

STATE OF WASHINGTON

IN MUNICIPAL COURT OF SEATTLE FOR THE CITY OF SEATTLE

CITY OF SEATTLE vs. TRAFFIC CASE #0210800107943 and #202727989

DENNIS EROS,

Defendant

MOTION IN LIMINE TO STRIKE & CHALLENGE THE CONSTITUTIONALITY OF MUNICIPAL CODE SECTION 11.31.090 OF THE CITY OF SEATTLE

COMES NOW, Dennis Eros (hereinafter Eros), the Defendant herein to Motion this Honorable Court to rule on the constitutionality of the Seattle Municipal Code Section 11.31.090. In support of this Motion the Defendant states into this Honorable Court as follows:

FACTS:

On or about December 10, 2008 Eros received in the mail a traffic citation for allegedly running a red light. It alleges that a vehicle which is allegedly registered to Eros was photographed allegedly running a red light at the corner of NE 45th St @ Union Bay Pl. NE, Seattle, Washington on October 10, 2008 at approximately 03:27 PM. The citation was not personally served upon Eros, but was mailed to him at his home at 102 Jemi Way, Onalaska, WA 98532, on or about October 20, 2008. Eros does not receive mail at his home and, on information and belief, the citation was returned to the City of Seattle. Apparently the City then mailed a citation to Eros' Post Office Box #87, Chehalis, WA 98532, where Eros does receive mail. The City added a "Default Penalty" of \$25.00 to the "Base Penalty" of \$124.00, thereby penalizing Eros for the City's failure to get Eros' mailing address correct. It was at this point that Eros realized that the statute, Seattle Municipal Code Section 11.31.090, under which the City operates its red light cameras, is biased and corrupt, in that the process is administered automatically without regard to the

facts at hand, the Rule of Law and Due Process under the United States and Washington State Constitutions.

MOTION

UNCONSTITUTIONAL DENIAL OF RIGHT TO CONFRONT AND CROSS EXAMINE ADVERSARIAL WITNESSES

1. As written, the Seattle Municipal Code Section 11.31.090 (hereinafter “the Code”) is unconstitutional for a number of reasons including but not limited to the fact that it denies defendants due process constitutional rights under the 5th and 6th Amendments to the Federal Constitution as incorporated through the 14th Amendment to the Federal Constitution, and it violates Eros’ State Constitutional rights under the Washington Constitution Article I, Section 3 “Personal Rights. No person shall be deprived of life, liberty, or property, without due process of law.” (Emphasis added)

2. The 6th Amendment to the United States Constitution as incorporated through the 14th Amendment to the Constitution states that “in all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him . . .” Washington State Constitution guarantees “. . . to meet the witnesses against him face to face. . .” See Washington State Constitution Section 22 Rights of the Accused. These Constitutional rights include the right to reasonable cross-examination of witnesses. However, in this particular prosecution, the Code does not call for, nor can the City of Seattle produce any human witness that could be subject to cross examination, which can testify to actual first hand information evidencing that the alleged offense even occurred, other than the Defendant himself. Instead, the City is relying on hearsay evidence, i.e. unclear pictures which do not even show anyone driving the vehicle in question, taken out of context and used to prove the matter asserted. Pictures in which one cannot even identify the sex, race or identifying characteristics of the driver, or in this particular situation, pictures in which one cannot identify the existence of a driver in the vehicle at

all. Indeed, for some strange reason the Washington State Legislature has passed RCW RCW 46.63.170 (c) ordering cities within the state to not to identify drivers alleged to have run red lights caught on camera. “Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.”

3. Under RCW 46.63.170 (e) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030 (1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075. The Code allows the registered owner of a vehicle to sign an affidavit that he or she was not driving at the time: RCW 46.63.075 (2). If a person fails to sign such an affidavit the law, impermissibly and unconstitutionally, presumes that person was the guilty driver, thereby destroying the presumption of innocence so historically woven into the fabric of our laws. See Washington State Constitution Section 9 Rights of accused persons. “No person shall be compelled in any criminal case to give evidence against himself. . .”

CIVIL VS. CRIMINAL CLASSIFICATION

4. The City of Seattle is likely to argue that because they classify these tickets as “civil in nature” or “administrative” the constitutional protections afforded criminal defendants don’t apply. However, the argument is without factual and legal merit. The U.S. Supreme Court has ruled that simply classifying a fine, as a civil fine is not the standard for determining if a fine is civil or penal in nature. The U.S. Supreme Court in *United States v. Halper*, 490 U.S. 435, 447 (1989) citing *Hicks v. Feiock*, 485 U.S. 624, 632 (1988) held “the labels affixed whether to the proceeding or to the relief imposed . . . are not controlling and will not be allowed to defeat the applicable protections of federal constitutional law.” (Emphasis added.) The Court stated, “in determining whether a particular civil sanction constitutes criminal punishment, it is the purposes actually served by the sanction in question, not the underlying nature of the proceedings giving rise to the sanction, that must be evaluated.” *United States v. Halper*, 490 U.S. 435, 447 (1989). The U.S. Supreme Court went on to state “we have recognized in other contexts that

punishment serves the twin aims of retribution and deterrence.” See e.g. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168 (1963) (these are the traditional aims of punishment”). Furthermore, “retribution and deterrence are not legitimate non-punitive governmental objectives.” Bell v. Wolfish, 441, U.S. 520, n. 20 (1979). “From these premises, it follows that a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term.” United States v. Halper Supra at 448. In the present case, there is no rational relation to the necessary goal of compensating the City of Seattle for its loss associated with alleged red light runners, thus leading but to one conclusion that the fines purpose is to punish and deter red light running, a function that is clearly and unequivocally criminal and punitive in nature. This “civil vs. criminal” analysis and standard has been followed by the Virginia Court of Appeals in Tench v. Commonwealth, 21 Va. App. 200, 204, 462 S.E.2d 922 (1995).

THE CITY OF SEATTLE WITHHOLDS IMPORTANT EVIDENCE FROM THE DEFENDANT

5. The City makes the photos available to the owner of the vehicle over the Internet by typing in the infraction number and a pin code. These photos purport to show the vehicle just before it enters the intersection, in the intersection and then a photo of a license number of the vehicle. The City also makes available an alleged video of the auto going through the intersection after the light has turned red. This on line video, available to Eros, is of such poor quality it cannot be considered as reliable evidence. In addition, the City fails and refuses to allow a person to download stills or the video. Such refusal clearly violates both civil and criminal procedures and the rules of evidence. Under these rules the City is compelled to turn over all evidence to a defendant. However, the City only allows a red light camera defendant to view the photos online but, fails and refuses to allow the defendant to hold the City’s evidence in his hands or to present the photos and video to an expert to independently analyze. The “Rules” require the City to turn over all evidence to the defense not just let him take a peak at it.

These Rules are so well engrained in law that citations are not needed. In the instant case the quality of the online photos and video available online are so poor that they are rendered useless to Eros. It appears, to this viewer, that the traffic signal is yellow, not red. The City makes it impossible, through programming, for a defendant to download high-resolution photos and the video. The City only allows the defendant to print a blank page of the photographs or, in the case of the video, a print that is completely black. See Exhibit "A" and "B." The City programs its website so that the photos and videos cannot be downloaded. However, the City does make an excellent video available to the Court, which the judge, at Eros' contested hearing showed Eros. After a period of time the "evidence" disappears from the city's website and the following message appears: Images for this violation are not available or have been archived." This failure to provide a defendant unfettered access to evidence hinders a defendant's ability to properly defend against a citation.

