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LAW SUMMARY

A Missouri Citizen's Guide to Red Light Cameras

JOE CONLON*

I. INTRODUCTION

Red light cameras are a hotly debated issue in Missouri. Many supporters argue that red light cameras reduce accidents and save lives.¹ Those opposed claim the cameras do more harm than good.² This Summary provides a brief background on red light cameras and their early use in Missouri. This Summary then discusses the recent development in red light camera laws, including the string of recent Missouri court cases dealing with the issue, as well as proposed state legislation. Finally, this Summary discusses possible legal arguments one can present in court in the event that he or she is accused of a violation.

II. LEGAL BACKGROUND

Running red lights poses a serious safety threat to pedestrians, bicyclists, and motorists nationwide. In 2012 alone, over 133,000 people were injured in crashes involving motorists running a red light.³ Even worse, more than 680 people lost their lives that year due to such accidents.⁴ In response to this threat, many states and cities began using red light camera systems in order to prevent needless accidents. The first red light camera system was installed in New York City in 1992.⁵ Currently, over 500 communities na-

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1. See, e.g., *Testimonials*, NAT'L COALITION FOR SAFER ROADS, <http://ncsr-safety.org/state/missouri/> (last visited Feb. 26, 2015).

2. See, e.g., *About WrongOnRed.com*, WRONG ON RED, <http://wrongonred.com/index.html> (last visited Feb. 26, 2015).

3. *Red Light Running: Overview*, INS. INST. FOR HIGHWAY SAFETY, <http://www.iihs.org/iihs/topics/t/red-light-running/topicoverview> (last visited Feb. 26, 2015).

4. *Id.*

5. *Red Light Running: Q&As*, INS. INST. FOR HIGHWAY SAFETY, <http://www.iihs.org/iihs/topics/t/red-light-running/qanda> (last visited Feb. 26, 2015).

tionwide in twenty-three states and the District of Columbia utilize red light camera systems.⁶

A. *Red Light Cameras First Introduced in Missouri*

In Missouri, cities and municipalities are authorized to make traffic rules and regulations in order to meet their traffic needs.⁷ Armed with police power granted from the state, municipalities can enact ordinances to promote the public health, safety, and general welfare.⁸ In the mid-2000s, municipal ordinances permitting the use of red light cameras began springing up across the state.

The City of Arnold was the first municipality in Missouri to adopt such an ordinance.⁹ In 2006, Arnold enacted Ordinance 23-181, which permitted the use of red light camera enforcement systems.¹⁰ The ordinance adopted by Arnold is very similar to other ordinances used throughout the state.¹¹ Under Arnold's ordinance, traffic cameras are installed at intersections around the city.¹² The cameras are angled in such a way that they can easily take a picture of a car passing through an intersection.¹³ If a driver enters an intersection under a solid red light, the traffic camera takes a picture of the intersection, which captures a view of the red light and the car, including the license plate.¹⁴ A notice of the violation is sent to the owner of the vehicle.¹⁵ The notice of the violation includes a copy of the photograph taken by the camera, a summons to appear in court, and instructions on how to waive the court

6. *Red Light Running: State Laws*, INS. INST. FOR HIGHWAY SAFETY, http://www.iihs.org/iihs/topics/laws/automated_enforcement?topicName=red-light-running#map (last visited Feb. 26, 2015).

7. MO. REV. STAT. § 304.120 (Cum. Supp. 2013).

8. *See id.*; *see also* Engelage v. City of Warrenton, 378 S.W.3d 410, 414 (Mo. Ct. App. 2012) (“The only police power a city enjoys is that conferred to it by the state. . . . A city’s authority to exercise police power must come from a specific delegation by the state or in some cases from the express or fairly implied powers of its charter.”).

9. Ken Leiser, *Ruling Deals Blow to Arnold’s Red-Light Camera Law*, ST. LOUIS POST-DISPATCH (Dec. 17, 2013, 4:15 PM), http://www.stltoday.com/news/local/metro/ruling-deals-blow-to-arnold-s-red-light-camera-law/article_ee9546e8-761a-5ee2-9b77-48937faa5350.html.

10. Brunner v. City of Arnold, 427 S.W.3d 201, 206 (Mo. Ct. App. 2013).

11. *Id.*

12. *Id.*

13. *See id.*; *see also* *Video Cameras at Signalized Intersections Frequently Asked Questions*, MODOT, <http://modot.org/stlouis/links/signalcameras.htm> (last visited Feb. 27, 2015).

14. Brunner, 427 S.W.3d at 206.

15. *Id.* at 207.

hearing and pay a fine.¹⁶ The penalty for a red light violation is usually around \$100.¹⁷

Whether red light camera systems actually reduce violations and accidents is still up for debate. A synthesis of numerous red light camera studies compiled by the National Cooperative Highway Research Program concluded that red light camera systems do reduce the number of red light running violations.¹⁸ More importantly, it noted that intersections with red light cameras saw a decrease in angle crashes, which occur when two cars collide at an angle of approximately ninety degrees.¹⁹ A common example is when a car gets "T-boned," which occurs when the front end of one car crashes directly into the side of another car. Angle crashes are usually more dangerous than collisions in which the vehicles are pointing in the same direction, such as when one gets "rear ended."²⁰

Critics of red light cameras note that there are numerous studies that show that red light cameras do not reduce accidents.²¹ In fact, critics often note that the use of cameras can lead to an increase in rear end collisions, as overly-cautious motorists will choose to stop at an intersection flashing a yellow light to avoid getting a ticket, thereby coming to a quick stop such that the motorists following them will crash into the rear end of their cars.²² According to the New Jersey Department of Transportation, New Jersey saw a twenty-percent increase in rear-end collisions at intersections with newly installed red light cameras.²³ It also noted a slight increase in overall collisions at all intersections in which it installed red light cameras, as compared to the year before when the intersections did not have red light cameras.²⁴

While the debate over effectiveness rages on, the debate over cost is settled: red light cameras are expensive. One camera alone can cost around \$50,000 to purchase and over \$5,000 to install, not to mention maintenance costs.²⁵ Most cities cannot afford to purchase one camera, let alone several,

16. *Id.* at 207-08.

17. *Id.* at 208.

18. National Cooperative Highway Research Program, *Impact of Red Light Camera Enforcement on Crash Experience*, TRANSP. RES. BOARD 39 (2003), http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_310.pdf.

19. *Id.* at 39-40.

20. *Id.* at 38.

21. *Red Light Camera Studies*, NAT'L MOTORISTS ASS'N, <http://www.motorists.org/red-light-cameras/studies> (last visited Feb. 27, 2015).

22. Mike Frassinelli, *Accident Rate Rises at Intersections with Red-Light Cameras, N.J. Study Shows*, NJ.COM (Nov. 27, 2012, 9:56 AM), http://www.nj.com/news/index.ssf/2012/11/red-light_cameras_lead_to_more.html.

23. *Id.*

24. *Id.*

25. *Red Light Cameras*, SILICON IMAGING, http://www.siliconimaging.com/red_light_cameras.htm (last visited Feb. 28, 2015).

so they contract with manufacturers to lease them instead.²⁶ One of the most popular camera manufacturers is American Traffic Solutions (“ATS”). ATS is based out of Arizona and has been manufacturing, installing, and operating cameras since 1987.²⁷ ATS operates cameras in many places across the United States, including New York, Chicago, Philadelphia, Washington D.C., New Orleans, and Atlanta.²⁸ The company currently operates cameras in over twenty Missouri communities, including St. Louis, Kansas City, and Springfield.²⁹ Instead of purchasing a camera from ATS, municipalities contract with ATS to install and operate the cameras at little or no cost to the city.³⁰ In return, ATS receives a portion of each fine collected by the city.³¹ ATS is heavily involved in the enforcement process, as it installs the cameras, tracks violations, sends out violation notices, and even collects fines for some cities.³² The amount of money ATS receives varies with each contract and is usually around one third of each red light fine collected by the city.³³ In some cases, ATS receives a flat fee from the city for each camera it operates, regardless of how many fines are actually issued.³⁴ For example, in its contract with Kansas City, ATS receives about \$4,500 per month for each camera it operates, or about \$1.6 million a year.³⁵

For some cities, red light cameras can generate a huge source of revenue. Kansas City, Missouri, has collected over \$2 million since it instituted its red light camera ordinance in 2009.³⁶ Likewise, the City of Ellisville in St. Louis County has generated about \$200,000 in revenue annually since it began using red light camera systems in 2009 for a total of over \$1 million.³⁷ St. Louis collected over \$4.1 million in 2013 alone.³⁸

26. See Joel Rubin, *L.A. Traffic Cameras May Get the Red Light*, L.A. TIMES (June 8, 2011), <http://articles.latimes.com/2011/jun/08/loc/la-me-0608-red-light-20110607>.

27. *About Our Company*, AM. TRAFFIC SOLUTIONS, <http://www.atsol.com/our-company/> (last visited Feb. 28, 2015).

28. *Id.*

29. *Id.*

30. *Brunner v. City of Arnold*, 427 S.W.3d 201, 206-07 (Mo. Ct. App. 2013).

31. *Id.*

32. See *id.*; *Damon v. City of Kan. City*, 419 S.W.3d 162, 169-70 (Mo. Ct. App. 2013); *Unverferth v. City of Florrisant*, 419 S.W.3d 76, 84-85 (Mo. Ct. App. 2013).

33. *Brunner*, 427 S.W.3d at 206-07.

34. Lynn Horsley & Mark Morris, *Missouri Court Says Red-Light Camera Laws Like Those in KC Are Invalid*, KAN. CITY STAR (Nov. 7, 2013, 10:05 AM), <http://www.kansascity.com/2013/11/06/4602214/missouri-court-red-light-camera.html>.

35. *Id.*

36. *Id.*

37. Mike Colombo, *Ellisville City Council Votes Against Red-Light Cameras*, KMOV.COM (Mar. 6, 2014, 8:08 AM), <http://www.kmov.com/news/editors-pick/Ellisville-City-Council-votes-against-red-light-cameras-248741131.html>.

