

IN THE MISSOURI SUPREME COURT

CITY OF ST. PETERS,)	
)	Supreme Court No.: SC94379
Appellant,)	
)	Court of Appeals No.: ED100701
v.)	
)	Circuit Court No.: 1311-MU00010
BONNIE A. ROEDER,)	
)	
Respondent.)	

**Appeal from the Eleventh Judicial Circuit Court
County of St. Charles, State of Missouri
Honorable Ted House
Division 1**

SUBSTITUTE BRIEF OF APPELLANT
CITY OF ST. PETERS

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Jurisdictional Statement

This action involves a citation issued by the City of St. Peters (the “City”) against Respondent, Bonnie A. Roeder (“Respondent”) for violation of §§ 335.095 and 315.030 of the City’s Traffic Code (the “Traffic Code”). Section 335.095 (the “Camera Ordinance”) authorized the use of automated photographs and video of vehicles that enter an intersection in violation of a red traffic signal or otherwise violate the Traffic Code. *See* Trial Exhibit¹ 1; *see* Appendix² A7.

Section 315.030 (the “Traffic Control Ordinance”) provides that “[t]he driver of any vehicle shall obey the instructions of any official traffic control device....” *See* Trial Exhibit 1, *see* App. A5.

On September 5, 2013, the Jury returned its verdict and found Respondent guilty of violating the Camera Ordinance and the Traffic Control Ordinance. *See* Legal File³ pp. 166, 169, 175-76; *see* App. A3-4. On October 29, 2013, the Trial Court called the matter for sentencing and for hearing on Respondent’s Renewed Motion for Acquittal. L.F. 288-289. On October 30, 2013, the Trial Court entered its Judgment and dismissed the citation. *Id.*; App. A1-2.

¹ All Trial Exhibits were deposited with the Court of Appeals- Eastern District pursuant to Rule 81.16 and shall be forwarded to the Supreme Court by the Court of Appeals.

² References to the Appendix will be to “App. ____.”

³ References to the Legal File will be to “L.F. ____.”

⁴ The appellate court issued *Unverferth* after the Trial Court had reviewed and denied

² References to the Appendix will be to “App. ____.”

³ References to the Legal File will be to “L.F. ____.”

On June 3, 2014, the Court of Appeals affirmed the Judgment of the Trial Court. *See City of St. Peters v. Roeder*, 2014 WL 2468832 (Mo. App. E.D. 2014).

By Order dated August 25, 2014, this Court sustained the City's Application for Transfer and ordered this appeal transferred to this Honorable Court.

Statement of Facts

On June 7, 2012, a vehicle registered to and operated by Respondent traveled into and through an intersection after the traffic control light had turned red. *See* Trial Exhibits 2a, 3, and 4. Thereafter, the City issued a Notice of Violation and Summons (the "Notice of Violation") to Respondent, citing Respondent for violating the Traffic Code. *See* Trial Exhibit 2a. Respondent was cited for violating the City's Camera Ordinance (§ 335.095) and Traffic Control Ordinance (§ 315.030). *See* Trial Exhibit 2a; *see* App. A17-21. The Camera Ordinance provides, in relevant part, that:

A person commits an offense under [§ 335.095] when such person fails to comply with the City Traffic Code and the violation is detected through the automated red light enforcement system, as herein provided. A conviction for a violation of the City Traffic Code detected through the automated red light enforcement system shall be deemed an infraction, and, upon a conviction thereof, shall be punishable by a fine no greater than two hundred (\$200.00) dollars. In no case shall points be assessed against any person, pursuant to Section 302.302, RSMo., for a conviction of a violation of the City Traffic Code detected through the automated red light enforcement system.

Trial Exhibit 1; City Ordinance No. 4536; § 335.095.G of the Traffic Code; App. A7-10, A11-16.

The Traffic Control Ordinance provides, in relevant part, that “[t]he driver of any vehicle shall obey the instructions of any official traffic control device....” Trial Exhibit 1; § 315.030 of the Traffic Code; App. A5-6.

Respondent certified the case to the Circuit Court for a jury trial pursuant to Rule 37.61 and § 479.130 RSMo. L.F. 8.

Prior to trial, Respondent filed her “Motion to Dismiss Based on Defect in the Institution of the Prosecution” (the “Motion to Dismiss”). L.F. 24-55. In her Motion to Dismiss, Respondent asserted various legal challenges to the Notice of Violation, including an argument that the Camera Ordinance conflicts with State law by failing to impose points on a violator’s driving record. L.F. 33-36. The Trial Court denied that Motion to Dismiss and held the Camera Ordinance is not void because, “in order to obtain a conviction in this case, the City of St. Peters will have to prove beyond a reasonable doubt that the [Respondent] violated a provision of the St. Peters City Traffic Code and that such violation was detected through the automated enforcement system.” L.F. 74. The Trial Court also found that “[Respondent’s] argument regarding whether or not points are assessed is unpersuasive.” L.F. 74.