USE OF OBVIOUSLY ALTERED/MANIPULATED EVIDENCE

6. The photos are further suspect in that the infraction stills and video contain obviously altered portions of photographs, showing that the photographs were obviously manipulated after being created by a remotely operated, inanimate machine. The pictures also have images of "scoreboard-like" information superimposed upon them. The City does not explain on its website what the scoreboard symbols means. The City has again withheld evidence pertaining to the infraction. As such, the pictures presented do not accurately and fairly represent the intersection in question in that they contain an image, which does not actually appear over the intersection in reality.

7. Nor, for that matter, does the City even know who processed the photos or even if that person or persons were qualified to process the alleged evidence. The City does not know if the processor of the photos was drunk or on drugs at the time the photos were taken. Nor does the City have a verified chain of control of the alleged evidence. The City takes it on faith that the photos have not been mishandled or improperly processed, respectfully, this court should not.

LACK OF FOUNDATION FOR THE ENTRY OF THE PHOTOS INTO EVIDENCE

8. Evidentiary rules in Washington courts require that a party offering a photograph into evidence must demonstrate its relevance and lay a foundation for their introduction in evidence. Normally, a foundation and authentication for a photograph is established by the photographer who took the photo or a witness with first hand information that can testify that the photo purports to accurately portray what was actually observed first hand on the date and time in question. In this case, because a photograph was produced by remote, mechanical means, there is no one with first hand information who is capable of testifying to the foundation and accuracy of the photo purporting to accurately portray what has been observed at the time and on the date in question. Eros recognizes that while there is some case law, which indicates that “even though no human is capable of swearing that he personally perceived what a photograph purposes to portray . . . there may nevertheless be good warrant for receiving the photograph in evidence.” *Ferguson v. Commonwealth*, 212 VA 745, 747; 187 S.E.2d 189, 191 (1972). However, in such cases, the test of admissibility is whether the evidence is sufficient to provide an adequate foundation assuring the accuracy of the process producing it. This is important, for not all mechanical means of producing evidence of guilt, is deemed scientifically reliable enough to warrant acceptance into evidence. Indeed the City of Seattle admits in its December 2007 report: “City of Seattle Traffic Safety Camera Pilot Project Final Evaluation Report” its study “. . . very likely do not meet stringent tests required for true scientifically controlled study. They are at best seen as ‘comparisons’ rather than scientific controls.” (Emphasis added.) See footnote 2, page five (5), of the City’s Report. Furthermore, on page one (1) of this report the City admits: “There is little evidence that cameras have decreased the frequency of all auto crashes or the more dangerous angle collisions:” (Exhibit C attached.) The City also admits under “Red Light Violations.” [Page 5 Emphasis in the original] “Although there is not strictly comparable data for the control intersections, the design allows inspection of VIMS [Vehicle Incident Monitoring System i.e. cameras] red light running results during a **single weekday** pre and post pilot project.” (Emphasis mine.) This is hardly a scientific study. It would appear, at least to

my eyes, this “Report” merely exists to justify the use of red light cameras, flying in the face of its commentary: “. . . revenue is not a justification for this project[.]” Page 12. Since revenue is not a justification for this project the city suggests: “. . . it is worth trying to summarize the conclusions up front before elaborating in the balance of this section:” According to the city there are two reasons which justify red light cameras [see page 4];

1. “RED LIGHT RUNNING. There is evidence that the operation of red light cameras has reduced red light running on the order of 50% over the 12-month study period; however, progress has not been uniform, . . . ” Since the results are not uniform, the evidence is faint or non-existent that the cameras work as intended; it follows that the continued use of red light cameras are not justified.
2. Traffic Crashes. There is little evidence that cameras decreased the frequency of all auto crashes or the more dangerous angle collisions; however it does appear that cameras may have mitigated the severity of crashes.” If one reads the above sentence and drops the qualifier “all” the sentence suggests the cameras do not work as intended. If, as the city admits, there is “little evidence” that the cameras have worked to reduce crashes, it is admitting that the cameras don’t work to reduce crashes and therefore there is no justification for the continued use of the cameras. The city does say that it appear[s] to have mitigated the severity of crashes, but the city offers no help to the reader of this report that the cameras actually do mitigate severity of crashes. One is left to one’s self to justify the mitigation of severity of crashes.

9. The fact is the City of Seattle has no human being that can properly testify to first hand knowledge of the incident in question or the accuracy of, and the foundation for the photo(s) and video, intended as *prima facie* evidence, nor is this a situation in which there was a traffic officer who contemporaneously observed the offense in question. The alleged evidence was produced by mechanical camera, which is triggered remotely by non-human means, gathered after the fact, and developed and processed by a third party contractor that did not actually witness the incident in question. The third party in this instant case is a civilian contractor who operates the cameras for profit, i.e., a company that has a vested economic interest in the outcome of the production of evidence, which

leads to citations and convictions. Quite literally, the party producing the alleged incriminating evidence of the alleged violations enjoys a direct economic gain with each citation manufactured. This creates a suspect situation, rank with potential bias and the potential appearance of improprieties. One only needs to look at current Wall Street banking frauds and Enron corruption to see that many, many corporations today will do anything, legal or not, for a profit.

LACK OF ESTABLISHED SCIENTIFIC RELIABILITY AND ACCEPTANCE OF MECHANICAL DEVICE USED TO CREATE EVIDENCE

10. Likewise, the remote red-light photographic equipment used in this case is a mechanical/scientific method of producing evidence, which lacks the scientific reliability, scientific acceptance, and reliability records to warrant its unquestionable acceptance into evidence, in that these machines are without sufficient documentation evidencing scientific reliability, or their routine calibration and testing. As noted above, in paragraph 8, the city admits it lacks “. . . stringent tests required for true scientifically controlled study.” The U.S. Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, (1993) reasoned that when faced with a proffer of scientific evidence, the court must make a preliminary assessment of whether the evidence’s underlying reasoning and methodology is scientifically valid and whether it can be properly applied to the facts at issue. Among the many considerations the Court indicated should bear in the inquiry, were whether the theory or technique in question can be tested, whether it has been the subject to peer review and publication, its known or potential error rate, the existence and maintenance of standards controlling its operation, and whether it has attracted widespread acceptance within the scientific community. The photo enforcement red light camera system is a machine, which is without sufficient documentation evidencing its acceptance as a reliable and well-recognized method of testing, and is a machine and process that is without sufficient documentation evidencing its accuracy and/or potential error rate. It is a machine, which is without sufficient documentation evidencing a reliable chain of custody for the alleged pictures, which serve as the *prima facie* evidence. Respectfully, this Court should take notice that the city reiterates that its

findings in the Report are “preliminary.” In other words this report cannot, in any way, be considered scientific. There is no documentation evidencing the machine, which is operated by sensors and electronic type technology (some of which is buried under ground) is routinely and scientifically calibrated, tested and maintained to insure accuracy, calibration or proper placement of the equipment, and/or the meters and sensors used. Nor is there any evidence to prove that the machine was properly calibrated and working in perfect order at the exact date and exact time in question.

