpose of generating revenue.¹⁵⁶ The ordinance could also be used to punish an innocent owner for a violation the owner did not commit, and assess points on the owner's license, while the driver, the one who committed the offense, continued to threaten public safety with further speeding violations.¹⁵⁷ He emphasized the importance of examining the purpose of the ordinance to determine if it is regulated under the police power or the tax power.¹⁵⁸ Finally, he urged the court to consider current criticisms of St. Louis County municipalities:

This Court should be cognizant of the times in which these ordinances are being enforced in light of the recent criticisms of St. Louis County municipalities, which have used traffic violations and the revenue they generate to enrich their coffers to the financial detriment of the citizens they are ostensibly protecting.¹⁵⁹

Municipalities need to ensure they are enacting traffic ordinances for the purpose of public safety, rather than as a scheme solely to generate revenue.¹⁶⁰

D. The Dissent

Justice Patricia Breckenridge agreed with the majority's decision that the ordinance did not conflict with state law by punishing owners of vehicles for allowing their vehicle to be driven in violation of the speed limit and in relation to the assessment of points.¹⁶¹ Justice Breckenridge argued that the presumption the city intended was to equate ownership to the permission given to the driver to operate the vehicle.¹⁶² The presumption was not intended to permit the driver to operate the vehicle above the posted speed limit.¹⁶³

155. *Id.* (Draper, J., concurring).

156. *Id.* at 384.

157. *Id.* at 385.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* (Breckenridge, C.J., dissenting).

162. *Id.*

163. *Id.*

Additionally, Justice Breckenridge reasoned that even if the notice is deemed unconstitutional, it should be dismissed without prejudice as “an insufficient charging document.”¹⁶⁴ Ordinances are similar to statutes, and thus, should be considered constitutional when under review by the court.¹⁶⁵ The constitutionality based on the payment of fines outside of the judicial system should not be considered by this court because it was not addressed by the defendant on appeal.¹⁶⁶

IV. ANALYSIS

The Missouri Supreme Court correctly ruled the ordinance in *City of Moline Acres v. Brennan* was unconstitutional. Under Rule 37.33(a)(1), notice of traffic citations are required to state the name and address of the court where the prosecution of the violation will occur and the time and date of the initial appearance.¹⁶⁷ In addition, the specific element of the offense requires that the owner gave the driver specific permission to exceed the speed limit.¹⁶⁸ Thus, to comply with Rule 37.33(a)(5), the notice must specifically state facts that show probable cause to prove that this element has been met.¹⁶⁹ On the basis of the presumption, the court correctly ruled there cannot be a presumption on the basis of ownership that the owner permitted the driver to operate his vehicle in violation of the posted speed limit.¹⁷⁰

Although the court made the correct decision, its analysis is faulty on various issues. This analysis first examines the court’s discussion on how the ordinance did not conflict with state law on the use of ordinances to punish vehicle owners for lending their vehicles to others, the issue of point assessment, and the use of speeding cameras to generate revenue. The analysis then examines the court’s decision on the presumption issue and the type of presumption an ordinance can create. Finally, it discusses how the court’s opinion modified the Missouri Court of Appeal’s recent decision in *Damon*, and the overall use of automated traffic enforcement systems.

164. *Id.* at 386.

165. *Id.*

166. *Id.*

167. *Id.* at 379 (majority opinion).

168. *Id.*

169. *Id.*

170. *Id.* at 378.

A. The Court Wrongly Held the Ordinance Did Not Conflict with State Law

The Missouri Supreme Court erred in holding the ordinance did not conflict with state law. The ordinance was drafted with the purpose of punishing vehicle owners, rather than the driver of the vehicle who committed the speeding violation. The ordinance is used to deter owners from loaning their vehicles to others. This use of an ordinance conflicts with state law and the purpose of issuing speeding citations to deter the act of speeding.

To protect the welfare and safety of the public, the purpose of traffic ordinances should be to deter drivers from committing wrongful acts on roadways. Punishing a vehicle owner for allowing another individual to drive their vehicle does not advance a state's goal in protecting the welfare of its citizens.¹⁷¹ It also encourages local municipalities to create similar ordinances to generate revenue.¹⁷² An ordinance drafted in this way is not constitutional. An ordinance should only be held valid if its purpose is to deter speeding by punishing the drivers who commit speeding violations.

In regards to the point assessment, the court should have ruled that an ordinance that does not address the issue of points is nevertheless invalid because it conflicts with state law.¹⁷³ Under state law, at least two points must be assessed for a speeding violation.¹⁷⁴ Thus, if the ordinance is silent on this issue, then it should still be held to conflict with state law on the issue of the two-point assessment requirement.

The concurring opinion discussed the issue of the use of a photo-radar ordinance to generate revenue;¹⁷⁵ the majority opinion, however, should have discussed it. A city should not be allowed to create an ordinance with the purpose of punishing owners for lending their vehicles to others because it may have the effect of encouraging municipalities to create similar ordinances with the sole purpose of generating revenue. If an ordinance can be created to punish acts other than punishing the driver for the act of speeding, then local municipalities will likely create broader ordinances to comply with state law and generate larger amounts of revenue with the use of photo-radar ordinances.