Thereafter, the City submitted proposed Jury Instructions and, in Instruction No. 5, predicated its prosecution of Respondent on the Camera Ordinance and Traffic Control Ordinance. L.F. 109.

At trial, the City presented testimony and evidence, including four still photographs of Respondent, which showed: (1) Respondent's vehicle traveling towards an intersection and not yet to the stop bar (i.e., the white line where motorists stop while waiting for the light to turn from red to green) when the traffic control light at the intersection was red; (2) Respondent's vehicle traveling beyond the stop bar and into the intersection after the light turned red; (3) the front window of Respondent's vehicle, showing Respondent's face as she drove her vehicle into the intersection; and (4) the rear of Respondent's vehicle, including the vehicle's license plate. *See* Trial Exhibit 3. The City also played a video of Respondent driving into and through the intersection after the light had turned from yellow to red. *See* Trial Exhibit 4.

On September 5, 2013, the Jury unanimously found that Respondent "failed to stop at a red light," and that "such failure was detected through the automated red light enforcement system." L.F. 166, 169; App. A3-4. The Jury recommended a fine of One Hundred Ten and 00/100 Dollars (\$110.00). L.F. 174.

On September 18, 2013, Respondent filed a "Renewed Motion for Acquittal." L.F. 182-185. In her Renewed Motion for Acquittal, Respondent asserted legal challenges to the Camera Ordinance. *Id.* Respondent did not contest that sufficient evidence existed to permit the Jury to find her guilty of violating the City's Traffic Code. *Id.* As relevant to this appeal, Respondent argued that the Camera Ordinance conflicted with State law because it provided that "[n]o points will be assessed" for violation of the Camera Ordinance. *Id.* In support of her argument, Respondent relied on the appellate decision in

Unverferth v. City of Florissant, 419 S.W.3d 98 (Mo. App. E.D. 2013). L.F. 182.⁴ The Trial Court agreed with Respondent and, on October 30, 2013, entered the Judgment which is the subject of this appeal. L.F. 288-289; App. A1-2. The Trial Court stated that “the [Camera Ordinance] is substantially similar to the Florissant ordinance at issue in *Unverferth*,” and that the Court of Appeals held the Florissant ordinance conflicted with State law because the ordinance “permits what the state law prohibits – the classification of running a red light as a non-moving violation free from the assessment of points.” L.F. 289; App. A2 (quoting *Unverferth*, 419 S.W.3d at 98).

⁴ The appellate court issued *Unverferth* after the Trial Court had reviewed and denied Respondent’s initial Motion to Dismiss, and five days after the Jury’s verdict in this case.

Points Relied On

I. The Trial Court erred in dismissing the citation against Respondent because the Camera Ordinance does not conflict with State law, in that the City's Camera Ordinance is fully compliant with, and does not conflict with, §§ 43.505 and 43.512 RSMo, which require the Department of Public Safety to classify and identify reportable violations and to publish the Missouri Charge Code Manual with that information, which must be followed by the City as it relates to the Red Light Camera Safety Violations under the Camera Ordinance, in that the City is required by §§ 43.505 and 43.512 RSMo and the statutorily-mandated Missouri Charge Code Manual to refrain from reporting or assessing points against a violator's driving record for charges of Red Light Camera Safety violations under the City's Camera Ordinance.

State ex rel. Rothermich v. Gallagher, 816 S.W.2d 194 (Mo. banc 1991)

II. The Trial Court erred in dismissing the citation against Respondent because the Camera Ordinance does not conflict with State law, in that Missouri law permits the Director of Revenue to classify certain offenses as non-point offenses pursuant to § 302.302 RSMo, and the Director of Revenue has exercised his discretion to designate red light violations detected by automated cameras as non-point violations.

City of Kansas City v. Carlson, 292 S.W.3d 368 (Mo. App. W.D. 2009)

McCollum v. Dir. of Revenue, 906 S.W.2d 368 (Mo. banc. 1995)

III. The Trial Court erred in dismissing the citation against Respondent because the Camera Ordinance's alleged conflict with State law does not provide Respondent with a defense to the citation, in that the statutory obligation to impose points for a moving violation is directory and not mandatory.

