[[Traffic court judge's decision, People v. Anna V., from highwayrobbery.net]]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. Defendant.	TRIAL DECISION COMMISSIONER GLENN MONDO Dept. C-52

Defendant declared her intent to plead not guilty on August 31, 2007. The cause was set for arraignment and court trial on October 3, 2007. A motion was brought by defendant on September 12, 2007, to reset arraignment and continue the trial. The motion was granted and arraignment and trial were continued to October 31, 2007. This matter came on regularly for trial on that date. Trial was not completed on October 31, however, because defendant requested an electronic recording of the proceedings, and the case exceeded the court's time estimate. With a time waiver from the defendant, trial recessed on the afternoon of October 31, and was initially continued to November 7 and then,

due to the court's schedule, to November 14, 2007, when the trial was completed.

Defendant was charged with violating Vehicle Code section 21453(a), failing to stop for a steady circular red signal prior to entering the intersection. Enforcement of the alleged violation was by photographic enforcement; there was no witness present at the scene of the alleged offense. At the end of trial the court took the matter under submission to conduct additional research, and the parties waived their presence for judgment and sentencing.

Officer Bell of the Santa Ana Police Department testified for the people regarding operation of the automated red light photo enforcement system; warning notices issued by the City of Santa Ana; posted signs identifying the system's presence; public hearings conducted by the City; public announcements by the City; and the alleged violation captured by the photo enforcement system.

Defendant was permitted cross examination regarding Officer Bell's knowledge, experience, training and education related to the photo enforcement system. Based on the evidence presented, including Officer Bell's description of three days of training regarding operation of the system and the encrypted communications between the photo enforcement system vendor and the police department, the court finds Officer Bell to be qualified as an expert under Evidence Code section 801, and considered his qualifications in determining the weight to be given to his testimony. Officer Bell's testimony established the people's compliance with Vehicle Code section 21455.5, subsections (b) and (c).

Defendant objected to introduction of people's exhibits 1, 4 and 6 which included photos and video of the alleged violation. Evidence Code section 250 includes photographs within the definition of "writings" which must be properly authenticated before being admitted into evidence. Evidence Code section 1400, 1401. As analyzed in greater detail below, Officer Bell, who testified as an expert

witness, sufficiently authenticated the offered photographs and video. Defendant failed to present any evidence which would shift the burden of producing evidence regarding the accuracy of the images. See Evidence Code section 1553 ("A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent.")

Defendant objected to Exhibit 1 (a notice of traffic violation containing 4 photos taken by the automated photo enforcement system) on the grounds of lack of foundation; hearsay; denial of defendant's constitutional right to confront witnesses; and lack of a warning notice program for 30 days at this particular location prior to commencement of the enforcement program. The objections were overruled and the exhibit admitted into evidence.

As to lack of foundation, Officer Bell testified he had been specially trained in the technical aspects of the automated red light photo enforcement system manufactured by the City's vendor, Redflex. Officer Bell has been certified to operate the Redflex automated enforcement system, and testified regarding secured transmission lines preventing unauthorized persons from accessing the system. The present case is analogous to People v. Flaxman (1977) 74 Cal.App.3d Supp. 16. In Flaxman, the police officer was familiar with and calibrated a radar device but could not explain how it worked. The court nevertheless found a prima facie showing the machine was suitably functioning. Similarly, Officer Bell's testimony was sufficient to establish the City's automated red light enforcement system was suitably functioning.

In determining Officer Bell qualified as an expert, and that photographic and video evidence was admissible, the court considered photos and video to be qualitatively different than typical writings because photos and video can be used as probative evidence of what they depict. When used in this manner they take on the status of independent "silent" witnesses. People v. Bowley (1963) 59

Cal.2d 855, 860. Bowley recognized that a foundation for admission of photos or video may be established by expert testimony even if, as here, no person is qualified to authenticate the images from personal observation.

Given Officer Bell's training and expertise in the automated red light enforcement system used in the City of Santa Ana, the photos and video offered by the city were sufficiently authenticated as an accurate representation of what they depict. This ruling is reinforced not only by the provisions of Evidence Code section 1553, as there was no evidence offered by defendant that any printed representation offered by the people was inaccurate or unreliable, but also by the fact the photos and video show defendant driving the vehicle in question (and failing to stop for the red light prior to entering the intersection).

