

Due Process in Traffic Violations in Beijing¹

Du Baoliang (“Du”), a vegetable vendor in Beijing, China, was unknowingly charged over 10,000 RMB in fines for a series of traffic violations. Every day, Du would take the same road on his way to the market even though it was marked with a DO NOT ENTER sign. Du, who did not know a camera had recorded all of these violations, believed he had taken this route unnoticed. Recently, he was shocked to receive a notice for over 10,000 RMB in fines, which he incurred for 105 counts of traffic violations.

In his defense, Du claims that the enforceability of the DO NOT ENTER sign in this case is in question because the sign is “illegal.”

Du admitted that he saw the sign and understood that the road was a one way street and should not be entered. However, he did not know that the Beijing Traffic Bureau had adopted the practice of so-called “remote law enforcement,” which uses digital cameras instead of policemen to supervise traffic flows and to record traffic violations. Du was caught by the same camera at the same location 105 times, without receiving any ticket or any notice from the Beijing Traffic Bureau. It was not until recently when Du’s driver’s license was suspended that he finally learned about the huge amount of fines pending against him. However, after paying the 10,000 RMB in fines, Du is now suing the Beijing Traffic Bureau, in an attempt to recover his money.

Arguments have been made on both sides regarding whether the traffic sign is enforceable against Du. Du argues that since the sign was not made according to the Standard for Traffic Signs, the sign was defective. Under the relevant Chinese law, a defective sign cannot be enforced. However, the Beijing Traffic Bureau counters that although the sign is defective, it is still widely used and treated as legitimate by drivers; therefore it may be enforced. In fact, Du himself admitted that the reason he disregarded the sign was not because he had thought it was illegitimate, but because he had believed that as long as he was not stopped by a policeman, his violation would go unnoticed.

Assuming the traffic sign is legitimate, another interesting question is whether the penalty is enforceable. Du argues that even if the traffic sign is legitimate, the penalty issued by Beijing Traffic Bureau is not enforceable because the Traffic Bureau did not give him notice as required by law. The relevant Chinese law requires the traffic authority to give written notice to offenders, but does not specify what constitutes written notice. Currently, the Beijing Traffic Bureau uses the internet, phone service and newspapers to give notice to offenders who are captured by digital cameras. In order to learn the existence of a pending ticket, a driver may check the traffic violation section of the local newspaper, call the Beijing Traffic Bureau’s phone service center, or check the online database. However, all of these means do not seem to work for drivers like Du, who have limited resources and knowledge as to the legal system. Du had assumed that

¹ Compiled from the following sources:

<http://forum.blogchina.com/p692896.html>

http://auto.china.com/zh_cn/news2/10003230/20050606/12376124.html

<http://auto.people.com.cn/GB/14556/3470732.html>

http://paper.yntv.cn/category/3100105/2005/06/15/2005-06-15_244339_3100105.shtml

http://news.xinhuanet.com/auto/2005-06/16/content_3091409.htm

the Beijing Traffic Bureau would have given him notice by phone or in writing in the case of a traffic violation. He did not realize that one was to read the newspaper or check online for such notices (in fact, Du does not know how to use a computer at all).

The U.S. legal system usually categorizes notice into actual notice and constructive notice, which is what a reasonable person should have known. Du certainly did not receive actual notice of his traffic violations. The more complicated question is whether Du had constructive notice, i.e., whether a reasonable man in Du's situation would have known that there were tickets pending. This is not a simple question to answer. One needs to decide first the standard for a reasonable person. Is he a reasonable layman with limited resource like Du? Or is he a reasonable yet more sophisticated person who has general knowledge as to online and paper resources?

It will be interesting to see the Chinese court's take on this case, especially given the fact that in recent years, more and more people in China have started to use legal means to protect themselves. In the old days, it would have been unthinkable for a person like Du to sue the Beijing Traffic Bureau, which is a governmental authority. However, the increasing preponderance of cases like Du's attests to the gradual modernization of Chinese law.