Kersting v. Dir. of Revenue, 792 S.W.2d 651 (Mo. App. E.D. 1990)

State v. Conz, 756 S.W.2d 543 (Mo. App. W.D. 1988)

IV. The Trial Court erred in dismissing the citation against Respondent for violating the Camera Ordinance because, in doing so, the Trial Court failed to enforce the Camera Ordinance's severability clause, in that the severability clause expressly provides that the Camera Ordinance shall remain valid and enforceable except for the term, condition, or provision that is held to be invalid or unenforceable, and the Trial Court should have simply severed any provision of the Camera Ordinance found to conflict with State law and applied the remainder of the Camera Ordinance.

City of Boonville v. Rowles, 869 S.W.2d 889 (Mo. App. W.D. 1994)

City of St. Louis v. Grafeman Dairy Co., 89 S.W. 617 (Mo. 1905)

St. Louis County v. Glore, 715 S.W.2d 565 (Mo. App. E.D. 1986).

Summary of the Argument

This case differs from the various “red-light” camera cases addressed by the appellate courts to date.⁵ In this case, the parties completed a jury trial and the Jury, after hearing all the evidence, unanimously found beyond a reasonable doubt that Respondent drove her own registered vehicle into and through an intersection in the City of St. Peters after the traffic signal had turned red.

In this case, the Court received photographs and video evidence that Respondent personally drove into and through the intersection against a properly functioning red light. In that regard, this case is distinguished from previous cases considered by the appellate courts. *Compare and contrast Brunner*, 427 S.W.3d at 206 (city’s camera ordinance prohibits the photographing of the vehicle’s occupants, particularly the driver) and *Unverferth*, 419 S.W.3d at 84 (city’s cameras only photographed rear portion of the vehicle and license plate).

The Camera Ordinance is not a strict liability ordinance, but requires the City to prove beyond a reasonable doubt that the person charged with violating the Traffic Code did indeed violate the Traffic Code. *Compare and contrast Edwards*, 426 S.W.3d at 650 (city’s camera ordinance placed “strict liability on the owner of any vehicle found to be

⁵ See *Brunner v. City of Arnold*, 427 S.W.3d 201 (Mo. App. E.D. 2013); *Damon v. City of Kansas City*, 419 S.W.3d 162 (Mo. App. W.D. 2013); *Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. App. E.D. 2013); *Smith v. City of St. Louis*, 409 S.W.3d 404 (Mo. App. E.D. 2013); *Unverferth v. City of Florissant*, 419 S.W.3d 76 (Mo. App. E.D. 2013).

in violation of the Ordinance, without regard to whether the owner was operating the vehicle at the time of the violation”).

The Camera Ordinance does not create a “rebuttable presumption” that the owner of the vehicle is the driver. Rather, only the driver of the vehicle can be found guilty of violating the Camera Ordinance. *Compare and contrast Brunner*, 427 S.W.3d at 207 (city’s camera ordinance created a rebuttable presumption that the owner of the vehicle was the driver at the time of the offense), and *Smith*, 409 S.W.3d at 408 (same), and *Unverferth*, 419 S.W.3d at 84 (same).

The jury determined that Respondent herself, driving her own vehicle, violated a properly functioning red light. Respondent has not challenged the sufficiency of that evidence.

The City’s Camera Ordinance does not conflict with State law, but is in full conformity with specific State statutory provisions relating to this type of violation, and should be upheld. Further, even if the no-points clause contained in the City’s Camera Ordinance is found to conflict irreconcilably with another State statute, the severability clause of the ordinance should have been applied. Finally, the Camera Ordinance’s no-points clause, even if inconsistent with State law, does not provide Respondent a procedural defense to the charged offense.

Argument

I. The Trial Court erred in dismissing the citation against Respondent because the Camera Ordinance does not conflict with State law, in that the City’s Camera Ordinance is fully compliant with, and does not conflict with, §§ 43.505 and 43.512 RSMo, which require the Department of Public Safety to classify and identify reportable violations and to publish the Missouri Charge Code Manual with that information, which must be followed by the City as it relates to the Red Light Camera Safety Violations under the Camera Ordinance, in that the City is required by §§ 43.505 and 43.512 RSMo and the statutorily-mandated Missouri Charge Code Manual to refrain from reporting or assessing points against a violator’s driving record for charges of Red Light Camera Safety violations under the City’s Camera Ordinance.

A. Standard of Review

A trial court’s decision to grant a motion to dismiss is reviewed de novo. *Otte v. Edwards*, 370 S.W.3d 898, 900 (Mo. App. E.D. 2012). “Matters of statutory interpretation and the application of [a] statute to specific facts are also reviewed de novo.” *Id.* In addition, the determination of “[w]hether a city exceeds its statutory authority in passing an ordinance” is reviewed de novo. *City of Kansas City v. Carlson*, 292 S.W.3d 368, 370 (Mo. App. W.D. 2009).