38. Tim Jones & Mark Niquette, *Red Light Cameras Click Less as Cities Get Orwell off Road*, BLOOMBERG (Feb. 25, 2014, 9:55 AM), <http://www.bloomberg.com/>

B. Challenges to Red Light Cameras in Missouri

One of the first notable challenges to a red light camera ordinance in Missouri came in 2011 in the case of *City of Creve Coeur v. Nottebrok*.³⁹ The city passed an ordinance permitting the use of “automated photo traffic enforcement system[s],” otherwise known as red light cameras.⁴⁰ Under the ordinance, if a camera recorded a car entering an intersection while the signal was emitting a steady red light, the car owner could be found guilty of committing a “violation of public safety at an intersection.”⁴¹

In August 2009, Mary Nottebrok’s car was caught running a red light.⁴² The city sent her a citation in the mail, which included the images of her car in the intersection and a fine for \$100.⁴³ The citation also notified Nottebrok that the violation was considered by the city as a non-moving violation, so no points would be added to her license.⁴⁴ It also stated that the car owner was responsible for the ticket, even if she had not been driving the vehicle at the time of the violation, and that the owner could not transfer liability to the driver.⁴⁵ Finally, the citation noted that if Nottebrok failed to respond to or pay the citation, a notice to appear in court would be issued.⁴⁶

Nottebrok did not pay the fine, and a notice to appear in court was issued in September 2009.⁴⁷ In response, Nottebrok filed a motion to dismiss, alleging that the camera ordinance violated her right to due process, that the city did not have probable cause to find her guilty under the ordinance, that the ordinance conflicted with state law for failing to assess points for a moving violation, and that Creve Coeur did not have authority to enact such an ordinance.⁴⁸ The municipal court denied her motion to dismiss and found her guilty of violating the ordinance.⁴⁹ Nottebrok then filed an application for review in circuit court and subsequently an identical motion to dismiss.⁵⁰ The circuit court denied the motion and, after *de novo* review, found Nottebrok

news/2014-02-25/red-light-cameras-click-less-as-u-s-towns-get-orwell-off-roads.html.

39. 356 S.W.3d 252 (Mo. Ct. App. 2011), *overruled by* *Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. Ct. App. 2013).

40. CREVE COEUR, MO., ORDINANCE ch. 315, § 315.140(C) (2009), *available at* <http://www.creve-coeur.org/DocumentCenter/View/4235>.

41. *Id.* at (B).

42. *Nottebrok*, 356 S.W.3d at 255.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* at 256.

48. *Id.*

49. *Id.*

50. *Id.*

guilty of violating the ordinance.⁵¹ Unsatisfied with the outcome, Nottebrok appealed to the Court of Appeals for the Eastern District of Missouri.⁵²

Nottebrok's first point on appeal was that Creve Coeur violated her right to due process.⁵³ She argued that if the city was going to issue her a ticket, it must have had probable cause to suspect that she was driving the car at the time of the violation, and the fact that she was the owner was not enough to hold her responsible.⁵⁴ The appellate court disagreed, finding that since violations under this ordinance were civil in nature, and not criminal, she was not entitled to the higher degree of procedural protection afforded under criminal laws.⁵⁵ One does not get the same level of procedural protections for violating a civil ordinance as one does for violating a criminal statute.⁵⁶ The level of due process required in this case was less than that of a criminal case. The court therefore held that the city did not have to prove that the car owner was in fact the driver in order to hold the car owner liable under the ordinance.⁵⁷ The court believed red light camera tickets could be treated like parking tickets.⁵⁸ When a car owner receives a parking ticket for violating a city ordinance, the city can hold the car owner liable and need not prove that he or she was the driver of the car.⁵⁹ Following this logic, the court held that the red light camera ordinance did not violate Nottebrok's right to due process.⁶⁰

Nottebrok's second and final point on appeal was that the ordinance violated Missouri law, and therefore the ordinance should be held invalid.⁶¹ If a municipality in the state chooses to pass an ordinance, it must do so in accordance with state law upon the same subject.⁶² Missouri, like numerous other states, operates a point system for its drivers' licenses.⁶³ A driver gets points for committing crimes and infractions, such as speeding or leaving the scene of an accident.⁶⁴ If a driver gets too many points, his or her license can be revoked.⁶⁵ Nottebrok alleged that the Creve Coeur ordinance conflicted

51. *Id.*

52. *Id.*

53. *Id.* at 257.

54. *Id.*

55. *Id.* at 257-58.

56. *Id.* (citing *Mills v. City of Springfield*, No. 2:10-CV-04036-NKL, 2010 U.S. Dist. LEXIS 92031, at *12 (W.D. Mo. Sept. 3, 2010)).

57. *Id.* at 259.

58. *Id.* at 260.

59. *City of Kan. City v. Hertz Corp.*, 499 S.W.2d 449 (Mo. 1973) (upholding municipal ordinance imposing liability on car owner and not car driver for illegally parked car).

60. *Nottebrok*, 356 S.W.3d at 260-61.

61. *Id.* at 261.

62. MO. REV. STAT. § 71.010 (2000).

63. MO. REV. STAT. § 302.302 (Supp. 2014).

64. *Id.*

65. *Id.*

with state law because it did not assess any points for running a red light.⁶⁶ Under Missouri law, drivers that commit a “moving” violation of a municipal ordinance not specifically listed in Section 302.302 are to be assessed two points.⁶⁷ Running a red light is not specifically listed under the statute.⁶⁸ All courts are required to report moving violation offenses to the Missouri Department of Revenue within seven days after a defendant pleads or is found guilty of such an offense.⁶⁹ Nottebrok believed that running a red light was a “moving” violation, as a car running a red light is moving while committing the violation, and therefore the municipal court would have to report her offense to the Department of Revenue so that points could be assessed.⁷⁰ But, Nottebrok argued, since the ordinance did not assess any points, it therefore violated Missouri law and must be held invalid.⁷¹

The appellate court once again disagreed with Nottebrok.⁷² It found that running a red light is not specifically listed in the state point assessment law, so if the city was required to assess points, a violation of the red light camera ordinance must be deemed a “moving” violation.⁷³ The appellate court, however, held that the ordinance violation was not a “moving” violation, but rather a “non-moving” one.⁷⁴ It noted that the city classified a violation of the ordinance as a “non-moving” violation, for the ordinance prohibited being present in an intersection while the light was red, not the act of running the red light itself.⁷⁵ This technical difference convinced the appellate court, which held that Creve Coeur was not required to assess any points for a violation of its red light camera ordinance.⁷⁶ Therefore, the ordinance was not in conflict with state law, and the red light ordinance was deemed valid.⁷⁷

This court decision had a substantial impact, as red light cameras had survived their first test. Municipalities and red light camera companies such as ATS saw the court's decision in *Nottebrok* as a huge success. Many other cities began implementing red light camera laws, and municipalities across the state continued to collect large amounts of revenue from violators.⁷⁸ But the decision in *Nottebrok* would not last long, as the very same court that

66. *Nottebrok*, 356 S.W.2d at 261.

67. § 302.302.

68. *See id.*

69. MO. REV. STAT. § 302.225 (Supp. 2012).

70. *Nottebrok*, 356 S.W.3d at 261.

71. *Id.* at 262.

72. *Id.*

73. *Id.*

74. *Id.* A moving violation is defined as “at the time of violation the motor vehicle involved is in motion . . .” MO. REV. STAT. § 302.010(13) (Supp. 2012).

75. *Nottebrok*, 356 S.W.3d at 262.

76. *Id.*

77. *Id.*

78. *Red Light Running: State Laws*, *supra* note 6.

originally upheld red light camera laws would strike them down less than two years later.⁷⁹

III. RECENT DEVELOPMENTS

As of this writing, there are over twenty-five cities in the state of Missouri with red light camera systems.⁸⁰ Not long after *Nottebrok*, multiple citizens challenged other red light camera laws in court.⁸¹ In these cases, the challengers were successful.⁸² From June to December 2013, six decisions were handed down by state appellate courts nullifying red light camera laws all across the state.⁸³ Courts struck down ordinances for violating due process and for conflicting with state law.⁸⁴ Some ordinances were found to have violated due process because they provided insufficient notice to the accused or because they failed to provide the accused with the required criminal procedure protections.⁸⁵ Other ordinances were found to conflict with state law because they failed to assess points for moving violations or because they held car owners strictly liable for violations.⁸⁶ Once the first red light camera ordinance fell, a domino effect was felt around the state. The first domino to fall came in the case of *Smith v. City of St. Louis*.⁸⁷

A. *The Eastern District Domino Effect*

1. *Smith v. City of St. Louis*

The City of St. Louis enacted a red light camera ordinance in late 2005 and began issuing citations in May 2007.⁸⁸ The St. Louis ordinance was similar to the one enacted in Creve Coeur. It presumed the owner of the vehicle was the driver at the time of the violation and held the owner responsible.⁸⁹ A violation of the ordinance was deemed a “non-moving” violation

79. *Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. Ct. App. 2013).

80. *Red Light Running: State Laws*, *supra* note 6.

81. *E.g.*, *Edwards*, 426 S.W.3d 644; *Damon v. City of Kan. City*, 419 S.W.3d 162 (Mo. Ct. App. 2013).

82. *E.g.*, *Edwards*, 426 S.W.3d at 664-65 (Mo. Ct. App. 2013); *Damon*, 419 S.W.3d at 186-87.

83. *Brunner v. City of Arnold*, 427 S.W.3d 201 (Mo. Ct. App. 2013); *Edwards*, 426 S.W.3d 644; *Damon*, 419 S.W.3d 162; *Ballard v. City of Creve Coeur*, 419 S.W.3d 109 (Mo. Ct. App. 2013); *Unverferth v. City of Florissant*, 419 S.W.3d 76 (Mo. Ct. App. 2013); *Smith v. City of St. Louis*, 409 S.W.3d 404 (Mo. Ct. App. 2013).

84. *Edwards*, 426 S.W.3d at 665; *Damon*, 419 S.W.3d at 187.

85. *Smith*, 409 S.W.3d at 418; *see also Brunner*, 427 S.W.3d at 233.

86. *Edwards*, 426 S.W.3d at 665.

87. 409 S.W.3d 404.

88. *Id.* at 407-08.

89. *Id.* at 408.

and no points were assessed to the owner's license.⁹⁰ Cameras were positioned at intersections to take pictures of a car's license plate as it drove through a solid red light.⁹¹ A police officer would review the images and determine if a violation had occurred.⁹² If a possible violation was found, the city would mail a violation notice to the owner of the vehicle.⁹³ The notice included directions on how to pay the \$100 fine and a warning stating that failure to pay the fine by the due date or to appear in court would result in further legal action by the city.⁹⁴ No court date was provided on the notice.⁹⁵ If the owner failed to pay the fine by the due date, the city would send a "final notice," which included a date to appear in court.⁹⁶

In September 2007, St. Louis issued Alexa Smith a citation after her vehicle was caught running a red light.⁹⁷ After Smith did not pay by the due date, the city sent her a "final notice" with a court date set for March 2007.⁹⁸ Fearful of arrest, Smith paid the fine.⁹⁹ Smith later filed a class action against St. Louis in September 2010.¹⁰⁰ She asserted several counts, alleging that the ordinance violated the class members' rights to due process, confrontation, and the right against self-incrimination, that the city was unjustly enriched by the fines that were paid, and that the ordinance conflicted with Missouri law in that the city lacked power to enact the ordinance.¹⁰¹

The appellate court rejected all claims except the claim that the ordinance violated due process.¹⁰² The initial violation notice did not inform Smith of her right to plead not guilty and appear at trial, as required by Missouri Supreme Court Rule 37.33.¹⁰³ Rule 37.33 states that when a municipality issues a violation notice, it must do so in writing and include specific information including how a person may respond to the notice, how he can pay any fine issued, and how he can plead not guilty and appear at trial.¹⁰⁴ The citation included only instructions on how to pay the fine and information stating that further legal action would result if the violator did not pay.¹⁰⁵ The citation never included a court date, nor did it inform the violator

90. *Id.*

91. *Id.*

92. *Id.* at 408.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* The city issued an incorrect court date, as the March date had already passed before a violation had even occurred. *Id.*

99. *Id.*

100. *Id.* at 409.

