

No. AP-14168

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT**

PEOPLE,

Plaintiff and Respondent,

v.

FISCHETTI,

Defendant and Appellant.

Court of Appeal

No.AP-14168

(Superior Court No. CM46167PE)

DATE: January 27, 2005

TIME: 9:00 AM

DEPT: C1

Appeal From a Judgment of
The Superior Court of California, County of Orange
The Honorable Mark Sheedy, Commissioner

**APPELLANT'S RESPONSE TO
RESPONDENT'S BRIEF**

Fischetti, self-represented

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STATUTES

Vehicle Code § 21455.5

Vehicle Code § 21455.7

The following is hereby submitted in response to the Respondent's Brief filed December 20, 2004.

INTRODUCTION

The Respondent's Brief submitted by the City of Costa Mesa raises points of opposition to the Opening Brief submittal by Appellant, Thomas Fischetti, relating to the Automated Enforcement System (AES) at the intersection of Newport Boulevard and 19th Street. Appellant alleges that AES at this location is inconsistencies in with requisites of California Vehicle Code Sections 21455.5 and 21455.7, which empowers governmental agencies to equip intersections with AES only after the fundamental requirements contained within section are met. The insufficient, contradictory and sometimes-irrelevant arguments presented by Respondent an attempt to dismiss administrative and engineering shortcomings in its deployment of AES at Newport Boulevard and 19th Street warrant this response.

THE COURT MUST DEFER TO THE LEGISLATIVE INTENT WHEN INTERPRETING A STATUTE

Respondent's argument is accepted with exception as to the relevance of Senate Bill 780, which is currently in suspense and not law at this time. However, Bills pertaining to California Vehicle Code Sections 21455.5 and 21455.7 in effect at the time of the alleged infraction can be used to demonstrate legislative intent. Accordingly, review of Bill Analysis records presented herein will reinforce Appellant's arguments, and explicitly refute Respondent's argument, related to the minimum duration for left turn signal change intervals at intersections using AES.

**CITY DID NOT PROVIDE 30-DAY WARNING NOTICE AS
REQUIRED BY CALIFORNIA VEHICLE CODE SECTION 21455.5(b)**

Defendant objected to People’s foundational requirements for AES at trial, stating it did not comply with 30-day notice requirements of California Vehicle Code Section 21455.5. Defendant’s objection was overruled. Appellant alleges that allowing the AES citation to go to trial despite its failure to comply with law regarding its use oversteps judicial discretion.. Issue 1 of Appellant’s Opening Brief argues that the City is required to issue warning notices for 30-days prior to issuing citations for the AES installation at Newport Boulevard and 19th Street. In response, Respondent argues that under current law the 30-day warning notice period is limited to the first intersection where City installed AES, and not for each installation.

Respondent’s argument attempts to twist the meaning of Section 21455.5(b) and cloud its intension. Section 21455.5(b) provides:

“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. 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.”

As to the question, were warning notices issued for the 30-day period before the first citation was issued using AES at Newport Boulevard and 19th Street, the undisputed answer is no – City provides no evidence that warning notices were *ever* issued in connection with the Automated Enforcement System at Newport Boulevard and 19th Street. To comply with governing law, Section 21455.5, City’s Program must provide warning notices for 30-days prior to issuing citations, and it did not.

The appropriateness of issue warning notices at each intersection equipped with AES is intuitive; issuing warning notices to drivers at one local is meaningless to a different group of drivers at another. The objective of AES, improving traffic safety, includes educating commuters of the impending automated enforcement

system. To gain public support and confidence in this program, legislation was careful to include a warning period rather than shocking the community with direct and indirect penalties that result from a citation (i.e., increased insurance premiums, loss of driver's license, etc.). These intensions are apparent in proposed edits to relevent law as introduced by Assembly Bill No. 1022. Proposed amendments to Section 21455.5, as introduced in AB1022 by Assembly Member Oropeza on February 20, 2003, includes the following:

“(b) Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system at ~~intersections~~ shall, ~~prior to issuing citations~~, 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.

The record is absent any legislative intentions to change the AES requirement to issue warning notices for a 30-day period prior to issuing citations.

Respondent's discussion of Senate Bill No. 780 is meaningless as the Bill is currently in suspense and not relevant to law applicable to this case. Setting that aside for one moment, further analysis of Respondent's evidence reveals the legislative intention of current law, which requires a 30-day warning notice period for each intersection equipped with AES. Documented in the Senate Bill No. 780 Analysis prepared by Steve Schnaidt (dated 4/28/03) is the following:

“... Under current law, the use of red light cameras is conditioned on several requirements and procedures, including that:

Intersections equipped with the enforcement systems must be identified by signs visible to traffic in all directions, or by signs posted at all major entrances to the participating city;

Use of the system must be preceded by public notice by the local jurisdiction at least 30 days in advance **and only warning notices may be issued to violators during the first 30 days of the system's operation,** after which citations may be issued...”

