

FILED
SUPERIOR COURT OF SAN FRANCISCO
04 OCT 13 AM 10:59

SUPERIOR COURT OF SAN FRANCISCO
TRAFFIC DIVISION

People of the State of California,

Plaintiff, Consolidated Cases

v.

ORDER AFTER HEARING ON
MOTION IN LIMINE TO EXCLUDE
EVIDENCE; AND FOR DISMISSAL

IQBAL AHMAD [ZB0045906],
et al.

Defendant.

STATEMENT OF THE CASE

The City and County of San Francisco ["CCSF"] previously has installed and currently operates an automated red light enforcement system at certain controlled intersections, pursuant to Vehicle Code §21455.5. The defendants in these consolidated matters are vehicle drivers who received citations for allegedly violating Vehicle Code §21453(a) pursuant to this automated enforcement program. Procedurally, the defendants fall within three groups:

1. Cases proceeding on certain stipulated facts concerning testimony and evidence that would be presented at trial;
2. Cases proceeding prior to presentation of evidence at trial, seeking orders limiting or excluding evidence at trial;
3. Cases in which the cited driver was not the registered owner of the vehicle photographed by the system, but subsequently was identified in a declaration signed by the registered owner of the vehicle.

Defendants collectively have filed motions in limine to exclude from evidence the documentary and photographic evidence obtained by the Red Light Camera system. The motions challenge the admissibility of the evidence on various grounds, as well as its manner of presentation, and CCSF's alleged undue delegation of the operation of the system to a third party. In addition, in those cases in which defendants were identified by the registered owner of the vehicle, defendants challenge these declarations of non-liability as inadmissible hearsay, and a violation of the defendant's Fifth Amendment rights.

Defendants assert that should the subject evidence be excluded by the court, their citations must be dismissed for the resulting lack of evidence.

Finally, the court will consider and decide requests for sanctions submitted by each side during the course of these proceedings.

FACTS OF THE CASE

1. Stipulated Facts.

In September, 2001, when the first of the subject cases was scheduled for trial, and the first of these motions were filed, the parties—for purposes of these motions--reached certain agreements concerning common testimony, evidence, and objections that the parties anticipated would be offered. The Court will apply these stipulated fact in pertinent cases.

The parties stipulated that at trial of any of the subject matters, a San Francisco Police officer detailed to the Red Light Enforcement program would testify that the officer was presented with a packet of documents and photographs previously prepared and submitted by PRWT, Inc. ["PRWT"] the contractor engaged to install and maintain

the photo enforcement system. The officer would further testify that he/she reviewed the photographs, field technician service logs, and citation submitted; and that based on that review the officer signed the subject citation and returned it to PRWT for service by mail on the registered owner or named defendant. The parties further stipulated that defendants would object on grounds of lack of foundation, lack of personal knowledge, hearsay, and lack of competence, to prevent the officer from testifying about the actual content of the subject citation.

Testimony then would be offered by the project manager of the Red Light Camera. That witness would testify that PRWT produced and prepared the proposed citation based on the photographs and data produced by the automated enforcement system. The project manager would testify that each photo depicted a legible license plate. The name of the registered owner of the vehicle pictured would be determined from the license plate information. The project manager also would testify that part of his/her job is to oversee the field service technicians who pick up the film and memory cards; and who review the resulting photos to determine which will be processed for citations. The project manager's testimony also would include confirmation that the field service technician logs for the subject incident indicated that the system was operating properly when the film was inserted, and later removed from the camera.

Finally, it was stipulated that the PRWT project manager would testify that PRWT delivers the film to an independent company for photo developing. After photo processing the film is picked up by PRWT and downloaded into its computers. After downloading, the photo images are enhanced to display the license plate of the vehicle, the face of the driver, and, as needed, to mask the face of any passenger in the vehicle.

As in the case of the citing police officer, the stipulation provides that defendants would object to this testimony on grounds including lack of foundation, lack of personal knowledge, hearsay, and lack of competence, in order to prevent the project manager from testifying about the content of the subject citation.

2. Facts Based on Testimony and Declarations. Testimony received, and declarations on file in this matter provided further information concerning how the Red Light Camera system operates.

Vehicle Code §23455.5 authorizes a California city to equip a controlled intersection with an automated enforcement system, so long as the system meets specified statutory requirements, such as warning signage. Although there apparently are different automated enforcement systems available, San Francisco has installed and operates the “Type 36 Gatsometer Red Light Camera” system. San Francisco has contracted with the private firm PRWT, Inc. to install and maintain the system, as well as process the photos generated by the system, and generate the evidence packets used in the prosecution of the resulting citations.