101. *Id.*

102. *Id.* at 410.

103. *Id.* at 412.

104. *Id.* at 416.

105. *Id.* at 412-13.

of her right to plead not guilty.¹⁰⁶ Because of the defective notice, the court held that St. Louis had violated the mandatory Supreme Court rule and thus violated due process under the Missouri Constitution.¹⁰⁷ The court held that sending a court date in a “final notice” was not enough to satisfy the due process requirement.¹⁰⁸ Furthermore, the final notice still did not inform the accused of her right to plead not guilty and challenge her violation in court.¹⁰⁹

Yet, despite the due process violation, Smith was not entitled to a refund. The court held that the voluntary payment doctrine barred recovery.¹¹⁰ If the city had indeed gained unjust enrichment, the court held that the voluntary payment doctrine prevented recovery of any fines paid.¹¹¹ Smith alleged that she paid her fine under the mistaken belief that the ordinance was valid and that failure to pay might lead to arrest.¹¹² The court held that her mistake cost her, as she paid the fine without knowing the true validity of the ordinance, and therefore she could not recover.¹¹³ Aside from the due process violation, the court held that the rest of the ordinance was valid.¹¹⁴ The court held that St. Louis could continue to enforce its red light ordinance once it amended its notice procedures to be consistent with the court’s opinion.¹¹⁵

2. *Unverferth v. City of Florissant*

The next domino fell a couple months later in the case of *Unverferth v. City of Florissant*,¹¹⁶ in which a court struck down an ordinance for conflicting with state law.¹¹⁷ Florissant had an ordinance similar to the ones previously discussed.¹¹⁸ Plaintiff Unverferth received a citation from Florissant for violating its red light camera ordinance and subsequently filed a class action petition in August 2011 challenging the ordinance.¹¹⁹ The plaintiffs asserted multiple counts against the city including unjust enrichment, improper exercise of police power, violation of the privilege against self-incrimination, and violation of due process, as well as claims against ATS for

106. *Id.* at 413.

107. *Id.* at 407.

108. *Id.* at 415.

109. *Id.*

110. *Id.* at 418-19.

111. *Id.* at 419.

112. *Id.* at 420.

113. *Id.* The author takes great issue with this logic. “Municipalities are entitled to presume their laws are constitutional and thus enforceable.” *Cnty. Fed. Sav. & Loan Ass’n v. Dir. of Revenue*, 752 S.W.2d 794, 797 (Mo. 1988) (en banc). Citizens should be entitled to the same presumption.

114. *Smith*, 409 S.W.3d at 425-26.

115. *Id.* at 418.

116. 419 S.W.3d 76, 84 (Mo. Ct. App. 2013).

117. *Id.* at 98.

118. *See id.* at 84; *see also Smith*, 409 S.W.3d at 407-08.

119. *Unverferth*, 419 S.W.3d at 85.

unjust enrichment and a civil conspiracy count against Florissant and ATS.¹²⁰ The trial court dismissed all claims with prejudice, and the plaintiffs appealed to the Missouri Court of Appeals, Eastern District.¹²¹

On appeal, the Eastern District held that the ordinance partly conflicted with state law.¹²² Unverferth claimed that running a red light is a moving violation, and thus points must be assessed under Missouri law.¹²³ Under the Florissant ordinance, the violation was treated as a non-moving violation, and no points were assessed.¹²⁴ The court found Unverferth's argument persuasive, holding that the Florissant ordinance punished running a red light, and common sense dictated that "running a red light" meant that the car had to be in motion.¹²⁵ Therefore, the ordinance conflicted with the requirement to assess points for a moving violation under Missouri Revised Statute Section 302.302.¹²⁶ It found the ordinance at issue to be different than the carefully crafted ordinance found in *Nottebrok*.¹²⁷ Under the ordinance in *Nottebrok*, a violation occurred when a vehicle was present in an intersection while the light was red.¹²⁸ Under the Florissant ordinance, a violation occurred when a driver failed to comply with the rules and regulations at an intersection emitting a red light.¹²⁹ This small difference allows for violations of the *Nottebrok* ordinance to be classified as non-moving, whereas a violation under the Florissant ordinance could be either moving or non-moving.

The *Unverferth* court also permitted the plaintiffs to continue their claim of improper exercise of the police power.¹³⁰ Florissant claimed it had authority to enact a red light camera ordinance, as Section 304.120 granted municipalities the authority to exercise their police power to make traffic regulations related to the public health, safety, and welfare.¹³¹ Florissant asserted that it enacted the ordinance in order to prevent dangerous accidents.¹³² The court noted that this reason was valid, as it has been upheld in previous cases.¹³³ However, the plaintiffs asserted that the city enacted the ordinance for

120. *Id.*

121. *Id.* at 83.

122. *Id.* at 84.

123. *Id.* at 96-97; *see also* MO. REV. STAT. § 302.302 (Supp. 2014).

124. *Unverferth*, 419 S.W.3d at 96-97.

125. *Id.* at 98.

126. *Id.* at 97.

127. *Id.*

128. *City of Creve Coeur v. Nottebrok*, 356 S.W.3d 252, 258-59 (Mo. Ct. App. 2011), *overruled by* *Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. Ct. App. 2013).

129. *Unverferth*, 419 S.W.3d at 84.

130. *Id.* at 94-95.

131. *Id.* at 94.

132. *Id.* at 95.

133. *Id.* (citing *Smith v. City of St. Louis*, 409 S.W.3d 404, 425-26 (Mo. Ct. App. 2013); *City of Creve Coeur v. Nottebrok*, 356 S.W.3d 252, 259 (Mo. Ct. App. 2011), *overruled by* *Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. Ct. App. 2013)).

purposes of revenue generation, not safety.¹³⁴ A municipality is not permitted to enact a traffic regulation ordinance under the police power when in fact the ordinance operates as a tax.¹³⁵ For example, a speed limit ordinance will be declared void if it is primarily enacted to produce revenue for the city and not designed to regulate traffic flow.¹³⁶ If the plaintiffs' assertions were true, Florissant's exercise of its police power would be illegal and, therefore, the court held that the trial court's dismissal of this claim was improper and the plaintiffs should be able to conduct discovery on the issue.¹³⁷ A settlement between ATS and the class was later reached, in which ATS agreed to pay back twenty percent of each fine paid by class members.¹³⁸

3. The Creve Coeur and Ellisville Ordinances

The courts revisited the Creve Coeur ordinance in *Ballard v. City of Creve Coeur*.¹³⁹ But they once again found no problem with the ordinance.¹⁴⁰ In a brief dissent, Judge Lawrence Mooney took issue with Creve Coeur's "cleverly worded" statute.¹⁴¹ In his view, the ordinance was in conflict with state law.¹⁴² Creve Coeur should have to conform to the point system for driver's licenses and should not be able to escape it by using "imaginative drafting" to call a violation under its ordinance "non-moving."¹⁴³ Judge Mooney would have overturned part of *Nottebrok* and changed the violation from non-moving to moving.¹⁴⁴

Judge Mooney's argument seemed predictive; clever semantics could save a city from being in conflict with state law. That is, until the Eastern District changed its mind in *Edwards v. City of Ellisville*.¹⁴⁵ Ellisville passed an ordinance permitting the use of red light cameras, crafted similarly to the

134. *Id.*

135. *Id.* at 95-96 (citing *Automobile Club of Mo. v. City of St. Louis*, 334 S.W.2d 355, 363 (Mo. 1960)).

136. See MO. REV. STAT. § 304.010.4 (Supp. 2012) (providing that an ordinance may be declared void if the ordinance was: "(1) [n]ot primarily designed to expedite traffic flow; and (2) [p]rimarily designed to produce revenue for the city, town or village which enacted such ordinance."). For example, speed traps in order to generate revenue are not permitted.

137. *Unverferth*, 419 S.W.3d at 96 (Mo. Ct. App. 2013).

138. Joel Currier, *Settlement of Up to \$18 Million Approved in Red-Light Camera Lawsuits in St. Louis County*, ST. LOUIS POST DISPATCH (Mar. 15, 2015, 3:00 AM), http://www.stltoday.com/news/local/crime-and-courts/settlement-of-up-to-million-approved-in-red-light-camera/article_20635e7a-92a3-58de-bb81-bfb5654468f8.html.

139. 419 S.W.3d 109 (Mo. Ct. App. 2013).

140. *Id.* at 124.

141. *Id.* at 125 (Mooney, J., dissenting).

142. *Id.*

143. *Id.*

144. *Id.*

145. 426 S.W.3d 664 (Mo. Ct. App. 2013).

ordinance used by Creve Coeur.¹⁴⁶ In Ellisville, a violation occurred when a car was present in an intersection while the traffic light was emitting a red signal.¹⁴⁷ Any violation was deemed to be non-moving, and no points on a driver's license were to be assessed.¹⁴⁸ Unlike other cities where the car owner was presumed to be the driver, Ellisville's ordinance held the owner of the vehicle strictly liable, even if he was not the driver at the time of the violation.¹⁴⁹ A city police officer would review all the images, and if probable cause that a violation occurred was found, the officer would send the car owner a citation.¹⁵⁰ Instructions were also sent on how to pay the \$100 fine or how to request a hearing in municipal court.¹⁵¹ Molly Edwards and several other plaintiffs received citations in the mail.¹⁵² Edwards paid her fine and later brought a class action lawsuit against Ellisville and ATS.¹⁵³ Plaintiffs brought claims similar to those brought before, namely that the ordinance violated due process and the privilege against self-incrimination, that the city and ATS were unjustly enriched, and that a civil conspiracy existed between Ellisville and ATS.¹⁵⁴ The trial court dismissed all of the plaintiffs' claims with prejudice, and the plaintiffs appealed.¹⁵⁵

On appeal, the Eastern District declared the ordinance void and unenforceable.¹⁵⁶ It found Ellisville's ordinance to be in conflict with state law,¹⁵⁷ and no city ordinance can be deemed valid if it conflicts with state law on the same subject.¹⁵⁸ In this case, the court found that the Ellisville ordinance conflicted with state law regarding traffic signal violations.¹⁵⁹ The court reasoned that Ellisville's ordinance essentially regulated the running of red lights, despite its clever semantics.¹⁶⁰ Missouri Revised Statute Section 304.281 regulates the running of red lights.¹⁶¹ Since the state law and city ordinance regulate the same conduct, Ellisville's ordinance could only be valid if it did not conflict with Section 304.281.¹⁶² The court found a conflict, as Section 304.281 prohibits running red lights, but it only applies to drivers

146. Compare *Edwards*, 426 S.W.3d at 650 with *Ballard*, 419 S.W.3d at 113.

147. *Edwards*, 426 S.W.3d at 650.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.* at 651.

