

[[Opening brief, People v. Anna V., from highwayrobbery.net.  
This is a .pdf. The brief also is available online as an editable  
.txt document.]]

## TABLE OF CONTENTS

	<i>Page</i>
Table of Contents .....	i
Table of Authorities .....	iii
Statement of the Case.....	1
Statement of Appealability .....	1
Statement of Facts .....	1
Argument.....	2

1. (A) THE CITY OF SANTA ANA MUST COMPLY WITH VEHICLE CODE §21455.5 IN ORDER TO COMMENCE AN AUTOMATED ENFORCEMENT SYSTEM AT THE INTERSECTION OF HARBOR BOULEVARD AND WARNER STREET.

(A) (1) DIGRESSION INTO LINGUISTIC DELINEATION IS NECESSARY TO DEMONSTRATE ‘SYSTEM’ CONCLUSIVELY REFERS TO A CAMERA SYSTEM AT EACH INTERSECTION.

(B)THE CITY OF SANTA ANA FAILED TO PROVIDE PUBLIC ANNOUNCEMENT FOR THE AUTOMATED ENFORCEMENT SYSTEM AT HARBOR BOULEVARD AND WARNER STREET.

2. (A) IN ORDER FOR EVIDENCE OBTAINED BY THE AES AT HARBOR AND WARNER TO BE ADMISSABLE, THE CITY MUST COMPLY WITH VEHICLE CODE SECTIONS §21455.5 AND §21455.6. IT DOES NOT.

(A)(1)THE CITY OF SANTA ANA FAILED TO ENSURE THAT THE AUTOMATED ENFORCEMENT SYSTEM (AES) AT HARBOR BOULEVARD AND WARNER STREET WAS REGULARLY INSPECTED.

(A)(2)THE CITY OF SANTA ANA FAILED TO CERTIFY THAT THE AUTOMATED ENFORCEMENT SYSTEM (AES) AT HARBOR BOULEVARD AND WARNER STREET WAS PROPERLY INSTALLED AND CALIBRATED AND WAS OPERATING PROPERLY.

(A)(3)THE CITY OF SANTA ANA FAILED TO PROVIDE APPROPRIATE GUIDELINES FOR THE AUTOMATED ENFORCEMENT SYSTEM AT HARBOR BOULEVARD AND WARNER STREET.

Conclusion ..... 15

## TABLE OF AUTHORITIES

### CASES

Page

Dyna-Med, Inc. v. Fair Employment and Housing Commission (1987) 43 Cal.3d 1379, 1387	3
---	---

### STATUTES

Vehicle Code § 21455.5	
Vehicle Code § 21455.6	

## **STATEMENT OF THE CASE**

This is a Red Light Camera case and the Defendant/Appellant is seeking *de novo* review by the Appellate Court. The Defendant/Appellant alleges that, despite objections, People's testimony lacking foundation was admitted into evidence and obscured matters of law. The Defendant/Appellant is calling upon the Appellate Court for interpretation of relevant statutes as a matter of law and to determine whether or not the Trial Court abused judicial discretion in its measure of an automated enforcement system's conformance to statutory requirements allowing its use.

## **STATEMENT OF APPEALABILITY**

This appeal is from the judgment of the Superior Court of California and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1).

## **STATEMENT OF FACTS**

On the morning of August 8, 2007, at approximately 11:42 a.m., in Orange County, California, Defendant/Appellant made a right turn, from the right turn lane along eastbound Harbor Boulevard onto southbound Warner Street, in her 1993 Lexus Coupe. A video camera, comprising the main component of an AES, automatically took photographs/video of the intersection, Defendant/Appellant's rear license plate and the driver of the vehicle. Subsequently, on August 15, 2007, seven days after the alleged offense, a City of Santa Ana Automated Enforcement Traffic Violation was issued to the Defendant/Appellant by First Class Mail. The Citation, contained reprints of four photographs mentioned earlier, and commanded Defendant/Appellant to appear before the Superior Court of California in Santa Ana, on or before October 1, 2007.

