

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY ORANGE  
APPELLATE DIVISION

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

**FEB 16 2010**

ALAN CARLSON, Clerk of the Court

*H. Potter*  
BY H. POTTER

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff/Respondent

Appellate Number: 30-2009-00304893

Vs.

██████████ KHALED

Case No.: SA128676PE

Defendant/Appellant

**APPELLANT'S OPPOSITION TO CITY OF SANTA ANA POICE DEPARTMENT'S  
REQUEST FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND REPLY TO AMICUS  
BRIEF**

On Appeal from the Superior Court of California – County of Orange

HONORABLE Commissioner Daniel Ornelas Presiding

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CASE NUMBER: 30-2009-00303675-CL-MC-CJC – SA123981PE  
PEOPLE V. KHALED

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APPELLANT'S OPPOSITION TO CITY OF SANTA ANA POICE DEPARTMENT'S  
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AMICUS BRIEF

ARGUMENT

I

THE ISSUE OF WHETHER VEHICLE CODE §21455.5(B) REQUIRES 30 DAYS OF  
WARNING NOTICES FOR EACH INTERSECTION HAS BEEN DECIDED

This Court has addressed the issue Vehicle Code §21455.5(b)'s 30 day warning notice requirement as applying to each automated enforcement system on four prior occasions. (*People v. Fischetti* 2005, *People v. V* [REDACTED] 00044334 (2008), *People v. Fischetti* 00089037 (2008), and *People v. Romero* 00270350 January 28, 2010) In each of the four previous cases in which this issue was addressed, the Court found that the 30 day warning notice requirement applies to each camera system installed and made operational within the city, not simply the first one. In the latest case (*Romero*) the City of Santa Ana was provided with notice of the appeal, and given the opportunity to file briefs and participate in oral argument. This issue has been decided. There is no compelling reason for this court to change course at this late stage. Additionally, the City's Amicus Brief fails to advance any new arguments relating to the 30 day warning requirement. Allowing the City of Santa Ana and/or its Police Department to continue to ignore this Court's rulings will only encourage the city to use it's red light camera systems prosecute alleged violators in the absence of statutory authority to do so.

The City has had its opportunity, to be heard on this issue, and availed itself of that opportunity in *People v. Romero*. This court should deny the City of Santa Ana Police Department's application for Leave to File Brief as Amicus Curiae.

II

THE ISSUE OF WHETHER THE EVIDENCE THE SANTA ANA POLICE  
DEPARTMENT SUBMITTED AT TRAIL WAS ADMISSABLE HAS BEEN  
DECIDED

This Court addressed the issue of the admissibility of the evidence collected by the City of Santa Ana's contractor, Redflex Traffic Systems, Inc., in *People v. B* [REDACTED] 00270637, decided January 28, 2010. This issue has been decided. There is no compelling reason for this court to change course at this stage. In the *B* [REDACTED] case the City of Santa Ana was provided with notice of the appeal, and given the opportunity to file briefs and participate in oral argument. This issue has been decided. Additionally, the City's Amicus Brief fails to advance any new arguments relating the admissibility of the evidence produced by Reflex for the Santa Ana Police Department.

The City has had its opportunity, to be heard on this issue, and availed itself of that opportunity in *People v. B* [REDACTED]. This court should deny the City of Santa Ana Police Department's application for Leave to File Brief as Amicus Curiae.

### III

#### CITY'S ANALYSIS OF VEHICLE CODE §21544.5(B) IS INCORRECT.

Reading the statute in question, it is clear that the legislature intended that motorists be provided with fair warning that the government intends to use AES technology to enforce red light violations. City seems to take the position that the statute should be interpreted narrowly, so as to provide minimal burden on the government and shift the burdened to the motoring public. As a matter of policy, statutes intended to provide the public with fair notice of a potential for penal liability and protect the public from excessive government intrusion should be interpreted broadly, so as to give maximum protection to the public.

If made to comply with the thirty-day warning notice requirement, the City would simply have to stop issuing citations for thirty days, issue warning notices for that period, and resume issuing citations when compliance had been accomplished. The City would likely lose revenue, but this is not a new issue. This Appellate Division has ruled on four separate occasions that the City must issue warning notices for thirty days prior to issuing citations for each camera installation. Out of an abundance of caution, the City should have complied at least four years ago.

