

**Summary of SC94379, *City of St. Peters, Missouri v. Bonnie A. Roeder***

Appeal from the St. Charles County circuit court, Judge Ted House

Argued and submitted December 2, 2015; opinion issued August 18, 2015

**Attorneys:** The city was represented by Victor Scott Williams, Nicholas J. Komoroski and Jared D. Howell of Hazelwood & Weber LLC in St. Charles, (636) 947-4700; and Roeder was represented by W. Bevis Schock, an attorney in St. Louis, (314) 726-2322, and Hugh A. Eastwood, another attorney in St. Louis, (314) 809-2343.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A city appeals the circuit court's judgment dismissing its charge against a woman for violating an ordinance as captured by an automated red light enforcement system. In a decision written by Chief Justice Patricia Breckenridge, the Supreme Court of Missouri affirms the judgment. Six judges agree that, because the ordinance creates a moving violation for which state law requires the assessment of two points against the violator's driving record, the portion of the ordinance stating no points will be assessed against the violator's driving record conflicts with state law and is void. Six judges agree this invalid portion may be severed from the rest of the ordinance because the city stated it would have enacted the ordinance without the invalid portion. Five judges agree this Court will give effect to that severance and permit enforcement of the valid portions of the ordinance prospectively only because severance in the woman's case would violate constitutional notions of fair notice.

Judge Laura Denvir Stith concurs in part and dissents in part. She agrees with the result of the principal opinion, its analysis of the conflict between the ordinance and state law, and all its other portions except the dicta in its final footnote in which it disagrees that the city's ordinance creates a rebuttable presumption that the vehicle's owner is the driver. Regardless of whether the ordinance technically includes an implicit rebuttable presumption comparable to the explicit rebuttable presumption invalidated in SC94212, *Tupper v. City of St. Louis*, also decided today, it misleads the reader to believe that it is the citizens' burden to prove they were not driving, with the result that the city's notice said such proof was required. As such, the ordinance should be invalidated on this basis also.

In an opinion joined by one other judge, Judge George W. Draper III dissents. He would address the woman's contention that the ordinance contained a rebuttable presumption that the owner committed the violation. He would confine the application of this Court's rebuttable presumption analysis in its 1949 decision in *City of St. Louis v. Cook* to parking violations and instead would apply the Court's analysis in SC94212, *Tupper v. City of St. Louis*, also decided today, to invalidate the ordinance, which operates the same as the one invalidated in *Tupper*. Having found the ordinance invalid, he would affirm the circuit court's judgment dismissing the charge against the woman.

Judge Paul C. Wilson dissents. He agrees that the no-points provision of the ordinance conflicts with state law and is void and that the remainder of the ordinance is valid. He disagrees,

however, that the ordinance should be enforced only prospectively. He would find there is no basis for dismissing the charge against the woman or otherwise failing to give effect to the jury's verdict that she violated the ordinance. He would remand (send back) the case for entry of judgment, after which the director of revenue must assess the points required by the statute.

Judge Roger M. Prokes, presiding judge of the 4th Judicial Circuit (Atchison, Gentry, Holt, Nodaway and Worth counties), sat in this case by special designation in place of Judge Zel M. Fischer.

**Facts:** St. Peters enacted an ordinance authorizing the installation and use of an automated red light enforcement system. The system produces images of a motor vehicle running a red light, the vehicle's license plate, the vehicle's operator and the traffic control signal. A city police officer reviews the images and, if the officer determines a violation occurred, the officer uses any lawful means to identify the vehicle's owner. The city then serves a summons on the owner within 60 days of the violation. The ordinance classifies a violation as an infraction punishable by a fine no greater than \$200 and states that no points shall be assessed for a violation detected through the automated red light enforcement system. In June 2012, the city issued a notice of violation and summons to Bonnie Roeder, stating that a vehicle registered to her was captured running a red light. The attached instructions gave Roeder three choices: pay a \$110 fine; submit an "affidavit of non-responsibility" showing either that Roeder sold the vehicle before the violation or that her vehicle or its license plates were stolen at the time of the violation; or appear in the municipal division. The notice also stated that no points would be assessed against Roeder's driving record. Roeder failed to complete any of the three options and failed to appear at a subsequently scheduled hearing in the municipal division, after which the city charged her with the additional violation of failure to appear. At her request, her case was certified for a jury trial in the circuit court. Before trial, Roeder filed a motion to dismiss, asserting challenges to the ordinance and notice of violation. The court overruled her motion, and following a September 2013 jury trial, the court acquitted her of failure to appear, and the jury found her guilty of violating the red light ordinance and assessed a \$110 fine. Following a court of appeals decision regarding a similar ordinance, Roeder filed a renewed motion for acquittal. The circuit court sustained the motion and dismissed the charge for violating the red light ordinance. The city appeals.

