



**By E-mail Only: [amyrmitchell@sbcglobal.net](mailto:amyrmitchell@sbcglobal.net)**

November 24, 2015

Ms. Amy R. Mitchell  
DeSoto City Prosecutor  
P.O. Box C  
DeSoto, KS 66018

**Re: *City of DeSoto v. Baker*, Case No. 67138**  
**Our File No.:15-0007344**

Dear Ms. Mitchell:

I represent Heather C. Baker regarding a traffic citation issued in your jurisdiction. The ACLU is interested in this case because we believe it raises important First Amendment free speech issues. I will briefly provide you with a description of the facts.

During rush hour on the evening of September 21, 2015, my client was driving home from work and was proceeding westbound on K-10. At 5:15 p.m., Johnson County Deputy Sheriff "Blake R" stopped my client at mile marker 18, near the Kill Creek exit. The Deputy immediately asked my client why she was flashing her headlights as she came over the hill, and she answered that she was warning oncoming drivers of heavy traffic ahead of them in the eastbound lanes of K-10. The Deputy then suggested that my client was actually attempting to warn on-coming drivers of the speed trap located at the bottom of the hill. The Deputy then issued my client a traffic citation for "flashing lights" allegedly in violation of Section 169(c) of the Uniform Traffic Ordinances, which provides that "Flashing lights are prohibited except as authorized or required in Sections 160, 161, 163, 170, and 172." Ms. Baker's trial is currently set for 6:00 p.m. on December 14, 2015, in DeSoto Municipal Court.

I ask that you dismiss the case against my client for two reasons. First, flashing a car's headlights is not a violation of Section 169(c). The exceptions found in Sections 160, 161, 163, 170, and 172 make it clear that the "flashing lights" referred to are specialty lights mounted on certain buses (school, church, day program, etc.) and emergency vehicles (police cars, ambulances, snow plows, etc.) for purposes of warning traffic. Nothing in these sections suggests that it is a violation of any Kansas traffic ordinance to flash one's headlights for any purpose. Instead, Section 169 (c) makes it unlawful to install and use flashing lights that mimic emergency signals used by police cars, etc.

Second, as applied in this case, the ordinance – even if it may sometimes apply to the non-communicative flashing of headlights – violates Ms. Baker's First Amendment of free speech. Under the First Amendment, conduct is protected speech when the person engaging in the conduct had "[a]n intent to convey a particularized message . . . and in the surrounding

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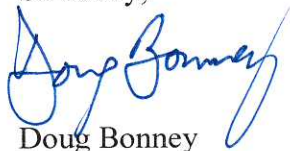
circumstances the likelihood was great that the message would be understood by those who viewed it.” *Spence v. Washington*, 418 U.S. 405, 410-11 (1974). There can be no doubt that, when she flashed her headlights, Ms. Baker intended to convey a particularized message (specifically a warning of an upcoming traffic snarl) and that oncoming drivers would understand her message as a warning of some kind of problem on the roadway ahead. Even assuming *arguendo* that Ms. Baker had been trying to warn other motorists that they were approaching a speed trap, that message is not illegal because it asks other motorists to bring their driving into compliance with law, specifically the speed limit. See *Elli v. City of Ellisville*, 997 F. Supp. 2d 980, 984 (E.D. Mo. 2014). There are other cases on point, but – for purposes of this letter – I think *Elli* is sufficient to get my point across.

For these reasons, I ask that you please dismiss the case against my client.

Also, please say hello to City Attorney Patrick Reavey for me. Patrick and I were opponents in a Fair Labor Standards Act case many years ago and have touched base a few times since then.

I am happy to discuss this matter with you at your convenience. I will be in the office all day tomorrow. On Friday, I will be in the office part of the day, but I am not sure of my exact hours since the office will officially be closed.

Sincerely,



Doug Bonney  
Chief Counsel & Legal Director  
Direct Dial: (816) 994-3311

cc: Heather C. Baker