11. The calibration and accuracy of these machines are questionable in that it is an established fact that the cameras are frequently jostled, tinkered with, and may routinely be affected by wind, heat, sunlight and cold weather. Thus, to allow the use of such evidence without proof of its calibration and accuracy would clash with the fundamental due process rights of the accused. In the present case the City assumes this Court will find Eros guilty on the face value of the citation and that the camera was properly working and calibrated when it recorded the alleged violation. The fundamental unfairness of utilizing remote photo evidence is not only Orwellian in nature, but is unconstitutional because the City offers not a wit of evidence, beyond a reasonable doubt, or even a preponderance of evidence, that the camera was ever calibrated or working properly on the day or moment the photos were taken.

UNCONSTITUTIONAL INFRINGEMENT ON THE FIFTH AMENDMENT RIGHTS OF THE ACCUSED

12. The Code is further unconstitutional in that it denies the Defendant his constitutional rights under the Fifth Amendment to the U.S. constitution as incorporated through the 14th Amendment to the Constitution and under the Washington Constitution, in that it compels the Defendant to give up his Constitution right and privilege against self incrimination in order to take affirmative actions to rebut the presumption of guilt created by the Code. In other words the City is saying under the Code, you are guilty, now prove you are innocent. But, we are going to limit the ways you can prove yourself innocent to only three ways.

13. It is fundamental constitutional hornbook law that in America a defendant is innocent until proven guilty beyond a reasonable doubt. The Fifth Amendment to the

U.S. Constitution as incorporated through the 14th Amendment to the Constitution further holds a defendant is entitled to due process, including but not limited to the fact he or she cannot be compelled in any criminal case to be a witness against himself. Specifically, the U.S. Supreme Court in *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1993) stated “[t]he Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.” (Emphasis added.) Also see *McCarthy v. Arndstein*, 266 U.S. 34, 40 (1924) (*the privilege is not ordinarily dependant upon the nature of the proceeding in which the testimony is sought or is to be used. It applies alike to civil and criminal proceedings...*)

14. Likewise, similar protections can be found in the Washington Constitution. Specifically, Washington State Constitution Section 9 Rights of accused persons: “No person shall be compelled in any criminal case to give evidence against himself. . .” The privilege against self-incrimination protects a person from any disclosure sought by legal process against him as a witness. It further has been held to preclude the prosecution from using an assertion of the privilege against self-incrimination to discredit or convict the person who asserted it. However, that is the exact situation the application of the Code creates i.e., the only way under the ordinance to rebut the presumption of guilt is to forfeit the constitutional right to remain silent and to take affirmative action to prepare an affidavit denying involvement. Thus, under the Code, one is not innocent until proven guilty. One must take affirmative steps and forfeit the right to remain silent in order to present three, and only three, very specific and enumerated defenses. The Fifth Amendment declares that no person "shall be compelled in any criminal case to be a witness against himself". This privilege against self-incrimination includes the right of a witness not to give incriminatory answers in any proceeding civil or criminal, administrative or judicial, investigatory or adjudicatory. *KASTIGAR v. UNITED STATES*, 406 U.S. 441, 32 L. Ed. 2d 212, 92 S. Ct. 1653 (1972). The Fifth Amendment privilege against self-incrimination is applicable to the states through the Fourteenth

Amendment. MALLOY v. HOGAN, 378 U.S. 1, 12 L. Ed. 2d 653, 84 S. Ct. 1489 (1964). See also 28 Wn. App. 524, EASTHAM v. ARNDT. Case law holds that “it is the question, not the anticipated answer, that is relevant to a ruling on the privilege against self-incrimination.” Citations omitted.

UNCONSTITUTIONAL AND IMPROPER LIMITATION OF DEFENSES

15. The unconstitutionality of remote photo enforcement is further highlighted by the fact the statute specifically limits defenses to three ways, and only three ways, in which a defendant may attack liability and rebut the presumption under the statute. These limitations foreclose and prevent the basic fundamental ability to assert other viable, rational, and well-reasoned defenses such as breach in chain of custody; altered evidence; improperly calibrated machines; broken sensor; necessity; yielding the right of way to an emergency vehicle; being part of a funeral procession; being directed through the intersection by the police; presenting alibi evidence through a third party witness, etc. As written, the Code does not allow for the presentation of other defenses, no matter how legitimate, to rebut the presumption. The fact that the ordinance creates a presumption and then in the next breath expressly limits the ability to rebut the presumption, throws the concept of innocent until proven guilty on its ear and establishes a fundamentally unfair scheme that creates the appearance of improprieties and an inequitable rubber stamp court system stacked against the Defendant. In fact, other Courts have held that restricting an accused to a single method of rebutting the prima facie case against him would deprive him of due process of law. See *People v. Hoogy*, 277 Mich. 578, 267 N.W. 605 (1936). The court in *People v. Hoogy* held:

If the accused submits himself as a witness the prima facie case made by the ordinance is overcome, but otherwise (regardless of whatever other testimony than that of the accused is submitted) the prima facie case against him is not overcome. The italicized portion of the ordinance restricts the accused to one class of competent testimony by which the presumption may be met in making his defense, and in so doing bars him from meeting the presumption with the other testimony regardless of its competency and probative force. Such an ordinance provision deprives the accused of due process, compels him to be a witness in proceeding where he is being prosecuted and is therefore obviously invalid and violative of the Constitution . . .” *Hoogy*, at p. 606-607 (Emphasis added.)

Under a strict reading of the Code, even if you proved the light was malfunctioning; that necessity required you to go through the light; that a Police Officer not seen in the picture waived you through the intersection; that you were in a funeral procession; that the evidence was altered; that the machine was not properly calibrated; or that a third party can provide you an alibi --- there is no ability to raise those defenses or any other legitimate defense, in that those defenses are not valid defenses under the Code as written-regardless of their legitimacy and probative force. The ordinance thus appears to compel all but a small minority of defendants – those whose cars were stolen prior to the offense – to testify on their own behalf in order to rebut the presumption against them. So the issue now becomes whether these apparent limits on the defendant’s ability to rebut the presumption against him render the ordinance unconstitutional for self-incrimination reasons. In *Griffin v. California*, 380 U.S. 609 (1965), the court held “that [the defendant] could not substitute another person to testify as to matters on which he himself could testify,” was erroneous. The court said that the ruling in question impermissibly burdened the constitutional privilege against self-incrimination by penalizing the defendant for exercising his right to refuse to take the stand. Specifically, the Court, in *Speller v. Commonwealth*, 2 Va. App. 437, 441, 345 S.E.2d 542 (1986), stated:

“The court’s ruling that Speller could not substitute another person to testify as to matters on which he himself could testify is erroneous. The effect of the courts ruling was to preclude relevant, admissible evidence on behalf of Speller because he did not choose to take the witness stand and offer the evidence personally. By handicapping Speller’s defense in this manner, the court achieved the impermissible result of imposing a penalty on him for exercising his constitutional privilege.” Speller, at page 442.