In general terms, the system operates with the use of a computer, 35mm camera, and copper wire loop detectors. To install the system, cuts are made in the pavement in a loop configuration. Copper wires are inserted in those cuts, creating a wire “loop.” Electricity passing through the loops creates an electromagnetic field. Vehicles passing over the loops disrupt the field; that disruption of the electromagnetic field is a trigger for the Red Light Camera system. Two such loops are cut into the roadway in each lane of traffic to be controlled by the system, placed at a measured distance apart. When a

vehicle passes over the loops, the system not only detects the presence of the vehicle, but calculates the speed of the vehicle, using a time-distance computation.

Wires lead from the loops in the roadway to a cabinet mounted on a pole adjacent to the traffic signal. This cabinet contains the camera unit and computer for the system. In addition, the cabinet is linked to the traffic signal itself. The system is programmed to take photographs of a potential violation based on certain predetermined criteria. These include:

- a. Whether the traffic signal was red before the vehicle crossed the wire loops;
- b. Whether the signal has been red for a prescribed period of time prior to taking the photos [not less than 3/10th of a second];
- c. The calculated speed of the vehicle as it passes over the wire loops.

If these criteria are met, the system takes two photographs of the intersection. These photos capture the targeted vehicle first, prior to entering the intersection—generally, just at or before the limit line—and second, while in the intersection. Close-up images are also taken from these photos to depict the face of the driver, and the license plate of the vehicle. In addition to the visual images, the camera captures a digital display that provides information including the date and time of the alleged violation, the calculated speed of the vehicle, the length of time of the yellow caution light prior to the red light, the length of time the light has been red at the time of the photograph, and other information. This data also is saved to a computer memory card.

Three times per week, a field service technician from PRWT performs an on-site inspection of each red light camera system. This inspection serves two purposes: (a) to inspect the system for problems, and perform routine

maintenance; and (b) to retrieve the film and memory card from each device., and install new film and memory card.

With regard to inspection, service and maintenance, the technician inspects the computer cabinet and certain read-outs and displays that are designed to indicate whether the system is performing correctly. In the event that problems are found, the technician can attempt a repair on-site, or take the device off-line for more extensive repairs. Testimony indicated that the technician may visually inspect the roadway where the wire loops are installed for any obvious signs of problems. The technician also may clear and/or replace the clear plastic window that covers the camera lens in the event it is scratched or smeared.

At the same time, the technician removes the existing film from the system's camera, and replace it with new film. The memory card also is replaced. The technician contemporaneously fills out a field service technician's log sheet intended to show the working status of the system, and record the removal and replacement of the film and memory card.

Following this process, the technician delivers the film to an independent developing lab for processing of the film. Upon return to the PRWT offices, the technician enters into the form's computer the field service log information that was hand entered on-site.

Once the developed film is returned to the PRWT offices, company personnel review the photographs to determine if they meet criteria set by the City as minimum standards for issuance of a citation, are clear and legible, etc. Photographs that meet these criteria are compiled and forwarded to a designated San Francisco Police officer who reviews the information, and determines whether to issue a citation. If a citation is to be issued, the

officer signs a pre-printed citation, and returns all of this information to PRWT for processing, and service of the citation to the registered owner of the pictures vehicle

ISSUES PRESENTED

1. Has the City and County of San Francisco delegated the operation of the Red Light Camera system to such a great extent that it does not “operate” the system within the meaning of Vehicle Code §21455.5, rendering the system illegal?
2. Is the Red Light camera system a new or novel technology system which is not reliable or accepted within the relevant scientific community, and therefore subject to exclusion under the principles of the *Kelly* and *Leahy* cases?
3. The documentary and photographic evidence is hearsay, and, as presented, does not fall within any exception to the Hearsay Rule.
4. The Declaration of Non-Liability presented in cases involving drivers other than the registered owner of the subject vehicle are hearsay and/or double hearsay, and not admissible under any exception to the Hearsay Rule.

DOES THE CITY OPERATE THE SYSTEM IN COMPLIANCE WITH VEHICLE CODE §21455.5, ET SEQ.?

Vehicle Code §21455.5 authorizes the installation and operation of an automated enforcement system. That statute provides in pertinent part that “[o]nly a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system.”¹ Defendants argue that PRWT has sole control over the system; and that it has full and sole control over maintenance and service of the system. Noting that [at the time the subject citations were issued] the financial arrangements between CCSF and PRWT included a \$48.50 supplemental payment for each successfully prosecuted for which a fine was paid, defendants further argue that PRWT has an inherent conflict of interest which “precludes proper over-sight” of the system by the

¹ This is the language of the statute as it applied at the time the subject citations were issued, and these motions filed. Subsequent amendments to *Vehicle Code* §21455.5 have created specific standards and criteria against which the “operation” of the system must be determined

company. Defendants argue that the term “operate” in *Vehicle Code* §21455.5 requires the City to have a greater part in the Red Light Camera system.