153. *Id.*

154. *Id.*

155. *Id.* at 652.

156. *Id.* at 650.

157. *Id.*

158. MO. REV. STAT. § 304.120.3 (Cum. Supp. 2013).

159. *Edwards*, 426 S.W.3d at 663.

160. *Id.*

161. MO. REV. STAT. § 304.281 (2000).

162. *Edwards*, 426 S.W.3d at 660.

and pedestrians.¹⁶³ Section 304.281 does not permit the prosecution and penalization of those who are not drivers or pedestrians.¹⁶⁴ Under Ellisville's ordinance, a car owner could be penalized even though he was not a driver or pedestrian.¹⁶⁵ A subtle but important difference existed in Ellisville's ordinance compared to other municipalities. Other municipalities used rebuttable presumptions, meaning a car owner would not be penalized unless he was the driver.¹⁶⁶ Here, Ellisville held a driver strictly liable, regardless of whether he was the driver.¹⁶⁷ Again, Section 304.281 only permits holding drivers and pedestrians liable for running red lights, and Ellisville's ordinance expands liability to owners.¹⁶⁸ Therefore, the court found that a conflict existed and held the ordinance to be invalid.¹⁶⁹

Similar to *Unverferth*, the court also held that the ordinance conflicted with state law for failing to assess points for a moving violation.¹⁷⁰ Ellisville characterized violations as "non-moving," but the court rejected this clever wording and deemed violations to be "moving."¹⁷¹ Finally, like in previous rulings, the court held the plaintiffs were not entitled to restitution under the voluntary payment doctrine.¹⁷²

The impact of this case was felt statewide. This was the first time a court had struck down an ordinance for holding a car owner responsible, instead requiring that the driver must be held responsible or else the ordinance is invalid.¹⁷³ In previous decisions, municipalities could take simple steps to comply with court rulings, such as sending out proper notice to satisfy due process or change violations to "moving" and report convictions to the Department of Revenue.¹⁷⁴ But after *Edwards*, cities would need to either convince the state to change its law, or amend their ordinances so that drivers of cars would be held responsible and not simply car owners. Proving who was driving the car is more difficult than determining ownership, and this requirement may lead some municipalities to believe red light cameras are not worth the trouble.

163. *Id.* at 662-63.

164. *Id.* at 663-64.

165. *Id.* at 663.

166. *Ballard v. City of Creve Coeur*, 419 S.W.3d 109, 125 (Mo. Ct. App. 2013) (Mooney, J., dissenting).

167. *Edwards*, 426 S.W.3d at 650.

168. *Id.* at 662.

169. *Id.* at 664.

170. *Id.* at 665.

171. *Id.* at 664.

172. *Id.* at 650.

173. *Compare Edwards*, 426 S.W.3d at 668 *with Ballard v. City of Creve Coeur*, 419 S.W.3d 109, 121 (Mo. Ct. App. 2013) *and Unverferth v. City of Florrisant*, 419 S.W.3d 76, 106 (Mo. Ct. App. 2013).

174. *Edwards*, 426 S.W.3d at 665.

B. The Western District Weighs In

Until 2013, all rulings regarding red light camera ordinances had come from the Eastern District.¹⁷⁵ The Missouri Court of Appeals, Western District, finally chimed in when it decided *Damon v. City of Kansas City*.¹⁷⁶ A class action lawsuit challenging a red light camera ordinance was brought against Kansas City and ATS by plaintiffs Paul Damon and Natalia Olinetchouk.¹⁷⁷ They asserted multiple counts, all of which were dismissed by the trial court, and the plaintiffs appealed.¹⁷⁸

The plaintiffs alleged that Kansas City and ATS together were enforcing the red light camera ordinance, and at times ATS alone determined if a violation had occurred.¹⁷⁹ The city's ordinance was similar to those previously discussed.¹⁸⁰ Cameras took pictures of cars running red lights, and the owner of the car was held responsible, regardless of whether he was the driver at the time of the violation.¹⁸¹ The city deemed a violation to be "non-moving," meaning no points would be assessed on a violator's license.¹⁸² Citations were sent to car owners with information on how to pay the fine on a website run by ATS, by telephone,¹⁸³ or by mail to an address located in Ohio and run by ATS.¹⁸⁴ The citation also included directions on how to plead not guilty and arrange a court date.¹⁸⁵ The citation threatened that failure to pay the fine or set a court date could lead to "a warrant for [the recipient's] arrest and further penalties."¹⁸⁶ Plaintiffs alleged that ATS reviewed possible infractions first and then sent images to Kansas City police officers for review, which resulted in ATS employees, rather than a police officer, determining if a violation had occurred.¹⁸⁷

The Western District sided with the plaintiffs on appeal.¹⁸⁸ It held that the ordinance was invalid because it conflicted with state law regarding assessment of points for moving violations.¹⁸⁹ Just like the court in *Edwards*,

175. See *Edwards*, 426 S.W.3d 644; *Ballard*, 419 S.W.3d 109; *Unverferth*, 419 S.W.3d 76.

176. 419 S.W.3d 162 (Mo. Ct. App. 2013).

177. *Id.* at 169.

178. *Id.*

179. *Id.* at 170.

180. Compare *id.* with *Edwards*, 426 S.W.3d at 650 and *Ballard*, 419 S.W.3d at 113.

181. *Damon*, 419 S.W.3d at 172-73.

182. *Id.* at 172.

183. Both the website and telephone system charged a \$4 convenience fee that was believed to be retained solely by ATS. *Id.* at 170.

184. *Id.* at 171.

185. *Id.* at 170.

186. *Id.*

187. *Id.* at 170.

188. *Id.* at 169.

189. *Id.* at 187.

the *Damon* court held that a violation of the red light camera ordinance was really a moving violation, despite the city's claim to the contrary.¹⁹⁰ Therefore, because the city did not report moving violations to the Department of Revenue in accordance with Missouri Revised Statute Section 302.225, the ordinance was invalid.¹⁹¹

The Western District then addressed the rebuttable presumption part of the ordinance. In the ordinance, the car's owner was presumed to be the driver and bore the burden to rebut this presumption.¹⁹² The court held that it was unclear whether the ordinance was truly criminal or merely quasi-criminal and that further factual development of this issue would be necessary.¹⁹³ If the ordinance were truly criminal, the use of a rebuttable presumption would be unconstitutional, and therefore the trial court should not have dismissed this issue.¹⁹⁴ The court held that the trial court must decide if the ordinance was criminal in nature; if so, the plaintiffs' due process rights were violated.¹⁹⁵

Finally, the court touched on the issue of unjust enrichment.¹⁹⁶ Plaintiffs sought restitution for the fines they had paid.¹⁹⁷ The city and ATS once again asserted the defense of the voluntary payment doctrine.¹⁹⁸ Contrary to the Eastern District, the Western District held that the voluntary payment doctrine might not be applicable.¹⁹⁹ Unlike in previous cases, the plaintiffs in this case asserted that they paid fines under duress.²⁰⁰ If true, the voluntary payment doctrine would not be applicable. The court held that the plaintiffs were entitled to adjudicate this claim.²⁰¹

The court's holding in *Damon* had the greatest impact up to this point. Similar to *Edwards*, it found a conflict with state law such that the ordinance was deemed invalid.²⁰² But it also left open the possibility of restitution for those who paid fines, something that had previously been barred by the Eastern District pursuant to the voluntary payment doctrine.²⁰³ It called into

190. *Id.*

191. *Id.* at 186-87.

192. *Id.* at 187.

193. *Id.* at 189.

194. *Id.* at 191.

195. *Id.*

196. *Id.* at 192.

197. *Id.*

198. *Id.* at 192-93.

199. *Id.*

200. *Id.* at 193.

201. *Id.* at 194.

202. *Id.* at 187.

203. *Id.* at 193-94.

doubt the use of rebuttable presumptions, something many municipalities have included in their red light camera ordinances.²⁰⁴

C. *The Eastern District Follows Suit*

The issue with rebuttable presumptions was not affirmatively decided in *Damon*.²⁰⁵ But less than a month later, the Eastern District held the use of rebuttable presumptions in red light camera ordinances violated due process in *Brunner v. City of Arnold*.²⁰⁶ The City of Arnold had a red light ordinance that used rebuttable presumptions to prove the identity of the driver.²⁰⁷ The plaintiffs alleged that the use of the rebuttable presumption violated their right to due process by expanding liability to car owners who were not drivers at the time of a violation and by impermissibly shifting the burden of proof, as car owners bore the burden of proving that they were in fact not the driver at the time of the violation.²⁰⁸ The court held that if an ordinance was criminal in nature, the use of a rebuttable presumption would be unconstitutional, as it would violate the basic notion that a person is innocent until proven guilty.²⁰⁹

The court noted that rebuttable presumptions had been permitted in previous cases, but such cases were limited to parking tickets, and it declined to expand the use of such presumptions to other violations.²¹⁰ The court went one step further than the *Damon* court and declared the ordinance to be criminal in nature.²¹¹ In reaching this decision, it looked at various factors, such as the express language of the ordinance and how the city treated the ordinance.²¹² The court noted that Arnold treated violations as criminal by threatening the arrest of those who refused to pay.²¹³ It therefore held that the City of Arnold must prove beyond a reasonable doubt that the owner of the vehicle was driving at the time of the offense.²¹⁴ Because the city used a rebuttable presumption, the ordinance at issue was deemed invalid and un-

204. *Id.* at 194; see also *Set Back for Red Light Camera Ordinances*, MO. PUB. POL'Y & L. (Jan. 13, 2014), <http://momunicipallaw.com/2014/01/13/set-back-for-red-light-camera-ordinances/>.

205. *Damon*, 419 S.W.3d at 194.

206. *Brunner v. City of Arnold*, 427 S.W.3d 201, 236 (Mo. Ct. App. 2013).

207. *Id.* at 207.

208. *Id.* at 207, 209.

209. *Id.* at 231.

210. *Id.* at 230-31; see *City of St. Louis v. Cook*, 221 S.W.2d 468 (Mo. 1949).