B. Discussion

The Trial Court failed to give due consideration and full effect to §§ 43.505 and 43.512 RSMo, and the Missouri Charge Code Manual (the “Manual”) that is mandated

by those statutory provisions under the authority of the Missouri Department of Public Safety.

The Trial Court erred in finding that the Camera Ordinance conflicts with § 302.302 because the Trial Court ignored the effect of §§ 43.505 and 43.512, and because §§ 43.505 and 43.512 are more particular statutory provisions relating to the Red Light Camera Safety violation at issue in this case, and because § 302.302 is applicable only if the violation in question is determined by the Department of Public Safety to be a reportable violation pursuant to §§ 43.505 and 43.512.

Sections 43.505 and 43.512 required the City to follow the directives of the Manual for identification of violations which should and should not be reported to the Director of Revenue (“DOR”), and how they should be reported.

Section 43.505.1 provides: “The **department of public safety is hereby designated as the central repository for the collection ... and reporting of crime incident activity generated by law enforcement agencies** in this state. The Department shall develop and operate a uniform crime reporting system” Further, the Department of Public Safety “shall ... provide the ... procedures, standards and related training or training assistance to all law enforcement agencies in the state as necessary for such **agencies to report incident and arrest activity** for timely inclusion into the statewide system.” § 43.505.2(3) RSMo. And further, “[t]he central repository, with the approval of the supreme court, shall publish and make available to criminal justice officials, a standard manual of codes for all offenses in Missouri.” § 43.512 RSMo. “The manual of codes shall be known as the ‘Missouri Charge Code Manual’, **and shall be used by all**

criminal justice agencies for reporting information required by sections 43.500 to 43.530.” (all emphasis above added). *Id.*

The Manual in effect at the time of Respondent’s violation and conviction classified a red-light camera conviction as one that should **not** be reported to the DOR for assessment of points against the operator’s license. *See* L.F. 266 (which provides that a “public safety violation – red light camera (no points)” should not be reported to the DOR).

Sections 43.505, 43.512, and 302.302 must be considered in “para materia” and should be read “consistently and harmoniously” to give effect to each of them. *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 200 (Mo. banc 1991); *see also Div. of Labor Standards v. Chester Bross Construction*, 42 S.W.3d 637, 639 (Mo. App. E.D. 2001) (“[w]hen statutes seem to conflict, courts must attempt to harmonize each statutory enactment, considering the legislative scheme and the plain meaning of the language used so that both sections have meaning”).

Section 302.302 does not contain any provisions that address citations issued through an automated traffic enforcement system. Without specific direction from the Missouri legislature regarding what point assessment, if any, should result from a violation of an automated traffic enforcement system, the Department of Public Safety properly determined, within its authority under Chapter 43, that such violations should not be reported for the assessment of points against a driver’s record.

The Department of Public Safety acts under the authority of § 43.512 and with the approval of this Court. The Manual “**shall be used by all criminal justice agencies...**”

§ 43.512 RSMo. Thus, the City must follow, and cannot violate, the directives of the Department of Public Safety as expressed in the Manual. Further, the City does not assess points against any driver's record, as that is a record keeping activity of the DOR, based on violations determined by the Department of Public Safety to be reportable. The City merely reports as appropriate to the DOR, as directed by the Department of Public Safety's Charge Codes set out in the Manual.

Chapters 43 and 302 should be construed harmoniously to give effect to both by finding that the Department of Public Safety is tasked by Chapter 43 with identifying which violations should and should not be reported the DOR. The DOR is then, after that determination is made, charged with receiving such reports to "put into effect a point system for the suspension and revocation of licenses." § 302.302.1.⁶

Thus, there was a determination made by the Department of Public Safety that Traffic Code violations detected solely through an automated camera system should not, by themselves, result in the suspension or revocation of a driver's license. Under such harmonious reading of all the controlling statutes, §§ 43.505, 43.512, and 302.302, and the City's Camera Ordinance can and should all be given full effect. Through Chapter 43, the Department of Public Safety identifies the violation that shall or shall not be reported to the DOR; and through Chapter 302, the DOR receives, assesses, and keeps track of points assessed on reported violations consistent with the Department of Public Safety's directions through the Manual.

⁶ Running a red light is not specifically listed in § 302.302 RSMo.

Moreover, because the Chapter 43 Charge Code Manual directly addresses Red Light Camera safety Violations, and Chapter 302 does not, Chapter 43 is a more specific statute as relates to the question at bar. *See Smith v. Mo. Local Government Employees Retirement Sys.*, 235 S.W.3d 578, 581 (Mo. App. W.D. 2007) (“[i]f two statutes appear to conflict, [courts] attempt to reconcile the language to give effect to both,” but if the conflict is irreconcilable, “the general statute must yield to the statute that is more specific”) (internal quotes omitted).

