

IN THE SUPREME COURT OF OHIO

ORIGINAL

State ex rel. Anthony C. Christoff, et al.,

CASE NO. 11-0235

Relators,

ORIGINAL ACTION

v.

*Earle B. Turner, Clerk of Courts,
Cleveland Municipal Court
and as Violations Clerk,
Cleveland Parking Violations Bureau,
et al.,*

Respondents.

**Relators' Motion for Reconsideration
And Memorandum in Support
S. Ct. Prac. R. 11.2(B)(3)**

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MOTION FOR RECONSIDERATION

Drivers who speed or run red lights endanger people throughout Ohio. To protect the public, the state mandates the imposition of collateral-disabilities, such as points, on drivers who violate traffic ordinances. Because points for speeding and red light ordinance violations can be assessed only by court personnel and only after a court proceeding, R.C. 4510.036(A) & (B), the only possible way to achieve what this Court has previously characterized as the state's "substantial," "extremely high," and "compelling interest to promptly remove careless drivers from the road as a public safety measure," is to assure that the violation of all such ordinances are adjudicated in a municipal court. Consequently, no matter how many times Cleveland fines drivers through its extra-judicial proceeding for speeding or running red lights, they will not, and cannot, be assessed statutorily-mandated points, leaving them free to endanger those beyond Cleveland's corporate limits. For this reason, and pursuant to S. Ct. Prac. R. 11.2(B)(3), Relators move this Court to reconsider its dismissal without decision of their Petition in mandamus and prohibition and urge this Court to find, "upon reflection,"¹ that its dismissal was erroneous.

MEMORANDUM IN SUPPORT

I. PRELIMINARY STATEMENT

Relators request reconsideration because the significance of permitting a city to license speeding and red light ordinance violations for a purely monetary price through an extra-judicial proceeding appears to have been overlooked. This Court's ruling allows those who speed and run red lights in Cleveland to avoid with impunity the imposition of

¹ *State ex rel. Huebner v. W. Jefferson Village Council* (1996), 75 Ohio St.3d 381, 383, 662 N.E.2d 339.

statutorily mandated collateral-disability penalties such as court-imposed points and predicate-offense penalty enhancements. **Ohioans justifiably expect that the statutes requiring the removal of careless and dangerous drivers from the roads by the accumulation of points and predicate-offense penalty enhancements will be enforced, and those statutes can only be enforced by municipal court adjudication.**

The state unquestionably “has a compelling interest to promptly remove careless drivers from the road as a public safety measure.” *State v. Uskert* (1999), 85 Ohio St.3d 593, 600, 709 N.E.2d 1200, 1205; *see also City of Maumee v. Gabriel* (1988), 35 Ohio St.3d 60, 63, 518 N.E.2d 558, 561–62 (holding that the state has a “substantial” and “extremely high” interest in “removing dangerous and uncooperative drivers from the roads”). The state achieves this goal by completely occupying the field of driver’s licenses and imposing collateral-disability penalties such as points or license disqualifications for violations of traffic laws and ordinances. *See Mendenhall v. Akron* (2008), 117 Ohio St.3d 33, 41, 881 N.E.2d 255, 264, 2008-Ohio-270, ¶38. Thus, throughout the state, drivers who speed or run red lights are subject to penalties beyond mere monetary fines. Except, that is, in cities such as Cleveland, where a driver who speeds or runs a red light is subject only to an extra-judicially imposed civil fine and, as Cleveland’s code states “no points authorized by Section 4507.021 [sic] of the Revised Code (‘Point system for license suspension’) shall be assigned to the owner or driver of the vehicle.” Cleveland Cod. Ord. §413.031(I).

Only the appropriate court—here a municipal court—can impose collateral-disability penalties for violations of traffic ordinances. R.C. 4510.036(A) & (B). All violations of traffic ordinances, therefore, must be adjudicated in municipal court—where

collateral disabilities can and must be assessed—not in extra-judicial proceedings where only monetary fines can be imposed. Home rule authority does not permit a municipality to circumvent this requirement.

II. LAW AND ARGUMENT

A. This Court has characterized the need to remove careless drivers from the roads as “compelling,” “substantial,” and “extremely high.”

As this Court has repeatedly made clear, “the state has a compelling interest to promptly remove careless drivers from the road as a public safety measure.” See *Uskert*, and *City of Maumee, supra* (holding that the state has a “substantial” and “extremely high” interest in “removing dangerous and uncooperative drivers from the roads”).