UNCONSTITUTIONAL/IMPROPER CONCLUSIVE PRESUMPTION AND UNCONSTITUTIONAL/IMPROPER SHIFTING OF THE BURDEN OF PROOF

16. RCW 10.58.020 Presumption of innocence. . . “Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; . . .”

17. An additional infirmity of the Ordinance can be found in the fact that the Code unconstitutionally removes and relieves the obligation of the City to prove beyond a reasonable doubt the defendant's guilt and further improperly and unfairly limits a Defendant's defenses, unless he forfeit his constitutional right and privilege against self-incrimination. Thus, as written, in order to rebut the presumption of guilty, one must forfeit both his Federal and State Constitutional Rights to stand mute and must take affirmative steps to provide written or oral statements in the burden of proving his innocence. This same infirmity also creates an impermissible and unconstitutional burden-shifting situation. The U.S. Supreme Court has dealt with the burden shifting presumption issue on numerous occasions. In *Sandstrom v. State of Montana*, 442 U.W. 510 (1979), the Court held presumptions which impermissible shift the burden of persuasion to the Defendant, via either a conclusive presumption or a burden shifting presumption are unconstitutional. In fact, the U.S. Supreme Court in *Sandstrom* held "a conclusive presumption in this case would conflict with the overriding presumption of innocence which the law endows the accused and which extends to every element of the crime." *Sandstrom*, *Supra* at p. 522., see also *Morissette v. United States*, 342 U.S. 246 (1952), *Mullaney v. Wilber*, 421 U.S. 684 (1975), *United States v. United States Gypsum Co.*, 438 U.S. 422 (1978). The U.S. Supreme Court in *Sandstrom*, 442 U. S. 510, 534 (1979) went on to state "a presumption which, although not conclusive, had the effect of shifting the burden of persuasion to the defendant, would suffer from similar infirmities." On this same line of logic, the City of Seattle Municipal Code Section 11.31.090 creates a "rebuttable presumption" based upon simple and legal ownership and which sets forth only a few specific requirements that one must take affirmative action via testifying in open court or by filing an affidavit to rebut that presumption, creates the very same unconstitutional burden shifting situation the U.S. Supreme Court addressed and ruled unconstitutional in the above cited case.

18. The City's desire to raise revenue or arguably to provide for the traffic safety of its citizens (however admirable) should not and does not trump or negate the City's obligation to insure for and to provide for the well established, and extremely important,

fundamental Constitutional and Due Process Rights of the citizens of the United States and of the State of Washington. The City will likely argue the cameras are for the purpose of crime control, or law enforcement – not to create a Stalinist Police State. However, I would remind the Court that Stalin did not promise a Stalinist Police state either. Stalin promised crime prevention, law enforcement and a worker’s paradise. Progress in the field of law enforcement must still be tempered with constitutional safeguards.

IMPROPER CERTIFICATION OF EVIDENCE

19. The Code is further infirm in that it allows for a certificate or a facsimile thereof, sworn to or affirmed by a Police Officer employed by the City of Seattle, based upon inspection of photographs, microphotographs, videotapes or other recorded images produced by the system, to come into evidence as prima facie evidence of facts contained therein without providing adequate due process protections.

20. Despite the fact that the police officer has absolutely no first hand personal knowledge of the exact event to which he (or she) is certifying under the Code, the certificate is allowed into evidence as prima facie evidence as fact. The alleged photographs were gathered remotely, by a machine, and processed by one or more unknown third parties after the fact. The police officer, in the instant case, Officer Joseph D. Elliott, Serial # 5425, is certifying, under oath, that he believes the photographs and a video, provided to him by the unknown third party, is a true representation of the facts stated in his certification. The officer takes it on *blind faith* that the machine taking the photographs and video is infallible and based on this blind faith issues a citation. The officer is relying on obvious hearsay information given to him by an unknown third party(s), in that the officer has no first hand knowledge of who the registered owner is or even what specific type, make, or model of vehicle was involved. In this case the officer is not certifying his personal observations, nor is he certifying records he maintains. It is important to note that the officer is not certifying to the validity of test results physically observed by him, or recorded contemporaneously with his first hand observations, or even performed in his presence such as a Certificate of Drug Analysis performed by the

state laboratory, but is looking at altered evidence, which lacks a secure chain of custody, and lacks a sufficiently proven indicia of scientific reliability, in order to certify facts to which he or she did not personally witness, and to records he or she does not personally maintain. In short, this ordinance allows a police officer to certify facts to which he has absolutely no personal knowledge. This clearly smacks of a fundamental due process violation and puts the judicial system on a scary slippery slope toward the abolishment of legal standards of proof and foundation.

21. The underlying purpose of the Code appears to be intended to circumvent the normal evidentiary rules of the Court to allow obvious hearsay and double hearsay evidence to be made prima facie evidence of the facts contained therein by having the “evidence” processed by an unknown technician employed by a third party, a for-profit third party. The officer issuing the citation has no knowledge of the training, experience, and education or even if the third party was under the influence of drugs or alcohol at the time the photos and video were taken, altered and processed in a way, which would violate the rules of evidence.

22. Under the Code, an unknown technician without any specific legal training or qualifications is able to circumvent fundamental due process and established evidentiary court rules and certify hearsay facts into prima facie evidence with only a limited ability to rebut their alleged evidence, regarding facts to which the technician has no personal knowledge, after the alleged event. Once again, the City’s desire to raise revenue should not and does not trump or negate the City’s obligation to insure for and to provide for the well established evidentiary court rules and standards and extremely important, fundamental Constitutional and Due Process Rights which protect and are the right of the citizens of the United States and the State of Washington, nor should the government be able to contract those obligations away. The presumption in this case is not to prevent busy laboratory technicians from spending all of their time in court testifying to their personal observations, but is intended to allow the City to circumvent constitutional protections to aid in the convenient production of “acceptable” hearsay evidence needed to garner quick and defenseless convictions in a for-profit money making scheme, run by

the City in conjunction with civilian for-profit contractors.

HAS THE CITY OF SEATTLE PURPERTRATED A FRAUD ON ITS CITIZENS IN THE SELLING OF RED LIGHT CAMERAS?

23. Indeed, the City of Seattle, in the cases of red light cameras, has become a for-profit entity. How is this? Before the advent of red light cameras the City of Seattle raised about \$300,000 a year on its citizens running red lights. After the advent of red light cameras the City raised over one million dollars in a ten-month period from the programs start in June 2006 to May 2007. In June of 2007 the City of Seattle commissioned an “Evaluation Report” on the “Traffic Safety Camera Pilot Project.” Supra. A draft of the Report stated:

“All together, six camera systems are operating at four intersections in the pilot project. Through May 2007, nearly 14,000 citations have been issued, with a pay rate exceeding 70%, and more than \$900,000 in monetary penalties collected.