**AFFIRMED.**

**Court en banc holds:** (1) The ordinance conflicts with state law and, to that extent, is invalid. When a municipal ordinance conflicts with a state statute, the ordinance is void. The test for determining whether a conflict exists is whether the ordinance permits what the statute prohibits or prohibits what the statute permits. Under section 302.302.1, RSMo, two points must be assessed against a violator's driving record for any moving violation of a state law or county or municipal traffic ordinance not otherwise listed in section 302.302.1. The city charged Roeder with driving through an intersection when the light was red while that violation was detected by an automated enforcement system. Running a red light, regardless of whether detected by an automated enforcement system, is not an offense specifically listed in section 302.302.1, but it is a moving violation as defined by section 302.010, RSMo, because the motor vehicle involved in the violation is in motion at the time the violation occurs. Accordingly, section 302.302.1(1)

requires that a person found to violate the ordinance will have two points assessed against his or her driving record. Because the purpose of the point system is to protect the public, the assessment of two points for moving violations under section 302.302.1(1) is mandatory. The ordinance, on the other hand, states that no points will be assessed for a violation. As such, the ordinance conflicts with state law by prohibiting the assessment of points that state law permits.

(2) The portion of the ordinance that conflicts with state law can be severed from the valid portions. When a provision of an ordinance is found to be invalid, the Court will not declare the entire ordinance void unless it determines the municipality would not have enacted the ordinance without the invalid portion. In enacting the ordinance at issue here, the St. Peters board of aldermen found that a vehicle running a red light is a serious risk to the public and that use of an automated red light enforcement system had been proven to improve public safety significantly. The ordinance also contains a severability clause stating that, if any provision of the ordinance is found to be invalid or unenforceable, the rest of the ordinance shall remain in effect, valid and enforceable and that it was the board of aldermen's intent to enact the ordinance without the invalid or unenforceable provisions. After severing the invalid portion of the ordinance, the remaining ordinance is silent regarding the assessment of points. As such, two points will be assessed pursuant to section 302.302.1.

(3) Severance and enforcement of the remaining valid portion of the ordinance against Roeder would violate due process by imposing a direct and negative consequence of her conviction when the ordinance affirmatively informed her that a violation of the ordinance would not result in points. Due process requires fair notice of a penalty such that a defendant must be charged with any fact that increases the maximum penalty for a crime. Such notions of fairness dictate that this Court give effect to the severance and permit enforcement of the remaining valid portions prospectively only. Because Roeder did not have fair notice that points would be assessed at the time of violation – even though points are not assessed primarily for punishment – the Court will not permit enforcement of the valid portions of the ordinance in her case.

**Opinion concurring in part and dissenting in part by Judge Stith:** The author agrees with the result of the principal opinion, its analysis of the conflict between the ordinance and state law, and all its other portions except the dicta in its final footnote in which it disagrees that the city's ordinance creates a rebuttable presumption that the vehicle's owner is the driver. The ordinance states that a driver shall obey the red light, but its ordinance nowhere provides that a notice of violation be sent to the driver of the vehicle or otherwise requires any effort by the city or its police officers to identify the driver. Instead, it requires an officer to use any lawful means to identify the vehicle's owner and provides that the summons will be sent to the owner along with a statement that the recorded image will be submitted as evidence for prosecuting the violation against the owner. As such, the ordinance necessarily assumes and is premised on the owner being the driver. This also is how the city reads its ordinance, for the city's notice provides that the owner must pay the fine unless the owner shows he or she was not the driver and identifies the driver or shows he or she falls within other exceptions to owner liability. Regardless of whether the ordinance technically includes an implicit rebuttable presumption comparable to the explicit rebuttable presumption invalidated in SC94212, *Tupper v. City of St. Louis*, also decided today, it is misleading, which in turn caused the improper notice, and should be invalidated on this basis also.