Defendant/Appellant declared her intent to plead not guilty on August 31, 2007 and paid bail in the amount of \$346. The cause was set for arraignment and court trial on October 3, 2007. A motion was brought by Defendant/Appellant 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 October 31, 2007 in Department C54 of the Superior Court, before Officiating Judge Glenn Mondo, Commissioner. Trial commenced but was not completed on October 31. 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.

The case came on for court trial on November 14, 2007, before Officiating Judge Glenn Mondo, Commissioner. The Defendant/Appellant was found Guilty on December 3, 2007 and filed a timely Notice of Appeal and Proposed Statement on Appeal. This appeal ensued.

## **ARGUMENT**

### Issue 1

A. THE CITY OF SANTA ANA MUST COMPLY WITH VEHICLE CODE §21455.5 IN ORDER TO COMMENCE AN AUTOMATED ENFORCEMENT SYSTEM AT THE INTERSECTION OF HARBOR BOULEVARD AND WARNER STREET.

Uncontested by People, the AES at Harbor Boulevard and Warner Street went into effect without the 30-day grace period mandated by Vehicle Code § 21455.5 for intersections equipped with AES. During the grace period, alleged red-light violators picked-up by an AES are issued warnings rather than citations. To uphold lawful intent, the failure to comply with explicit requirements of Vehicle Code § 21455.5 must render

meaningless citations issued by the defiant AES. Defendant/Appellant alleges that the trial court overstepped judicial discretion when waiving the 30-day grace period required by Vehicle Code § 21455.5 for the AES at Harbor Boulevard and Warner Street.

§21455.5 (b) states that:

“Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system **shall** commence a program to issue only warning notices for 30 days.”(emphasis added)

According to Commissioner Mondo, only one 30-day warning is necessary when the first camera begins operation. In the Statement of Decision he writes: “it appears the Legislature intended the word “system” (to) refer to all the automated enforcement equipment used by the governmental entity (Exhibit 1, SD, page 11, lines 1-3).” However, it is obvious that the Legislature did not intend the statute language to be opaque and necessitate linguistic, semantic hair-splitting. The appropriateness of issuing warning notices at each intersection equipped with AES is intuitive; issuing warning notices to drivers at one location is meaningless to a different group of drivers at another. The application of the law should not arbitrarily be subject to the size of the jurisdiction.

Furthermore, issuing warning notices only at one location is not sufficient to fulfill the broader intent of the law. It is a well accepted law that “the words of the statute must be construed in context, keeping in mind 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 objective of AES, improving traffic safety, includes educating commuters about an impending automated enforcement system. To gain public support and

confidence, Legislators were careful to include a grace period rather than shocking the community with direct and indirect penalties that result from a citation. The Defendant/Appellant's case provides a relevant example. The Defendant/ Appellant lived abroad in June 2003 when the camera at Harbor and McFadden became operational and 30-day warning citations were issued. In May 2004 when the camera at Harbor and Warner became operational the Defendant/ Appellant lived in Costa Mesa. Had the law been followed and 30-day warning notices issued at the commencement of each intersection AES, she would have been duly informed and lawful intent upheld. However, this is not the case.

This contention is further strengthened by a similar case from Costa Mesa. In January of 2005 an appellate court found, in *People v. Fischetti*, that the city of Costa Mesa should have issued warning tickets for 30 days upon the installation of each new camera. Judge Charles Margines concludes the following:

“In addition, reversal is warranted based upon respondent's failure to implement a 30-day grace period ... Respondent's construction of Section 21455.5(b) appears to be inconsistent with the structure and purpose of Section 21455.5 as a whole. Because section 21455.5(a) provides that “the intersection” may be equipped with an automated enforcement system, “automated enforcement system” in Section 21455.5(b) cannot refer to a municipality's overall automated enforcement plan, but must instead refer to each individual automated system operated at an intersection within the municipal jurisdiction. Nor would it make sense, from the perspective of the motorists for whom the statutory requirements were intended to provide protection, for the geographic scope of the 30-day grace period to depend arbitrarily upon the size of each municipal jurisdiction. Tellingly, respondent itself offers legislative history of a 2003 amendment to Section 21455.5 (SB 780) which would have expressly provided for the grace period “during the first 30 days after the first recording unit is installed”- the omission of this language from the amendments enacted in 2003[[by AB 1022-see action page]] must be viewed not as an intention to adopt the omitted language, as respondent asserts, but rather as legislative

rejection of a link between the grace period and the installation of the municipality's first automated system.” (Exhibit 2)

The Defendant/Appellant notes that the undisputed nature of this issue, alone, could be the basis for summary judgment in favor of Defendant/Appellant, and brings forth the motion for Summary Judgment, herein.

A. (1) A DIGRESSION INTO LINGUISTIC DELINEATION IS NECESSARY TO DEMONSTRATE ‘SYSTEM’ CONCLUSIVELY REFERS TO A CAMERA SYSTEM AT EACH INTERSECTION.

The statutory scheme governing photo enforcement citations makes eleven references to the “system,” most importantly and clearly in the following:

§ 21455.5 (a):

“The limit line, the intersection, or a place designated in Section § 21455, where a driver is required to stop, may be equipped with an automated enforcement **system** ...” (emphasis added)

§ 21455.5 (1):

“Identifies the **system** by signs that clearly indicate the system’s presence and are visible to traffic in all directions ...” (emphasis added)

§ 21455.5 (2):

“If it locates the **system** at an intersection, and ensures the **system** meets the criteria ...” (emphasis added)

In the Statement of Decision Commissioner Mondo writes: “it appears the Legislature intended the word “system” (to) refer to all the automated enforcement equipment used by the governmental entity (Exhibit 1, SD,



page 11, lines 1-3).” If Commissioner Mondo’s interpretation is correct it follows that the “system” (i.e. all the equipment used by a governmental entity, meaning multiple intersections) would have to be located at each intersection. It follows that the signs at each intersection would need to warn about all the cameras in the city, not only a particular one at an intersection. This is illogical. In order to avoid an absurd statement the Legislature would have used the word “equipment” instead of “system” in each of the aforementioned instances. Since “system” is used and not “equipment,” the intent of the Legislature is that “system” be implicitly defined as the collection and functioning of necessary equipment at each individual intersection. This is further supported by the Redflex Company’s own description that “each Camera System consists of a Main Camera (to provide rear-shot images of the vehicle), a Plate Camera (to provide a zoomed image of its rear license plate) and a Face Camera (to capture images of the driver’s face). The Camera System is connected to the traffic signal controller and detection sensors” (Exhibit 3).

In addition, this is supported by the generally accepted definition of a “system” as “a regularly interacting or interdependent group of items forming a unified whole.” Merriam-Webster’s Collegiate Dictionary 1194 (10<sup>th</sup> Ed. 1993). The collection of equipment at each intersection meaningfully and regularly interacts to create a “system.” If any part is removed the “system” could not operate. On the other hand, all the photo enforcement cameras operated in Santa Ana are just a collection of these intersection “systems,” not a true “system” in of themselves. These separate cameras at different intersections do not “interact” nor are they “interdependent” and therefore cannot be defined a “system.” Each intersection is, in fact, independent and could function on its own, as, in fact, it did when the first intersection was activated in the city of Santa Ana at Harbor and McFadden on June 30, 2003. In addition, particular cameras

do not operate due to malfunctions and some are simply shut down without having any effect on other intersections. Therefore, it is once more clear that “system” refers to the collection of equipment at each intersection and not all the automated enforcement system equipment used by the governmental entity.