Respectfully, this court should take judicial notice that the main point of this paragraph is about the money, “. . . with a pay rate exceeding 70%,”

24. The City of Seattle has lowered the timing of yellow lights by one-half second while increasing red light time. Seattle Traffic Management Director Wayne Wentz told the Seattle Post-Intelligencer newspaper that the reduction was not designed to increase the profit of the city’s expanding red light camera program. Instead, the changes were made at more than 200 intersections in March were designed to increase traffic flow. But what was the end result of this change? The city got a “pay rate” exceeding 70% and rear end collisions increased from 4.94 per intersection in the four years prior to camera installation to 5.25 afterward. “During the ten months which police have been authorizing citations, crashes overall have changed little,” the report stated. Despite the lack of clear, positive results, Seattle police chief Gil Kerlikowske proposed increasing the number of cameras fourfold to cover 12 to 18 intersections on the day that the “draft report” circulated. The change could boost revenue to over \$5 million a year. The city breaks even when 50 citations are issued in a month. The system collected between 130 and 300 of the \$101 tickets per month during the study period. Each extra violation

allows Seattle to issue another \$124 ticket.

25. The Seattle report also noted the unquestioning support the program has received from the Washington state media outlets, with any potential criticism of the program ignored or downplayed. A Seattle Times story announcing the city's evaluation report, for example, failed to mention that the overall number of accidents did not decline at camera intersections. Neither of the city's main papers has done any investigative reporting on the subject:

“Local media coverage of the photo enforcement pilot projected also has generally been quite positive, as measured by editorial comment and feature stories in both the Seattle Times and the Seattle Post-Intelligencer,” the report stated. “The P-I editorial board has been particularly supportive.”
Source” Traffic Safety Camera Pilot Project Draft Evaluation Report (City of Seattle, 7/19/2007 (TSCPDER).

Seattle's own website carries the false impression that “It's all about saving lives” (<https://www.vioationinfo.com/Home.aspx>). This is on its surface a fraudulent statement because the City knows that accident rates of collisions have increased under the red light camera program, not decreased. And, to use the City's own term, its “pay rates” increased by 70%.

26. Again, “its all about the money.” By lowering the time yellow lights remain yellow the City increases its “pay rate” by 110 percent. On information and belief the City of Seattle is aware of, and has in its hands, a report by the Texas Transportation Institute entitled: “Study: Longer Yellows Reduce Crashes.” The Texas Transportation Institute shows that engineering improvements are an effective alternative to cameras. The Texas Transportation Institute examined concerns that red light cameras were being used by cities that had not first exhausted available engineering alternatives such as improving signal timing and visibility. They studied individual police accident reports from 181 intersection approaches across three Texas cities over three years to determine the most effective solutions for problem intersections.

27. The study found that improving signal visibility reduced violations 25 percent.

“Other changes could net between 18 and 48 percent reductions. Yet they found when the yellow signal was 1 second shorter than what the standard Institute of

Traffic Engineers (ITE) timing formula specifies as a minimum, red light violations jumped 110%. Adding an additional second to the ITE minimum yellow yielded 50% reduction in violations, producing the greatest benefit of all the factors studied. When safety is the main concern, preventing crashes is more important than reducing violations. Yellow signal timing again provided most effective in reducing crashes. An extra second yielded a 40 percent collision reduction.”

28. The study also found that the vast majority of red light camera tickets are issued within the first second a light is red – in fact, the average ticket is issued when the light has been red for half a second or less. Yet right-angle crashes, which account for the majority of red-light related collisions, “with one exception, all of the right-angle cases occurred after 5 seconds or more of red”. In other words, tickets are being issued primarily for split-second violations where collisions are not occurring.

29. Just to be clear, if the City of Seattle truly wanted to save lives and reduce accidents, it would have increased yellow light time, not reduce it. If Seattle Traffic Management Director Wayne Wentz is taken at his word that “the changes were made at more than 200 intersections in March were designed to increase traffic flow” then increasing traffic flow is more important that “saving lives” and reducing accidents. It is kind of like the actuaries of General Motors who were willing to accept a number of deaths in the Corvar auto as long as it was more profitable paying death awards than making changes to millions of autos.

30. Finally, on information and belief, the City of Seattle has used a report entitled Oxnard Red Light Camera Study to justify the use of red light cameras in Seattle, just like hundreds of other cities across the United States. The study claims red light cameras decrease accidents. But that study is a study of errors and conflicts of interest. The study was commissioned by the insurance industry. The Insurance Institute for Highway Safety funded the research, which, in turn, helped its parent companies collect millions in additional profits. Because widespread installation of cameras has increased the number of photo tickets issued in California, each of which carries license points, these companies have been able to collect substantially higher annual insurance premiums. In

2001, the Office of the Majority Leader of the US House of Representatives slammed the Oxnard study's primary author, Richard A. Retting, for not disclosing his own fundamental conflict of interest. The other allegedly independent author was Sergey Kyrychenko.

“Before joining the Insurance for Highway Safety, Retting was a top transportation official in New York City at the time the city began looking into becoming the first jurisdiction in the country to install red light cameras. In other words, the father of the red light camera in America is the same individual offering the ‘objective’ testimony that they are effective.”

(House Report: “The Red Light Running Crisis. Is it Intentional?” attached as Exhibit D)

31. University of South Florida (USF) researchers, Barbara Orban, Etienne Pracht and John T. Large, have uncovered fundamental flaws in the first US study to claim red light cameras decrease accidents. The Orban team attempted to replicate these findings and discovered that the Oxnard numbers intended to serve as the model of peer-reviewed scholarship, simply did not add up. Special interest groups with a financial stake in red light camera use are actively working to influence public opinion and policy. As we have seen from Seattle's experience, the claim of decreased accidents in the Oxnard study is false and allegedly fraudulent.

The USF team reported:

“The regression analysis of Retting and Kyrychenko [Ref. 1.] does not support their conclusion that RLCs reduced total or injury crashes.”

SEATTLE RED LIGHT CAMERAS FAIL TO REDUCE ACCIDENTS

32. In June of 2007 the City of Seattle itself produced a draft report called, “City of Seattle Traffic Safety Camera Pilot Project Evaluation Report June 2007 Draft. It stated, inter alia, “During the ten months during which police have been authorizing citations, crashes overall have changed little.” Exhibit E. According to the Insurance Institute for Highway Safety, that is not the end of the story. The insurance group argues that red light cameras have a “halo” or “spillover” effect where driving habits learned at red light

camera intersections carry over to other intersections. Taking this into account, Seattle carefully selected four nearby intersections that would serve as a control. At these locations, injury accidents increased from 6 to 10 compared with a statistically “non-significant” drop from 10 to 7 injury collisions at the camera intersections. The report seized upon this as the only data point suggesting a benefit from camera usage. On the other hand, the same data also suggest the driving habits that spilled over caused an increase in injuries. Such conclusions are difficult because some of the control intersections saw an increase and others a decrease in the number of accidents.

“Examination of the collision data at so-called halo intersection shows no consistent pattern over the ten-month period,” the report stated.

