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How Traffic Citations Can Affect Evidence And Liability at Trial: Admissibility of Citations

In the majority of states, the issuance of and ultimate disposition of a traffic citation does not become admissible in a subsequent civil action for injury unless there is a plea of guilty, which is considered an admission by the driver of the charge for which the driver was cited. For example, if a driver is charged with speeding and pleads guilty to that charge, many courts will permit testimony – in a subsequent civil personal injury suit against the driver or his carrier/employer – on the basis that he admitted that he was speeding.

Consequently, in the majority of states, where a driver pleads guilty to a traffic citation, e.g. speeding, the jury may hear evidence as to which driver the law enforcement officer considered to be at fault (though testimony or specific use of the word fault may be barred in various jurisdictions). The jury may logically assume that the party issued the citation was considered the at-fault party by the officer. The jury will hear testimony that the driver admitted the charge, i.e. plead guilty. Finally, there will probably be no evidence of any citation issued to the other driver.

While some jurisdictions permit a party to attempt to explain away to the jury the circumstances of why a plea of guilty was made, the focus upon the citation may undermine any successful efforts to support a no liability defense, and can undermine such defenses premised upon scene investigation and/or accident reconstruction. In Barnes v. Croston, 108 Ill.App.2d 182, 184-5, 247 N.E.2d 1, 2 (1st Dist. 1969), the court held that it was not error to admit evidence of a plea of guilty to a citation as long as it was subject to explanation.

If a plea of not guilty is entered, and the citation is either dismissed or the driver is found guilty, the result of the citation may not be admissible. Accordingly, the fact as to the issuance of the citation is not presented to the jury, and evidence as to whom the officer thought should receive or did receive the citation is never made known to the jury.

Law Enforcement officers still may be able to offer opinion as to fault independent of the citation where opinions on ultimate issue of fact, such as federal court, are permitted.

There are a number of considerations that drivers could and should consider as to how best to defend traffic citations. Drivers need to weigh the impact of such citations on their driving record and employability. In addition, whether it is in the interest of the driver to plead guilty or not guilty may require consultation between driver and his or her own counsel.

Why do drivers often plead guilty to traffic citations?

First, drivers do not desire to return to remote jurisdictions to contest a citation. It costs them money in the form of either lost revenue from working and/or the incurring of travel expenses.

Second, drivers often rely upon statements by claimants that they were not injured or by officers that concluded the claimant driver to be at fault (or the defendant driver to have been deemed not at fault). Unfortunately, such exculpatory statements are often inadmissible.

Third, the fines and 'punishment' associated with a finding of guilty are often much greater than those associated with pleading guilty. For example, for a driver with a clean record, the court may offer supervision and a fine of only $75 if a plea of guilty is entered. However, if the defendant insists on a trial, the court may withdraw the offer of supervision (i.e. if found guilty, it will go on the driver's permanent record) and a greater fine as well as significant court costs may be assessed to the driver.

What are the benefits of Pleading Not Guilty to the Traffic Citation?

First, by pleading not guilty, an initial burden is placed on the prosecuting party (be it the state, county, or municipality) to prove their case. If an officer or witness fails to appear for the hearing, the citation may be dismissed. If there is a notation of injury – mild or serious – or fatality, the prosecuting party is more likely to line up its witnesses and/or seek a continuance in order to do so. However, because officers may fail to appear due to other work requirements or witnesses may fail to appear, defendant drivers should be prepared for a number of situations. If the state is not ready to proceed, perhaps a motion for an immediate trial will be granted. In that scenario, without witnesses, the prosecuting party may dismiss the case. Such a dismissal may be qualified with "leave to reinstate" language.

Second, if there is a trial over the traffic citation, the trial testimony may be recorded. This is an opportunity to record testimony of adverse witnesses that may not be cooperative with the defendants' investigation. Keep in mind that judge will often insist that the defendant's testimony is recorded – absent a waiver of the right to appeal – which means that you would be recording sworn testimony of your driver (something you may not want to do).

Third, there is an opportunity to build equity with the driver and get the driver invested in the process.

Finally, in many states, a finding of guilty – after a plea of not guilty – is often inadmissible in a subsequent civil trial.