Because a violation of an automated traffic enforcement ordinance does not require the assessment of points on a violator’s driving record, this Court should reverse the Judgment of the Trial Court and reinstate the jury’s verdict.

II. The Trial Court erred in dismissing the citation against Respondent because the Camera Ordinance does not conflict with State law, in that Missouri law permits the Director of Revenue to classify certain offenses as non-point offenses pursuant to § 302.302 RSMo, and the Director of Revenue has exercised his discretion to designate red light violations detected by automated cameras as non-point violations.

A. Standard of Review

A trial court’s decision to grant a motion to dismiss is reviewed de novo. *Otte*, 370 S.W.3d at 900. “Matters of statutory interpretation and the application of [a] statute to specific facts are also reviewed de novo.” *Id.* In addition, the determination of “[w]hether

a city exceeds its statutory authority in passing an ordinance” is reviewed de novo.

Carlson, 292 S.W.3d at 370.

B. Discussion

In its Judgment, the Trial Court found that § 302.302.1 “provides essentially that points shall be assessed for ‘any moving violation’ of a municipal ordinance.” L.F. 288; App. A1. The Trial Court therefore concluded that because subsection G of the Camera Ordinance provides that no points are assessed under the Camera Ordinance, subsection G is “in irreconcilable conflict with state law.” L.F. 289; App. A2.

The Camera Ordinance carries a presumption of validity and should be upheld unless “expressly inconsistent or in *irreconcilable* conflict with the general law of the state.” *Carlson*, 292 S.W.3d at 373 (citing *McCollum v. Dir. of Revenue*, 906 S.W.2d 368, 369 (Mo. banc. 1995) (emphasis added)). A conflict with a state statute exists only when its express or implied provisions are so inconsistent and irreconcilable that the statute invalidates the ordinance. *Carlson*, 292 S.W.3d at 371. Thus, “[i]f the ordinance prohibits what the statute permits, or permits what the statute prohibits, the two are in conflict.” *Id.* However, an ordinance may supplement state laws. *State ex rel. Teefey and Agri-Lawn, Inc. v. Bd. of Zoning Adjustment of Kansas City*, 24 S.W.3d 681, 685 (Mo. banc. 2000).

Pursuant to § 302.302.1, the DOR is empowered to “put into effect a point system for the suspension and revocation of licenses.” Section 302.302.1(1)-(18) then specifies certain offenses and sets out a point value for each reportable offense. A motorist’s failure to comply with a traffic control device (i.e., running a red light) is not specifically

listed among the offenses that require the assessment of points. Section 302.302.1(1) provides that the “initial point value” for “[a]ny moving violation” of a municipal ordinance not specifically listed is two points. The Trial Court found that “[f]ailing to stop at a red light is by any definition a ‘moving violation.’” L.F. 289; App. A2.

Section 302.010(13) provides that “[*e*]*xcept where otherwise provided*, when used in this chapter... ‘[m]oving violation’ [means] that character of traffic violation where at the time of violation the motor vehicle involved is in motion.” (emphasis added). However, Section 302.302.1 provides the DOR with the task of putting “into effect a point system for the suspension and revocation of licenses.” Thus, the ultimate determination of whether points, which can lead to a revocation, should be assessed for violation of a City ordinance is left to the DOR.

Significantly, the Office of the State Courts Administrator (“OSCA”) reported in Volume 75, Summer 2008, of the Missouri Association for Court Administration Reporter, that “[s]everal municipalities have enacted ordinances establishing a red light violation that is captured by camera,” and that the “on-going question is whether or not these violations are reportable to the Department of Revenue ... *OSCA’s recommendation has been that ordinance violations enforced by red light cameras are not reportable to [Department of Revenue].*” (emphasis added). See <http://www.macaonline.net/acrobat/2008MACASummerReporter.pdf> (last visited December 16, 2013).

Further, Missouri statutory law expressly provides that the Central Repository, “with the approval of the [S]upreme [C]ourt, shall publish... a standard manual of codes

for all offenses in Missouri.” § 43.512 RSMo. This “manual” (i.e., the Missouri Charge Code Manual) “*shall be used* by all criminal justice agencies....” *Id.* (emphasis added). The Manual in effect from August 2012 to August 2013 instructs that “[p]ublic safety violation[s]” for violating a “red light camera” ordinance shall result in *no* points. L.F. 262-66. The current Manual continues to forbid the reporting and assessment of points for violation of a red light camera ordinance.⁷

The City, like other “agencies,” must comply with the Manual. § 43.512 RSMo. Under the Manual, points are not assessed for any violation of an automated red-light traffic control ordinance. *Id.*