UNCONSTITUTIONAL PRESUMPTION THAT IS NOT RATIONALLY CONNEDTED TO THE ELEMENT IT SEEKS TO PROVE

33. The Code is further unconstitutional in that it contains a permissive presumption that is not rationally connected to the element it seeks to prove. Permissive presumptions are constitutional if there is a “rational connection” between the ultimate fact presumed and the basic fact proven. *Barnes v. United States*, 412 U.S. 837, 843 (1973) (citing *Tot v. United States*, 319 U.S. 463, 467 (1943)). While the United States Supreme Court in *Tot v. United States* Supra held that subject to the constitutional requirements of due process, congress has the power to prescribe what evidence is to be received in the Courts of the United States, the Court in *Tot* also held that the test of the validity of a statutory presumption is not the comparative convenience of producing the evidence of the ultimate fact, but the existence of a rational connection between the facts proved and the facts presumed. In short, a statutory presumption cannot be sustained if there is no rational connection between the fact proved and the ultimate fact presumed, or if the inference of the one from proof and the other is arbitrary because of the lack of connection between the two in common experience. In practical terms, this means that a permissive presumption must “more likely than not” flow from the presumed basic fact. *Leary v. United States*, 395 U.S. 6, 36 (1973). However when a presumption is mandatory, such as it is in this case, the prosecution “may not rest its case entirely on a

presumption unless the fact proved is sufficient to support the inference of guilt beyond a reasonable doubt.” County CT. v. Allen, 442 U.S. 140, 167 (1979) (Emphasis added.) In other words, in a mandatory presumption case the basic fact proven must bear sufficient relationship to the elemental fact presumed to prove it beyond a reasonable doubt. In Pennsylvania v. Slaybaugh, Surpa, the Pennsylvania Supreme Court held that, “the inferred fact of operation of a motor vehicle at a specific time does not flow logically beyond a reasonable doubt from the mere established fact of ownership.” Slaybough at p. 690 (Emphasis added). And in a New York case, the Court of Appeals held that lower court erred, in reasoning that proof that one owned a car created a rebuttable presumption that one was its operator. New York v. Hildebrandt, 308 N.Y. 397, 126 N.E.2d 377, 378 (NY 1955) (Emphasis added). Hildebrandt was a case in which a “photo traffic camera” was used to determine that the defendant’s car had been speeding, but the state could not or did not provide evidence of the cars driver at the time of the infraction. The lower courts held that the mere fact that the defendant owned the car was sufficient proof that he had been driving at the time of the infraction to support conviction for speeding. The appellate court held that such an inference violated the presumption of innocence and the right to proof of guilt beyond a reasonable doubt. In Hildebrandt, the New York court of

Appeals said:

“We think it is going much too far to infer the driver’s identity from the fact of ownership. We all know that many a passenger car is customarily driven at various times by various persons, we know that some owners are not licensed operators, and we are informed that there are outstanding in the State at least one million more automobile operators licenses than passenger automobile registrations. From all of this it follows, we think, that it is hardly a normal or ready inference or deduction that an automobile which speeds along a highway is being driven by its owner, and no other person.” Hildbrandt, at p. 379 (Emphasis added)

According to 2008 transportation statistics, the State of Washington, with a population of 6,587,600, has 4,407,269 motor vehicle driver licenses in force. See:

http://www.statemaster.com/graph/trn_lic_dri_tot_num-transportation-licensed-drivers-total-number. This number includes private licenses, commercial licenses, learner's permits and motorcycle licenses. This number does not account for the millions of additional individuals that drive on valid out of state licenses, on suspended licenses or without licenses all together. This is important, for the U.S. Supreme court in Sandstrom v. Montana, Supra, held "a presumption which would permit. . . an assumption which all the evidence considered together does not logically establish would give a proven fact an artificial and fictional effect." (Emphasis added)

34. We know from experience, the Court can take judicial notice of the fact, that clearly, some of these licensed drivers do not have automobiles registered in their own names, i.e. not everyone owns a car. For example, many of us did not have our own car when we were sixteen, despite the fact we had a license to drive, additionally many of us frequently drive our spouses or family's vehicles. Thus when these license holders do drive, they are not necessarily driving automobiles that they own. Couple this with the fact that there is no law which prohibits someone from having permission to drive a car that is not registered to them and/or that there is no requirement or law which requires a registered owner to identify individuals that may drive his or her vehicle, it illustrates that there is an extremely high probability that the registered owner may not in fact be the driver of the vehicle being cited. Based upon Washington statistics alone, the potential is that based solely on the numbers there is a one in several millions chance that the driver of the photographed vehicle was in fact the actual registered owner. The numbers get even more remote if you factor in the fact that any person licensed in the U.S. could possibly be driving a car registered to someone else.

35. I would further note that any requirement that would require an individual to identify who was driving the vehicle would create a number of additional constitutional issues, in that such a requirement would infringe upon the constitutionally protected freedom of association at times force an individual to possibly bear witness against a spouse in direct contradiction of the Spousal Privilege. No matter how one analyzes the various possible permutations of the statistics, in the words of the Hildebrandt court, it is

hardly a “ready inference” that the driver of an automobile is its owner. Hildebrandt Supra at p. 379. This leads to but one logical conclusion: that an ordinance which does, not require proof of who was actually committing the offense creates the distinct possibility of literally millions of erroneous photo red light citations being issued for the traffic infractions of others. That is far from proof beyond a reasonable doubt, or even a preponderance of evidence, especially in light of the fact that individuals are normally not responsible for the criminal act of third parties. See *Holle v. Sunrise Terrace, Inc.*, 257 Va. 131, 509 S.E2d 494 (1999).

36. The Washington Constitution provides, that no person shall be deprived of his life, liberty, or property without due process of law. In applying this right to the issue of evidentiary presumptions, a natural and rational evidentiary relationship must always exist between the fact proven and the ultimate fact presumed.

IMPROPER DELEGATION OF POLICE POWERS

37. The Code is again infirm as being against public policy as an improper delegation of police power to a for-profit commercial enterprise. Imagine the public outcry if the City of Seattle announced that from now on, Seattle Police Officers would receive a direct commission for each and every ticket they issued. The authority and credibility of the Police would be severely and irreparably damaged, in that such a scheme would be rank with the potential for abuse, that the officers would be subject to impeachment for bias for having an economic interest in the outcome of the charges, and based upon the fact that they have a direct economic incentive to issue as many tickets as possible, regardless of their legal and factual merit, in the hopes of increasing their income. Public policy alone should not allow that sort of scheme to exist. Yet the remote photo citation systems run by civilian contractors for-profit are directly analogous to police working on a commission, in that the City of Seattle has delegated the power of police observations to a for-profit company.

38. In most cities and counties in the State of Washington it is the police who observe and witness violations of the traffic laws and immediately issue citations. In the case of the for-profit company which observe and witness alleged violations through a

contraption and then sends a “copy” by some means unknown to the public, of so called photographic evidence to the City, after which a police officer then looks at the so-called evidence and renders a verdict and issues a citation at some later date.

39. Eros assumes the evidence is sent via the Internet in some digital form. A problem arises for the officer, which may be unknown to him or her. There are all sorts of interference, which can occur by transferring files via airwaves and the Internet, some minute, and not noticeable to the naked eye, some major interference may alter the reception of the digital transfer. However, the officer issuing the citation may not know the transferred file has been corrupted, if it has been. Every computer user has seen a message on a computer, “This file has been corrupted.” Any computer expert can attest that some files can be corrupted in minute ways, which may result in a perverted view. I have noted above that the photographic evidence the City of Seattle allowed me to only view online and refused to allow me to download is inferior to that which the City Court gets. Quite frankly, the alleged evidence the City allows me to see online stinks. The photos and video are totally useless for Eros to use as evidence, except to prove that the City gets excellent resolution, while Eros does not. This leads to an obvious question: Has the for-profit company altered the digits for a better viewing for the City? Has the for-profit company altered any of the photographic evidence in any way before passing it on to the City? I respectfully submit that this Court must seek to answer why the city’s reception of the video is so much better than the video, which the city only allows me to view but not download.

