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Constitutional Law

Anthony J. Colucci III

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CONSTITUTIONAL LAW

Radar Detection Devices

Several states have enacted legislation regulating the use of a radar detection device in a motor vehicle.¹ In the District of Columbia, the mere possession of a radar detection device in a motor vehicle is a violation of the D.C. Police Regulations.² A similar statute was recently held unconstitutional in Virginia.³ In *Smith v. District of Columbia*,⁴ the District of Columbia Court of Appeals addressed the constitutionality of prohibiting the possession of a radar detector in a motor vehicle. Appellants had been found guilty of violating this regulation because they possessed a detection device in the front portion of the passenger compartment of their vehicle.⁵ On appeal, appellants challenged the constitutionality of the regulation on the grounds that (1) the regulation of radar detectors by the states is preempted by the Federal Communications Act of 1934;⁶ (2) the regulation violated the commerce clause; and (3) the regulation contravened due process because it was vague, arbitrary, and overbroad, and created an irrebuttable presumption of a violation. The District of Columbia Court of Appeals was unpersuaded by these arguments, however, and upheld the constitutionality of the regulation.⁷

1. A radar detection device is essentially a radio receiving set commonly employed to detect the presence of police speeding traps. *See* *People v. Gilbert*, 88 Mich. App. 764, 279 N.W.2d 546 (1979). Michigan, Connecticut and Virginia are among those states which have prohibited the use of a radar detection device in a motor vehicle. In Virginia, the use or sale of any such device, or equipping a motor vehicle with such device is considered a violation. VA. CODE § 46.1-198.1 (1978).

2. D.C. POL. REG., art. 25, § 16 (1973).

3. *Crenshaw v. Commonwealth*, 219 Va. 38, 245 S.E.2d 243 (1978). Prior to 1978, the Virginia code provided that the presence of a radar detector in a motor vehicle was prima facie evidence of a violation. In addition, however, the Commonwealth was not required to prove that the device was in an operative condition or being operated. The *Crenshaw* court viewed the statute's lack of a proof requirement as tantamount to an irrebuttable presumption of the device's operation by its mere presence in the motor vehicle. Accordingly, the court concluded that the statute was unconstitutional as a violation of due process. 219 Va. at 43, 245 S.E.2d at 246.

4. 436 A.2d 53 (D.C. 1981).

5. This case actually involved several cases that were consolidated for both trial and appeal. The opinion of the Superior Court was unpublished.

6. 47 U.S.C. §§ 151-153 (1976). The District of Columbia is treated as a state for purposes of the Act. 47 U.S.C. § 301 (1976).

7. *Smith*, 436 A.2d at 58-60.

In examining the Federal Communications Act of 1934, the court concluded that there was no manifestation of congressional intent to preempt local regulation of radar detectors. Appellants had argued that local regulation would conflict with the purposes of the federal enactment. The court, however, recognized the need for federal regulation only with regard to the "bilateral relationship between transmitters and subscribers."⁸ The court distinguished the radar detector by the fact that the device is normally tuned to only one frequency, and as such, cannot be considered communication within the meaning of the Federal Communications Act.⁹

Appellants also argued that the regulation was a burden on interstate commerce, because it restrained the free flow of vehicular traffic across the District of Columbia borders by forcing those with radar detectors to avoid the District.¹⁰ In finding that the regulation was not in violation of the commerce clause, the court weighed the impact on interstate commerce against the benefit derived from the regulation.¹¹ The court saw regulation of highway speeding as a pressing state interest, and was unpersuaded by the argument that less severe regulatory means would accomplish the same state goal. The court characterized the radar device as "dangerous and deleterious" and likened its possession to such other illegal implements of crime as sawed-off shot guns, machine guns, switchblades, and blackjacks.¹²

Additionally, appellants argued that the regulation violated due process because it was vague, arbitrary, overbroad, and created an irrebuttable presumption.¹³ The court was not convinced, however, and concluded that

8. *Id.* at 56.

9. *Id.* The notion that the Federal Communications Act does not subject radar detectors to federal regulation is not new. *See* *Bryant Radio Supply Inc. v. Slane*, 507 F. Supp. 1325 (W.D. Va. 1981); *State v. Anonymous*, 36 Conn. Supp. 551, 421 A.2d 867 (1980); *People v. Gilbert*, 88 Mich. App. 764, 279 N.W.2d 546 (1979); *Crenshaw v. Commonwealth*, 219 Va. 38, 245 S.E.2d 243 (1978). Additionally, appellants contended that the regulation made no exception for Federal Communications Commission agents using detection equipment to monitor compliance with the Act. The court rejected this argument by pointing out that it was not bound to decide the constitutionality of the regulation in every possible application. 436 A.2d at 57.

10. In addition, appellants argued that the regulation posed an obstruction to the transportation of radar detectors by interstate shippers. The court, however, found that appellants had no standing to challenge the constitutionality of the prohibition as to circumstances beyond their own situation. 436 A.2d at 59 n.8.

11. The court concluded that a state may regulate matters of local concern, absent conflicting legislation by Congress, even if there is some burden on interstate commerce. 436 A.2d at 58. *See also* *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 669 (1981).

12. 436 A.2d at 59. The court, however, gave no evidence that the legislative goal could not be attained by merely prohibiting use.

13. The *Crenshaw* court found the Virginia statute unconstitutional because it made mere possession an irrebuttable presumption of illegal use. It should be noted, however, that

the regulation provided fair warning to citizens, was intelligible to the average person. The court also held that the appellants lacked standing to challenge the application and impact of the regulation in circumstances beyond those under which they were convicted.¹⁴

In examining appellant's contention that the regulation created an irrebuttable presumption of illegal use, the court highlighted the difference between the language of the District of Columbia regulation and the Virginia statute that had been found unconstitutional. Unlike the Virginia statute, under which possession was prima facie evidence of illegal use, the District of Columbia's statute outlawed possession itself. In contrast to the Virginia statute, therefore, possession is not an irrebuttable presumption of a violation; in the District of Columbia, it is the violation.¹⁵

The *Smith* decision is unique because it was the first occasion for any court to pass upon a law which prohibits mere possession of a radar detection device. The court failed, however, to recognize that the purpose of highway safety can at times be unrelated to the possession of a radar detector. In the interstate shipment of radar detectors, for example, no nexus exists between the state interest in safety and the prohibited conduct.¹⁶ In addition, there can be no danger of compromising District of Columbia highway safety where the device is stored in the trunk of a vehicle for use in a state where no prohibition exists.

Substantively, the District regulation is similar to the pre-1978 version of the Virginia code; both view possession as dispositive in finding a violation. Concern for due process through careful drafting, however, has produced a different result in *Smith v. District of Columbia*.

Anthony J. Colucci, III

the prohibitions and language of the Virginia statute clearly differed from the D.C. Police Regulation. See *Crenshaw*, 219 Va. at 40 n.1, 245 S.E.2d at 245 n.1.

14. 436 A.2d at 60.

15. *Id.*

16. See 436 A.2d at 59 n.8.