The Court has considered the testimony and declarations submitted, as well as the underlying contract between CCSF and PRWT. The Court notes that CCSF, through the Department of Parking and Traffic, determines at what intersections Red Light Camera systems will be installed, and is directly involved in the engineering and installation of the systems. Any change or relocation of a system is determined by CCSF, as well. The contract reserves to CCSF the ownership of all drawings, plans, specifications, negatives and photographs.

Under the terms of the Memorandum of Understanding between CCSF and PRWT, it is the Department of Parking and Traffic which is the designated Project Manager of the Red Light Camera program. Moreover, while the citation forms and photographs are prepared by PRWT, it is the SFPD’s designated officer who reviews each proposed citation, and determines whether a the citation should issue.

From the evidence presented, the Court determines that CCSF has not unduly delegated to PRWT the duty to operate the Red Light Camera system, and that CCSF retains the necessary authority and oversight to be deemed the operator of the system for purposes of *Vehicle Code* §21455.5, et seq.

IS EVIDENCE OBTAINED BY THE RED LIGHT CAMERA SYSTEM SUBJECT TO EXCLUSION UNDER THE PRINCIPLES OF *KELLY* AND *LEAHY*?

Defendants’ principal challenge to the subject Red Light Camera evidence is based on the fundamental reliability of the system—a so-called Kelly-Leahy challenge.

In *People v. Kelly* (1976) 17 Cal3d 12, the California Supreme Court set forth a standard for the admissibility of evidence derived from a new or novel scientific method.

Kelly set forth certain general principals of admissibility of expert testimony based on new scientific techniques, including the following two step process: (1) The reliability of the method must be established by expert testimony, and (2) the witness furnishing such testimony must be [properly qualified as an expert to give an opinion on the subject. Further, the proponent of the evidence must demonstrate that correct scientific procedures were used in the particular case. [see, *People v. Leahy* (1994) 8 Cal 4th 587, 594].

In the instant matters, the Court heard testimony from two key witnesses in connection with the *Kelly* motion—Rich Kosina, offered as a witness by the People; and Juan Francisco Orosco, offered by defendants. Each witness was familiar with the technology upon which the red light camera system is based, including design, installation, and maintenance. Witness Kosina is employed by PRWT, Inc.—the company that contracts with CCSF to install and maintain the systems—and therefore has specific knowledge of the devices installed in San Francisco. Witness Orosco, while knowledgeable concerning the technology, and familiar with the type of systems installed in San Francisco, had not made any recent inspections of the San Francisco systems, nor had he preformed any recent tests on the San Francisco systems. Following *voir dire*, the Court found each witness qualified as an expert for purposes of this proceeding.

Both witnesses appeared to be informed concerning the relevant scientific community which would have a bearing on the acceptance of the system as a reliable scientific method. The three individual components of the system—wire loop sensors, 33mm [analog] camera, and computer central processing unit [“CPU”]—individually are established in their reliability. Nothing in the testimony offered established that the combination of these components into the red light camera, photo-enforcement system

creates a method that is not accepted as reliable, or is unreliable in its operation as installed in San Francisco.

Although defendants' witness Mr. Orosco raised concerns about the reliability of the system because, as configured and installed, it does not take a photograph that depicts the red light facing the offending driver, his testimony did not establish that the systems is fundamentally inaccurate or unreliable in taking a photograph of a red light offender. Concerns about the reliability of the system because of the use of wire loops—and the possibility that earth movement could disrupt them, similarly did not detract from the reliability of the device, since disruption of the wire loops apparently results in no photograph being taken, rather than an inaccurate photo, or compromised evidence.

Finally, no evidence was offered that established that the technology as applied in the San Francisco system was not correctly designed, installed or maintained, such as to render it unreliable or inadmissible under the *Kelly* and *Leahy* standards.

Based on the testimony of these witnesses, the Court concludes that the Red Light Camera system installed in San Francisco is comprised of technology and systems generally accepted as reliable within the scientific community, and that the San Francisco system, as it is constructed and installed, is reliable.

EVIDENCIARY FOUNDATION

Defendants argue that the People have failed to establish the necessary foundation to permit admission of various documents, to wit: (a) the “photo packet” consisting of the photographs of the subject vehicle at the specified intersection, including photos of the driver and license of the vehicle; and (b) the declaration of non-liability submitted in cases involving a driver other than the registered owner of the car photographed.

The Photo Packet. Pursuant to stipulation, the parties agree that among the documentary evidence offered at trial is the so-called “photo packet” which consists of a photocopy of the original citation; a redacted proof of service by [certified] mail indicating service of the citation and other information on the named defendant; copies of two service technician’s log sheets, and two pages of photographic images which reveal two images of the intersection which is the subject of the citation, and image of the face of the driver of the vehicle, and a close-up image of the license plate of the subject vehicle.