Indeed, as a party to the Driver License Compact, R.C. 4510.61, Article I, (a), the state has expressly agreed with other states that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(Emphasis added.)

The state achieves this objective by completely occupying the field of driver's licenses and collateral-disability penalties associated with traffic violations such as points or license disqualifications. *See Mendenhall*, at ¶38. Only the state issues driver's licenses. Under R.C. 4507.10(A)(1), no person shall operate a motor vehicle within this state without having a valid driver's license issued under R.C. Chap. 4507, or a commercial driver's license issued under R.C. Chap. 4506.

A driver's license issued by the state is a privilege conditioned upon a driver not accumulating greater than a set number of points in a given period of time. By statute, drivers who commit moving violations (defined in R.C. 4510.01(E) as "any violation of *any ... ordinance* that regulates the operation of vehicles, streetcars, or trackless trolleys on the highways or streets" (emphasis added)) are subjected not only to criminal sanctions, but also to statutorily mandated "collateral disabilities" which this Court has described as "*penalties*." At least two types of collateral disabilities can be imposed: (1) points under R.C. 4510.036 against the holder of a "driver's license"² or a "commercial driver's license,"³ and (2) disqualification under R.C. 4506.16 against the holder of a commercial driver's license. As this Court held in *In re S.J.K.* (2007) 114 Ohio St.3d 23, 26, 867 N.E.2d 408, 410-411:

Courts are required to assess points for violations pursuant to a statutorily imposed formula based upon the type of traffic offense committed. R.C. 4510.036(C). The Bureau of Motor Vehicles maintains a record of the points assessed on a person's driver's license. R.C. 4510.036(A). Depending upon the existing number of points on a person's driving record, an additional four points may even result in the suspension of a person's driver's license

² "Driver's license" is defined in R.C. 4507.01(A).

³ "Commercial driver's license" is defined in R.C. 4507.01(A).

when 12 or more points are accumulated within a two-year period. R.C. 4510.037(B). The points may also increase the severity of future penalties, raise insurance rates, or impair the ability to obtain insurance. ***Thus, the imposition of points is a penalty that constitutes a collateral disability flowing from a conviction for a traffic offense.***

Id. (emphasis added). Imposition of points, therefore, is a penalty that constitutes a collateral disability flowing from a ***conviction*** for a traffic offense.

The existence of a ***court*** “conviction” is the *sin qua non* for the imposition of points or other commercial driver’s license disqualifications.⁴ Courts must assess points pursuant to R.C. 4510.036(A) & (B), for a “conviction” for the “violation of any law or ordinance pertaining to speed,” R.C. 4510.036(C)(11), or from any “moving violation,” R.C. 4510.036(C)(13), *e.g.*, red light violations. For purposes of the Compact, R.C. 4510.61, Art. II:

(c) “Conviction” means a conviction of any offense related to the use or operation of a motor vehicle that is prohibited by state law, municipal ordinance, or administrative rule or regulation; ... ***and which conviction ... is required to be reported to the licensing authority.***

(Emphasis added.)

Of utmost relevance, the term “conviction” includes civil determinations of traffic ordinance violations. For R.C. Chap. 4506, R.C. 4506.01(F) provides (with emphasis added):

“Conviction” means an unvacated adjudication of guilt ***or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal,*** ... regardless of whether or not the penalty is rebated, suspended, or probated.

⁴ Convictions ***in municipal court*** for speed and other municipal traffic ordinance violations can also enhance the penalty for a subsequent offense. R.C. 4511.21(P), 4511.99(B) & (C), and 4511.01(III) (“predicate motor vehicle or traffic offense”).

The “authorized administrative tribunal” referenced does not include the administrative tribunals *sub judice*. Instead, it refers to the administrative tribunal of a **state agency** whose administrative order may serve as evidence of a “conviction.” R.C. 4506.16(E)(2). The civil traffic offense *sub judice* must for this reason alone be adjudicated in municipal court.