In the Statement of Decision Commissioner Mondo further notes that in addition to the word “system,” section § 21455.5(b) also uses the term “program:”

“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 of the commencement of the enforcement **program.**” (emphasis added)

It is significant that the word “program” is used only twice in section § 21455.5(b). In the first instance, it refers to the action of issuing only warning notices for 30 days. The second (and only other) time it is used in Section § 21455.5 is to state “prior to the commencement of the enforcement program.” Defendant/Appellant contends that if legislative intent was to make “system”(as defined by Commissioner Mondo as all the automated enforcement equipment used by the governmental entity) and “program” synonymous, “program” would have been used more often, interchangeably with the word “system” which is used eleven times in Section § 21455.5. This is not the case and it follows that a 30-day grace period must be implemented at the commencement of each new enforcement “system” in order to uphold lawful intent.

Commissioner Mondo also argues that “when the Legislature referred to individual cameras in the statute, it used the word “equipment” (Exhibit 1, SD, page 10, lines 22-23).

§21455.5(2)(b):

“Ensuring that the equipment is regularly inspected.”

§21455.5(2)(c):

“Certifying that the equipment is properly installed and calibrated...”

He maintains that “by drawing a distinction between the “system” and “equipment” throughout the statutory scheme, it appears the Legislature intended the word “system” (to) refer to all the automated enforcement system equipment used by the governmental entity” (Exhibit 1, SD, page 11). However, this interpretation is obviously flawed because the Legislature does not draw a meaningful distinction between “system” and “equipment” as is clearly shown by the following sections:

§ 21455.6(b)(1):

“The activities listed in subdivision (c) of Section 21455.5 that relate to the operation of an automated enforcement system may be contracted out by the city or county, except that the activities listed in paragraph (1) ... may not be contracted out to the **manufacturer or supplier of the automated enforcement system.**” (emphasis added)

§ 21455.6(b)(2):

“Paragraph (1) does not apply to a contract that was entered into by a city or county and a **manufacturer or supplier of automated enforcement equipment** before January 1, 2004, unless that contract is renewed, extended, or amended on or after January 1, 2004.”(emphasis added)

Although “system” and “equipment” (literally taken) mean different things, in this context they are closely related since a collection of “equipment” makes up a camera “system.” It follows that a 30-day grace period must be implemented at the commencement of each new enforcement “system” in order to uphold lawful intent.

Furthermore, Commissioner Mondo does not adhere to the linguistic distinction he delineates. In the Statement of Decision he references/states the following:

“Defendant also objected to Exhibit 2 (a statement of red light camera technology summarizing the working of the **system** in question)” (emphasis added)

“Officer Bell testified the exhibit was an accurate summary of the photo enforcement **system’s** operation” (emphasis added)

“Exhibit 2 relates to operation of the **camera system** in question” (Exhibit 1, SD, page 5, paragraph 1, emphasis added). (emphasis added)

In each of the aforementioned instances the camera system in question is the one at Harbor and Warner, its operation, functionality, etc. and not all the other cameras in the city of Santa Ana. If (as according to Commissioner Mondo) “equipment” refers to the cameras at each intersection then in order to be consistent with his proposed distinction Commissioner Mondo would use the word “equipment” instead of “system.” He did not. Therefore, if he uses “system” to mean all of the equipment, meaning multiple intersections, then he misses the relevant point at issue; if he uses “system” to mean the AES at Harbor and Warner, then he contradicts himself rendering his argument meaningless.

There is overwhelming evidence in the statutory language of § 21455.5 and § 21455.6 to indicate that “system” should be defined as a collection of equipment at each intersection. More significantly, the statutory purpose of improving safety, in part by educating drivers and providing ample warning of each camera enforcement system, underscores that this is the only plausible interpretation and that a 30-day grace period must be instituted at each intersection.

B. THE CITY OF SANTA ANA FAILED TO PROVIDE PUBLIC ANNOUNCEMENT FOR THE AUTOMATED ENFORCEMENT SYSTEM AT HARBOR BOULEVARD AND WARNER STREET.

