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Opinion No. 10-116

Effect of Tenn. Code Ann. § 24-7-124 (Supp. 2010) on admissibility of photographs generated by automated speed detection devices

QUESTION

Does Tenn. Code Ann. § 24-7-124 (Supp. 2010) render inadmissible in judicial or administrative proceedings the photographic image of a motor vehicle imprinted with a rate of speed generated by a fully automated detection device?

OPINION

No. Tenn. Code Ann. § 24-7-124 provides for the exclusion of measurements of speed by a radar, laser, or similar device where the law enforcement officer operating the device has not been trained pursuant to applicable guidelines. Because an unmanned and fully automated speed detection device has no operator, this section of the Code does not apply to such devices.

ANALYSIS

Effective July 1, 2010, Tenn. Code Ann. § 24-7-124 provides in pertinent part:

> In any judicial or administrative proceeding in which the results of a radar, laser or similar device used to measure the speed of a motor vehicle are being introduced for the purpose of proving the speed of the motor vehicle or the conduct of the driver of the vehicle, such results shall not be admissible for such purposes unless the law enforcement officer operating the device has been trained pursuant to guidelines established by the National Highway Traffic Safety Administration or the Tennessee Peace Officer Standards and Training (POST) Commission.

2010 Tenn. Public Acts Ch. 703, §§ 1, 2 (Mar. 17, 2010) (codified at Tenn. Code Ann. § 24-7-124(a) (Supp. 2010)).

In construing this statute, courts will seek to give full effect to the General Assembly's purpose, stopping just short of exceeding its intended scope. Lee Medical, Inc. v. Beecher, 312 S.W.3d 515, 526 (Tenn. 2010). The interpretive process begins with the text of the statute, giving the words that the General Assembly has chosen their natural and ordinary meaning. See id. When a statute's text is clear and unambiguous, the courts need not look beyond the statute itself to ascertain its meaning. Id. at 527. If an ambiguity exists, the courts may consider, among

other things, the background and purpose of the statute, its legislative history, and the entire statutory scheme in which the statute appears in divining the legislature's intent. *See id.* at 527-28.

The text of Tenn. Code Ann. § 24-7-124 opens broadly, encompassing "any" judicial or administrative proceeding in which the results of a speed detection device are offered to prove the speed of the subject motor vehicle. Tenn. Code Ann. § 24-7-124(a). The balance of the statutory language, however, delimits the scope of the enactment. The statute contemplates devices that are "operat[ed]" by a law enforcement officer, and conditions the admissibility of the results on the training of the officer. *Id.* In its ordinary sense, "operate" means "to cause to function" or to "run or control" that functioning. *See, e.g.,* Webster's New Collegiate Dictionary 797 (1981); American Heritage Dictionary 871 (Second College ed. 1985). Unmanned devices that automatically detect the speed of vehicles, make photographs, and imprint the rate of speed on images do not comfortably fit within the ambit of this language. In essence, such devices perform the work of speed detection by themselves.

The legislative history bolsters this conclusion. Remarks by legislators indicate that some local law enforcement agencies were purchasing radar guns and then using them without training or certification. *See* Tenn. H. Calendar & Rules Comm., *Debate on House Bill 2769* (March 4, 2010) (statements of Reps. Rich, Moore, and Todd). Existing regulations impose on smaller municipalities certification requirements respecting speed detection equipment—and, notably, draw a distinction between technicians who certify the equipment and "operator[s]" who themselves must be certified on its "use and operation." *See* Tenn. Comp. R. & Regs. 1340-03-04.09(1) (2008). The potential sanction for failing to adhere to certification regulations is revocation of the municipality's authorization to enforce the rules of the road on the interstate highways, *see* Tenn. Comp. R. & Regs. 1340-03-04.14, but no rule speaks to the admissibility of evidence gained by untrained operators. Tenn. Code Ann. § 24-7-124(a) thus provides a legislatively crafted exclusionary rule for evidence obtained by law enforcement officers who are not appropriately trained in the use of speed detection equipment.

Reading Tenn. Code Ann. § 24-7-124 to erect a per se ban on the admissibility of photographic evidence from automated speed detection devices would extend the scope of the statute beyond the phraseology chosen by the General Assembly and the particular problem that it evidently intended to address. It is our opinion, in short, that Tenn. Code Ann. § 24-7-124 encourages law enforcement agencies to properly train officers in the use of speed detection equipment, but does not require the equipment to have a human operator in the first instance. In our view, the admissibility in judicial proceedings of photographic evidence from automated speed detection devices, like other photographs, is guided by Tenn. R. Evid. 901. *See State v. Williams*, 913 S.W.2d 462, 465 (Tenn. 1996) (discussing admissibility of photographs from surveillance camera under the Rule); *see also* Op. Tenn. Att'y Gen. 10-17 (Feb. 19, 2010) (discussing red-light camera enforcement programs). That Rule provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to the court to support a finding by the trier of fact that the matter in question is what its proponent claims." Tenn. R. Evid. 901(b)(1). The question whether a law enforcement agency has laid a suitable evidentiary foundation in a particular case for the

admission of a photographic image imprinted with an alleged rate of speed generated by an automated speed detection device rests initially in the discretion of the trial court. *See Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 443 (Tenn. 1992) ("In Tennessee admissibility of evidence is within the sound discretion of the trial judge.").

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