So important is the reporting of points that: (1) there is a repeat traffic offender, point system, R.C. 4510.037; (2) license suspensions apply even to “violation of a municipal ordinance that is *substantially similar* to a provision of the Revised Code,” R.C. 4510.05 (emphasis added); (3) even federal district courts may forward abstracts of conviction to the bureau of motor vehicles, R.C. 4510.031(A); (4) failure to report abstracts to the bureau of motor vehicles is grounds for a public official’s removal from office, R.C. 4510.035; and (5) *under the Driver License Compact, convictions must be reported by Ohio’s licensing authority, i.e., the bureau of motor vehicles, to the home state of an out-of-state driver, R.C. 4510.61, Art. III*, so that each state shall give the same effect to the conduct reported in another state. R.C. 4510.61, Art. IV.

Thus, reporting convictions is the predicate upon which citizens throughout the state, and residents in states within the Compact, rely to keep dangerous, repeat traffic offenders off the road. When violations of traffic ordinances are adjudicated outside of municipal court, no “convictions” exist—either civil or criminal—and without “convictions” no requirement exists to report abstracts of convictions to the bureau of motor vehicles. Under Cleveland’s ordinances, drivers who endanger others both in Ohio and elsewhere by speeding and running red lights are permitted to do so without the imposition of statutorily mandated collateral disability penalties and enhancements.

B. Home rule authority does not allow a municipality to enforce traffic ordinances through an extra-judicial process; local traffic ordinances must be adjudicated in municipal courts.

The state's comprehensive⁵ statutory scheme coordinating speeding and red light violations with the imposition of collateral-disability penalties (e.g., points, license disqualifications, and predicate-offense penalty enhancements) for violations of traffic laws and ordinances clearly takes precedence over municipal ordinances imposing civil-only penalties for speeding and red light violations. Under *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, "[a] state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law." *Id.*, at ¶9. Here, all three tests fall in favor of the state's statutes taking precedence over local traffic ordinances.

1. Statutes regulating speed limits and red light violations are general laws.

"[S]tatutes regulating matters such as speed limits ... are regulations '*for the protection of the lives of the people of the whole state*' and have 'no special relation to any of the political subdivisions of the state.' *Schneiderman*, 121 Ohio St. at 84, 167 N.E. 158 (speed limits), quoting *Froelich v. Cleveland* (1919), 99 Ohio St. 376, 386, 124 N.E. 212;⁶ [additional citation omitted]. Thus, those statutes were deemed to be 'general

⁵ *Jacob v. Curry* (1975), 42 Ohio St.2d 145, 146, 326 N.E.2d 672, 673 ("A review of that statute [§4507.40, the predecessor to §4510.036] discloses a *comprehensive, step-by-step legislative scheme which provides for, inter alia, the compilation of violation records by appellee; allocating points to specified offenses; and suspending driving privileges of persons exceeding the allowable point limits.*") [Emphasis supplied.]

⁶ *Froelich v. City of Cleveland* (1919), 99 Ohio St. 376, 386, 124 N.E. 212, 215, provides:

When the state passes a law which prevents the running of an automobile upon highways faster than at a certain rate, ... that is a

laws.” *Canton v. State* (2002) 95 Ohio St.3d 149, 157, 766 N.E.2d 963, 970. The same must certainly be true for statutes regulating compliance with red lights.⁷

2. ***Municipal ordinances imposing civil penalties for speeding and red light violations conflict with state law.***

“[A] municipal ordinance is in conflict with state law when there is a ***significant discrepancy*** between the punishments imposed for that behavior.” *Mendenhall*, at ¶35 (emphasis added). The significant discrepancy here consists of the total absence of the opportunity for the mandatory imposition of collateral disabilities, *i.e.*, “***penalties***,” per *In re S.J.K.*, (and without the effect of predicate-offense penalty enhancement) by court personnel. The lack of any effect whatsoever on licensing “alter[s] statewide traffic regulations,” *Mendenhall*, at ¶41, which does not constitute the exercise of “concurrent police power” condoned by *Mendenhall*, at ¶41, because it does not “apply uniformly to all citizens throughout Ohio.” *Id.*

In *Marich v. Bob Bennett Constr. Co.* (2008), 116 Ohio St.3d 553, 880 N.E.2d 906, 2008-Ohio-92, this Court contrasted a statute that limited the width of most vehicles traveling on public roads, R.C. 5577.05(A)(4), and the availability of a permit from identified state or municipal officials for exceptions thereto, R.C. 4513.34(A), with a municipal ordinance purporting to eliminate the statutory permit exceptions for vehicles

regulation for the protection of the lives of the people of the whole state, and has no special relation to any of the political subdivisions of the state. Such a law applies upon all streets ..., except as prescribed by the law itself. [Emphasis supplied.]

