

MEMORANDUM

I. Summary

On August 17, 2005, the Minneapolis automated traffic enforcement system captured images of a motor vehicle owned by Defendant Kuhlman going through a red light. Under the Minneapolis automated traffic enforcement ordinances, this evidence is sufficient to convict Kuhlman of the traffic control signal offense unless Kuhlman proves that someone else was driving Kuhlman's vehicle at the time of the offense. If Kuhlman were being prosecuted under the state statute that governs traffic control signals, a prosecutor would have to prove beyond a reasonable doubt that Kuhlman was driving his vehicle at the time of the alleged offense.

In *State v. Hoben*, 256 Minn. 436, 98 N.W.2d 813 (1959), the defendant was convicted of a DWI offense that was prosecuted under the Edina DWI ordinance. At that time, an ordinance prosecution was considered a civil proceeding, which did not provide for the presumption of innocence and proof beyond a reasonable doubt. Had the defendant been prosecuted under the state DWI statute, the defendant would have been presumed innocent unless proven guilty beyond a reasonable doubt. The Court reversed the defendant's conviction, holding that when a city enacts a traffic ordinance covering the same subject as a traffic statute, a defendant charged under the ordinance is entitled to the same due process protections as a defendant charged under the statute.

The holding in *Hoben* governs this case. A vehicle owner charged under the traffic control signal ordinance is entitled to the same due process protections as a vehicle owner charged under the traffic control signal statute. Because the Minneapolis ordinances deny a vehicle owner the due process protections guaranteed by state statutes, I am granting Kuhlman’s motion to dismiss.

II. The Minneapolis Automated Traffic Enforcement Ordinances.

The Minneapolis “automated traffic enforcement system” refers to photographic, video or electronic images showing the rear of a motor vehicle and the motor vehicle’s registration plate as the vehicle violates a standard traffic control signal. Minneapolis Ordinance § 474.620.

The driving conduct required by the Minneapolis automated traffic control signal ordinance (stop at red, proceed at green, etc.) is the same driving conduct that is required by the state statute governing traffic control signals. Minneapolis Ordinance § 474.630; Minn. Stat. § 169.06, subd. 5.

Although the driving conduct required by the Minneapolis ordinance and state statute is the same, the procedures used to determine liability for a violation are different.

The statute renders the driver of the vehicle liable for violating a traffic control signal, regardless of who owns the vehicle. Minn. Stat. § 169.06, subd. 4(a) (“The driver of any vehicle shall obey the instructions of any official traffic-control device....”). When a vehicle owner is prosecuted under the statute, the prosecutor must prove beyond a reasonable doubt that the vehicle owner was the

driver at the time the violation occurred. The vehicle owner has no burden to prove innocence. M. R. Cr. P. 23.05, subd. 3, (“A defendant charged with a petty misdemeanor violation is presumed innocent until proven guilty beyond a reasonable doubt”).

In contrast, the Minneapolis automated traffic enforcement ordinances contain a presumption that the owner of a vehicle photographed violating a traffic control signal was the driver of the vehicle at the time of the violation. In order to rebut the presumption, the owner of the vehicle has the burden to prove that he or she was not the driver at the time of the violation. This framework is described in two ordinances. First, Minneapolis Ordinance § 474.640 provides for the vehicle owner’s liability:

Violation. If a motor vehicle is operated in violation of [a traffic control signal] and the violation is detected by a recorded image taken by an automated traffic law enforcement system, *the owner of the vehicle or the lessee of the vehicle is guilty* (Emphasis added).¹

Second, Minneapolis Ordinance § 474.660 describes how a vehicle owner can avoid liability:

Evidence. (a) In the prosecution of a violation, as set forth by section 474.640, captured by an automated traffic law enforcement system, prima facie evidence that the vehicle described in the citation was operated in violation of this section, together with proof that the defendant was at the time of such violation the owner or lessee of the vehicle, *shall*

¹ “Owner means the person or entity identified by the Minnesota Department of Public Safety, or registered with any other state vehicle registration office, as the registered owner of a vehicle, or a lessee of a motor vehicle under a lease of six (6) months or more.” Minneapolis Ordinance § 474.620. For ease of discussion, I will simply be referring to owners of vehicles, instead of both owners and lessees.

constitute in evidence a rebuttable presumption that such owner or lessee was the person who committed the violation.
The presumption shall be rebutted if the owner or lessee:

- (1) Provides a sworn affidavit delivered by United States mail to the city or agency that he or she was not the owner or lessee of the vehicle at the time of the alleged violation and provides the name and current address of the person operating the motor vehicle at the time of the violation; or
- (2) Submits a copy of a police report showing the vehicle had been reported as stolen in a timely manner before the date of the violation.