Appellant reiterates its allegation that the trial court overstepped judicial discretion when waiving the 30-day warning notice period required by Vehicle Code § 21455.5 for the AES at Newport Boulevard and 19th Street. The Appellant notes that the undisputed nature of this issue, alone, should be the basis for summary judgment in favor of Appellant, and brings forth the motion for Summary Judgment herein.

**THE CORRECTLY POSTED SPEED LIMIT IS THE APPROPRIATE
DEFINITION OF “APPROACH SPEED.”**

Unless conditions warrant a reduction, which in this case they do not (by virtue of the fact that no such conditions were presented in the speed survey) the correctly posted speed is the same as the 85th percentile speed, rounded-down. The Defendant reference to prima fascia speed limit requirements was understood and uncontested in trial. Also presented at trial was the 5 mph disparity between the posted speed limit and the 85th percentile speed measured by both City and Caltrans’ personnel. Defendant also explained that for the purpose of determining yellow change interval time, the disparity between the posted speed limit (displays a 35 mph speed limit for a yellow time of 3.6 seconds) and the 85th percentile speed (computed as 40 mph in both City and State speed surveys for traffic approaching the 19th Street signals, for a yellow time of 3.9 seconds) is exacerbated by the speed of the freeway traffic entering Newport Boulevard at 19th Street (This traffic could legally approach to within 200 feet of the signals at a speed of 65 mph, for a yellow time of 5.8 seconds). If the posted speed limit will control the duration of the yellow change interval, its imperative that it be posted correctly, which is defined in the Traffic Manual to be the 85th percentile speed, rounded-down. Obviously, if two roadways with differently posted speed limits approach the same set of signals, the yellow change interval will be set to the higher speed limit. At the intersection of concern, all southbound Highway 55 traffic ie

channeled into Newport Boulevard when the freeway terminates at 19th Street. Therefore, signals at 19th street should be set to reflect posted speed of traffic on southbound Highway 55, posted at 65 mph, which they are not.

THE REDUCED YELLOW PHASING FOR A LEFT TURN LANE IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

Whether or not MUTCD is silent as to minimum yellow change intervals for left turn signals, the evolution of Senate Bill 667 (Peace) makes clear the intension of Section 21455.7: that is intersections equipped with AES shall have signals with minimum yellow change intervals meeting the suggested times in Table 9-1, based on the posted speed limit (presumably using the correct speed limit signage), of the Traffic Manual. The pertinent portion of Bill Analysis of Senate Bill 667 (Peace) published May 3, 2001 reads:

“...Existing law provides for the orderly and safe flow of traffic through the use of various traffic control devices, signs and signals, etc. Singularly or sequentially, green, yellow and red lights are used to indicate to drivers when they are to proceed, slow or stop, respectively.

Existing law requires the Department of Transportation to adopt rules and regulations prescribing uniform standards and specifications for all official traffic control devices. Only those traffic control devices conforming to the department's standards and specifications are allowed to be placed upon a public street or highway.

This bill would establish specific change intervals for yellow lights, based on the posted speed limit at intersections. The standards would be applicable, however, only at those intersections at which automated enforcement systems (red light traffic camera) are in operation. The specified yellow light intervals would be:

Posted Speed Limit / Time Interval

25 mph or less, 3.0 seconds

30 mph, 3.2 seconds

35 mph, 3.6 seconds

40 mph, 3.9 seconds

45 mph, 4.3 seconds

50 mph, 4.7 seconds

55 mph, 5.0 seconds

60 mph, 5.4 seconds

65 mph, 5.8 seconds

...3. Questions/Amendments. The bill seeks to establish reasonable standards for yellow light intervals, although it specifies absolute time periods rather than minimum intervals.

Should local agencies and the department be permitted to set the yellow light intervals for longer periods if traffic or safety conditions, road slopes or configurations, etc., suggest same?

Would it make more sense to require compliance with the minimum intervals as contained in the department's Traffic Manual, rather than putting the actual time periods into law?