⁷ And if home rule powers under Section 3, Article XVIII of the Ohio Constitution are insufficient to allow municipal corporations to interfere in the state’s regulation of private detective licenses, as this Court held in *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted* (1992), 65 Ohio St.3d 242, 602 N.E.2d 1147, they are hardly sufficient to interfere with the state’s regulation of driver’s licenses.

traveling on certain roads. *Id.*, at ¶3. Finding the ordinance void under a home rule analysis, this Court determined that:

The conflict between these sections is clear. Norton Codified Ordinances 440.01 *permits persons to operate excessively wide vehicles on certain roads without engaging in the statutorily mandated permit process and without demonstrating good cause for the exception*. While R.C. 5577.05 and 4513.34 prohibit such traffic without a permit, Norton Codified Ordinances 440.01(c)(1) explicitly permits it. Such a plain conflict under the *Struthers* framework satisfies the second element of the *Canton* test.

Id., at ¶34. No meaningful difference exists between the situation in *Marich* and the one here. Cleveland “permits persons to operate excessively [fast] vehicles on certain road without engaging in the statutorily mandated [license point accumulation] process”

At stake are collateral disabilities that are more inextricably and permanently attached to traffic violations than was the proscriptive appellation “felony,” to carrying a concealed weapon in *Cleveland v. Betts* (1958), 168 Ohio St. 386, 154 N.E.2d 917. And, while in *Betts*, both the ordinance and statute *proscribed the same conduct*, albeit providing a different penalty, here *the ordinance permits or licenses* – literally – *that which the statutes forbid*, namely: repeated speeding and/or red light violations *ad infinitum*, by in-state and out-of-state licensed drivers without the imposition of any of the *statutorily mandated collateral disabilities*, which, in turn, would lead to suspension and disqualification of driving privileges, or enhanced penalties. Simply stated, Cleveland’s ordinances permit drivers who endanger others by speeding and running red lights and who are caught doing so with cameras to continue endangering others without any impact on their driving privileges, even though the state’s statutes mandate the imposition of collateral-disability penalties.

The ordinances at issue proscribe the same conduct prohibited by statute, namely: speeding or red light violations. Concededly, by imposing a civil fine the ordinances do not condone the specified traffic violations. At the same time, however, the civil violators are licensed by the state to drive, but not to speed or to crash red lights. Because of state licensure, the penalties inflicted by means of points or disqualifications are solely within the province of the General Assembly. Accordingly, these penalties cannot be separated from the offense by municipal ordinance under the guise of home rule powers. Rather, the imposition of collateral disabilities for speeding and red light violations are “*inextricably intertwined with*, and dependent upon” the adjudication of such violation in municipal court where the statutorily mandated collateral disabilities can be imposed. *See, e.g., State v. Gustafson* (1996), 76 Ohio St.3d 425, 439, 668 N.E.2d 435, 446 (“In short, an R.C. 4511.191 administrative license suspension is *inextricably intertwined with*, and dependent upon, an arrest for violation of Ohio's DUI statute, R.C. 4511.19”). [Emphasis supplied.]

In deciding *City of Toledo v. Best* (1961), 172 Ohio St. 371, syllabus, this Court recognized that “[w]here the “only distinction between a state statute and a municipal ordinance, proscribing certain conduct and providing punishment therefor, is as to the penalty only but not to the degree, *i.e.*, misdemeanor or felony, [the] ordinance does not conflict with the general law of the state.” Here, however, the elimination of collateral-disabilities from traffic ordinance violations is both an additional “distinction” and a different “degree” of an offense. The offending ordinances thus conflict with the general law of the state. *Id.*

The question in *Betts*, 168 Ohio St. at 388, 154 N.E.2d at 918, was:

whether a municipality, under the police power given it by Section 3, Article XVIII of the Constitution of Ohio, may validly enact and enforce an ordinance prohibiting the carrying of concealed weapons and making the violation thereof a misdemeanor, in face of a statute covering the same subject and providing that a convicted offender *may be* sentenced to the penitentiary.