Initially, the court notes that no express objection was asserted to the proof of service by mail. Defendants’ objections are directed at the field service technician log sheets, and the photographs submitted in the packet. Defendants argue that none of the documents have been authenticated as business records, or fall within any other exception to the Hearsay Rule. With specific reference to the photographs, defendants contend that they have not been authenticated as a faithful representation of objects or persons depicted. *People v. Bowley* (1964) 59 Cal2d 855.

Evidence Code §1271 provides:

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

- a) The writing was made in the regular course of a business;
- b) The writing was made at or near the time of the act, condition, or event;
- c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and
- d) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

Evidence Code §1560 provides a specific procedure for authentication of a subpoenaed writing by declaration of the custodian of the specified records. Significantly, *Evidence Code* §1560 makes specific reference to documents subpoenaed in a criminal action. As such, the service logs, photographs and other documents produced at trial in a proceeding for violation of *Vehicle Code* §23452a, in which evidence is submitted based on the Red Light Camera process, *may* be admissible upon production of the documents in the manner provided in *Evidence Code* §1560, *et seq.* As further provided in that section, a party objecting to the submission of the records accompanied by the declaration of the custodian of records, has the ability to require the appearance of the witness.

In those cases proceeding on stipulated facts, the custodian of the records was neither produced at trial, nor was declaration submitted in compliance with *Evidence Code* §1560. As such the photographic packets submitted in the matters submitted on stipulated facts must be excluded from evidence. As to matters that have not proceeded to trial, a proper foundation must be established in order for the evidence to be admissible.

The Photographs. In addition to the foregoing, defendants challenge the admissibility of the photographs submitted, arguing that they can not be authenticated as being “faithful representations of the objects or persons depicted.” First, it should be noted that the parties agree that it is not essential that the photographer be produced to authenticate the images; any witness with such personal knowledge may lay that foundation. *People v. Bowley, supra*, 59 Cal2d 855. As such, the citing officer may be competent and sufficiently knowledgeable to identify the location/intersection depicted in the photos, and even the direction of travel depicted. In addition, the witness-

representative of the Red Light Camera company may be able to verify that the photos were taken at the location, based on other identifying information in the records submitted. Finally, it is within the jurisdiction of the court to order the appearance of the named defendant for purposes of identification. Penal Code §1043.

Declaration of Non-liability. A final objection is made to the Declaration of Non-liability submitted in certain cases. Under the procedure in place in Red Light Camera cases, the party cited for the alleged violation is the registered owner on the vehicle that was photographed. In certain cases, the registered owner may not be the driver of the car. This is occasionally true when the car has been loaned to a friend or family member, and is almost always true when the vehicle is a commercial vehicle such as a taxi cab. In those instances, the Red Light Camera program has made provision for the cited registered owner to execute a declaration of non-liability stating that the owner was not driving the car at the time of the alleged violation. The registered owner is required to provide a copy of his/her driver's license with its photographic identification, as well as a second identifying photograph. In addition, the owner is requested to provide the identity of the true driver of the vehicle.

Owners who respond may execute a declaration identifying the actual driver of the vehicle. Defendants submit that this declaration comprises hearsay, and is inadmissible.

To the extent the subject declarations of non-liability are offered in evidence to identify the driver of the photographed vehicle, they are hearsay and inadmissible.

ORDER ON MOTION TO EXCLUDE EVIDENCE

1. Defendant's motion to exclude evidence derived from the Red Light Camera system pursuant to *People v. Kelly* is denied;
2. The "photo packet" and other documentary evidence subject to defendants' motions must be authenticated adequately and in the manner set forth in the *Evidence Code*. In those cases proceeding on stipulated facts, and without foundation, the photographic and other documentary evidence is ordered excluded. In the remaining cases awaiting trial, failure to establish the proper foundation at trial will result in exclusion of such evidence.
4. With regard to those cases in which the defendant was not the registered owner of the vehicle photographed by the system, but identified in a declaration of non-liability, competent independent evidence must be offered to establish the driver/defendant's identity. [To the extent that any such cases have been submitted on stipulated facts, the declaration of non-liability is ordered excluded from evidence].

ORDER ON MOTIONS FOR SANCTIONS

Each side has requested sanctions against the other. The People seek sanctions for the actions of defendants in the last minute filing of a motion to continue the subject hearing in June, 2003. Defendants seek sanctions for a subsequent, and similarly late, request for continuance by the People.

People's motion for sanctions is denied.

Defendants' motion for sanctions is denied.

FURTHER PROCEEDINGS

Inasmuch as the instant Order affects numerous cases in various procedural postures, the Court orders the parties to appear on November 19, 2004, at 10:00 a.m., in Department B for a status conference to discuss the disposition of the subject cases, and scheduling of further proceedings in accordance with the provisions of this Order.

IT IS SO ORDERED.

DATED: October 13, 2004



Superior Court Commissioner