211. *Id.* at 231, 236.

212. *Id.* at 232.

213. *Id.* at 233. If a person does not respond to a ticket, a city can arrest him for failure to appear in court. Telephone Interview with Kelly King, Municipal Prosecutor for Wright City, Mo. (April 2014).

214. *Brunner*, 427 S.W.3d at 232.

constitutional as it was held to have violated the plaintiffs' right to due process.²¹⁵

Despite finding a due process violation, the court declared that the voluntary payment doctrine barred recovery from the city.²¹⁶ However, it held that the doctrine might not bar recovery from ATS.²¹⁷ If the city permitted ATS to perform some of its governmental functions, such as deciding whom to prosecute, that would be improper, and any fines collected by ATS would therefore be unjust.²¹⁸ The court held that discovery would be necessary to properly resolve this question.²¹⁹

Brunner struck another small but important blow against red light camera ordinances. For the first time, a red light ordinance was declared criminal in nature and the use of rebuttable presumptions was therefore deemed illegal.²²⁰ *Brunner* also allowed for the possibility of recovery of any fines received by ATS, which helped facilitate a settlement between ATS and class members.²²¹

D. A Shift in Municipal Policy

In response to these recent court decisions, many cities stopped issuing red light camera tickets.²²² The City of Ellisville stopped using the cameras, and the city council voted to get rid of them all together.²²³ The City of Columbia temporarily stopped prosecuting violators, realizing that it had an ordinance similar to the one struck down in *Edwards* and thus believing that it also conflicted with state law.²²⁴ Columbia still issues red light tickets, but those who do not appear in court will not be prosecuted and no warrant will be issued for their arrest.²²⁵ Creve Coeur has put a temporary stop to its use of red light cameras, but could resume use depending on the outcome of appeals pending in Missouri courts.²²⁶ The ordinance in St. Louis was struck

215. *Id.* at 236.

216. *Id.* at 234-36.

217. *Id.* at 236.

218. *Id.* at 225, 235.

219. *Id.* at 236.

220. *Id.*

221. See Currier, *supra* note 138.

222. Andy Banker, *Ellisville City Council Votes To Get Rid of Red Light Cameras*, FOX2NOW ST. LOUIS (Mar. 5, 2014, 10:30 PM), <http://fox2now.com/2014/03/05/ellisville-city-council-votes-to-get-rid-of-red-light-cameras/>.

223. *Id.*

224. Ashley Arp, *Columbia Suspends Red Light Camera Prosecution*, KOMU (Nov. 7, 2013, 11:20PM), <http://www.komu.com/news/columbia-suspends-red-light-camera-prosecution/>.

225. *Id.*

226. Todd Schuessler, *Creve Coeur Brings Red-Light Camera Program to Temporary Stop*, ST. LOUIS POST-DISPATCH (Dec. 9, 2013, 11:50 PM), <http://www.stltod->

down once again in February 2014, but the city can still issue tickets and collect fines as long as the money is put into an escrow account.²²⁷ Arnold also temporarily stopped issuing tickets.²²⁸

The Supreme Court of Missouri declined to grant transfer for *Damon, Ballard, and Unverferth*.²²⁹ The Court elected to hear cases out of St. Louis, St. Peters, and Moline Acres.²³⁰ The Court heard oral arguments in the fall of 2014, and a decision is expected in the spring of 2015.²³¹ As of March 2015, Missouri had no law expressly permitting the use of red light cameras.²³² However, a bill was passed by the House of Representatives of the Missouri Legislature in March 2014 that would set up a framework for future red light camera ordinances to follow.²³³ Sponsors of the bill believed that it would solve all possible conflicts with state law and permit cities to issue tickets once again.²³⁴ Not surprisingly, ATS supported the bill.²³⁵ Other representatives are pushing in the opposite direction and hope to get a bill passed that would ban the use of red light cameras statewide.²³⁶ There are multiple pro-

ay.com/news/local/crime-and-courts/creve-coeur-brings-red-light-camera-program-to-temporary-stop/article_0f35e38f-74e8-5d1b-a3fa-172fd5e7abfa.html.

227. Jennifer S. Mann, *St. Louis Red Light Cameras Can Continue as Judge Puts Hold on Own Order*, ST. LOUIS POST DISPATCH (Feb. 14, 2014, 11:30 PM), http://www.stltoday.com/news/local/metro/st-louis-red-light-cameras-can-continue-as-judge-puts/article_fac67122-68e2-5306-a86c-41ef17ed62bb.html.

228. *Arnold To Stop Issuing Red-Light Tickets*, ST. LOUIS POST-DISPATCH (Feb. 20, 2014, 9:03 PM), http://www.stltoday.com/news/local/govt-and-politics/arnold-to-stop-issuing-red-light-tickets/article_179341da-c8cf-5918-9aab-a3b97819186b.html.

229. *Missouri Supreme Court Rejects Red Light Camera Industry Appeal*, THE NEWSPAPER.COM (Apr. 30, 2014), <http://www.thenewspaper.com/news/43/4398.asp>.

230. Ken Leiser, *Red-Light Camera Company, Plaintiffs Agree To Settle Class Action Suits*, ST. LOUIS POST-DISPATCH (Sept. 26, 2014, 5:05 PM), http://www.stltoday.com/news/traffic/along-for-the-ride/red-light-camera-company-plaintiffs-agree-to-settle-class-action/article_5b2734f9-56f4-5998-81c7-8b703456bb68.html.

231. *See Case Summary for December 2, 2014*, MO. CTS., <http://www.courts.mo.gov/SUP/index.nsf/fe8feff4659e0b7b8625699f0079eddf/38e236697468d70786257d79006a4052?OpenDocument> (last visited Mar. 24, 2015).

232. *Missouri*, GOVERNOR'S HIGHWAY SAFETY ASS'N (Mar. 2014), <http://www.ghsa.org/html/stateinfo/bystate/mo.html>.

233. H.B. 1557, 97th Gen. Assemb. 2nd Reg. Sess. (Mo. 2014), available at <http://www.house.mo.gov/billtracking/bills141/billpdf/perf/HB1557P.PDF>; Marie French, *Missouri House Approves Legal Framework for Red Light Cameras*, ST. LOUIS POST-DISPATCH (Mar. 13, 2014, 4:30 PM), http://www.stltoday.com/news/local/govt-and-politics/political-fix/missouri-house-approves-legal-framework-for-red-light-cameras/article_71ea9411-80d2-5932-b11f-a963522c52ff.html.

234. French, *supra* note 233.

235. *Id.*

236. Mark Schlinkmann, *Red-Light Camera Opponents Plan 'Town Hall' Meeting in St. Peters*, ST. LOUIS POST DISPATCH (Mar. 14, 2014, 6:36 PM), <http://www.stltoday.com/news/local/govt-and-politics/mark-schlinkmann/red-light-camera->

posals pending in the state legislature that would restrict or even eliminate the use of red light cameras.²³⁷ State legislators are likely to act on these proposals in the future, although no concrete developments have occurred as of this writing. Additionally, ATS reached a settlement with plaintiffs in the suit for civil conspiracy and the settlement was certified by the court.²³⁸ ATS settled claims with plaintiffs from twenty-seven cities in Missouri, including Arnold, Creve Coeur, Ellisville, Florissant, Kansas City, and St. Louis.²³⁹ Under the terms of the settlement, ATS agreed to pay class members twenty percent of each fine paid, which is \$20 for each \$100 fine.²⁴⁰ Plaintiffs could receive between them up to \$16 million in compensation from ATS.²⁴¹

IV. DISCUSSION

With all the recent developments in red light camera laws, the idea of fighting a red light ticket in court might seem like a daunting task for some. Still, those who believe they were wrongfully accused or those who want to exercise their rights might want to do so. An accused person may think that hiring a lawyer to represent him might be the only option, but from a practical standpoint, it might not be worth it, as fines usually run around \$100, while the cost of hiring a lawyer will likely be more. But fear not, for the average Joe is perfectly capable of representing himself in court and beating a red light ticket. He or she just needs to know which legal arguments are worthwhile and which arguments should be avoided altogether.²⁴²

opponents-plan-town-hall-meeting-in-st/article_598f4d1c-1d27-5387-828a-345088d81e60.html.

237. H.B. 1207, 97th Gen. Assemb., 2nd Reg. Sess. (Mo. 2014), *available at* <http://www.house.mo.gov/billtracking/bills141/billpdf/intro/HB12071.PDF> (prohibiting any entity that is authorized to issue traffic tickets from implementing a new automated photo red light enforcement system at any intersection within its jurisdiction beginning September 1, 2014); H.B. 1533, 97th Gen. Assemb., 2d Reg. Sess., (Mo. 2014), *available at* <http://www.house.mo.gov/billtracking/bills141/billpdf/intro/HB15331.PDF> (prohibiting the use of automated traffic enforcement systems while allowing any political subdivision to complete or terminate any automated traffic enforcement contracts within one year); H.B. 1292, 97th Gen. Assemb., 2d Reg. Sess., (Mo. 2014), *available at* <http://www.house.mo.gov/billtracking/bills141/billpdf/intro/HB12921.PDF> (requiring any traffic enforcement system photograph to depict the driver from the front in order for the violation to be valid).

238. Currier, *supra* note 138.

239. *Id.*

240. *Id.*

241. *Id.*

242. Of course these are just suggestions and are not guaranteed to work. Additionally, the law is currently in flux in this area, so consulting an attorney can often be the best course of action.

A. *The Practical Argument*

From a practical standpoint, the fact that an accused even makes an argument in court might get him or her out of paying a fine. Those that lose at trial in municipal court are entitled to trial *de novo* in the circuit court.²⁴³ Not only does an accused get two bites at the apple, but for some municipalities, it might not be worthwhile to pursue the case in circuit court. Some municipalities might not have the time or resources to do so. For others, it might not be worth the cost. For example, it costs the City of Washington, Missouri, roughly \$1,300 in legal fees to pursue a case in circuit court in the hopes of collecting a fine of \$100.²⁴⁴ Many cities might not pursue the case, and the ticket will be dismissed. Simply exercising one's right to trial by challenging the ticket, rather than paying it, might be enough for an accused to beat a ticket.

B. *The Privacy Argument*

Some citizens object to the use of red light cameras on the grounds of privacy. They do not want "Big Brother" snooping around their lives, and installing cameras on street corners is seen as a small step towards the government having cameras in their homes. Americans have clung to their "right to privacy"²⁴⁵ and resist government infringement with great zeal. The idea of a city taking pictures of one's car could be deemed an invasion of privacy.