In addition, the DOR has relied on the Manual in his determination to refrain from assessing points for violations of automated red-light traffic control ordinances. In doing so, the DOR has undertaken an interpretation of statutes and regulations pertaining to him, which should receive “considerable deference” from this Court. *Plumb v. Missouri Dept. of Social Services*, 246 S.W.3d 475, 479 (Mo. App. E.D. 2007). The DOR, who is not a party to this action, has discretion to determine whether an offense is considered a “moving” violation. Also, the statutorily mandated Manual treats safety violations detected through red light cameras as no-point violations. Thus, this Court should reverse

⁷ See <http://www.mshp.dps.mo.gov/MSHPWeb/Publications/Handbooks-Manuals/documents/2013-2014%20Charge%20Code%20Manual.pdf> (last visited January 28, 2014; see page 177 of 190, which states that no points shall be assessed for the “safety violation” of violating a “red light camera” ordinance).

the decision of the Trial Court in this case and find that the “no-points” provision of the Camera Ordinance does not conflict with Missouri law.

III. The Trial Court erred in dismissing the citation against Respondent because the Camera Ordinance’s alleged conflict with State law does not provide Respondent with a defense to the citation, in that the statutory obligation to impose points for a moving violation is directory and not mandatory.

A. Standard of Review

A trial court’s decision to grant a motion to dismiss is reviewed de novo. *Otte*, 370 S.W.3d at 900. “Matters of statutory interpretation and the application of [a] statute to specific facts are also reviewed de novo.” *Id.* In addition, the determination of “[w]hether a city exceeds its statutory authority in passing an ordinance” is reviewed de novo. *Carlson*, 292 S.W.3d at 370.

B. Discussion

On the morning of June 7, 2012, Respondent drove her vehicle towards an intersection controlled by a traffic signal. *See* Trial Exhibits 2a, 3, and 4. The signal turned from yellow to red well before Respondent’s vehicle came to the stop bar at the intersection. *See id.* Notwithstanding that the light had completely turned from yellow to red as she approached the stop bar, Respondent maintained her speed and drove into and through the intersection in violation of the red stop signal. *See id.* The Jury found these facts in favor of the City when it rendered its guilty verdict. L.F. 166, 169; App. A3-4.

Respondent, however, claims the Camera Ordinance’s statement that no points

shall be assessed against her driving record conflicts with State law to such an extent that she should be immunized from prosecution.⁸

The Camera Ordinance's no-points clause does not give rise to an evidentiary or procedural defense to a citation for violation of the Camera Ordinance or the Traffic Control Ordinance. This is true because the purported requirement under Chapter 302 of the Missouri Revised Statutes that the City forward a record of conviction to the DOR is, at best, directory and *not* mandatory.

“The cardinal rule of statutory construction requires the court to ascertain the true intention of the legislature, giving reasonable interpretation in light of legislature objective.” *Kersting v. Dir. of Revenue*, 792 S.W.2d 651, 652 (Mo. App. E.D. 1990) (internal quotes omitted). “While the use of the word ‘shall’ in a statute will generally be interpreted as mandatory... such is not always the case.” *State v. Conz*, 756 S.W.2d 543, 546 (Mo. App. W.D. 1988). “In determining whether a statute is mandatory or directory, the general rule is that when a statute provides what results shall follow a failure to comply with its terms, it is mandatory and must be obeyed; however, if it merely requires certain things to be done and nowhere prescribes results that follow, such a statute is

⁸ If that one provision within the Camera Ordinance conflicts with State law, then that provision alone should be severed from the ordinance and Respondent should receive what she apparently claims to be necessary – the assessment of points on her driving record. *See* Appellant's Fourth Point Relied On.

merely directory.” *Id.* Where “a statutory provision does not provide what results shall follow a failure to comply with its terms, it is generally held to be directory.” *Id.*

Section 302.302.1(1) does not state what results shall follow if a city fails to report a moving violation, or if the DOR fails to assess points. As such, the statutory requirement for points is not mandatory, but merely directory.

In *Conz*, the defendant was convicted, as an alcohol-related persistent offender, of felony driving while intoxicated. 756 S.W.2d at 544. On appeal, the defendant noted that the State was required to prove his status as a “persistent offender” by submitting “evidence of convictions received by a search of the records of the Missouri uniform law enforcement system maintained by the Missouri [S]tate [H]ighway [P]atrol.” *Id.* at 546 (internal quotes omitted). Defendant argued that the State failed to present such evidence, and that defendant’s conviction should be reversed. *Id.* The Court of Appeals held that although the statute provided that the State “shall” submit such evidence, that requirement was not mandatory but merely directory. *Id.* Because the defendant did not suffer any prejudice from the State’s failure to introduce such evidence, as the State submitted other evidence of defendant’s prior offenses, defendant’s point was denied and the Court affirmed the defendant’s conviction. *Id.* at 547-48.

