

No. 1200240

IN THE SUPREME COURT OF ALABAMA

RICHARD STEPHEN GLASS,

APPELLANT,

V.

CITY OF MONTGOMERY,

APPELLEE.

**Brief of *Amicus Curiae* the City of Tuscaloosa, Alabama
in Support of Appellee on the Merits [Corrected]**

**On Appeal from
the Montgomery County Circuit Court
(CV-18-000079)**

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STATEMENT REGARDING ORAL ARGUMENT

Amicus curiae does **not** request oral argument.

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BRIEF OF AMICUS CURIAE

ARGUMENT

I. Civil Local Acts and Ordinances for Red-Light Camera Enforcement Do Not Conflict with the Criminal Rules of the Road.

- A. Laws providing for civil and criminal sanctions for the same conduct have long been held to be permissible under Alabama law.

Appellant's claims are at bottom based on the argument that Montgomery's civil local act and ordinance somehow impermissibly displace the criminal Rules of the Road statutes. This, according to Appellant, works a violation of Ala. Const. Art. IV, Sec. 105 (prohibiting local acts which create variances from the general laws) and Sec. 104(14) (prohibiting local criminal laws). These are the same positions taken in the Tuscaloosa Case. The Rules of the Road are criminal in nature. So to make their constitutional arguments, Appellant must in all circumstances maintain that the local act is actually criminal and not civil – because only then is does the local law fall within the purview of Section 104, and only then does the local act (presumably criminal in Appellant's telling) stand on equal footing with the Rules of the Road (which are criminal), thus implicating Section 105.

Appellant's problem is that, for the first time in this appeal (at least for the first time of which Tuscaloosa is aware), Appellant has given up the ghost on the very thing he must prove. Appellant's brief admits that "[w]e do not disagree that the [local] Act creates a civil law." Blue Brief at p. 35. By admitting that the local laws are civil (*i.e.* by admitting reality), Appellant has now conceded the very point on which he must prevail - there is no Section 105 conflict, after all, if the local law is civil and the Rules of the Road are criminal in nature. Page 35 of the Appellant's Brief seals their fate in this appeal.

Like Tuscaloosa's local act, the Montgomery act and ordinance are explicitly civil on their face and unambiguously defer to the general criminal law in all aspects. The act defines a "civil violation" to mean a "non-criminal category of state law." Act 2009-740 § 3(3). It further states that a record of a civil violation issued under the act cannot be listed on a criminal record, cannot be "considered a conviction for any purpose," and cannot "be used as evidence that [a] person was guilty of negligence or other culpable conduct." Id. at § 10. Similarly, the Montgomery ordinance states that "[t]he imposition of a civil penalty under this article is not a criminal conviction for any purpose."

Montgomery Code, Art. X, § 27-606(a). To remove any doubt of conflict with the criminal law, it also provides that in the event a person is criminally cited for running a red-light, that person cannot also be subject to a civil citation under the ordinance. § 27-606(b).

Even without the Montgomery local act's "siloing" provision maintaining the exclusivity of enforcement, the Montgomery local act would still be a valid and constitutional civil enforcement scheme. The Rules of the Road specifically contemplate a parallel non-criminal enforcement scheme:

This title does not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constitutes an offense defined in this title.

Ala. Code § 13A-1-8(a)(2). This provision negates any notion that there is a variance between civil camera enforcement systems (such as that in place in Montgomery) and the Rules of the Road.

There is a good reason the Rules of the Road contemplate parallel non-criminal systems of enforcement of traffic laws. While the Rules of the Road (Ala. Code § 32-5A-31(a) and -32(3)) require that drivers obey posted traffic control devices and stop at red lights, tickets issued for

violations of the traffic code are Uniform Traffic Ticket and Complaints (UTTCs), governed by section 12-12-53, which are commenced when either (a) an officer files a complaint, or (b) an information is filed by the district attorney. Ala. Code § 12-12-53(b). That means a UTTC can be initiated, as a practical matter, only on an officer complaint – requiring that an officer witness the infraction. Obviously, that is a recipe for sporadic enforcement, and thus compromised safety, in a place where traffic issues demand more robust protection of the traveling public.

For this reason, in some localities (such as in Montgomery and in Tuscaloosa), the Legislature perceived a local need for there to be a civil red-light enforcement system to enhance public safety and to supplement traditional criminal enforcement regimes. Take Tuscaloosa, which has nearly 40,000 student drivers in the community through most of the year – many of whose wheels whir while they tap on their phones. Tuscaloosa has a local economy driven in (non-pandemic) times by college football, an enterprise attracting several hundred thousand fans for a weekend - fans who also tend to enjoy various non-game festivities, sometimes into the wee hours, which can impair driving abilities. And Tuscaloosa has several “anchor” employers, one of whom (Mercedes-Benz) is posted out

of town, requiring increased flows of traffic accessing the interstate in peak times. Finally, Tuscaloosa has several high-volume, high-speed intersections where accidents, when they occur, are commonly serious.