Roots of the right of privacy are found in the Fourth Amendment.²⁴⁶ The Fourth Amendment protects persons from unreasonable searches and seizures.²⁴⁷ However, what a person exposes to the public is not necessarily protected. When people drive cars on city streets, they expose themselves to the public. People cannot claim privacy for things they leave in plain view of the public.²⁴⁸ It would be unreasonable for a person to have an expectation of privacy while driving a car on a public street; any person on a street corner could snap a photo of a driver passing by. Similarly, a police officer could see and identify a driver in person. Neither situation is likely to be deemed an invasion of privacy. Therefore, it is also unlikely that an automated camera snapping a photo of a car will be deemed a search. Furthermore, most automated cameras only take pictures of the car and the license plate and not

243. MO. REV. STAT. § 479.200 (2000). As long as the accused does not plead guilty or have a trial by jury, he has the right to trial *de novo* in the circuit court. *Id.*

244. *Activist Tools*, WRONG ON RED, <http://wrongonred.com/index-3.html> (last visited Mar. 1, 2015).

245. *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965) ("We deal with a right of privacy older than the Bill of Rights.").

246. *Id.* at 484-85 (citing *Mapp v. Ohio*, 367 U.S. 643, 656 (1981)).

247. U.S. CONST. amend. IV.

248. Mary Lehman, *Are Red Light Cameras Snapping Privacy Rights?*, 33 U. TOL. L. REV. 815, 818 (2002).

the driver.²⁴⁹ A picture of the outside of a car on a city street is definitely not going to be deemed an unreasonable search. After *Brunner*, cities will need to prove the identity of the driver beyond a reasonable doubt, so some cities might start taking pictures of drivers.²⁵⁰ But as previously stated, this is unlikely to be deemed an unreasonable search.

Offenders arguing in court should avoid the privacy argument. The idea of “Big Brother” having cameras everywhere is not a legal argument and will fall upon deaf ears in court. This argument is best left for the legislature. If one feels that red light cameras are an invasion of privacy, he should write his state congressman, or address his local town council in hopes that they will ban the use of red light cameras. But those raising this argument in court are likely to lose.

C. The Revenue Generation Argument

Many of the plaintiffs in recent red light cases presented arguments that cities were not using red light systems for purposes of safety, but were secretly using them for purposes of collecting revenue.²⁵¹ A local government should not seek to tax its citizens through use of fines. There may be truth to this claim. Municipalities in the St. Louis area have collected over \$48 million since they began issuing red light camera tickets, and over \$18 million has gone to camera provider ATS.²⁵²

The amount of money made by cities and ATS from red light camera tickets is astounding, but regardless, raising these facts at municipal court is not likely to save one from paying a fine. As *Unverferth*, *Brunner*, *Damon*, and *Edwards* noted, if a municipality enacted a red light camera ordinance for the purpose of revenue generation, the ordinance would be invalid.²⁵³ The fact that many people continue to run red lights while cities continue to collect revenue from violators does not necessarily mean that cities are acting illegally. But the proper place to argue the validity of a municipal ordinance

249. See *Brunner v. City of Arnold*, 427 S.W.3d 201 (Mo. Ct. App. 2013); *Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. Ct. App. 2013); *Damon v. City of Kan. City*, 419 S.W.3d 162, 169 (Mo. Ct. App. 2013); *Ballard v. City of Creve Coeur*, 419 S.W.3d 109 (Mo. Ct. App. 2013).

250. *Brunner*, 427 S.W.3d at 232.

251. See *Brunner*, 427 S.W.3d at 225-26; *Edwards*, 426 S.W.3d at 660; *Unverferth v. City of Florissant*, 419 S.W.3d 76, 93 (Mo. Ct. App. 2013).

252. Chris Nagus, *Arizona Brothers Making Millions on Red-Light Camera Tickets in St. Louis*, KMOV (Oct. 30, 2012, 10:24 AM), <http://www.kmov.com/news/investigates/Arizona-Brothers-making-Millions-on-Red-Light-Camera-Tickets-in-St-Louis-175861641.html>.

253. *Brunner*, 427 S.W.3d at 225-26; *Edwards*, 426 S.W.3d at 660; *Damon*, 419 S.W.3d at 185 (citing *Auto. Club of Mo. v. City of St. Louis*, 334 S.W.2d 355, 363 (Mo. 1960)); *Unverferth*, 419 S.W.3d at 95.

would not be in municipal court. "Municipalities are entitled to presume their laws are constitutional and thus enforceable."²⁵⁴

On the other hand, this argument can be effective if proven at circuit court, for a circuit court has the power to declare a city ordinance invalid if it is not a valid exercise of the police power. But this argument will be difficult to prove even at a circuit court, for even if a city collects a substantial amount of revenue from a red light ordinance, it does not mean that the ordinance is invalid. An ordinance enacted pursuant to a city's police power is presumed valid, and the challenging party bears the burden of proving its invalidity.²⁵⁵ The challenging party has a high burden, as it must "negate every conceivable basis" that might support the ordinance.²⁵⁶ In this case, that would mean negating every contention that the red light ordinance is related to serving the health, safety, and welfare of the public. Cities claim their intent in enactment is to reduce accidents and increase road safety. A challenger would bear an almost impossible burden in proving that this is false.

The revenue generation argument is best left for state legislatures and town councils. ATS has a history of greasing the wheels such that cities will enact red light camera ordinances and then sign lucrative contracts with ATS for camera installation and operation.²⁵⁷ If state legislatures are made aware of the facts, perhaps they will pass legislation restricting the use of red light cameras. Or perhaps local voters will become outraged and vote city council members out of office, replacing them with anti-red light camera members. But either way, this argument should be avoided in court.

D. Conflicts with State Law

Numerous cases struck down various red light camera ordinances because they conflicted with state law.²⁵⁸ This legal argument can be very effective in getting a ticket dismissed, and one might not even need to show up to court to do so. The various cases struck down ordinances due to a few different conflicts. Some municipalities in the state are still enforcing violations, and many plan to do so after amending their ordinances. Therefore, the first thing the accused needs to do is look at the local ordinance.

The ordinance cannot impose strict liability on car owners.²⁵⁹ The court in *Edwards* held this to be in conflict with state law.²⁶⁰ If the ordinance im-

254. *Cnty. Fed. Sav. & Loan Ass'n. v. Dir. of Revenue*, 752 S.W.2d 794, 797 (Mo. 1988) (en banc).

255. *Bezayiff v. City of St. Louis*, 963 S.W.2d 225, 229 (Mo. Ct. App. 1997).

256. *Id.*

257. *See generally* Chad Garrison, *Red Light, Green Light*, RIVERFRONT TIMES (Feb. 1, 2006), <http://www.riverfronttimes.com/2006-02-01/news/red-light-green-light/full/>.

258. *See Brunner*, 427 S.W.3d at 225-26; *Edwards*, 426 S.W.3d at 660; *Unverferth*, 419 S.W.3d at 95; *Damon*, 419 S.W.3d at 185.

259. *Edwards*, 426 S.W.3d at 663-64.

poses strict liability, a defendant should bring *Edwards* to the court's attention.

Likewise, the ordinance must assess points for a moving violation.²⁶¹ Many cities tried to cleverly draft their ordinances to classify a violation as "non-moving."²⁶² However, courts no longer accept "imaginative drafting" as a way to avoid classifying a moving violation as something else.²⁶³ *Edwards* and *Damon* expressly stated that such violations must be classified as moving violations and points must be assessed.²⁶⁴ If the local ordinance classifies a violation as "non-moving," a defendant should cite *Edwards* or *Damon* to show a conflict with state law. This will likely get one out of paying a fine one day, but this conflict is easily fixable by city councils. In fact, some councils have done just that. The City of St. Peters amended its ordinance that had been found to conflict with state law, so now all offenses are reported to the Department of Revenue as moving violations.²⁶⁵

In order to avoid court altogether, if one notices that the local ordinance conflicts with state law, one might write the local prosecutor beforehand, asking for her case to be dismissed, and citing the above cases. This argument can be effective for getting a ticket dismissed once, but beware, the city is likely to amend its ordinance so that it complies with state law, meaning this "get out of jail free" card will usually be effective only once.

E. The Due Process Argument

The right to due process was applied to the states by the Fourteenth Amendment.²⁶⁶ No state or local government can deprive any person of life, liberty, or property without due process of law.²⁶⁷ Missouri has a similar due process requirement in its state constitution.²⁶⁸ Due process is composed of two main parts, substantive due process and procedural due process.²⁶⁹ Procedural due process requires the government to follow certain procedures before depriving a person of liberty or property.²⁷⁰

260. *Id.* (finding the ordinance conflicted with MO. REV. STAT. § 304.281 (Cum. Supp. 2013)).

261. *Id.* at 664; see MO. REV. STAT. § 302.302 (Supp. 2014) (requiring two points to be assessed for any moving violation).

262. See *Edwards*, 426 S.W.3d at 664; *City of Creve Coeur v. Nottebrok*, 356 S.W.3d 252, 262 (Mo. Ct. App. 2011), *overruled by Edwards*, 426 S.W.3d 644.

263. See *Edwards*, 426 S.W.3d at 664-65.

264. *Id.*; *Damon v. City of Kan. City*, 419 S.W.3d 162, 187 (Mo. Ct. App. 2013).

265. Schlinkmann, *supra* note 236.

266. U.S. CONST. amend. XIV, § 1.

267. *Id.*

268. MO. CONST. art. I, § 10.

269. Peter Strauss, *Due Process*, LEGAL INFO. INST., http://www.law.cornell.edu/wex/due_process (last visited Mar. 1, 2015).

270. *Id.*

One of the core requirements of procedural due process is the right to a fair hearing.²⁷¹ As noted in *Smith*, Missouri law secures the right to a hearing for those accused of a municipal ordinance violation.²⁷² When one is accused of a violation, he has the right to declare his innocence and have a hearing on the matter.²⁷³ In *Smith*, when the city mailed the accused notices of the violation it failed to include information informing recipients of their right to plead not guilty and have a hearing.²⁷⁴ The court held that the city was required to do so.²⁷⁵ If one receives a citation in the mail and it does not include this vital information, one can claim that due process was not met. A city cannot cure defective notice by sending a second amended notice.²⁷⁶ An accused should notify the local prosecutor, citing to case law such as *Smith*. If notice is inadequate, this argument should be enough to get the ticket dismissed. But a city can amend its notice protocol to ensure that future violation notices comply with due process requirements, and indeed many cities have already done so.