(b) If the city or agency finds that the person named in the citation was not operating the vehicle at the time of the violation or receives evidence under paragraph (a)(1) of this section identifying the person driving the vehicle at the time of the violation, the city or agency shall issue a citation to the identified driver through the United State mail, no later than fourteen (14) days after receipt of this information. (Emphasis added).

This ordinance provides three ways in which an accused vehicle owner may avoid liability.

First, an accused owner may avoid liability by submitting to the City a sworn affidavit which, 1) states that the accused owner was not the owner at the time of the violation, and 2) identifies the person operating the vehicle at the time of the violation. § 474.660(a)(1).²

² This provision makes little sense. If the defendant was not the owner at the time of the violation, the defendant need not prove the identity of the driver because a non-owner is always not guilty. Furthermore, if the defendant was not the owner at the time of the violation, the defendant will likely not know the identity of “the person operating the vehicle at the time of the violation.”

The second way for an owner to avoid liability is to submit to the City a police report showing that the vehicle had been reported stolen before the violation occurred. § 474.660(a)(2).

The third way for an accused owner to avoid liability is a catch-all. An accused owner can avoid liability if the City “finds” that the accused owner “was not operating the vehicle at the time of the violation.” § 474.660(b). With respect to this catch-all, the ordinance does not describe how the City is to go about making its “finding.” According to the City, the ordinance requires the owner to identify the driver before the City can make a finding that the owner/driver presumption has been rebutted. It is the current practice of the City to dismiss prosecutions against accused owners who submit a “nomination” that identifies the person operating the vehicle at the time of the violation. Although the ordinance appears to require the City to prosecute the person nominated by the owner, the City does not always do so. In any event, the City will not prosecute both the accused owner and the person nominated. Exhibit 1 (January 24, 2006, Affidavit of Minneapolis Police Officer Greg Reinhardt.).

Minneapolis Ordinance § 474.660 does not speak to the role of the court in determining whether a vehicle owner has presented sufficient evidence to rebut the presumption that he or she was driving the vehicle at the time of the violation.³ The City interprets the ordinance as providing vehicle owners with an affirmative

³ A role for the court is required by the separation of powers doctrine. *See State v. Olson*, 325 N.W.2d 13 (Minn. 1982).

defense at trial which places the burden on vehicle owners to prove by a preponderance of the evidence that he or she was not driving the vehicle at the time of the violation. I find that this interpretation is consistent with the city council's intent. *See State v. Myrland*, 644 N.W.2d 847 (Minn.App. 2002).

A violation of the automated traffic enforcement ordinance is a petty misdemeanor offense. Minneapolis Ordinance § 474.640. The maximum penalty for a petty misdemeanor offense is a \$300 fine. Minn. Stat. § 609.02, subd. 4a.

Within 10 days after the conviction of a vehicle owner under the ordinance, Hennepin County District Court must certify a record of that conviction to the Minnesota Department of Public Safety. Minn. Stat. §§ 169.95(b), 171.16, subd.

1. The conviction will then appear on the vehicle owner's "driver's record."⁴

Once the conviction is on the vehicle owner's driver's record, state law governs the effect of that conviction on any subsequent traffic offenses committed by the vehicle owner. The Department of Public Safety must consider traffic ordinance convictions in determining whether a subsequent traffic statute conviction triggers a driver's license suspension. Minn. R. § 7409.2200. Prosecutors and judges must consider traffic ordinance convictions in determining whether a subsequent traffic statute violation triggers misdemeanor penalties for repeat offenders. Minn. Stat. § 169.89, subd. 1.