As to defendant's hearsay objection, the photos are not statements, and the hearsay objection is therefore inapposite. Given the photos show defendant driving the vehicle in question, there is nothing inauthentic about them. Defendant's objections regarding confrontation rights and compliance with the statutory warning notice are addressed in detail below, but are likewise overruled.

Defendant objected to Exhibit 4 (consisting of 4 photos) for lack of foundation and hearsay. Defendant's objections are overruled for the same reasons as were her objections to Exhibit 1. Given the photos show defendant driving the vehicle in question, there is nothing inauthentic about them. The photos are not statements, and therefore not hearsay. For reasons stated above, including Bowley, supra, Evidence Code section 1553, and Officer Bell's expert testimony, the lack of foundation objection is overruled.

Similarly, defendant's objections to Exhibit 6 (the DVD ROM containing approximately twelve seconds of video showing the defendant failed to stop at the red light in question) are overruled. For the reasons set forth above, the

people established an adequate foundation, and the video is not a statement and therefore cannot be inadmissible hearsay.

Defendant also objected to Exhibit 2 (a statement of red light camera technology summarizing the working of the system in question) based on lack of foundation and relevancy. The objections are overruled and the exhibit admitted. Officer Bell testified the exhibit was an accurate summary of the photo enforcement system's operation, and Officer Bell was available for cross examination on this topic. For this reason, and because Exhibit 2 relates to operation of the camera system in question, and thus has a tendency to prove a disputed fact of consequence to determination of the action, the exhibit was admitted into evidence. Evidence Code section 210.

Defendant objected to Exhibit 3 (a custodian of records declaration) on the grounds of lack of foundation and hearsay. However, these objections are not well taken.

Subdivision (a) of Evidence Code section 1521 makes secondary evidence generally admissible to prove the content of a writing. The nature of the evidence offered affects its weight, not its admissibility. No evidence was received or offered which would indicate a genuine dispute concerning material terms of the exhibit or that its admission would be unfair. None of the additional grounds for exclusion of secondary evidence offered in section 1522 exist, and the exhibit had a tendency in reason to prove disputed facts that were of consequence to the determination of the action.

In overruling defendant's objection to Exhibit 3 (declaration of custodian of records), the court notes the declaration was offered to lay a foundation for admission of the photo, video and other technical data obtained from the photo enforcement system. Even if considered a statement offered for the truth of the matter, and therefore hearsay, the declaration qualifies for the official records exception to the hearsay rule. Evidence Code section 1280. Evidence admissible

under this section is also admissible under section 1271 (the business records exception). Unlike section 1271, however, section 1280 permits the court to admit an official record without requiring a witness to testify if the court takes judicial notice or if sufficient evidence shows the record was prepared in such a manner as to assure its trustworthiness.

Even though prepared by the City's agent, Redflex, the sources of information and preparation of the document indicate its trustworthiness. Evidence Code section 195 defines a public employee as an officer, agent or employee of a public entity, and therefore documents prepared by Redflex may be imbued with the trustworthiness of a public police agency so long as it is functioning as an agent of the government entity. See Imachi v. DMV (1992) 2 Cal.App.4th 809, 816-817 (trustworthiness indicia supplied by fact private lab technician, acting on behalf of law enforcement agency, was reporting first hand observations as well as presumption of official duty regularly performed, citing Evidence Code section 664). Similarly, Redflex was acting as an agent for the City, and meets the chief foundation of the special reliability granted official and business records: that they are based on first-hand observation of someone whose job it is to know the facts recorded.

As stated in the Law Revision Commission Comment, "Section 1280 . . . permits the court to admit an official record or report without necessarily requiring a witness to testify as to its identity or mode of preparation . . . if sufficient independent evidence shows the record or report was prepared in such a manner as to assure its trustworthiness." The people have met this burden. Therefore defendant's Sixth Amendment right to confront witnesses has not been violated. Even the U.S. Supreme Court in Crawford recognized that business and public records are usually admissible because they are not testimonial. 541 U.S. 56, n.8; see, e.g., People v. Johnson (2004) 121 Cal.App.4th 1409.