Again, due process requires that the government afford the accused a fair hearing to dispute the matter at hand.²⁷⁷ A fundamental part of each hearing is that the accused is deemed innocent until proven guilty.²⁷⁸ Many ordinances utilize rebuttable presumptions, meaning the car owner is presumed to be the driver at the time of violation, but the owner has the option to present evidence to the contrary.²⁷⁹ In previous cases, Missouri courts have allowed the use of rebuttable presumptions, specifically in cases involving parking tickets.²⁸⁰ But the use of rebuttable presumptions is only permitted in civil actions and not criminal ones.²⁸¹ The court in *Brunner* held the use of such presumptions for criminal actions to be a violation of due process, as the presumption shifts the burden of proof.²⁸²

The red light camera ordinance in *Brunner* was deemed criminal in nature, while other ordinances, such as the one in *Nottebrok*, have been deemed

271. *Id.*

272. *Smith v. City of St. Louis*, 409 S.W.3d 404, 412 (Mo. Ct. App. 2013).

273. *Id.*

274. *Id.*

275. *Id.* at 413.

276. *Id.* at 417.

277. Strauss, *supra* note 269.

278. *See Coffin v. United States*, 156 U.S. 432, 453 (1895) (“The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.”).

279. *See Unverferth v. City of Florissant*, 419 S.W.3d 76, 99 (Mo. Ct. App. 2013).

280. *City of St. Louis v. Cook*, 221 S.W.2d 468, 470-71 (Mo. 1949).

281. *Brunner v. City of Arnold*, 427 S.W.3d 201, 231 (Mo. Ct. App. 2013) (citing *State v. Neal*, 526 S.W.2d 898, 902 (Mo. Ct. App. 1975)).

282. *Id.* at 232-33 (citing *Damon v. City of Kan. City*, 419 S.W.3d 162, 189 (Mo. Ct. App. 2013)).

civil.²⁸³ Usually prosecutions of municipal ordinance violations are considered civil actions.²⁸⁴ One does not receive the same level of heightened procedural protection required by the Fifth, Sixth, and Eighth Amendments of the U.S. Constitution in a civil action as one does in a criminal action.²⁸⁵ Regardless, the rules of criminal procedure apply to prosecutions of municipal ordinances.²⁸⁶ This means that prosecutions of violations of city ordinances, whether criminal or civil, must be proven beyond a reasonable doubt.²⁸⁷ In order for the accused to be found guilty of violating a red light camera ordinance, the city must prove beyond a reasonable doubt that the accused was in fact the driver at the time of the violation.²⁸⁸ However, for ordinance violations that are deemed criminal in nature, the use of rebuttable presumptions to prove guilt is unconstitutional, whereas in civil actions it is not.²⁸⁹ One cannot be presumed innocent until proven guilty if in reality he is presumed guilty and must prove his innocence. This shifting of the burden of proof in the criminal context is not allowed.²⁹⁰ Whether an ordinance violation is deemed criminal or civil is very important. If an ordinance has been deemed criminal in nature by a court, and it utilizes a rebuttable presumption, a person can argue that it is unconstitutional as determined in *Brunner*.

If the nature of the ordinance is unclear, a person should research the factors considered by a court when it makes this decision, and perhaps consult an attorney due to the fluctuating nature of the law.²⁹¹ No one factor is dispositive, but together multiple factors can tip the scale toward an action being criminal.²⁹² Does the language of the ordinance express the city's intention to treat a violation as a civil action? If it does not, it is more likely to be deemed criminal. But just because a city calls a violation "civil" does not mean it really is. Does a violation impose a sanction that operates as an affirmative disability or restraint on a violator, such as a substantial monetary fine or jail time? Or are sanctions less severe, such as a small fine not accompanied by points on a driver's license? The more severe the sanction, the

283. *Id.* Normally, city ordinance violations are considered civil actions. *City of Creve Coeur v. Nottebrok*, 356 S.W.3d 252 (Mo. Ct. App. 2013), *overruled by* *Edwards v. Ellisville*, 426 S.W.3d 644 (Mo. Ct. App. 2013); *City of Webster Groves v. Erickson*, 789 S.W.2d 824, 826 (Mo. Ct. App. 1990).

284. *Erickson*, 789 S.W.2d 824.

285. *Nottebrok*, 356 S.W.3d at 257 (citing *Mills v. City of Springfield*, No. 2:10-CV-04036-NKL, 2010 U.S. Dist. LEXIS 92031 (W.D. Mo. Sept. 3, 2010)).

286. *Brunner*, 427 S.W.3d at 231; *see Erickson*, 789 S.W.2d at 826; *City of Kan. City v. McGary*, 218 S.W.3d 449, 452 (Mo. Ct. App. 2006).

287. *Brunner*, 427 S.W.3d at 232.

288. *Id.* at 207.

289. *Id.*

290. *Id.* at 231.

291. *Id.* at 225 (citing *President Riverboat Casino-Mo., Inc. v. Mo. Gaming Comm'n*, 13 S.W.3d 635, 641 (Mo. 2000) (en banc)).

292. *See id.* at 232.

more likely it operates as a disability or a restraint on a violator and thus the more likely it is to be deemed criminal in nature.

Furthermore, unless state law is amended, all red light camera ordinances must assess points for violators, and this assessment of points tips the scales in favor of the ordinance being deemed criminal. Does the city treat ordinance violations as criminal? The court in *Brunner* found this factor persuasive in deeming the ordinance criminal.²⁹³ The city in *Brunner* encouraged violators to plead guilty and threatened those who refused to pay with warrants and jail time.²⁹⁴ If a city uses similar enforcement tactics, its ordinance is likely to be deemed criminal. Red light ordinances are also likely to be deemed criminal because of the way violations are treated by the state. Instead of classifying violations as civil infractions,²⁹⁵ violations of Missouri's traffic light statute are considered a class C misdemeanor.²⁹⁶ Misdemeanors are considered crimes by the state, and therefore normal rules of criminal prosecution and procedure must be followed.²⁹⁷ Red light ordinances are likely to be deemed criminal. A persuasive argument to a judge or prosecutor might result in a dismissal of a ticket under an ordinance that uses a rebuttable presumption.

F. Authentication of Video Evidence and Hearsay

In order for photographic or video²⁹⁸ evidence to be admitted in court, a proper foundation must be laid. The foundation consists of proving that the evidence is relevant and that it is not subject to any hearsay objection.²⁹⁹ The evidence must also be authenticated.³⁰⁰ There are many ways to authenticate a photo in Missouri. The most common way is to have a witness with personal knowledge of the photo testify that it is a fair and accurate representation of what it purports to portray.³⁰¹ Missouri courts have also permitted

293. *Id.* at 232.

294. *Brunner*, at 208.

295. MO. REV. STAT. § 556.021(1) (Supp. 2010).

296. MO. REV. STAT. § 304.281 (2) (2000). Class C misdemeanors are punishable by a jail term of no more than fifteen days and a fine of no more than three-hundred dollars. See MO. REV. STAT. § 558.011 (Supp. 2003) (jail time); MO. REV. STAT. § 560.016 (2000) (fine).

297. MO. REV. STAT. § 556.016 (2000).

298. The basic principles that govern the admission of photographs also govern the admission of motion pictures or videotapes. *St. Louis Univ. v. Geary*, 321 S.W.3d 282, 289 (Mo. 2009) (en banc) (citing *Morris v. E.I. Du Pont de Nemours & Co.*, 139 S.W.2d 984, 987 (1940)).

299. *Asset Acceptance v. Lodge*, 325 S.W.3d 525, 528 (Mo. Ct. App. 2010) (“Before a document may be received in evidence, it must meet a number of foundational requirements including relevancy, authentication, the best evidence rule, and hearsay.”).

300. *Id.*

301. *State v. Schlup*, 724 S.W.2d 236, 242 (Mo. 1987) (en banc).

photographs to be authenticated and admitted as business records.³⁰² In order to be admitted as a business record, a custodian³⁰³ or other qualified witness³⁰⁴ must testify to the photo's identity and the mode of its preparation, and that it was made in the regular course of business, at or near the time of the act or event in question.³⁰⁵ The custodian or qualified witness need not testify in court, but can submit an affidavit instead.³⁰⁶ The judge has ultimate discretion on whether proper foundation has been laid.³⁰⁷

Red light cameras take pictures (and some record videos) of the accused's car running a red light.³⁰⁸ The prosecutor will seek to admit this evidence in court as proof of the accused's guilt, as without it the prosecution cannot prove its case. The accused can prevent the admission of the evidence if it is not properly authenticated. It is important to note how the prosecution acquires these photos. The cameras take pictures of the supposed violation.³⁰⁹ The photos are then sent via wireless Internet to the processing center of the camera company.³¹⁰ At the processing center, camera company technicians review the photos for a possible violation.³¹¹ Photos are imprinted with a data bar at the top that includes the date, time, and location of the possible violation.³¹² If a technician believes a violation has occurred, he sends the photos to the municipal police department to review.³¹³ The prosecution is likely to have the officer who reviewed the photos testify. The officer will likely testify that the evidence shows the accused's car with identifiable license plate running a red light at a specific intersection on the specific date in

302. 33 Mo. Prac. Courtroom Handbook on Mo. Evidence § 901(1.4) (2013 ed.); see also *State v. Tillman*, 289 S.W.3d 282, 295 (Mo. Ct. App. 2009); *State v. Coulter*, 255 S.W.3d 552, 564 (Mo. Ct. App. 2008).

303. A custodian is one who keeps the records and has personal knowledge of how the records are produced and stored.

304. "A witness is qualified to testify regarding a business record if he or she has sufficient knowledge of the business operation and methods of keeping records of the business to give the records probity." *Asset Acceptance v. Lodge*, 325 S.W.3d 525, 528 (Mo. Ct. App. 2010).

305. MO. REV. STAT. § 490.680 (2000).

306. MO. REV. STAT. § 490.692.2 (2000) ("No party shall be permitted to offer such business records into evidence pursuant to this section unless all other parties to the action have been served with copies of such records and such affidavit at least seven days prior to the day upon which trial of the cause commences.").

307. *St. Louis Univ. v. Geary*, 321 S.W.3d 282, 289 (Mo. 2009) (en banc) (citing *Gomez v. Constr. Design, Inc.*, 126 S.W.3d 366, 373-74 (Mo. 2004) (en banc)) ("The trial court has broad discretion in assessing the admissibility of videotapes.").

308. *Brunner v. City of Arnold*, 427 S.W.3d 201, 206 (Mo. Ct. App. 2013).

309. *ATS Road Safety, St. Joseph, MO – How Red-Light Safety Cameras Work*, YOUTUBE (Jan. 17, 2013), <http://www.youtube.com/watch?v=alwSHLId6j4>.

310. *Id.*

311. *Id.*

312. *Red-Light Photo Enforcement Program*, ST. PETERS MO., <http://www.stpetersmo.net/red-light-cameras.aspx> (last visited Mar. 2, 2015).

313. *ATS Road Safety*, *supra* note 309.

question. One should object that the officer lacks personal knowledge and therefore cannot authenticate the photo.