⁴ Both Minnesota statutes and Minnesota rules consistently refer to a person's Department of Public Safety record of convictions as a "driver's record." *See e.g.*, M.S. §§ 169.89, subd. 4; 169A.54, subd. 11; 171.12, subd. 3; Minn. R. §§ 7409.1500, subp. 3; 7503.1300, subp. 2B; 7503.1250; 7503.0900, subp. 3B(1); 7503.1600.

The Minneapolis automated traffic enforcement ordinances contain a severability provision. Minneapolis Ordinance § 474.670 states, “If any section, sentence, clause or phrase of sections 474.620 to 474.670 is held invalid or unconstitutional by any court of competent jurisdiction, it shall in no way affect the validity of any remaining portion of these sections.”

III. Analysis

A. The Scope of the City’s Authority

The City of Minneapolis is authorized to enact ordinances regulating traffic. The City’s authority is derived both from its charter and from state statutes. Specifically, Minn. Stat. § 169.04(a)(2) provides:

The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction . . . and within the reasonable exercise of police power from regulating traffic by means of police officers or traffic-control signals.

The City’s authority to regulate traffic is limited by the statutory requirement that traffic laws be applied uniformly throughout the state. Minn. Stat. § 169.022 provides:

The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may adopt traffic regulations which are not in conflict with the provisions of this chapter; provided, that when any local ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, then the penalty provided for violation of said local ordinance

shall be identical with the penalty provided for in this chapter for the same offense.

This statute is identical to the statute the Court interpreted in *State v. Hoben*, 256 Minn. 436, 98 N.W.2d 813 (1959). As I described in the Summary, the defendant in *Hoben* was convicted of violating the Edina DWI ordinance. On appeal, the Court held that the Edina DWI ordinance was invalid because the ordinance did not guarantee the defendant the same procedural protections that were guaranteed to a defendant prosecuted under the state DWI statute. The Court framed the issue as follows:

The narrow question presented is this: Where a municipality has adopted an ordinance relating to the subject of motor vehicle drivers under the influence of drugs or alcoholics, which the legislature says must carry sanctions identical with those provided by state law, may it by prosecution under such ordinances deny to the defendant the same constitutional and statutory safeguards which would surround him had he been prosecuted for the same act under state law? 256 Minn. at 438, 98 N.W.2d at 815.

The Court answered its question in the negative. The Court said:

[Minn. Stat. § 169.022] clearly states that in the interest of uniformity its provisions shall have the same application throughout the state. The fact that the municipality is given authority to adopt such an ordinance does not change the nature and quality of the offense. As we interpret [§ 169.022], it was the intention of the legislature that the application of its provisions should be uniform throughout the state both as to penalties and procedures, and requires a municipality to utilize state criminal procedure in the prosecution of the act covered by [§ 169.022]. *It would be a strange anomaly for the legislature to define a crime, specify punishment therefor, provide that its application shall be uniform throughout the state, and then permit a municipality to prosecute that crime as a civil offense.* Basic civil rights of the defendant would

then depend upon the arbitrary choice of the prosecutive authorities as to the court in which action against him would be instituted. [Footnote omitted.] When a municipality undertakes such prosecution, it must, therefore, to insure uniformity of treatment, do so in a criminal prosecution which affords the defendant all the protection of criminal procedure 256 Minn. at 443-44, 98 N.W.2d at 818-19. (Emphasis added).

These principles render the Minneapolis automated traffic enforcement ordinances invalid. The ordinances cover the same subject as the state traffic control signal statute. If a vehicle owner is prosecuted under the statute, the state must prove beyond a reasonable doubt that the owner was the driver at the time of the offense. If a vehicle owner is prosecuted under the Minneapolis automated traffic enforcement ordinances, the owner is presumed to be the driver and must prove that someone else was driving in order to avoid a conviction. The Minneapolis procedure is invalid because it provides less due process protections than are guaranteed to vehicle owners who are prosecuted under the state traffic control signal statute.

Relying on *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 143 N.W.2d 813 (1966), the City argues that there is no prohibited conflict between the traffic control signal ordinances and the traffic control signal statute. The City reasons that the ordinances do not require or forbid a driver to do anything that conflicts with the statute and the statute does not require or forbid a driver to do anything that conflicts with the ordinances. Therefore, according to

the City, its owner liability ordinances “complement” but do not “conflict” with the state’s driver’s liability statute.