Are there any other options to avoiding a Plea of Guilty short of a full trial on the merits of the citation?

In some circumstances, we have represented drivers where the citation arose out of a fatality or serious injury. There have been situations where the prosecuting party suggested that a plea of guilty to the traffic citation would eliminate potential review by their department of a more serious charge, such as criminal negligence or a more serious charge that could lead to jail time. In those situations, the driver would almost certainly prefer to pleading guilty to a traffic infraction rather than risking the potential for a criminal conviction, more significant fines, or the potential for a sentence of probation or jail service.

In some circumstances, we have been able to work out a deal that serves both parties. For example, we have on occasion had drivers that plead not guilty; however, to avoid a more costly trial, we agreed in advance to stipulated testimony. We saved the state the time and expense of calling their witnesses; instead, we stipulated or agreed to use their testimony as set forth in the police reports or statements. We did not stipulate to facts. Stipulating to facts could lead to claims at a subsequent civil matter that defendants had effectively made judicial admissions by stipulating to facts in the traffic hearing. Thus, should there be a stipulation to use statements or reports, which would otherwise be inadmissible as hearsay, the court record should be made clear that there was no stipulation of facts - only expected testimony. This is then buttressed by the attorney or defendant during closing argument as to what the testimony proved or did not prove.

Is there any other reason a defendant driver should contest the citation?

Drivers do not often realize the full potential impact of a finding or plea of guilty to a traffic citation. Traffic citations for moving violations are typically a petty offense; this means that they are only punishable by fines, i.e. since they are not criminal in nature but “quasi-criminal” - they are not in and of themselves punishable through jail time. (Obviously, offenses such as DUI have other statutory penalties such as license revocation, suspension, and potential jail time.)

What drivers do not realize is that if there is a conviction or plea of guilty in an accident involving “significant injury” or a fatality, that conviction/plea may be reported to the Secretary of State in that jurisdiction. In Illinois, 625 ILCS 5/626(4) extends discretionary authority to suspend a license, as follows: “The Secretary of State is authorized to suspend or revoke the driving privileges of any person without preliminary hearing upon a showing of a person’s records or other sufficient evidence that the person has… [b]y the unlawful operation of a motor vehicle caused or contributed to an accident resulting in death or injury.”

The Secretary of State is a separate administrative body that may levy its own punishment. One such punishment is a summary suspension of a driver’s license – without opportunity for a hearing – as a result of a conviction or guilty plea

involving fatality or serious injury. The Circuit Courts have separate jurisdiction and authority from the Secretary of State's administrative system.

For truck drivers with CDLs, this presents an even greater problem. Non-CDL drivers that receive notice of a license suspension may seek an informal hearing before the Secretary of State in their county whereby that office has authority to issue a Judicial Driving Permit ("JDP"). Such a permit allows the affected driver to use a passenger vehicle to get to and from work (or even for work under certain circumstances).

In Illinois, informal hearings are not an option for CDL drivers to get a JDP or to challenge the suspension. CDL drivers must go through a formal process that will take at least one month, and often much longer, just to get a hearing on the suspension and/or make a request for a JDP.

If a driver's CDL is suspended, the driver should be prepared for to file notice of a formal hearing to secure a JDP. The Secretary of State should exercise his discretion liberally in favor of issuance of permit so long as public safety and welfare are not put in jeopardy. Foege v. Edgar, 110 Ill.App.3d 190, 196, 441 N.E.2d 1267, 1270 (1st Dist. 1982).

Should the defendant driver appear for the potential claimant's citation?

For the same reasons cited above, your driver may not want or feel any need to attend a hearing for the citation issued to the claimant that may eventually sue him. Why? The driver thinks that if he is sued for bodily injury, the officer will be permitted to testify that the claimant was at fault. However, in many jurisdictions, officers may not testify to fault. Also, officers investigate hundreds of accidents every year. Will the officer remember anything that isn't recorded specifically in the report?

If your driver does not appear for the hearing on the claimant's citation, with no other witnesses, the citation is often dismissed. When you get to trial on the subsequent bodily injury case, if there are no independent witnesses and the citation was dismissed or the claimant pled not guilty, what are your chances for a successful defense? How might your chances for a successful liability defense have improved if the claimant driver head plead guilty to the citation? Depending on the jurisdiction, it might change the liability outcome significantly.