In 2010, the Alabama Legislature recognized the scope and magnitude of Tuscaloosa’s red light enforcement problem. Recognizing that something drastic was called for to address this pressing local need, the Legislature passed Tuscaloosa’s local law, similar to Montgomery’s in this case.¹ The Legislature believed, as has been the experience in our age, that the ubiquity of cameras could alter personal behavior. But recognizing that cameras can identify only the offending car and can’t tell who is driving it, the Legislature created a civil and administrative

¹ Even if Section 105 were directly implicated in this case (which it is not, since the local act is civil and the Rules of the Road criminal), this Court has sustained against Section 105 attack local laws which, in the judgment of the Legislature, are not sufficiently addressed by general laws due to legislatively perceived local needs. *Miller v. Marshall County Board of Education*, 652 So. 2d 759, 761–62 (Ala. 1995); *Jefferson County v. Taxpayers & Citizens of Jefferson County*, 232 So. 3d 845, 866 (Ala. 2017). Montgomery’s and Tuscaloosa’s red-light camera enforcement laws are supported by such legislative findings. And the “local need” exception is solid: undersigned counsel for Tuscaloosa was counsel for the losing appellees in *Taxpayers & Citizens*, in which undersigned unsuccessfully argued for this Court to overrule *Miller* and abandon the “local need” exception. The “local need” exception is alive and well.

enforcement system, rather than utilizing the criminal traffic-enforcement system historically employed.

There is nothing unconstitutional about a civil administrative system which runs parallel to the criminal Rules of the Road. Alabama law has long recognized the proposition that there is no conflict where the law allows for the same conduct to be subjected to both criminal and civil penalties. *Ex parte State Alcoholic Beverage Control Bd.*, 654 So. 2d 1149, 1154 (Ala. 1994) (finding no issue with the act of selling alcoholic beverages to a minor being subject to both criminal and civil liability). The Alabama Criminal Code expressly states that “[t]his title does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constitutes an offense defined in this title.” Ala. Code § 13A-1-8. Similarly, the Rules of the Road state an intention to not repeal or supersede other laws: “[t]he provisions of this chapter are cumulative and shall not be construed to repeal or supersede any laws not inconsistent herewith.” Ala. Code § 32-5A-13.

Since the same conduct can give rise to both civil and criminal consequences without creating any conflict, Montgomery’s local act and ordinance can be upheld simply upon a finding that they are civil in nature. Given Appellants’ admission on that very point, that is the easiest path to affirmance of the Circuit Court in this case.

B. The Eleventh Circuit has held that a substantially similar local act and ordinance for Phenix City, Alabama is civil.

The Eleventh Circuit has found Phenix City’s red-light camera program to be civil in nature in *Worthy v. Phenix City*, 930 F.3d 1206 (11th Cir. 2019). For the Court, whether a “punishment is criminal or civil is, at least initially, a matter of statutory construction.” *Worthy*, 930 F.3d at 1217. The Eleventh Circuit found the “Alabama legislature explicitly labeled the sanction as civil” and, in so holding, pointed to exactly the same provisions in the Phenix City act that are in Montgomery’s local act and ordinance (as well as Tuscaloosa’s):

- “It specifically authorized ‘automated traffic light enforcement in the City of Phenix City, Alabama, as a *civil violation*.’”
- The act “described the penalty for this civil violation as ‘the payment of a *civil* fine, the enforceability of which shall be accomplished through *civil* action.’”

- A violation carries “reduced evidentiary requirements and burden of proof” and provides that “[in] no event shall an adjudication of liability for a *civil* violation be punishable by a criminal fine or imprisonment.”
- The ordinance “provides that a red-light violation caught on camera shall carry with it ‘a *civil* penalty of \$100.00”
- The ordinance “devotes an entire section to describing the effect of a violation – stating, among other things, that the civil penalty is ‘not a criminal conviction for any purpose’ and that no ‘record of [the]civil penalty made under [the ordinance will] be listed, entered, or reported on any criminal record or driving record.’”

Worthy, 930 F.3d at 1217-18 (emphasis in opinion). *Worthy* contains a worthy discussion of how courts assess whether a law is civil in nature.

Worthy is on solid ground. Other courts have upheld similar red-light camera programs on the basis that they are civil in nature. *Shavitz v. City of Highpoint*, 270 F. Supp. 2d 702 (D. Md. 2003) (act and ordinance that assessed a \$50 penalty were civil, not criminal); *Mills v. City of Springfield*, 2010 WL 3526208 (W.D. Mo. 2010) (ordinance that assessed a \$100 fine was civil); *Mendenhall v. City of Akron*, 2008 WL 7484179 (N.D. Ohio 2008) (ordinance allowing for citations from \$35 to \$100 was civil), *upheld on appeal* 374 Fed. Appx 598 (6th Cir. 2010); *Bevis v. City of New Orleans*, 2011 WL 2899120 (E.D. La 2011) (local ordinance allowing for fines from \$45 to \$205 was civil), *upheld on appeal*, 686 F.3d 277, 280 (5th Cir. 2012); *Krieger v. City of Rochester*, 978 N.Y.S.2d 588 (N.Y. 2013)

(ordinance that provided for a \$50 fine was civil); *Ware v. Lafayette City-Parish Consol. Gov't*, 2009 WL 5876275 (W.D. La. 2009) (ordinance providing for a sanction of \$125 to \$200 was civil).

CONCLUSION

There is no conflict between Montgomery's local act and ordinance and the Rules of the Road. Nor is there any other constitutional impediment to enforcement the Montgomery act and ordinance, because they are civil in nature. Accordingly, the Court should affirm.

RESPECTFULLY SUBMITTED this the 24th day of May, 2021.

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CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with the word limitation in Ala. R. App. P. 27(d); according to the word-count function of Microsoft Word, the Brief contains 1,868 words. I further certify that this Motion complies with the font requirement of Ala. R. App. P 32(a)(7), in that it is prepared using Century Schoolbook font in 14-point type. See Ala. R. App. P. 32(d).

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CERTIFICATE OF SERVICE

The foregoing is being filed and served using the ACIS system, which shall notify all registered counsel of the filing. In addition, the foregoing is being served on the following via **electronic mail only**, pursuant to Ala. R. App. P. 25(c), on this the 24th day of May, 2021, as follows:

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