In Johnson, defendant sought to exclude a laboratory report, arguing it was "testimonial" hearsay because the person preparing it would have expected it to be used for criminal prosecution. The court rejected this argument, holding a laboratory report does not "bear testimony" or function as the equivalent of in-court testimony, noting if the preparer had appeared in court, he would merely have authenticated the document.

As stated in People v. Arreola (1994) 7 Cal.4th 1144, 1157: "Generally, the witness's demeanor is not a significant factor in evaluating foundational testimony relating to the admission of evidence such as laboratory reports, invoices, or receipts, where often the purpose of this testimony simply is to authenticate the documentary material, and where the author, signator, or custodian of the document ordinarily would be unable to recall from actual memory information relating to the specific contents of the writing and would rely instead upon the record of his or her own action." As Johnson recognized, such evidence did not amount to "testimonial" hearsay under Crawford. The same can be said regarding Exhibit 3 here.

The court's research found People v. Earnest (1995) 33 Cal.App.4th Supp. 18, which arguably requires either original or certified copies of documents be offered by the People. However, Earnest dealt with a challenged radar ticket and the undisputed fact the Legislature "strongly disapproves" of speed traps. The court in Earnest therefore found testimony regarding the existence of a speed survey to be legally insufficient. However, People v. Hardacre (2004) 116 Cal.App.4th 1292 held that speed trap laws apply only to speeding tickets (in Hardacre, the defendant was arrested for DUI after being pulled over in what was later established to be a speed trap; conviction upheld). Therefore, the ruling in Earnest does not require use of original or certified documents in the prosecution of a ticket for failing to stop at a red light.

Based on the above analysis, the fact the declarants were not in court, and original signatures not provided, does not constitute a violation of defendant's rights.

Defendant further objected to the declaration on the ground it does not address the "possibility" of some sort of virus affecting the system's operation, although defendant offered no evidence whatsoever of any such virus existing let alone actually impacting operation of the system. In essence, defendant has a basic misunderstanding of the People's burden of proof, which is "beyond a reasonable doubt." The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt. Here, defendant's "virus" objection is best classified as a possible or imaginary doubt.

Defendant did not object to Exhibit 5 (a DMV photo of defendant), and the exhibit was admitted.

Defendant also objected to Exhibit 7 (a maintenance log for the red light photo enforcement equipment in question) on the grounds of hearsay, foundation and relevance. Because the testimony by officer Bell established the writing was made by and within the scope of duty of a public employee; was made at or near the time of the act; and the sources of information and method and time of preparation were such as to indicate its trustworthiness, the log was admissible under Evidence Code section 1280. Among other things, Officer Bell testified the yellow signal phasing is set by the city engineer, and that authorized police officers, including the one who made the entries on the maintenance log, subsequently hand-timed the signal to ensure compliance with the required minimum duration based on the posted speed limit.

For the same reasons as with Exhibit 3 (the custodian of records declaration), the foundation and hearsay objections are overruled. As to defendant's relevancy objection, based on the fact that the equipment inspections (i.e., the hand-timing of the yellow signal phase) were not made on

the same date as the alleged violation, it is overruled as this factor goes to the weight rather than the admissibility of the evidence.

Both when objecting to Exhibit 1 and during closing argument, defendant referred to an unreported decision for the proposition that Vehicle Code section 21455.5(b) requires warning notices be issued for a period of thirty days following the installation of each photo enforcement camera in the city rather than a thirty day warning period from installation of the first intersection's camera equipment. However, unreported decisions do not constitute binding precedent. See California Rule of Court, Rule 8.1115(a), which states that except in situations not relevant here, an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action. This court's research disclosed no binding precedent, and therefore the court reviews the issue independently.

Section 21455.5(b) provides:

> "Prior to issuing citations under this section, a local jurisdiction utilizing an automated enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program."