Vehicle Code § 21455.5 presents a battery of requirements, all of which must be met before governmental agencies are allowed to equip intersections with AES, specifically:

§ 21455.5 (b):

“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.”(emphasis added)

The Santa Ana Police Department failed to produce a copy of the public announcement for AES at Harbor Boulevard and Warner Street. As was concluded in argumentation for Issue 1(A), “program” does not constitute all the camera “systems” but a “system” at each intersection. Furthermore, making a public announcement at each intersection is consistent with the legislative intent of educating and informing the public. Therefore, by not making a public announcement at the commencement of the AES at Harbor and Warner, the city of Santa Ana did not uphold lawful intent.

Issue 2

A. IN ORDER FOR EVIDENCE OBTAINED BY THE AES AT HARBOR AND WARNER TO BE ADMISSABLE, THE CITY MUST COMPLY WITH VEHICLE CODE SECTIONS §21455.5 AND §21455.6. IT DOES NOT.

In a 2001 decision from the San Diego Superior Court, Judge Ronald L. Styn concludes that

“ ‘where evidence is obtained from sources subject to legislative standards, there should be substantial compliance with those standards before the evidence is admitted ... there should be substantial compliance with Vehicle Code section §21455.5 to insure reliability and trustworthiness before red light camera evidence can be admitted. The reason the legislature set forth the requirement of governmental operation in Vehicle Code section §21455.5 was so the evidence would be trustworthy and reliable. (See Evidence Code section 664; official duties are presumed to be performed regularly.)’ ” *The People of the State of California v. John Allen* (Exhibit 4)

(1) THE CITY OF SANTA ANA FAILED TO ENSURE THAT THE AUTOMATED ENFORCEMENT SYSTEM (AES) AT HARBOR BOULEVARD AND WARNER STREET WAS REGULARLY INSPECTED.

Vehicle Code § 21455.5 presents a battery of requirements, specifically:

§ 21455.5 (c)(2)(B):

“Ensuring that the equipment is regularly inspected.”

To verify that AES at Harbor Boulevard and Warner Street conformed to these requirements, Defendant/Appellant requested documents and records required or controlled by those provisions, including maintenance job statistics for the AES at Harbor Boulevard and Warner Street (Exhibit 5). Careful review of this document revealed that the AES at Harbor and Warner was not regularly inspected.

According to the Maintenance Job Statistics, a monthly maintenance of the camera system at Harbor and Warner constitutes the following:

“All physical, hardware, and software systems operational per RTS specifications and Routine Maintenance Program. Performed following checks: Physical Check (Verified structure, glass cleaned, area free of debris, foundation seals, equipment clean, enclosures secure) Communication Check (Router, modem, and communication link in working order) Secure continuity (All loop grounding is secure and within specification) Voltage Levels (All incoming voltage levels are within specification and foreign voltage does not

exist) System Check (Next Images, hard-drives, SDCM comms, video, and phasing fully operational) Valid Certification” (page 23, Exhibit 5)

These checks seem appropriate as they include the physical, hardware and software systems, as well as making sure they are properly functioning together. However, during the first nine months the AES at Harbor and Warner was in operation (May 2004-January 2005) there were no monthly maintenance checks (and they are sporadic thereafter). The statute specifically mandates that the equipment be inspected regularly, not only when there are problems or when the issue is obvious. Overall, 61% of the time the AES at Harbor and Warner was in operation (from May 2004-September 2007) there were no monthly checks (Maintenance Job Summary Table, Exhibit 6). In fact, during numerous months (July, August and September of 2005, November and December of 2006, and April of 2007) there are no reports of any kind, not even to state that the camera was being fixed, that construction was going on or camera was off-line, etc. It is unclear whether the camera was functioning properly at those times and/or whether any tickets were issued. This seems a wanton disregard for the governing statute.

Although the law does not specifically state what interval “regularly” delineates, it stands to reason (and Legislative intent) that it should be fairly frequently and consistently in order that that the statute protect the people it is intended to serve. In fact, the City of Santa Ana itself deems a monthly maintenance appropriate albeit (curiously) only during certain time frames. In order for the evidence obtained by the equipment to be trustworthy and admissible, it must be without reproach and conform to statutes which govern it.