171. Conlon, *supra* note 1, at 199.

172. *See id.* at 200.

173. *City of Moline Acres*, 470 S.W.3d at 372.

174. *Id.*

175. *Id.* at 384.

B. The Court's Holding on the Presumption was Wrongly Decided

The court was correct in holding a presumption based on ownership alone is invalid if it assumes the owner permitted the driver of the vehicle at the time of the violation to exceed the speed limit.¹⁷⁶ The court, however, held this presumption was not enough to invalidate the ordinance.¹⁷⁷ The court incorrectly allowed future use of a presumption if the city can prove the owner gave the driver permission to exceed the speed limit.¹⁷⁸ The court held that if the city can state facts in the notice showing probable cause that the owner gave the driver permission to exceed the speed limit, then the city can maintain an ordinance specifically established to punish owners for lending their vehicles to others to commit speeding violations.¹⁷⁹

Ordinances that punish vehicle owners for allowing others to drive their vehicles in excess of the speed limit imposes an almost impossible standard to prove. Law enforcement would have to gather enough evidence to prove that a vehicle owner specifically gave the driver of the vehicle permission to speed. Thus, this standard will almost never result in a conviction for the speeding violation, or law enforcement will apply the wrong evidence to establish this element of the offense. In either circumstance, the purpose of speeding ordinances to protect the public safety on roadways is not furthered by this presumption. Alternatively, the court should have invalidated the ordinance on the presumption alone and prohibited municipalities from creating an ordinance that imposes such a far-reaching presumption.

C. The Decision Modified Existing Law on Speeding Cameras

The *Damon* court held the presumption that the owner of the vehicle was operating the vehicle at the time of the violation was unconstitutional.¹⁸⁰ In *Brennan*, the court ruled similarly on the issue of the invalidity of the presumption on ownership, but ruled that a narrower presumption could be applied. Additionally, the *Damon* court stated that for a moving violation, points must be assessed.¹⁸¹ However, the Missouri Supreme Court failed to hold that the lack of point assessment was unconstitutional. The Missouri Supreme Court ruled the ordinance did not

176. *Id.* at 378.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Damon v. City of Kansas City*, 419 S.W.3d 162, 191 (Mo. Ct. App. 2013).

181. *Id.* at 186.

conflict with state law because the ordinance was silent on the issue of point assessment.¹⁸²

Additionally, the *Damon* court addressed the issue of the use of an automated traffic enforcement system ordinance as a money-making scheme.¹⁸³ There have been concerns that ordinances are used to generate revenue, rather than promote the safety and welfare of the public.¹⁸⁴ The *Damon* court stated that the State's police power is not unlimited, and there has to be an interest in public safety when creating traffic ordinances.¹⁸⁵ Although the *Brennan* court discussed this concern in the concurring opinion, it should have been discussed in the majority opinion.¹⁸⁶ After the recent incident in Ferguson, Missouri, involving the increased use of traffic fines to generate revenue, the court, in its opinion, should have discussed the unlawful use of ordinances to generate revenue to deter municipalities from using ordinances for this purpose.

Finally, there is the issue of the inability to determine who is driving the vehicle at the time of the speeding violation. The inability to punish all drivers who violate the speed limit has many constitutional concerns, including due process, equal protection, and privacy concerns.¹⁸⁷ Thus, if an ordinance is to use photo-radar cameras to issue citations for speeding violations, there should be a better method to determine the identity of the driver. The issue may entail waiting until technology advances enough to distinguish the identity of the driver of the vehicle before the use of photo-radar cameras becomes more prevalent.

V. CONCLUSION

In conclusion, the Missouri Supreme Court correctly held that the ordinance was unconstitutional. The ordinance did not provide proper notice to the defendant to comply with the Due Process Clause. The court failed, however, to hold the ordinance conflicted with state law on the issue of point assessment. Additionally, the court should have held that it was unconstitutional to draft a photo-radar ordinance with an underlying purpose, apart from promoting public safety and deterring the act of speeding. Courts should only uphold photo-radar ordinances if the purpose is to protect the public, while deterring the act of speeding. Ordinances should also not be allowed to create a presumption that the owner was the

182. See *City of Moline Acres v. Brennan*, 470 S.W.3d 367, 374 (Mo. 2015).

183. *Damon*, 419 S.W.3d at 183.

184. *Id.*

185. *Id.* at 184.

186. *City of Moline Acres*, 470 S.W.3d at 385 (Draper, J., concurring).

187. *Askland*, *supra* note 2, at 4.

driver of the vehicle at the time the violation occurred, or that the owner gave the driver permission to exceed the speed limit. Overall, the Missouri Supreme Court created more stringent standards on the notice required for photo-radar ordinances. Nevertheless, municipalities continue to push the boundaries of photo-radar and red light ordinances, and citizens continue to find their presence awaiting in the mail.