40. The defendants in red light camera violations have no ability to ask the above questions of the person processing the so-called evidence thereby rendering the Rules of Evidence obsolete or at least inoperable and unobtainable in red light camera alleged violations. The City of Seattle has issued 10’s of thousands, perhaps hundreds of thousands citations for running red lights based on red light cameras evidence. It would be absolutely impossible for the City to allow Constitutional Due Process in these cases because it would tie up the courts incessantly, so a scheme had to be invented to force its citizens to accept the citations meekly and without consideration of the Constitutional

Rights the all citizens own via both the State and Federal Constitutions.

41. That scheme is quite simple, Orwellian and deceitful. Intended or unintended, the City of Seattle has learned well the lessons from the last Administration in Washington DC; manipulate the citizens through planted messages in the press. Convince the public their loss of rights is for their own good. That is the message the City of Seattle is giving the public on its website: <http://www.violationinfo.com/Home.aspx> “It’s all about saving lives.” knowing from its own studies that red light cameras actually contribute to more accidents and potential deaths.

42. **I should note here that I am not accusing any one person, or any group of persons of a deliberate conspiracy to commit fraud *per se*, but *per incuriam*. It flows as a matter of course from the last eight years, federal, state and local governments have learned to get what they want from their citizens by means devious. There is a clear pattern that municipalities, all across the United States, have been selling red light cameras as life saving apparatus, when in truth they are anything but.**

43. As noted above the City is moving exponentially to acquire more red light cameras for the sold purpose of raising its “pay-rate.” Sure, the City says it is not about the money it’s about saving lives. But, as we have seen this is not true based on the City’s own admission in its own studies and by its own admission that each ticket issued increases the City’s bottom line, or words to that effect: “. . . with a pay rate exceeding 70%.”

44. The fear associated with the delegation of governmental police powers to private entities is that the governmental power may be used and abused to further private rather than public interests, and in such a manner as to circumvent constitutional protections or to insulate the government entity from accountability or civil rights liability. In short the contractors can be hired to do the Government’s dirty work for them, in a manner that themselves would not be allowed to, without a readily available avenue for procedural safeguards or adequate redress by the citizens. One of the safety nets created by the

governments retaining the exercise of police powers is that through the democratic process, aggrieved citizens can vote abusing governmental officials out of office. Whereas, citizens have no ability to directly vote commercial contractors away.

45. Discovery and disclosures from red light camera jurisdictions illustrate these are multi-million dollar operations. *(in an article titled "D.C. aims to Catch Speeders on Camera," the Washington Post reported on July 2, 2001 that the District of Columbia generated over 9 million dollars in fines from red light photo enforced citations last year.)* With modern computers, digital pictures, graphics, scanners and photo quality printers, one can easily adjust images to eliminate the "red eyes created by a flash bulb or to change a green light to red, especially where a multi-million dollar economic interest exists to do so. Both the City of Seattle and the company, which maintains the cameras, have a vested financial interest in perpetuating revenue from red light cameras. As Massachusetts Democratic congressman Michael Capuano, told eight bank CEOs, at a U.S. Congressional hearing, on February 11, 2009, "America doesn't trust you anymore."

46. While Washington State does not allow the company managing the cameras to make a profit on each ticket as cities in other states do, the company has a vested financial interest in having its cameras produce more and more tickets so that it can lease additional cameras to the city at about \$5,000 a month. So when Seattle's Chief of Police wanted to increase the number of cameras by 12 to 18 the company stood to gain, and, on information and belief, did gain between \$60,000 and \$90,000 a month. The company thereby has an interest in producing as many tickets as possible every month. Actually, it is like a Ponzi scheme because it has a limit to how many cameras it can place in one city. If, and after, the City puts a camera on every traffic light the company's finances will gain no more unless the City grows and adds more traffic lights and cameras.

47. An alarming issue is once again, as written, the Code does not allow defendants to raise or challenge the evidence on the issue of potential bias, thus, once again creating a clear constitutional violation.

48. Furthermore RCW 46.63.170 (1) (h) reads: “If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.” (Emphasis mine).

49. If RCW 46.63.170 (1) (h) is accepted on its face and strictly construed, and it must be, see: 89 Wn.app. 253 Lumberman’s, Inc. v. Barnhardt (1997) “A statute is construed according to its plain language. ... In General. A statute in derogation of the common law is strictly construed.” then the City of Seattle cannot pay for the companies cameras because money is fungible and the revenue generated by the equipment is put into Seattle’s general fund and commingled with other funds. Therefore a certain portion of Seattle’s general fund is generated by the equipment and then paid directly to the company in violation of the statute.

50. The City of Seattle has cleverly approached the subject of fees. They purposely set the potential fine at \$101 (originally) and then raised it to \$124, an amount significantly less than California’s \$271.00 photo enforced tickets. This amount is sufficient to penalize drivers, but is typically not high enough to justify an individual taking a day off from work to contest the ticket or to justify retaining expensive legal counsel to challenge the ticket, when the costs of representation would likely grossly exceed the ticket itself. Thus, most tickets go uncontested, and the potential of improprieties goes on – capable of repetition yet evading legal review.

51. The Washington State Legislature has assisted the City of Seattle and other red light camera cities in perverting the Rules of Procedure in both civil and criminal cases. In RCW 46.63.170 (c) the Legislature has refused to allow red light camera cities to photograph the identity of the driver. Thereby making it impossible for cities to identify the actual driver. Moreover, the Legislature in its wisdom has dictated that red light violations do not carry a moving violation, even though said violation is obviously a moving violation. See RCW 46.63/170 (2). What is the result of this measure? The

perpetrator can be fined again and again without losing his license. Again this is like a Ponzi scheme -- get as much money as you can without spoiling your revenue base.

52. Finally, I was struck, I emphasize STRUCK with the inescapable idea that the red light camera scheme of the City of Seattle has employed the Seattle's court system to perpetuate its alleged money making scheme. I am, however, convinced that the judges involved have not yet considered all, or perhaps any, of the Constitutional implications of the red light camera laws and are just doing their job to resolve the tickets presented to them for disposal.

53. I would like to make it emphatically clear that I have the greatest respect for the court system in the State of Washington and its judges. I am not impugning the integrity of the Court system. I am impugning the integrity of the red light camera system and the results thereof. I am not the first to impugn the integrity of red light cameras. In fact there are dozens of cities across this Nation, which have tossed out its red light camera systems, several for reasons identified in this Motion.

54. In a report submitted by Keith E. Mathews, Administrative Judge in District Court for the City of Baltimore entitled: "Red Light Camera Enforcement System in Baltimore City. *For Revenue or Safety?*", Judge Mathews ponders, "Unfortunately, the Baltimore City Red Light Camera Enforcement System (RLCES), as it is presently operated, can be seen as a revenue-producing measure instead of safety-oriented ..." (His report is attached in full to this Motion as Exhibit F) While his report and opinion carries no legal weight in the State of Washington, I respectfully request this Court consider his words carefully for they do apply intrinsically to the issues at hand and are quite on point.