The officer will not have personal knowledge of how the specific photos were collected, analyzed, and transmitted, as officers do not maintain the camera system. The photos are not sent directly to the officer, but are first sent to the camera company and then the officer.³¹⁴ The officer lacks personal knowledge as to whether the photos he received are in fact a true representation of what the cameras captured. The photo could have been edited or altered by the technicians at the camera company. In fact, the officer lacks knowledge on whether even the date and time printed on the photo is accurate.³¹⁵ The date, time, and location printed on the photo will have either been entered by a technician manually, or verified by a technician.³¹⁶ The officer would lack personal knowledge about this. The officer likely would not know if the camera system was acting properly on the specific day of the possible violation, or if the camera took an accurate photo. He or she likely would not know how photos are kept and stored by the camera company either. The officer might claim that he acquired personal knowledge of such information from correspondence with the camera company, but the accused could object to this as hearsay. Since the officer likely lacks personal knowledge regarding the photographic evidence, a judge might deny its admission. If the prosecution wants to get the evidence admitted, it likely must have a technician from the camera company who has personal knowledge of the photos testify.

It is unlikely that a technician from the camera company would be waiting in the courtroom in case the officer's testimony was insufficient in laying proper foundation. In such an event, the prosecution would be unable to prove its case and would have to dismiss the ticket. But a sharp prosecutor might try to avoid this problem altogether by getting the photographic evidence admitted through a business records affidavit.³¹⁷ Courts have held photographs to be business records.³¹⁸ As long as proper procedure is followed, a prosecutor could still get the photos into evidence. A custodian or qualified witness must submit an affidavit to the court, where a judge might deem it acceptable and allow the photos into evidence.³¹⁹ But the accused still might have a chance to prevent admission of such evidence via the Confrontation Clause.³²⁰

314. *Id.*

315. *Id.*

316. *Id.*

317. MO. REV. STAT. § 490.680 (2000).

318. *Tillman v. State*, 289 S.W.3d 282, 295 (Mo. Ct. App. 2009).

319. § 490.680.

320. U.S. CONST. amend. VI.

G. Confrontation Clause Argument

The Sixth Amendment guarantees the accused in criminal prosecutions the right to confront witnesses against him.³²¹ The accused has the right to be present when a witness is testifying against him and to cross-examine the witness.³²² The Supreme Court has held that the Confrontation Clause prevents the admittance of “testimonial” hearsay.³²³ A party seeking to admit an out of court statement deemed “testimonial”³²⁴ via a hearsay exception will not be permitted to do so unless the declarant is unavailable and the accused had a prior opportunity to cross-examine the declarant.³²⁵

When the camera companies send possible violation photos to the municipal police departments, they include more information than just the photographic evidence.³²⁶ A data bar printed on the photo includes the date, time, and location of the alleged violation, as well as how long the light was red before the accused entered the intersection.³²⁷ One could argue that this information, especially the date and time, is testimonial hearsay, and therefore subject to the Confrontation Clause. The date and time are necessary to convict the accused, as they are essential for authentication of the photos as well as proving that the violation occurred on the specific date alleged by the prosecution. The prosecution must also prove the location. One could argue that the information printed on the photos are statements made by the camera technician that the accused ran a red light on the specific date and time at the specific location alleged. And since these statements are made out of court by the declarant, offered to prove what they assert, and are made for their likely use at trial, they can be deemed testimonial hearsay. The prosecution could avoid the hearsay problem via the business records exception,³²⁸ but the statements would still be subject to the Confrontation Clause.

In order to win this argument, one must show that the information included with the photos is hearsay and that the hearsay is testimonial. First, in order to prove that the information is hearsay, one must show exactly what the technicians add to the photos. Most camera systems do not automatically include the information printed in the data bar on the photographs, in which case a technician must look up what time the photo was taken and where it was taken and then manually enter such information. This is hearsay. By manually inserting this information onto the photograph, the technician is essentially stating that the accused ran a red light at the location printed on

321. *Id.*

322. *State v. Sutherland*, 939 S.W.2d 373, 378 (Mo. 1997) (en banc).

323. *Crawford v. Washington*, 541 U.S. 36, 68 (2004).

324. Testimonial essentially means statements made for likely use at trial. *Id.* at 52.

325. *Id.* at 68.

326. *Red-Light Photo Enforcement Program*, *supra* note 312.

327. *Id.*

328. *See* discussion *supra* Part IV.F.

the photo and on the printed date and time. This statement is made out of court and is used to prove what it asserts, that the accused ran a red on the date in question at the location printed.

However, some camera systems automatically put a time stamp on the photos, meaning the photos are sent to the technicians with the time and date already on the photo as well as the location.³²⁹ The prosecution would likely argue that such information is not hearsay, as only persons can make statements, not cameras or computers. However one could argue that, when the technician verifies the information printed on the photo, the technician is making a statement that such information is true and accurate and that this statement is hearsay. This hearsay issue has yet to be ruled on by Missouri courts, but California courts have considered it.³³⁰ Some state courts have deemed it hearsay,³³¹ and some have not.³³² The Supreme Court of California recently ruled on the issue in 2014, and it found that the photographs did not constitute hearsay.³³³ Although the California courts rejected this argument, it is still possible that Missouri courts might disagree.

Recent Supreme Court decisions dealing with the Confrontation Clause suggest that the information provided by the camera company technicians is in fact testimonial.³³⁴ In *Melendez-Diaz v. Massachusetts*, the Supreme Court held that forensic lab reports constituted testimonial hearsay and were therefore subject to the Confrontation Clause.³³⁵ Scientists conducted lab tests on a substance confiscated from the defendant and concluded that it was cocaine.³³⁶ The state sought to introduce the report through an affidavit, but the court held that the report was testimonial hearsay, as it was made solely for use at trial in order to prove that the defendant was in possession of cocaine.³³⁷ Therefore, the report could only be admitted if the scientist was subject to cross-examination.³³⁸

Shortly thereafter, the Court decided *Bullcoming v. New Mexico*.³³⁹ The defendant, Bullcoming, was charged with driving while intoxicated.³⁴⁰ A forensic analyst hired by the state conducted a test on Defendant's blood to determine if Defendant's blood-alcohol content was above the legal limit, and

329. *Red-Light Photo Enforcement Program*, *supra* note 312.

330. *People v. Khaled*, 113 Cal. Rptr. 3d 796, 798-99 (Cal. App. Dep't. Super. Ct. 2010).

331. *Id.*

332. *People v. Goldsmith*, 138 Cal. Rptr. 3d 305, 307 (Cal. Ct. App. 2012), *aff'd* 326 P.3d 239 (Cal. 2014).

333. *Goldsmith*, 326 P.3d 239.

334. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 310 (2009).

335. *Id.* at 311.

336. *Id.* at 308.

337. *Id.* at 308, 329.

338. *Id.* at 311.

339. 131 S. Ct. 2705, 2710 (2011).

340. *Id.*

then recorded the incriminating results in a report.³⁴¹ The analyst who conducted the test was unavailable to testify at trial, so the state tried to get the report admitted through the testimony of a fellow lab analyst who could vouch for its validity.³⁴² The Court held that the lab report was testimonial hearsay, and therefore the analyst who created it must testify in order to satisfy the Confrontation Clause.³⁴³ The report was testimonial because it was made in order to prove a fact at Defendant's criminal trial: the fact that his blood-alcohol content was above the legal limit.³⁴⁴ Since the analyst was not available, the report could not be admitted.³⁴⁵

The Supreme Court has held that scientific evidence reports created for use at trial are subject to confrontation.³⁴⁶ A state cannot get such reports into evidence unless the person who created them testifies subject to cross-examination.³⁴⁷ In a red light ticket case, one could argue that photographs with time stamps created by camera technicians are in fact testimonial, as they are created solely for use at trial in order to prove the fact that the accused ran a red light on the date and at the time listed. If the judge agrees, the prosecution must have the technician who created the photo testify at trial, or else the photographs will not be admissible. Some cities have brought in witnesses from out of state to testify,³⁴⁸ but it is unlikely a Missouri municipality would do the same. It would not make sense from a practical standpoint, as the cost of bringing in the witness might outweigh the revenue collected from the fine. If the technician is not present at trial and the judge deems the photographs to be testimonial hearsay, the photographs cannot be admitted. Without the photos, the prosecution likely cannot make its case and the ticket will be dismissed.

V. CONCLUSION

Current red light camera laws are in a state of flux. Ordinances can be amended to comply with court rulings, and some cities have already done so.³⁴⁹ At the time of this writing, the Missouri Supreme Court has yet to rule on the red light camera cases currently on its docket, and Missourians eagerly await the court's opinion.³⁵⁰ Eventually, courts will have to decide issues not yet answered, including those involving self-incrimination and confrontation.

341. *Id.*

342. *Id.* at 2711.

343. *Id.* at 2714.

344. *Id.* at 2713.

345. *Id.*

346. *Id.* at 2715.

347. *Id.* at 2710.

348. *Stepping Up Efforts to Prosecute Red Light Runners*, WFTV (May 29, 2012, 5:31 PM), <http://www.wftv.com/news/news/stepping-efforts-prosecute-red-light-runners/nPGqp/>.

349. *Red-Light Photo Enforcement Program*, *supra* note 312.

350. *See Case Summary for December 2, 2014*, *supra* note 231.

Rulings on such issues are likely to extend to the use of speed cameras as well.³⁵¹

More research needs to be conducted on red light camera systems. Hard data needs to be collected in order to determine if red light cameras actually reduce accidents, increase road safety, and save lives. While red light camera ordinances are problematic in their current state, these ordinances can be amended to ensure proper use. Proper procedures can be followed to ensure that cities prove drivers guilty beyond a reasonable doubt without the use of rebuttable presumptions. Cameras can be used to take pictures of the driver's face so car drivers are held responsible and not car owners. Procedures can be put in place to ensure each accused defendant the right to confront witnesses against him. Camera systems can be managed by local police departments instead of out-of-state camera companies. Additionally, ordinances can be amended to increase their deterring effect while decreasing revenue generation. If points are assessed on a driver's license for an infraction, dangerous drivers will be taken off the road. Fines can be raised such that the cost of running a red light will be so expensive that it will deter people from doing so. If ordinances are amended to a point of effective deterrence, drivers will stop running red lights, and revenue collection will decrease significantly. Red light camera systems are not necessarily a bad thing, as long as the truly guilty party is proven guilty by a city and proper procedures are followed. More developments in this area are sure to take place in the coming months.

351. See *City of Moline Acres v. Brennan*, No. ED 99787, 2014 WL 295050, at *1 (Mo. Ct. App. 2014) (speed camera ordinance struck down due to conflict with state law). The Supreme Court of Missouri granted transfer on this case and heard oral arguments on December 2, 2014. *Case Summary for December 2, 2014*, *supra* note 231.