

ENDORSED

**STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT**

CITY OF LAS CRUCES,

Plaintiff-Appellee,

**v
CRISTOBAL RODRIQUEZ,**

Defendant-Appellant, pro se.

FILED
2011 APR -5 AM 8:45
DISTRICT COURT
DONA ANA COUNTY, NM

No.CV-2010-0202

Judge Arrieta

CERTIFICATION TO THE COURT OF APPEALS

THIS MATTER having come before the Court on the Notice of Appeal filed by the Appellant Rodriguez on January 20, 2011, pursuant to NMRA Rule 1-074, from an adverse decision from the hearing officer under the Safe Traffic Operations Program, and the Court having taken notice that a Certification on similar issues has been requested in City of Las Cruces v. Avallone Mechanical Company, No. CV-2010-1693 in this same district, the Court hereby states as follows:

Introduction

This is a final decision from the hearing officer appealed to the district court but which remains undecided by the district court. The appeal challenging the STOP Program raises constitutional issues which are of substantial public interest and are issues which will likely recur with some frequency. In view of the certification in Avallone Mechanical Company, the need for uniformity in the resolution of these issues is great and will result in advancing the interests of judicial economy and reduce future litigation.

1. Respondent received notice of a STOP fine violation of a vehicle in which he was the registered owner. At the time of the violation, Respondent was not driving the vehicle. While

his wife was authorized to use the vehicle, other family relatives were visiting on the day in which the violation was issued. Respondent claims that he does not know the identity of driver for the day in question.

2. The City of Las Cruces enacted Ordinance No. 2527 which was codified as Las Cruces Municipal Code, Sections 27-7-1 et. seq. (STOP Program hereafter) under which a motor vehicle owner can be held *strictly and vicariously liable* [Sec. 27-7.4(b); 27-7.5(b); 27-7.5(c)(3) to Exhibit A] for speeding or running a red light as detected by cameras or electronic equipment at various locations throughout the City of Las Cruces.

3. Ordinance No. 2527, Section 27-7.5(d)(3) holds that a registered owner who was not driving the vehicle at the time of the violation, may either accept responsibility or identify (“nominate”) the driver. The Ordinance also holds that if the “nominee” successfully appeals the allegation of the traffic offense contesting that he/she was the driver, the City can then proceed with a subsequent STOP notice violation with the registered owner. If the City cannot assert jurisdiction over the nominee, the registered owner is responsible. *Id.* Additionally, if the registered owner nominates an individual, and that nominee defaults, the registered owner is liable for a default by a nominee. Section 27-7.4(e).

The Appellant contends that the application of strict liability and vicarious liability to the registered owner is inconsistent with his Due Process rights under the Constitution.

4. Section 27-7.5(l) holds that the Department has the burden of proof by a preponderance of the evidence. It also holds that a photograph, videotape or other electronic evidence of a violation is authentic, is not hearsay, and “shall be admitted into evidence” by the Hearing Officer. The Hearing Officer advises the respondents that the evidence shall be admitted without

evidentiary objections or challenges to foundation, but they may challenge the weight or accuracy of the evidence.

The Appellant contends that the evidence is hearsay, its admission denies his constitutional right to procedural Due Process, and it further denies him a reasonable opportunity to contest and present evidence. Appellant argues that by admitting evidence without an objection, the Ordinance language inherently serves an adjudicatory function. Appellant also seems to argue that this is a denial of his right to equal protection under the laws.

5. Under the Ordinance, the registered owner can avoid the application of strict/vicarious liability only when: 1) his/her vehicle was stolen; 2) the vehicle ownership had previously been transferred, or 3) the evidence shows no violation occurred. See Section 27-7.5(g). In all other instances, the registered owner must identify the actual driver or be strictly/vicariously liable.

The Respondent contends that this forces him to serve as a “witness against himself” or to provide witness. Respondent argues that this is a denial of Due Process and it is also against his Fifth Amendment right not to incriminate himself.

6. A STOP fine violation can lead to a fine, in the event of a default, the City may seize the vehicle for unpaid fines [27-7.5(e) and (i)], and if the default remains uncured or the fines unpaid, the vehicle is subject to forfeiture [27-7.5 (c)and (i)].

The Appellant contends that the ordinance scheme is punitive and requests the courts to inquire as whether the statutory scheme was so punitive either in purpose or effect, as to transform what was clearly intended as civil remedy into a criminal penalty since the behavior to which it applies is already crime.

7. The City contends that the STOP Ordinance is a constitutional enactment which punishes

traffic violations and declares them to be nuisances and that the specific traffic violation as opposed to the driver or the vehicle is the nuisance. [Compare with Section 27-7.2 (e), Exhibit A: “The governing body declares that a vehicle used to violate this Article is the instrumentality of a nuisance and shall be abated...”]. The City also contends that the constitutional issues have not been preserved, the arguments are unclear, and that because the nuisance is the act and not the vehicle or owner, it is not necessary to identify the specific driver. The City refers to a district court opinion in One 2005 Hyundai v City of Albuquerque, CV 2006-04892 (Second Judicial District Court 2007) for its support that the Ordinance is constitutional.

8. The undersigned Court believes that the need for uniformity in the resolution of these case is great; the cases raise constitutional issues which are likely to recur with some frequency at the district court level, and that the resolution of these cases will have a state-wide impact as there are other municipalities with similar ordinances. In addition, an appeal from any district court decision is highly likely such that certification in the first instance would serve the interests of judicial economy and reduce litigation costs.

WHEREFORE, pursuant to NMRA 1978, Rule 1-074S and Rule 12-608, the undersigned Court certifies this matter to the New Mexico Court of Appeals.


DISTRICT JUDGE

CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing was served to counsel and pro se parties as follows:

Clerk of the District Court: for preparation of the district court file in accordance with Rule 1-608

City of Las Cruces
c/o Steven Almanza, Esq.
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on this 5th day of April 2011.



Nancy A. Heavner
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