What follows is a summary of how many states handle the admissibility of dispositions of minor traffic offenses in subsequent civil litigation. While the citations are relatively recent, you should not rely on this summary, rather, use it as a reference and follow up with counsel in the applicable jurisdiction for guidance.

Summary of Admissibility of Traffic Citations

Jurisdictions where a plea of guilty to a traffic offense or criminal offense is admissible in a subsequent civil proceeding arising out of the same occurrence as an "admission against interest" or as an admission by a party-opponent:

Alabama, Arizona, California, Connecticut, Delaware, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Dakota, Virginia, West Virginia, Wisconsin, Wyoming

See Durham v. Farabee, 481 So.2d 885 (Ala.1985); Kelch v. Courson, 103 Ariz. 576, 447 P.2d 550, 553 (1968); Ray v. Jackson, 219 Ca.App.2d 445, 33 Cal.Rptr. 339, 343 (1963); Jacobs v. Goodspeed, 180 Conn. 415, 429 A.2d 915, 917 (1980); Boyd v. Hammond, 55 Del. 336, 187 A.2d 413, 416 (1963); Hunter v. Hardnett, 199 Ga.App.443, 405 S.E.2d 286, 287 (1991); Wright v. Stokes, 167 Ill.App.3d 887, 522 N.E.2d 308, 311 (1988); Lepucki v. Lake County Sheriff's Dept., 801 N.E.2d 636 (C.A. Ind. 2003) (citing Ind. Evid. Rule 801(d)(2); Patrons Mutual Insurance Ass'n v. Harmon, 240 Kan. 707, 732 P.2d 741, 745 (1987) (citing K.S.A. 60-401, et. seq.; K.S.A. 1986 Supp. 60-460(g); Dept. of Public Safety v. Palmisano, 444 S.W.2d 128 (Ky. 1969); Arceneaux v. Domingue, 365 So.2d 1330, 1336 (La .1978); Seals v. St. Regis Paper Co., 236 So.2d 388, 392 (Miss. 1970); Sikora v. Sikora, 499 P.2d 808, 160 Mont. 27 (Mont 1972)Schaefer v. McCreary, 216 Neb. 739, 345 N.W.2d 821, 825 (1984); Taylor v. Naomi Ruth Walking Eagle Thunder, 116 Nev. 968, 13 P.3d 43 (2000); Public Service Co. v. Chancey, 94 N.H. 259, 51 A.2d 845, 846 (1947); Eaton v. Eaton, 119 N.J. 628, 575 A.2d 858, 866 (1990); Valencia v. Dixon, 83 N.M. 70, 488 P.2d 120 (Ct.App.1971); Vargas v. Clauser, 62 N.M. 405, 311 P.2d 381 (1957); Alexander v. Eldred, 100 A.D.2d 666, 473 N.Y.S.2d 864, 866 (1984); Teachey v. Woolard, 16 N.C.App. 249 S.E.2d 903, 906 (1972); Ludwig v. Kowal, 419 A.2d 297, 303 (R.I. 1980); Dartt v. Berghorst, 484 N.W.2d 891, 894 n.3 (S.D. 1992); Bagley v. Weaver, 211 Va. 779, 180 S.E.2d 686, 688 (1971); White v. Lock, 175 W.Va. 227, 332 S.E.2d 240, 243 (1985); Gaspord v. Hecht, 13 Wis.2d 83 108 N.W.2d 137, 139 (1961); Haley v. Dreesen, 532 P.2d 399, 402-83 (Wyo. 1975). Ferguson v. Boyd, 448 S.W.2d 901 (Mo. 1970). The majority of these cases held that evidence of the prior guilty plea, while admissible, is not conclusive and may be explained by the party against whom it is offered. For example, in Ferguson v. Boyd, 448 S.W.2d 901 (Mo. 1970). The court held that his explanation or reasons for pleading guilty were for the jury to weigh and value in determining the issues in the case.

