



July 2, 2010

VIA OVERNITE EXPRESS

Hon. Ronald M. George, Chief Justice
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102-7303

Re: Request for Depublication of the Decision of the
Orange County Superior Court of California,
Appellate Division, in *People v. Khaled*

Dear Chief Justice George and Honorable Associate Justices:

Pursuant to California Rules of Court, Rule 8.1125(a), the City of Garden Grove (the "City") respectfully requests depublication of the Orange County Superior Court, Appellate Division's opinion in *People v. Khaled*, 30-2009-00304893 (Orange Super. Ct., Ap. Div., filed May 25, 2010), a copy of which is enclosed.

The City makes this request because it, as well as numerous other California cities, operates a red light photo enforcement system pursuant to Vehicle Code section 21455.5 and regularly prosecutes violations of Vehicle Code section 21453 (failing to stop for a red light) with evidence obtained from red light cameras. The City contracts with Redflex, the largest traffic photo enforcement technology provider in the United States, to install and maintain the digital cameras, computers, and other components of the red light enforcement system. The City's automated system has proven successful in altering driver behavior and reducing dangerous side-impact collisions caused by otherwise careless or inattentive motorists.

The City joins in the Request for Depublication filed by Mr. Michael Stewart of Sheppard Mullin Richter & Hampton LLP, on behalf of Redflex Traffic Systems, Inc. on June 23, 2010, a copy of which is enclosed and incorporated herein by reference. The City concurs with the points raised in Mr. Stewart's Request for Depublication.

In an effort to save the Court's valuable time, Mr. Stewart's arguments will not be duplicated in this letter. However, in addition to the many reasons cited by Mr. Stewart, the *Khaled* court erred in ruling that exceptions to the hearsay rule do not apply to the videos and photographs obtained from Redflex. The videos and photographs taken by the automated system installed and maintained by Redflex are admissible under Evidence Code section 1280, the official records exception, because Redflex is an agent of the municipality it contracts with. Municipalities are granted the authority to contract with Redflex under Vehicle Code section

21455.5(d), which provides, "Activities that relate to the operation of the system may be contracted out by the governmental agency, if it maintains overall control and supervision of the system." The requirement that the municipality "maintains overall control and supervision of the system" effectively defines the relationship between Redflex and the municipality as one of principal-agent.

Cases have consistently and indisputably held that the distinction between independent contractors and principal-agent relationships is determined by "the right to control the manner and means of accomplishing the result, that is, the details of the work." *Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal. App.3d 864, 873-874. Factors to consider in determining whether one is an agent of another are: (a) whether or not the one performing services is engaged in a distinct occupation or business; (b) whether the kind of work performed is usually done under the direction of the principal or by a specialist without supervision; (c) whether the skill required in the occupation is specialized and particular to that occupation; (d) who supplies the equipment; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether the work is a regular business of the principal; and (h) whether the parties believe they are creating the relationship of employer-employee. *Malloy v. Fong* (1951) 38 Cal.2d 356, 381-372.

In the case of the City of Garden Grove, as with most cities that contract with Redflex, the City and Redflex agree that a principal-agent relationship exists between them, where the City is the principal and Redflex is the agent. Both parties share the common interest of traffic enforcement for public safety. Redflex has a limited and narrow role as the City's agent. Redflex is only allowed to gather information obtained by the automated red light enforcement system. Redflex is not authorized to analyze, decipher, or test any of the information it gathers. Instead, only the City may make the determination on whether to issue citations based on its analysis and examination of the videos and photographs obtained from the system. The City retains the sole discretion and control to enforce Vehicle Code violations.

Furthermore, the skill required to perform the duties of Redflex is not specialized. Redflex is required to install, maintain, and obtain the information produced by the automated system. The Traffic Unit of the City of Garden Grove Police Department is familiar with these skills and has been properly trained to install, maintain, and obtain the information as well. Redflex merely assists in the efficiency of the operation of the red light enforcement system under the supervision of the City.

The City maintains overall control and supervision of the system. The City is familiar with the operations of the automated system such that it is able to effectively oversee and regulate Redflex. Given that Redflex has no right to control the manner and means of enforcing Vehicle Code violations, its relationship with the City falls within the definition of "principal-agent." As an agent of the City, Redflex acts as, and upholds the duties of, a public employee for the City of Garden Grove in a limited capacity. Accordingly, the videos and photographs made

by and within the scope of duties of Redflex are official records and admissible under Evidence Code section 1280.

If allowed to stand as a published decision, the *Khaled* case would effectively undermine the important legislative statutory scheme governing and authorizing automated traffic enforcement systems. The decision would also create evidentiary hurdles that have been consistently rejected in longstanding decisions. Cities may also refrain from prosecuting red light violations or discontinue use of automated traffic enforcement systems, putting public safety at risk.

For the foregoing reasons and for the reasons articulated in Mr. Stewart's Request for Depublication, the City respectfully requests that the Appellate Division's opinion in *Khaled* be depublished.

Very truly yours,

WOODRUFF, SPRADLIN & SMART
A Professional Corporation



ESTHER P. LIN

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Enclosures