### IV

#### THE EVIDENCE SUBMITTED BY THE SANTA ANA POLICE DEPARTMENT WAS INADMISSABLE.

##### A. CITY'S CLAIM THAT THE EVIDENCE MET THE REQUIREMENTS OF EVIDENCE CODE §§1271, 1280, 1561, AND 801 ARE WITHOUT MERIT.

As discussed in Appellant's Opening Brief, the record of the trial proceedings clearly indicates that no employee from Redflex appeared as custodian of records to fulfill the requirements of Evidence Code §§1271. Sections 1560 et. seq. of the Evidence Code applies to business records provided in response to a subpoena duces tecum. The court record clearly indicates that the documents in question were not produced in response to such a subpoena. Therefore, the testimony of an employee of Redflex would have been necessary to provide a foundation for the admissibility of the document as a business record.

The City claims that the documents were admissible as official records pursuant to Evidence Code §1280 because Redflex is an agent of the Santa Ana Police department. However, the contract between the City of Santa Ana and Redflex defines the relationship of Redflex to the City as an independent contractor. Section 13 of the contract between the City and Redflex reads as follows:

##### 13. INDEPENDENT CONTRACTOR

Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Agreement; however, the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Contractor shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

Additionally, City raises this issue for the first time in its Amicus Brief. At no time during the trial did the Police Department claim that Redflex is an agent of the City for purposes of admissibility of the evidence.

The City's claim that Exhibit 3 was admissible because Officer Berg qualified as an expert in accordance with Evidence Code §801 fails.

Evidence Code §801  
reads as follows:

If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:

(a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact;  
and

(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

First, Officer Berg's testimony relating to People's exhibit 3 and the other documents was not the subject of expert opinion, but statements of fact; facts that he had no personal knowledge of. (See Settled Statement)

Second, opinion testimony of an expert must be based on the witness's special knowledge, skill, experience, training and education. Clearly, as to the documents, photographs and video proffered by Officer Berg, he possessed none of these attributes. Berg was unable to provide answers to any of the questions defense counsel asked and had no personal knowledge as to the mode of preparation of the documents or other evidence. Officer Berg could not be said to be an expert on the Redflex operations or any

of the other items about which he testified. (See Settled Statement)

The City would have the trial courts play fast and loose with the rules of evidence, as they have in the past. However, the fact that the case is merely a traffic infraction does not excuse the courts of the requirement that the defendant be provided with a fair trial.

V

THE PEOPLE BEAR THE BURDEN OF DEMONSTRATING COMPLIANCE WITH  
§21455.5(B)

Appellant notes that the Respondent has not briefed the third issue as requested by this Court's minute order of September 19, 2009. Respondent asserts that the People met their burden of proof beyond a reasonable doubt that the Appellant ran the red light. However there is no discussion of whether or not the People bore the burden of demonstrating that the City complied with Vehicle Code §21455.5(b).

Appellant further notes that the Respondent states in its Supplemental Brief that "... [T]he parties stipulated as to the evidence being introduced and received into evidence. The burden was on Appellant to object and argue that the evidence was invalid due the City's alleged non-compliance with Vehicle Code §21455.5(b)." The Record of the trial proceedings below is replete with defense objections to the admissibility of the evidence and that the City failed to comply with §21544.5(b). Certainly, Appellant met his burden of raising these issues in the trial court.

The requirement that the City comply with in order to gain statutory authority to operate an automated enforcement system is analogous to the requirement that the City conduct a valid engineering and traffic survey prior to using radar to enforce a posted speed limit. While the Vehicle Code lacks specific rules relating to the admissibility of evidence in prosecution of red light camera cases, this doesn't change the public policy consideration as to the duty of the people to disclose evidence in its possession that may be favorable to the defendant in a traffic case.