In holding that Cleveland's ordinance could not make a misdemeanor the very conduct that the state made a felony, this Court warned, "[i]f by ordinance a municipality can make the felony of carrying concealed weapons a misdemeanor, what is there to prevent it from treating armed robbery, arson, rape, burglary, grand larceny or even murder in the same way." Likewise, if by ordinance a municipality can eliminate the imposition of collateral disabilities for speeding and red light violations, what is there to prevent it from eliminating points (or criminal penalties) from hit-and-run violations or DUI?

3. *The regulation of traffic constitutes the exercise of police power.*

"It is well established that regulation of traffic is an exercise of police power that relates to public health and safety, as well as to the general welfare of the public."

Mendenhall, at ¶19.

4. *State ex rel. Scott v. Cleveland and Mendenhall are not controlling.*

In *State ex rel. Scott v. Cleveland* (2006), 112 Ohio St.3d 324, 859 N.E.2d 923, 2006-Ohio-6573, this Court did not hold that the applicable ordinance scheme comported with home rule principles. Rather, it found only that it was "unclear whether Section 413.031 conflicts with R.C. 4521.05." *Id.*, at ¶20. (Emphasis supplied.) Here, the lack of collateral disabilities for civil speeding or red light ordinance violations conflicts with the statutes which proscribe the exact conduct verbatim. Moreover, the *Scott* decision only addressed a home rule argument by applying a "patent and unambiguous[] lack [of] jurisdiction" standard never before applied by this Court in such a context. In fact,

“home rule” and “patent and unambiguous” have only been referenced in one other Ohio Supreme Court case, *State ex rel. Columbus S. Power Co. v. Fais* (2008), 117 Ohio St.3d 340, 346, 884 N.E.2d 1, 7, but appropriately, the two principles were not related to one another. Finally, the offending ordinances at issue in this action do not provide for the removal of dangerous drivers from the road. This is the very “significant discrepancy” in punishment which even *Mendenhall* would not condone. *Mendenhall*, at ¶35.

III. CONCLUSION

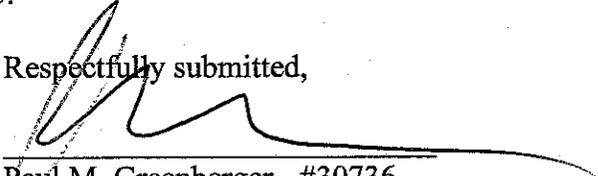
Drivers who speed and run red lights endanger everyone, which is why the state conditions the continued possession of a driver’s license upon compliance with traffic laws and ordinances—whether they be state statutes or municipal ordinances. Thus, the state’s express policy is to promote compliance with all traffic laws and ordinances in each jurisdiction in which people drive. It is the “over-all compliance with motor vehicle laws, ordinances, and administrative rules and regulations” that serves “as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.” R.C. 4510.61(b)(2).

To maintain the integrity of the state’s driver’s license laws—a field fully occupied by the state alone—all violations of traffic ordinances must be adjudicated in municipal court where statutorily mandated collateral disabilities, *i.e.*, penalties and enhanced penalties, as well as license disqualifications, may be imposed. The state-wide mandatory system for the imposition of those “collateral disabilities,” which this Court has appropriately characterized as “penalties,” will become a complete nullity once each municipality adopts an extra-judicial forum for the civil adjudication of as many traffic

offenses as possible. This is so because only court personnel have the capacity and mandatory duty to abstract and transcribe points to records of convictions obtained in their respective courts.

The only way to assure that the state's "substantial" and "extremely high" interest "to remove from the road those drivers who fail to obey the procedural laws or regulations," *City of Maumee*, at 63, is to require that which the statutory scheme for municipal courts on the one hand, R.C. 1901.20(A)(1), and operator's licensing on the other hand, R.C. Chaps. 4506, 4507, and 4510, mandate, namely: adjudicate all traffic ordinance violations in the municipal courts. Reconsideration of this Court's dismissal of Relators' Petition in mandamus and prohibition will serve the state's "compelling interest to promptly remove careless drivers from the road as a public safety measure." *Uskert*, 85 Ohio St.3d at 600, 709 N.E.2d at 1205.

Respectfully submitted,



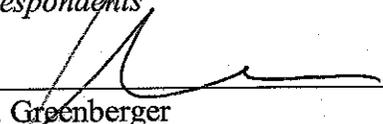
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CERTIFICATE OF SERVICE

A copy of the foregoing has been served via first class U.S. Mail, postage prepaid
this 12 day of May, 2011, upon the following parties:

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