Similarly, in *Kersting* the plaintiff was convicted of vehicular manslaughter. 792 S.W.2d at 652. Section 302.225.2, directs the court to forward to the DOR a record of this conviction within ten days of the conviction. *Id.* The court failed to satisfy this requirement. *Id.* Chapter 302 of the Missouri Revised Statutes required that the DOR assess twelve points against plaintiff’s driving record, and revoke plaintiff’s driving

privileges. *Id.* Although the DOR did not timely receive the record of the conviction, he assessed twelve points and revoked the plaintiff's driving privileges. *Id.* Plaintiff filed a petition for review, which the trial court granted due to the previous court's failure to comply with the ten-day deadline. *Id.*

The Court of Appeals held that although § 302.225.2 directs that the court "shall" forward a record of conviction to the DOR within ten days, that requirement was not mandatory because the statute did not set out any consequences should the court fail to comply with the deadline. *Id.* at 652-53. Rather, the Court explained that the "legislative intent" of § 302.302, which calls for the assessment of points, "is to speed revocation of driving privileges, [and] ***not to provide procedural protection for the driver.***" *Id.* at 653 (emphasis added).

Like the defendants in *Conz* and *Kersting*, Respondent cannot utilize the "no-points" clause of the Camera Ordinance to assert any procedural defense to the charge that she violated the City's Traffic Code.

In summary, the Camera Ordinance's no-points clause, even if it is somehow construed as inconsistent with § 302.302, does not provide Respondent a procedural defense to the charged offense. Therefore, the Trial Court erroneously applied the law in dismissing the citation.

The City respectfully requests that this Court reverse the decision of the Trial Court, remand this matter to the Trial Court, and direct the Trial Court to reinstate the Jury's verdict finding Respondent guilty of the charged offenses.

IV. The Trial Court erred in dismissing the citation against Respondent for violating the Camera Ordinance because, in doing so, the Trial Court failed to enforce the Camera Ordinance’s severability clause, in that the severability clause expressly provides that the Camera Ordinance shall remain valid and enforceable except for the term, condition, or provision that is held to be invalid or unenforceable, and the Trial Court should have simply severed any provision of the Camera Ordinance found to conflict with State law and applied the remainder of the Camera Ordinance.

A. Standard of Review

A trial court’s decision to grant a motion to dismiss is reviewed de novo. *Otte*, 370 S.W.3d at 900. “Matters of statutory interpretation and the application of [a] statute to specific facts are also reviewed de novo.” *Id.* In addition, the determination of “[w]hether a city exceeds its statutory authority in passing an ordinance” is reviewed de novo. *Carlson*, 292 S.W.3d at 370.

B. Discussion

After a two-day trial, the Jury returned its unanimous verdict that Respondent failed to stop at a red light. L.F. 166, 169; App. A3-4. Photographs and video of Respondent driving into and through the intersection after the traffic control light had turned red were received into evidence. *See* Trial Exhibits 3 and 4. In her post-trial motion, Respondent did not challenge the sufficiency of the evidence, but instead asserted legal challenges to the no-points provision of the Camera Ordinance. L.F. 180-194. In response, the Trial Court found that only the following provision of the Camera

Ordinance conflicted with State law: “[i]n no case shall points be assessed against any person, pursuant to Section 302.302, RSMo., for a conviction of a violation of the City Traffic Code detected through the automated red light enforcement system.” L.F. 288-89; App. A1-2.

The Camera Ordinance includes a mandatory and unambiguous severability provision at Section 3:

If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer valid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

Trial Exhibit 1; City Ordinance No. 4536, § 3; § 335.095.3 of the Traffic Code; App. A11-16.

Rather than simply severing the no-points section from the Camera Ordinance, and enforcing the ordinance as severed, the Trial Court dismissed the entire citation. L.F. 288-289; App. A1-2.

“It has been uniformly ruled by [the Missouri Supreme Court] that, where a provision of a statute or ordinance [is] severable and [is] not interdependent one upon the other, the whole will *not* be declared void because a part is invalid, but the void parts or portions will be eliminated and the valid parts upheld and enforced, provided this will not defeat the substantial object of the enactment.” *City of St. Louis v. Grafeman Dairy Co.*, 89 S.W. 617, 619 (Mo. 1905); *see also* § 1.140 RSMo (provides that the provisions of every statute are severable). More recently, the Court of Appeals held that an ordinance which contains an invalid section should be upheld, with the invalid section stricken, unless the Court finds “that the [Board of Aldermen] would not have passed the entire enactment if it had known of such invalidity.” *City of Boonville v. Rowles*, 869 S.W.2d 889, 892 (Mo. App. W.D. 1994).