55. Finally, Seattle's red light camera law is in violation of RCW 46.08.020. Precedence over local vehicle and traffic regulations. RCW 46.08.020 reads:

"The provisions of this title relating to vehicles shall be applicable and uniform throughout this state and in all incorporated cities and towns and all political subdivisions therein and no local authority shall enact or enforce any law, ordinance, rule or regulation in conflict with the provisions of this title except and unless expressly authorized by law to do so and any laws, ordinances, rules or

regulations in conflict with the provisions of this title are hereby declared to be invalid and of no effect. Local authorities may, however, adopt additional vehicle and traffic regulations which are not in conflict with the provisions of this title.”

Seattle has disregarded the statute imposing uniformity of traffic laws across the state. The city’s photo ticket program offers the accused fewer due process protections than available to motorist prosecuted for the same offense in the conventional way after being pulled over by a policeman. A case exactly on point is *State v. Kuhlman*, 729 N.W.2d 577 (Minn. 2007). The Kuhlman Court held that the Minnesota traffic code did not authorize the City to penalize vehicle owners for red light violations simply because their vehicles were photographed going through a red light. The court argued that Minneapolis had, in effect, created a new type of crime: “owner liability for red-light violations where the owner neither required nor knowingly permitted the violation.”

“We emphasized in *Duffy* that a driver must be able to travel throughout the state without the risk of violating an ordinance with which he is not familiar,” the court wrote. “The same concerns apply to owners. But taking the state’s argument to its logical conclusion, a city could extend liability to owners for any number of traffic offenses as to which the Act places liability only on drivers. Allowing each municipality to impose different liabilities would render the Act’s uniformity requirement meaningless. Such a result demonstrates that [the Minneapolis ordinance] conflicts with state law.” (Emphases in the original.)

The court also struck down the “rebutable presumption” doctrine that lies at the heart of every civil photo enforcement ordinance across the country.

“The problem with the presumption that the owner was the driver is that it eliminates the presumption of innocence and shifts the burden of proof from that required by the rules of criminal procedure,” the court concluded. “Therefore the ordinance provides less procedural protection to a person charged with an ordinance violation than is provided to a person charged with a violation of the Act. Accordingly, the ordinance conflicts with the Act and is invalid.”

The court’s decision was unanimous.

SYNOPSIS

Ticket recipients are not adequately notified. Most governments using ticket cameras

send out tickets via first class mail. There is no guarantee that the accused motorists will even receive the ticket. The government makes the assumption that the ticket was received. If motorists fail to pay, it is assumed that they did so on purpose. This happened in the instant case when the city mailed the citation to the wrong mailing address and then penalized Eros for not receiving and paying the citation timely.

The driver of the vehicle is not positively identified. Typically, the photos taken by these cameras do not identify the driver of the offending vehicle. The owner of the vehicle is mailed the ticket, even if the owner was not driving the vehicle and may not know who was driving at the time. The owner of the vehicle is then forced to prove his or her innocence, often by identifying the actual driver who may be a family member, friend or employee or a spouse.

Ticket recipients are not notified quickly. People may not receive citation until days or sometimes weeks after the alleged violation; this also happened in the instant case. This makes it very difficult to defend oneself because it would be hard to remember the circumstances surrounding the supposed violation. There may have been a reason that someone would be in an intersection after the light turned red. Even if the photo was taken in error, it may be very hard to recall the day in question.

There is no certifiable witness to the alleged violation. A picture may be worth a thousand words, but it may also take a thousand words to explain what the picture really means. Even in those instances where a law enforcement officer is overseeing a ticket camera, it is highly unlikely that the officer would recall the supposed violation. For all practical purposes, there is no “accuser” for motorists to confront, which is a constitutional right. There is no one that can personally testify to the circumstances of the alleged violation, and just because a camera unit was operating properly when it was set up does not mean it was operating properly when the picture was taken of any given vehicle, at any given time.

Ticket cameras do not improve safety. Despite Seattle’s preposterous claims that “It’s

all about saving lives!” and the claims of companies that sell ticket cameras, and provide related services, there is no independent verification that photo enforcement devices improve highway safety, reduce overall accidents, or improve traffic flow. Indeed the opposite is true as to accidents. As proven herein, and admitted by the City of Seattle, these devices actually create accidents. Believing the claims of companies that sell photo enforcement equipment or municipalities, like Seattle, is like believing any commercial produced by a company that is trying to sell you something you don’t want.

Cameras do not prevent most intersection accidents. Intersection accidents are just that, accidents. Motorists do not casually drive through red lights. More likely, they do not see a given traffic light because they are distracted, impaired, or unfamiliar with their surroundings. Even the most flagrant of red-light violators will not drive blithely into a crowded intersection, against the light. Putting cameras on poles and taking pictures will not stop these kinds of accidents, they will increase rear-end accidents because drivers fearful of getting photo tickets tend to slam on their brakes.

These devices discourage the synchronization of traffic lights. When red-light cameras are used to make money for local governments, these governments are unlikely to jeopardize this income source. This includes traffic-light synchronization, which is the elimination of unneeded lights and partial deactivation of other traffic lights during periods of low traffic. When properly done, traffic light synchronization decreases congestion, pollution, and fuel consumption and . . . reduce rear-end collisions.

There are better alternatives to cameras. If intersection controls are properly engineered, installed, and operated, there will be very few red-light violations. From the motorists’ perspective, government funds should be used on improving intersections, not on ticket cameras. Even in instances where cameras were shown to decrease certain types of accidents, they increased other accidents. Simple intersection and signal improvements can have lasting positive effects, without negative consequences. Cities can choose to make intersections safer with sound traffic engineering or make money with ticket cameras. Unfortunately, many cities, like Seattle, chose money over safety.

In my Declaration, attached hereto, I have enumerated two-dozen studies, which question the value, if any value exists except raising money for cities, of red light cameras.

WHEREFORE, any and/or all of the foregoing reasons, the Defendant prays this Honorable Court finds Seattle Municipal Code Section 11.31.090 unconstitutional, striking the Code Section and dismissing the charges against the Defendant with prejudice.

DATED this _____, day of March, 2009.

Respectfully submitted,

.....

Dennis Eros

STATE OF WASHINGTON

IN MUNICIPAL COURT OF SEATTLE FOR THE CITY OF SEATTLE

CITY OF SEATTLE vs. TRAFFIC CASE # 0210800107943 and #202727989

DENNIS EROS,

Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of March, 2009, I caused service of the foregoing documents: Motion In Limine to Strike & Challenge the Constitutionality of Municipal Code Section 11.31.090 of the City of Seattle and Declaration of Dennis Eros, by mailing a true, correct and complete copy of each document in a postage, prepaid wrapper to the following, addressed to them at the addresses set forth below:

Seattle Municipal Tower
Seattle City Attorney
Public & Community Safety Division
PO Box 94667
Seattle, WA 98124-4667

and;

Clerk of the Municipal Court of Seattle
For Court Room 301
PO Box 34109
Seattle, WA 98124

Dennis Eros, in pro se