**Dissenting opinion by Judge Draper:** The author would hold the ordinance void and would affirm the circuit court’s judgment dismissing the city’s prosecution of Roeder on that ground. The Court should address Roeder’s contention that the ordinance contained a rebuttable presumption that the owner committed the violation and that this presumption impermissibly shifted the burden of proof away from the city. While the express language of the ordinance does not create a rebuttable presumption, its application creates an implied rebuttable presumption. The ordinance directs a police officer reviewing the recorded image to identify the vehicle’s owner and directs that the summons be served on the owner. The notice advises the owner that a vehicle “registered in your name” appears to have run a red light, and the notice and instructions state that the registered owner is responsible for paying the fine or appearing in court. The instructions further state that it is sufficient evidence under the ordinance that the person registered as the vehicle’s owner was operating the vehicle at the time of the violation. Only if the vehicle is registered to more than one person does the ordinance require the police officer reviewing the recorded image to identify the registrant most likely depicted as the driver. Otherwise, the owner must provide evidence that the vehicle had been sold or stolen or must appear in court and identify another driver. This rebuttable presumption is impermissible.

The author would confine this Court’s rebuttable presumption analysis of the parking ordinance in its 1949 decision in *City of St. Louis v. Cook* to the facts under which *Cook* was decided and not extend it to the automated traffic enforcement mechanisms employed today. In 1949, it generally was a vehicle’s registered owner who operated the vehicle. Several recent appellate court decisions have questioned *Cook*’s application to red light camera ordinances containing a rebuttable presumption, given that *Cook* addressed parking rather than moving violations, given transportation developments since 1949, and given that multiple driver and vehicle households are commonplace now. Unlike in *Cook*, the red light ordinances do make the inferred fact conclusive and, to avoid liability, the owner must submit evidence to prove otherwise. Instead, the author would apply the Court’s analysis in SC94212, *Tupper v. City of St. Louis*, also decided today, to invalidate the St. Peters ordinance, which operates the same as the one invalidated in *Tupper*. The scheme in St. Peters effectively shifts the burden of persuasion, requiring the owner to prove to the factfinder that he or she was not operating the vehicle at the time of the violation. *Tupper* held this presumption was unconstitutional because it relieves the prosecution from proving, beyond a reasonable doubt, an element of the violation, which is impermissible under United States Supreme Court precedent.

**Dissenting opinion by Judge Wilson:** The author agrees that the no-points provision in the city’s ordinance is void because it conflicts with the requirement in section 302.302.1, RSMo, that two points be assessed for any ordinance violation that qualifies as a moving violation. The author also agrees that there is no basis in the record to hold the city would not have enacted the ordinance had it known the no-points provision would be void. As such, the author agrees that the rest of the ordinance remains enforceable – but, as a result, the author would find there is no basis to dismiss Roeder’s prosecution or otherwise fail to give effect to the jury’s verdict that she violated the ordinance. Having found the remainder of the ordinance enforceable, the Court should enforce the ordinance as well as the statute. There is nothing in this Court’s precedent for a prospective-only application of the ordinance. More than 40 years ago, this Court rejected the contention that assessing points for a traffic violation is a punishment imposed for that violation.

Given that precedent and the context of chapter 302, RSMo, the Court should hold that the legislature intended the points system to be a regulatory evaluation of a driver's collective traffic violations and not a method of punishing any or all of those violations. Assessing points under the statute would not result in unfairness to Roeder. The jury found beyond a reasonable doubt that she ran the red light, and she does not claim she was relying on the no-points provision in the ordinance or the notice when she did so. There is no increased penalty imposed on Roeder, nor did she lack fair notice of the consequences. In fact, she pleaded not guilty on the basis that the statute requiring points to be assessed trumps the city's ordinance. The author, therefore, would remand the case for entry of judgment, after which the director of revenue must assess the points required by section 302.302. This Court has no authority to override that statute and compel the director not to assess points against Roeder.