"First, it goes without saying that the People may not suppress material evidence for do so hinders the search for truth which is the goal of our system of criminal justice. To further this goal the courts have recognized that it is the duty of the People to disclose substantial material evidence favorable to the accused upon request, for otherwise a defendant is denied a fair trial. (*In re Ferguson* (1971) 5 Cal.3d 525, 532, 96 Cal.Rptr.594, 599. 487 P.2d 1234 and cases cited.) Thus, if a defendant in a speeding case asks about relevant engineering and traffic survey evidence, as defendant tried to do here, such evidence must be disclosed. But the Supreme Court has gone further. It has said, 'to condition the duty to disclose upon request would

provide a trap for the unwary and place substantial additional burdens on our busy trial courts.’ (*In re Ferguson*, supra, at p. 532, 96 Cal.Rptr. 599, 487 P.2d p. 1239.) It is consonant with this policy to require the People to disclose without request that radar was used and to produce the engineering and traffic survey or declare their inability to do so. The prosecution will always know radar has been used to apprehend a speeder. The defendant and the court may or may not be aware of that fact. Simple fairness and ease of procedure dictate that the prosecution make the fact known.

Second, as noted, a strong public policy against the use of speed trap evidence has been dared by the Legislature. That policy is thwarted if its effectuation is meant to depend upon technical applications of burdens of proof and requests for production of evidence whose significance a defendant may only dimly comprehend if at all.” *People v. Halopoff* (1976) 60 Cal.App.3d Supp 3, 6 131 Cal.Rptr. 531, 535

Leaving the defendant to produce evidence that the City failed to comply with the provisions of Vehicle Code §21455.5(b) when the prosecution has ready access to the evidence would place the defendant in the untenable position of having to prove a negative. As stated in *Halopoff*, most traffic defendants would be unable to even know what evidence to seek in order to provide for their defense. The general rule in traffic infraction cases has been for many years that the prosecution has the burden of producing evidence of compliance with jurisdiction and statutory authority. The rule should not be any different in photo enforcement cases.

The City would like to be excused from having to prove that it has the authority granted by the legislature to operate red light cameras within the city. However, the provisions of the code that require compliance with certain prerequisites prior to operating the camera systems would be meaningless unless the City had to prove compliance with them in court.

## CONCLUSION

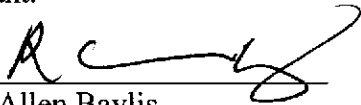
City of Santa Ana and its Police Department has been provided with an opportunity, and has been fully heard on each of the issues raised in this case. Additionally, City’s Amicus Curiae brief fails to provide any new information or legal argument to the case. This Court should deny the City of Santa Ana Police Department’s Application for Leave to File Brief as Amicus Curiae.

In its conclusion the City makes an “end justifies the means” argument. In other

words, since the evidence showed that the appellant ran the red light, all of his protections under the law and the rules for admissibility of evidence should be pushed aside. The government too, must be held accountable to follow the law, lest our society degenerate into a police state.

This court should stay on the course set by the cases decided on these issues in prior appeals and overturn the conviction of the Appellant.

Dated: February 15, 2010

  
\_\_\_\_\_  
R. Allen Baylis  
Attorney for Defendant/Appellant



PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

THE UNDERSIGNED DECLARES AS FOLLOWS:

I AM EMPLOYED IN THE County of Orange, State of California. I am over the age of eighteen and not a party to the within action. My business address is 9042 Garfield Ave., Suite 306, Huntington Beach, CA 92646, County of Orange, State of California.

On February 15, 2010, I served the following documents describe as:  
APPELANT'S OPPOSITION TO CITY OF SANTA ANA POICE DEPARTMENT'S  
REQUEST FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND REPLY TO AMICUS  
BRIEF, APPEAL CASE # 30-2009-00304893, TRIAL COURT CASE # SA128676PE  
Addressed as follows:

See Service list - attached

By Placing the true copies thereof enclosed in sealed envelope addressed as stated on the attached mailing list.

(BY MAIL) I caused such envelope(s) with postage fully prepaid thereon to be placed in the United States Mail at Huntington Beach, California.

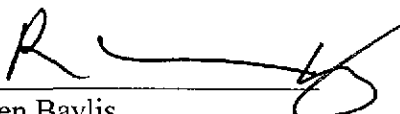
(BY PERSONAL SERVICE) I caused such envelope to be hand-delivered to the address listed above.

(BY FACSIMILIE MACHINE) I caused the above-referenced document(s) to be transmitted to the above named person(s) at the following telecopier number:

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U. S. Postal Service on the same day in the ordinary Course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 15, 2010 at Huntington Beach, California.

  
\_\_\_\_\_  
R. Allen Baylis

SERVICE LIST

People v. Khaled

Appellate Department Case No. 30-2009-00304893

Trial Court Case No. SA128676PE

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