The Camera Ordinance itself clearly states the intent of the Board of Aldermen in this case. The Board specified that if a section is found invalid the ordinance shall “be valid in all other respects and continue to be effective, and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, *it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions.*” (emphasis added). Trial Exhibit 1; City Ordinance No. 4536, § 3; App. A11-16.

The object and purpose of the ordinance is to “enforce public safety” by reducing the number of people that run red lights. City Ordinance No. 4536 (sixth “Whereas Clause”); App. A12. Thus, the no-points provision of the Camera Ordinance can be stricken from the ordinance without defeating the “substantial object of the enactment.”

In *St. Louis County v. Glore*, the County charged four defendants with violating a County obscenity ordinance. 715 S.W.2d 565, 566 (Mo. App. E.D. 1986). The ordinance rendered it unlawful “for any person for monetary consideration to knowingly promote any obscene material or to advertise, give notice or supply information where, how, of whom, or by what means possession, control or use can be obtained of any obscene material.” *Id.* (internal quotes omitted). The ordinance contained a presumption that a “person who promotes material or possesses the same with the intent to promote it in the course of his business is presumed to do so knowingly for monetary consideration.” *Id.* (internal quotes omitted). The trial court determined that this presumption “eliminated the element of knowledge as required proof by the Court in contravention of the Fourteenth Amendment of the United States Constitution.” *Id.* Based on this finding, the trial court dismissed the charges against the defendants. *Id.*

The Court of Appeals agreed that a defendant must “*knowingly* engage in the sale or distribution of obscene material,” and found that the presumption “serve[d] to eliminate this element.” *Id.* at 568 (emphasis in original). “However, the [County] ordinance contains a severability provision.” *Id.* The Court noted that if the presumption is stricken from the ordinance, “the offense remains the same, with the burden on the County to establish each element of the offense.” *Id.* The Court found that the presumption clause was void, and that the section containing the presumption “is fully severable from the remaining sections.” *Id.* As such, the Court held that the trial court erred in dismissing the charges. *Id.*

In the case at bar, the Trial Court found that one sentence within the Camera Ordinance conflicted with State law and, on that basis alone, dismissed the entire citation. L.F. 288-289.

Because the Camera Ordinance contains a valid severability clause, the alleged offending sentence could and should have been simply stricken from the ordinance. The balance of the Camera Ordinance, which requires proof beyond a reasonable doubt that the accused violated the Traffic Code, should have been enforced.

The Camera Ordinance, Ordinance No. 4536, clearly expressed that the Board of Aldermen's intent in passing the Camera Ordinance was *to improve public safety by decreasing the number of individuals that run red lights*. This expression of the core legislative intent of the City should have been given effect by the Court in determining whether severance is appropriate.

In addition, severing the no-points provision within the Camera Ordinance does *not* constitute a "rewrite" of the Camera Ordinance. The Camera Ordinance does not require the addition of any new provisions, but only needs the no-points provision severed in order to purportedly comply with Missouri law.

Also, Missouri law does not limit the effectiveness of severability clauses to only provisions that are deemed unconstitutional. Instead, severability clauses should be employed whenever a single provision within an ordinance is invalid or conflicts with State law. Section 1.140 expressly provides that "[t]he provisions of *every statute are severable.*" (emphasis added); see *Avanti Petroleum, Inc. v. St. Louis County*, 974 S.W.2d 506, 512 (Mo. App. E.D. 1998) (§ 1.140 has been adopted as "the test for

severability of an unconstitutional county ordinance provision”). Section 1.140 does not limit severability of an ordinance or statute to only those provisions that are unconstitutional, but provides that the provisions of every statute are severable. The severance rule does and should apply to the City’s ordinance.

For example, in *National Advertising Co. v. Mo. State Highway and Transp. Comm’n*, the Court of Appeals severed certain provisions from a City of St. Louis ordinance *even though those provisions were not unconstitutional, but merely conflicted with state law*. 862 S.W.2d 953, 955-57 (Mo. App. E.D. 1993).

As an alternative position to that expressed in Points I, II, and III, the City respectfully requests that this Court reverse the Trial Court’s dismissal of the citation and direct the Trial Court to reinstate the Jury’s finding that Respondent violated the Camera Ordinance, as severed, and impose the sentence recommended by the Jury.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) in that the Brief contains 7,038 words, exclusive of the cover, certificate of service, certificate required by Rule 84.06(c), signature block and appendix as determined by Microsoft Office Word software;

2. This Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 13-point Times New Roman.

4. That a true and correct copy of Appellant's Substitute Brief and separate Appendix were both served by the Court's electronic filing system on this 15th day of September, 2014, to:

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