This is especially important as the maintenance logs indicate there are frequent and varied problems with the AES at Harbor and Warner

including but not limited to: blurry images (Exhibit 5, pages 4,13), inaccurate dates (Exhibit 5, page 11,12), the computer system not working properly (Exhibit 5, page 23), cameras not properly aligned (Exhibit 5, page 11), certificate expiration (Exhibit 5, page 11), hardware failure (Exhibit 5, page 36), etc. Computer hardware and software often have problems, are susceptible to glitches and viruses. It makes sense that physical components of the system burn out and crash, are moved or damaged. Regular and frequent checks are essential in order to ensure the accuracy of the data gathered.

The apparent lack of regular inspection required under Vehicle Code Section § 21455.5 should in itself be sufficient to dismiss the matter completely in by summary judgment. Defendant/Appellant objection to People's request to admit AES photographs into evidence, on the basis of insufficient foundation, was overruled. Defendant/Appellant alleges judicial prejudice lessened People's burden to fully and completely lay foundation for AES conforming to California Vehicle Code requirements, undermined Defendant/Appellant's chance for a fair trial.

(2) THE CITY OF SANTA ANA FAILED TO CERTIFY THAT THE AUTOMATED ENFORCEMENT SYSTEM (AES) AT HARBOR BOULEVARD AND WARNER STREET WAS PROPERLY INSTALLED AND CALIBRATED AND WAS OPERATING PROPERLY.

§ 21455.5 (c)(2)(C):

“Certifying that the equipment is properly installed and calibrated, and is operating properly.”

To verify that AES at Harbor Boulevard and Warner Street conformed to these requirements, Defendant/Appellant requested documents and records required or controlled by those provisions. The Police Department failed to



produce a copy of the calibration records certifying the equipment is properly installed, calibrated and operational. This in itself should be sufficient to dismiss the matter completely in by summary judgment.

(3) THE CITY OF SANTA ANA FAILED TO PROVIDE  
APPROPRIATE GUIDELINES FOR THE AUTOMATED  
ENFORCEMENT SYSTEM AT HARBOR BOULEVARD AND  
WARNER STREET.

Vehicle Code § 21455.5 presents a battery of requirements, all of which must be met before governmental agencies are allowed to equip intersections with AES, specifically:

§ 21455.5 (c)(1):

“Developing uniform guidelines for screening and issuing violations and for the processing and storage of confidential information, and establishing procedures to ensure compliance with those guidelines.”

To verify that AES at Harbor Boulevard and Warner Street conformed to these requirements, Defendant/Appellant requested documents and records required or controlled by those provisions, including public announcements, review guidelines, certifications, procedures, engineering calculations and contracts for AES at Harbor Boulevard and Warner Street.

The Santa Ana Police Department failed to produce a copy of guidelines for issuing violations. In fact, Defendant/Appellant was informed during the trial that no such guidelines existed and it was up to officers’ discretions. It stands to reason that developing “uniform guidelines” necessitates some form of written communication. Otherwise the criteria are left to individual interpretation and open to inconsistencies, putting the public at risk. The fact that the city of Santa Ana failed to

produce a copy of guidelines for issuing violations shows that lawful intent was not upheld.

Defendant /Appellant objection to People's request to admit AES photographs and video into evidence, on the basis of insufficient foundation, was overruled. Defendant/Appellant alleges judicial prejudice lessened People's burden to fully and completely lay foundation for AES conforming to California Vehicle Code requirements, undermined Defendant/Appellant's chance for a fair trial.

### **CONCLUSION**

The issues regarding interpretation of and adherence to Vehicle Code § 21455.5 are not trivial. Defendant/Appellant respectfully asks this Court to reverse the Judgment of the Trial Court, set aside the Verdict, and grant Defendant/Appellant a new trial.

Dated: \_\_\_\_\_

By: \_\_\_\_\_ Defendant/Appellant