Section 21455.5(a) references installation of an automated enforcement system at "the intersection." Defendant argues this as evidence the Legislature intended 30 day notices be sent when each intersection has a camera installed. However, it is well accepted law that "the words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and

with each other, to the extent possible." Dyna-Med, Inc. v. Fair Employment and Housing Commission (1987) 43 Cal.3d 1379, 1387 (citations omitted).

The statutory scheme governing photo enforcement citations makes many references to the "system." Section 21455.5(a)(2) states: "If it locates the system at an intersection, and ensures the system meets the criteria . . ."; section 21455.5(c) provides that "Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system"; section 21455.5(d) states "The activities listed in subdivision (c) that relate to operation of the system . . ."; and section 21455.6 states "A city council or board of supervisors shall conduct a public hearing on the proposed use of an automated enforcement system . . . ."

In addition to the word "system," section 21455.5(b) also uses the term "program." This section does not state the warning notice program must be implemented when each camera comes on line at a given intersection; but only before issuing tickets under "this section." If defendant's logic were accepted, it would require the governmental entity to hold a public hearing before each additional location in the city could be brought on-line for photo enforcement. See section 21455.6(a). There is nothing in the statutory language that implies the Legislature intended such multiple hearings, or requiring the governmental agency provide warning notices for 30 days at each intersection after installation of an automated enforcement system has commenced.

Supporting this analysis is that when the legislature referred to individual cameras in the statute, it used the word "equipment." See section 21455.5(2)(B)("Ensuring that the equipment is regularly inspected") and 21455.5(2)(C)("Certifying that the equipment is properly installed and calibrated..."). Had the Legislature intended the word "system" to refer to each individual intersection's cameras, it would have consistently used one word or the other. By drawing a distinction between the "system" and "equipment" throughout

the statutory scheme, it appears the Legislature intended the word "system" refer to all the automated enforcement system equipment used by the governmental entity. This is consistent with generally accepted definitions of a "system" as "a regularly interacting or interdependent group of items forming a unified whole." Merriam-Webster's Collegiate Dictionary 1194 (10th Ed. 1993)

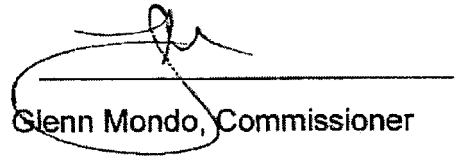
The court's research also included review of a proposed 2003 amendment (SB 780) which would have modified the law governing photo enforcement citations issued under section 21455.5. However, the Senate Bill 780 Bill Analysis does not shed any light on this issue. Even if it did, however, it is not possible to determine if the rejection of any proposed language evidenced a legislative rejection of a link between the grace period and the installation of the city's first automated enforcement system, or alternatively whether any proposed language was intended as a clarification of existing law which was rejected as unnecessary. Either way, the legislative history is not dispositive, and for the reasons stated above, this court concludes the 30 day warning period runs only from installation of the first camera in the system, and therefore the people have complied with section 21455.5(b).

Defendant did not testify but offered two exhibits which were admitted into evidence without objection. The first, Exhibit A, consisted of 44 pages of maintenance job statistics for the camera equipment in question. The second, Exhibit B, is a summary prepared by defendant of the information contained in Exhibit A. The summary of defendant's argument is that these exhibits establish the camera equipment in question was not working for a number of days, albeit over the course of nearly 3 ½ years between installation of the camera and the date defendant was issued her citation. The testimony by Officer Bell, however, was that the equipment was checked electronically each day, and that the majority of the dates the system was not working related to a construction project at the intersection.

More importantly, a fair interpretation of the records supports the conclusion that the camera equipment was regularly checked; that the vast majority of the time it was operating properly; and when not operating properly was maintained or repaired. Defendant's argument that the existence of repairs or downtime is somehow evidence that the system was not operating properly on the date she received her citation falls under the category of possible or imaginary doubt, not reasonable doubt, particularly in light of the photos and video showing defendant driving her car through the intersection in question without stopping for the red signal.

For the above reasons, defendant is guilty of the violation alleged, and her bail is applied as payment in full of the citation. Defendant's post-trial request for traffic school is denied.

Dated: November 27, 2007



Glenn Mondo, Commissioner