Jurisdictions where the admissibility of guilty pleas to traffic infractions is governed by statute:

Colorado, Florida, Maine, Minnesota, Oregon

See, e.g., Carter v. Rukab, (Fla.Dist, Ct.App.1983), (admission of guilt to traffic infraction cannot be used as evidence in any other proceeding); Theriault v. Swan, 558 A.2d 369, 370 (Me. 1989) (evidence of defendant's admission to traffic infraction of imprudent speeding precluded by Maine statute; therefore, not admissible as admission by party-opponent); 7 Glens Falls Group Ins. Corp. v. Hoium, 294 Minn. 247, 200 N.W.2d 189, 192 n. 2 (1972) (state statute excludes pleas of

guilty in traffic matters from being admitted into evidence in civil litigation); Ryan v. Ohm, 39 Or.App. 947, 593 P.2d 1296, 1298 (1979) (Under Oregon statutes, "a guilty plea" to a traffic offense, which is a crime, is admissible as an admission against interest in an subsequent civil action arising out of the same accident or occurrence. When the offense is merely a traffic infraction, however, a guilty plea is inadmissible.

In Colorado, evidence regarding traffic citations is generally inadmissible in civil actions. Colorado Revised Statute 42-4-1713 states that, except as provided in C.R.S. §§ 42-2-201 to 42-2-208, no record of the conviction of any person for any violation of the article concerning traffic regulations is to be admissible as evidence in any court in any civil action. See also, Lawrence v. Taylor, 8 P.3d 607, 610 (Colo. App. 2000). C.R.S. §§ 42-2-201 to 42-2-208 deal with habitual offenders.

States where evidence of payment of a traffic fine may support an inference that Defendant believed himself to be Guilty:

Idaho, New Mexico

Other states have held that where a party merely paid traffic fine, such evidence was only admissible in a subsequent civil proceeding if the fine was paid because the defendant believed himself to be guilty; otherwise, evidence of payment of the fine was inadmissible. For example, in Turner v. Silver, 92 N.M. 313, 587 P.2d 966 (Ct.App. 1978), the court held that a traffic citation for obstructing traffic, which carried a $10 fine, was admissible because the defendant "understood that he was guilty of the charge."

In Beale v. Speck, 127 Idaho 521, 903 P.2d 110, the court held that the rule to be that a party who is charged with a traffic offense and pays a fine because he understood or thought he was guilty, is akin to a party who pleads guilty. However, where the driver simply mailed the fine to the municipal court clerk, it was more properly considered a plea of nolo contendre.

States where guilty pleas to traffic citations are generally not admissible in subsequent Civil Proceedings:

Alaska, Michigan, Pennsylvania

In Wheelock v. Eyl, 393 Mich. 74, 223 N.W.2d 276, 278 (1974), the Michigan Supreme Court held that "a criminal conviction after trial, or a plea, or payment of a fine is not admissible as substantive evidence of conduct at issue in a civil case arising out of the same occurrence."

The Pennsylvania Supreme Court held that "evidence of the conviction of a traffic violation or of a small misdemeanor is not admissible in a civil suit for damages arising out of the same traffic violation or lesser misdemeanors." Id. Especially in traffic violations, expediency and convenience, rather than guilt, often control the defendant's trial technique. Id. Although the courts in Hurtt and Loughner addressed guilty convictions rather than pleas, their reasoning was extended to guilty pleas. See Cusatis v. Reichert, 267 Pa.Super. 247, 406 A.2d 787, 790 (1979). In Scott v. Robertson, 583 P.2d 188, 190 (Alaska 1978), the driver of a

car involved in a rear-end collision was convicted of operating a motor vehicle while under the influence of intoxicating liquor. In the negligence action resulting from the collision, the Alaska Supreme Court held that evidence of the conviction was admissible. Although this case addressed the admissibility of a conviction pursuant to a jury trial rather than a guilty plea, the court, in enunciating a test governing the admissibility of prior convictions, also addressed the admissibility of guilty pleas to minor traffic citations. The court required that the prior conviction be for a serious offense in order that the accused have the motivation to defend himself fully. A driver who pleads guilty to a minor traffic violation may have decided merely that the costs of defending outweigh the burden of having such a conviction on his record. Such a conviction was not considered credible evidence of guilty conduct.