The author indicates that amendments will be offered in Committee to correct a drafting error. **The bill's current language refers only to left-turn yellow lights but was intended to apply to all yellow signal lights.**

Respondent contention that the Traffic Manual is silent as to whether the minimum yellow times are for left hand turns is based on the assumption that the Traffic Manual intended to distinguish different yellow change interval timings between through traffic and left turn signals, which it does not. Using an authority introduced by Respondent, a staff report (for Judicial Notice submitted herewith as Exhibit A) prepared by its subcommittee for the December 8, 2004 meeting of CALIFORNIA TRAFFIC CONTROL DEVICES COMMITTEE (CTCDC) included the following:

“...Furthermore, this downward adjustment (to approach speed) is neither recommended nor supported in any shape or form by the 2003 MUTCD and California Supplement,”

As a final note on this matter, in relation to Senate Bill No. 780 (introduced by Respondent on another matter), if made into law, the Bill would require the minimum yellow change interval timing for **all signals** at intersections with AES to be **4-seconds**. Specifically, the second reading of the Bill (April 28, 2003, and currently in suspense), states:

“...8.The bill would require that the duration of the yellow caution light be a minimum of 4 seconds at intersections equipped with red light cameras. The bill also would require that the local government entity certify that the camera system is properly installed, functioning correctly, and calibrated.”

If this Bill is indicative of future requirements for AES, the timing for the yellow change interval of concern in this case would need to be increased by 25% from its current setting to meet those requirements.

**THE POSTED SPEED LIMIT OF 35 MPH ON NEWPORT
BOULEVARD AT 19TH STREET IS THE CORRECT SPEED LIMIT
FOR THROUGH TRAFFIC**

Unless conditions warrant a reduction, which in this case they do not (by virtue of the fact that no such conditions were presented in the speed survey) the correctly posted speed is the same as the 85th percentile speed, rounded-down. The Defendant reference to prima fascia speed limit requirements was understood and uncontested in trial. Also presented at trial was the 5 mph disparity between the 35 mph posted speed limit, the 40 mph speed limit signage indicated by the City’s speed survey for Newport Boulevard at 19th Street, and the 85th percentile speed computed to be 40 mph, based on speed measured by both City and Caltrans’ personnel for southbound

traffic approaching 19th Street, and lastly the 65 mph speed limit for freeway traffic as it initially approaches the 19th street intersection. Respondent's claims that the posted speed limit is correct is based solely on testimony of Peoples witness, whom is not a traffic engineer and never claimed to represent an authority in establishing roadway speed limits. Furthermore the testimony from Peoples witness conflicts with the Citywide Speed Survey, certified by the Traffic Engineer for the City of Costa Mesa. Defendant submitted a copy of page 4 of 5 of that document, indicating a 40 mph posted speed limit on Newport Boulevard at 19th Street, into evidence at trial. Whether or not the City has jurisdictional authority to maintain this segment of roadway, It remains accountable for the information it certifies in its Citywide Speed Survey. Lacking any documentation that might substantiate a change from the certified 40 mph speed limit at the time the City established the yellow change interval for signals at 19th street (as it now claims to have done despite previous correspondence indicating otherwise – for Judicial Notice submitted herewith as Exhibit B), one would expect to see yellow change intervals of 3.9 seconds conforming to suggested minimum times in Table 9-1 of the Traffic manual. But we don't; instead we find a time of 3.6 seconds, corresponding to a 35 mph approach speed. Once again the facts surrounding technical and administrative requirements for AES do not support the City's claim to conform with Sections 21455.5 and 21455.7. Understanding the complexities of something seemingly simple as posted speed limit, and without so much as a memo to the file or hand-written calculation to document the evaluation of actual conditions against design criteria, how can the City claim to meet the requirements of 21455.5 (C) which reads:

“Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system. As used in this subdivision, "operate" includes all of the following activities:...

(c) Certifying that the equipment is properly installed and calibrated, and is operating properly...

Appellant alleges that, in terms of conformance to Vehicle Code requirements that allow AES to be operated by a governmental agency, as currently configured and operating the City **cannot** certify the AES at Newport Boulevard and 19th Street is installed and operates properly.

CONCLUSION

The issue here regarding interpretation of Vehicle Code § 21455.5 and § 21455.7 is not trivial. The City of Costa Mesa's commitment to improve traffic safety using AES will benefit the community only when its implementation follows closely and rigorously the Law allowing its use. The high degree of accuracy that AES can provide when properly installed and maintained is the same degree of accuracy the City should achieve while implementing AES. Defendant/Appellant alleges Respondent's Brief again attempts to sidestep responsibility and accountability. For the reasons provided in Appellants Opening Brief, as reinforced herein, 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