In *Hoben*, the Court was not concerned with the kind of “conflict” analysis being offered by the City. In *Hoben*, the Court said:

[I]t is unnecessary for us, in view of the disposition of this case, to discuss the issue as to whether or not the ordinance is so inconsistent with the state law as to be invalid. The issue with which we are solely concerned here relates to an alleged denial of due process by procedures followed in the prosecution of the defendant under the ordinance. 256 Minn. at 437-38, 98 N.W.2d at 815.

The defect in the Minneapolis automated traffic enforcement ordinances is that its procedures are preempted by state procedural law applicable to the prosecution of traffic offenses. “[P]reemption and conflict are separate concepts and should be governed by separate doctrines.”

Mangold Midwest Co. v. Village of Richfield, 274 Minn. 347, 356, 143 N.W.2d 813, 819 (1966). In *Mangold*, the Court quoted with approval the following description of preemption and how preemption is different from conflict:

“* * * (A) state law may fully occupy a particular field of legislation so that there is no room for local regulation, in which case a local ordinance attempting to impose any additional regulation in that field will be regarded as conflicting with the state law, and for that reason void, even though the particular regulation set forth in the ordinance does not directly duplicate or otherwise directly conflict with any express provision of the state law.” 274 Minn. at 356, 143 N.W.2d at 819, quoting *People v. Commons*, 64 Cal.App.2d Supp. 925, 930, 148 P.2d 724, 727.

In *Mangold*, the Court referred to *Hoben* as a preemption case. *See Mangold*, 274 Minn. at 358-59, 143 N.W.2d at 821. The holding in *Hoben* is that state law exclusively governs the due process rights of people accused of traffic offenses. In a traffic ordinance prosecution against a vehicle owner, the City has no authority to diminish the procedural protections that would be available to that vehicle owner had the vehicle owner been prosecuted under a state statute covering the same subject.

The City argues that the legislature has given its blessing to the City's owner liability ordinances because the legislature has enacted two traffic statutes which utilize the same procedural structure. Those statutes are Minn. Stat. § 169.20 (failure to yield to an emergency vehicle) and Minn. Stat. § 169.444 (unlawful passing of a school bus). Under each of these statutes, a vehicle owner is liable for the violation unless "a person other than the owner ... was operating the vehicle at the time the violation occurred." Minn. Stat. §§ 169.20, subd. 5b; 169.444, subd. 1a.

These statutes do not solve the City's preemption problem. These statutes apply to vehicles driven anywhere in Minnesota. The statutes do not violate any principle involving the uniform application of traffic statutes throughout the state.

Indeed, the statutes referred to by the City reveal the flaw in the City's position. The legislature recognized that the presumption of vehicle owner liability may result in an innocent vehicle owner being convicted of violating the statutes. Accordingly, the statutes provide, "A violation [of the vehicle owner liability provision] does not constitute grounds for revocation or suspension of the owner's or lessee's driver's license." Minn. Stat. §§ 169.20, subd. 5b(e), 169.444, subd. 6(e). The Minneapolis ordinances contain no similar protection for vehicle owners. Even if the Minneapolis city council wanted to provide such protection to vehicle owners, it could not do so because Minneapolis has no authority to regulate the suspension of driver's licenses. That is a state government function. Because the power to regulate driver's licenses is vested exclusively with the state, the power to define procedures leading to a traffic conviction must also be vested exclusively with the state, unless the legislature says otherwise.

B. The Minneapolis Ordinances' Severability Provision.

As mentioned earlier, there are two Minneapolis ordinances that create vehicle owner liability without requiring a prosecutor to prove that the owner was driving. Minneapolis Ordinance § 474.640 provides that if the automated traffic enforcement system captures the image of a motor vehicle violating a traffic control signal, the owner of the vehicle is guilty.

Minneapolis Ordinance § 474.660 provides that the owner is presumed to have been the driver at the time of the violation unless the owner proves that he or she was not driving at that time.