States where Guilty plea admissible only if plea made in open court (rather than by mail, for example).

Arkansas, Maryland, Tennessee, Ohio:

Other courts considering the issue have held that pleas of guilty are admissible only if the plea is made in open court. For example, in Dedman v. Porch, 293 Ark. 571, 739 S.W.2d 685, 687 (1987), the court held that evidence that a motorist had been cited for failure to yield the right-of-way, and that he had subsequently paid the ticket rather than appear in court, was not admissible in a property damage action as a statement against interest. In Maryland, the admission of guilt by a guilty plea to a traffic ticket is admissible in a subsequent civil proceeding arising out of the same accident. Briggeman v. Albert, 322 Md. 133, 586 A.2d 15 (1991). The payment of a ticket out of court is not an admission but only a consent to conviction and not admissible. Id. See also Williams v. Brown, 860 S.W.2d 854 (Tenn. 1993). A plea of nolo contender is not generally admissible in civil proceedings. Se for example State v. Crowe, 168 S.W.2d 731, rehearing denied (Tenn. 2005).

In Hannah v. Ike Topper Structural Steel Co., 120 Ohio App. 44, 201 N.E.2d 63 (1963), the court held that a traffic ticket issued to the defendant for failure to yield at a stop sign and the attached form which had been signed by the defendant and which authorized entry of a guilty plea and payment of a fine could not be used against the defendant in an automobile collision case. Id. at 44-46. Generally speaking, no contest pleas or "pleas of guilty in a violations bureau", i.e. paying the fine for the traffic ticket, are inadmissible per Ohio Evidence Rule 410. Pleas of guilty in court may be admissible.

States where a person cited for a traffic offense may be permitted to pay a pre-set fine in lieu of appearing in court and do not permit of evidence of payment of a traffic fine in a subsequent civil action based on the same accident.

Arkansas, Connecticut, Florida, Georgia, Maine, Maryland, Massachusetts, Michigan, Nevada, New Mexico, Ohio, Oklahoma

See Dedman v. Porch, 293 Ark. 571, 739 S.W.2d 685, 687 (1987); Casalo v. Claro, 147 Conn. 625, 165 A.2d 153, 157 (1960); Turco v. Leon, 559 So.2d 1199, 1201 (Fla.Ct.App. 1990); Reese v. Lyons, 193 Ga.App. 548, 388 S.E.2d 369, 370 (1989); Theriault v. Swan, 558 A.2d 369, 370 (Me. 1989); Briggeman v. Albert, 322 Md. 133, 586 A.2d 15, 16 (1991); LePage v. Bumila, 407 Mass. 163, 552 N.E.2d 80, 82 (1990); Wheelock v. Eyl, 393 Mich. 74, 223 N.W.2d 276, 278 (1974); Mendez v. Brinkerhoff, 105 Nev. 157, 771 P.2d 163, 164 (1989); Turner v. Silver, 92 N.M. 313, 587 P.2d 966, 969 (App.1978); Hannah v. Ike Topper Structural Steel Co., 28 O.O.2d 223, 224-25, 120 Ohio App. 44, 46-48, 201 N.E.2d 63, 65 (1963); Walker v. Forrester, 764 P.2d 1337, 1338 (Okl. 1998); Samuel v. Mouzon, 282 S.C. 616, 320 S.E.2d 482, 484-85 (App.1984); Under Tennessee law, a person cited for a traffic offense "may elect not to contest the charge and may, in lieu of appearance in court, submit the fine and costs to the clerk of the court." Tenn.Code Ann. § 55-10-207(d) (1988); Barrios v. Davis, 415 S.W.2d 714 (Tex.Civ.App. 1967); Lucas v. Burrows, 499 S.W.2d 212 (Tex.Civ.App. 1973); Kelly v. Simoutis, 90 N.H. 87, 4 A.2d 868 (1939).

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*The above is not meant to be considered legal advice. Before making a determination as to how to proceed with a traffic citation issued to a potential claimant or potential defendant driver, you should consult legal counsel knowledgeable about the law in the jurisdiction where the citation was issued.

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