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Blog Entry: The Stealthy Traffic Camera and the Class Action That Wasn't

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Mobile speed units. Those mindless menaces squinting at everything that rolls down the road. Most drivers approach them with caution, but others, either oblivious to their presence or bent on one-upping the machine, speed by, only to have their stomachs sink when a ticket arrives in the mail.

It's a bad feeling, getting nailed by a device. Who's the court likely to believe, should you decide to contest the ticket? You, a sentient human being with the ability to talk and presumably think? Or a patchwork of transistors affixed to a lens? And even if you truly believe you're in the right, how do you cross-examine a camera? Do leading questions really help?

Most people, in short, dislike them, including in all probability Allyson Eighmey, who sued the City of Cleveland in an Ohio state court claiming that the speeding ticket she was issued courtesy of an automated camera was unlawful because it violated a local ordinance requiring Cleveland to post signs "at each site of a red light or fixed speed camera" to "apprise ordinarily observant motorists that they are approaching an area where an automated camera is monitoring for red light or speed violators." The ordinance also required that mobile speed units "be plainly marked vehicles," meaning that a sign has to be posted so drivers would know they're in the zone of a traffic camera. According to Eighmey, the unit that ticketed her failed to comply with these requirements because it "contained no distinguishable markings whatsoever."

So what did she do?

Exactly, and her complaint requested class certification, which the trial court granted over the City of Cleveland's objections. The certified class essentially consisted of all persons who received tickets by mobile speed units under the Cleveland ordinance between September 25, 2013 and December 26, 2016.

The City appealed, raising a single error: Eighmey's claims, it contended, were not typical of the class she sought to represent.

Not typical? How could that be? Aren't all are motorists the same under the merciless gaze of a mobile speed unit?

One would think so. And the trial court appears to have thought so, too, having certified the class. But the court of appeals found otherwise, and on May 18, 2017, reversed. Its reasoning?

Eighmey, it seems, had voluntarily paid her ticket. And by doing so, she "waived her right to contest" it and was "barred from any recovery. She will neither benefit from, nor be harmed by, the litigation of other potential class members who may pursue viable claims." Because she cannot "receive redress from this litigation," she "lacks standing," and is "unable to represent the class."

On top of that, Eighmey failed to exhaust her administrative remedies. If she wanted to contest her ticket, she had to file an appeal within 21 days with the Cleveland Municipal Court's Parking Violations Bureau. But she didn't. Instead, five months after receiving her ticket, she filed her class action complaint in state court. Her "failure to pursue the appeal bars her from representing the class."

So Eighmey's certified class action - a class consisting, by the trial court's tally, of 36,179 motorists ticketed in Cleveland during the class period by unmarked speed units - went down in prosaic defeat. All because she stepped up, paid her ticket, and didn't appeal.

The moral of the story?

Don't speed.

The case is *Eighmey v. Cleveland*, Cuyahoga County, Ohio, Court of Appeals, case no. 104779, 2017-Ohio-2857, and the decision can be found at https://goo.gl/qG4aBv.