The City argues that even if § 474.660 is invalid because it creates a rebuttable presumption that the vehicle owner was the driver, which is contrary to state procedural law, § 474.640 remains valid and enforceable as a vicarious liability ordinance that always renders the owner liable regardless of who was driving. As a vicarious liability ordinance, the elements of the offense would be, 1) the violation involving the vehicle was captured by the automated traffic enforcement system, and 2) the defendant owned the vehicle at the time of the violation. Upon proving these elements beyond a reasonable doubt, the owner would be convicted without regard to who was actually driving.

Notwithstanding the severability provision in the ordinances, I do not believe that the Minneapolis city council intended the automated traffic enforcement ordinances to be in effect without a procedure in place to protect innocent owners. *See* Minn. Stat. § 645.20 (severance of valid portions of law from invalid portions is not allowed when the resulting law is “incapable of being executed in accordance with the legislative intent.”). *See also Spokane Arcades, Inc. v. Brockett*, 631 F.2d 135, 139 (9th Cir. 1980) (statute not severable despite severability clause); *Barlow v. Davis*,

72 Cal.App.4th 1258, 1265, 85 Cal.Rptr.2d 752,757 (1999) (same). The City concedes that its ordinances are modeled after the state's vehicle owner liability statutes (failure to yield to an emergency vehicle and unlawful passing of a school bus). Both of those statutes allow vehicle owners to avoid liability if the vehicle owners produce evidence that they were not the drivers. There is no reason to believe that the Minneapolis city council intended to enact a vehicle owner liability ordinance without providing a similar procedural safeguard for innocent vehicle owners.

Even if the two ordinances could be severed as suggested by the City, the resulting vicarious liability ordinance would still be preempted by the uniformity requirement described in *Hoben*. The ordinance requiring a vehicle owner to prove someone else was driving is defective because it fails to give vehicle owners the same due process protections that vehicle owners would have if prosecuted under the state traffic control signal statute. That defect cannot be cured by eliminating even more due process protections that are guaranteed to vehicle owners prosecuted under the state statute.

IV. Conclusion

My holding in this case is not intended to be critical of automated traffic enforcement systems. I recognize that drivers who commit traffic offenses pose a

serious threat to public safety and that the prosecution of vehicle owners through the use of automated traffic enforcement systems deters unlawful driving conduct. In every court decision from other jurisdictions that has been brought to my attention, the cities' automated traffic enforcement systems have been upheld against legal challenges made by vehicle owners. *See Shavitz v. City of High Point*, 270 F.Supp.2d 702 (M.D.N.C. 2003), *vacated on other grounds sub nom. Shavitz v. Guilford County Board of Education*, 100 Fed.Appx. 146 (4th Cir. 2004) (High Point, North Carolina); *State v. Dahl*, 336 Or. 481, 87 P.3d 650 (2004) (Portland, Oregon); *City of Wilmington v. Minella*, 879 A.2d 656 (Del.Super. 2005) (Wilmington, Delaware); *Agomo v. Williams*, 2003 WL 21949593 (D.C.Super. 2003) (Washington D.C.).

In each of these cases, the government entity that enacted the vehicle owner liability legislation was the same entity that determines the procedures to be used to prosecute traffic offenses and the penalties to be imposed upon conviction. The North Carolina legislature authorized the High Point system. The legislation provides that a conviction results in no driver's license points or insurance points. The Oregon legislature authorized the Portland system. The legislation treats automated traffic enforcement prosecutions as civil proceedings, consistent with all other traffic prosecutions in Oregon. The Delaware legislature authorized the Wilmington system. The legislation limits the penalty to a \$75 administrative fee. The Washington D.C. city council authorized the Washington D.C. system. The

legislation provides that a conviction results in no driver's license points. In all of these cases, there were no preemption problems.

Unlike these other jurisdictions, the Minneapolis city council enacted an automated traffic enforcement scheme that it had no authority to enact. The ordinances are invalid on their face, and cannot be used to prosecute Kuhlman.

Because I have held that the Minneapolis automated traffic enforcement ordinances violate the uniformity requirement in the state traffic code, I need not address the constitutional issues raised by Kuhlman.

MSW