

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER**

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
[REDACTED], *MURRAY*
Defendant.

Case No.: SA [REDACTED] PE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
[REDACTED], *LORI A.*
Defendant.

Case No.: SA [REDACTED] PE

[REDACTED] VERDICT
OF NOT GUILTY

WRITTEN FINDINGS BY THE COURT

On January 12, 2009 and April 2, 2009, defendants *MURRAY* [REDACTED] and *LORI A.* [REDACTED] are alleged to have violated Vehicle Code (hereafter VC) section 21453(a) for failing to stop at red signal lights in the City of Santa Ana at the intersections of Bristol and Edinger

1 northbound and Dyer and Pullman westbound, respectively. The signal lights were of part
2 of an automated enforcement system – commonly known as red light cameras – installed
3 pursuant to VC 21455.5 et. seq.; and the result of a contractual agreement between the city
4 and Redflex Traffic Systems, Inc., entered into in December, 2002 and amended and
5 extended in February, 2008.

6 At trial, defendant *MURRAY* [REDACTED] alleged that the charge should be dismissed because the
7 city did not give a 30 day warning notice of the camera's installation for enforcement at
8 Bristol & Edinger, pursuant VC 21455.5(b). Defendant *LORI A.* [REDACTED] contended in limini at
9 her trial that the Santa Ana police officer should be precluded from testifying in the matter
10 because the contract's compensation clause violated the statutory mandates of VC
11 21455.5(g)(1)&(2). While the Court generally agrees with these contentions, it is compelled
12 to declare - on its own motion - that the contract between the Santa Ana and Redflex is
13 contrary to terms of a law designed for the protection of the public, which prescribes a
14 penalty for violation; is illegal and void, and that no action may be brought to enforce it. The
15 Court also finds that Santa Ana violated the "public announcement" requirement of VC
16 21455.5(b). Therefore, the Court enters verdicts of not guilty in these matters.

17
18 The Public Announcement

19 In the contract's initial recitals, Santa Ana and Redflex agreed that vehicle code
20 violations in general pose a serious threat to the lives and property of residents of and
21 visitors to the city, and violations of VC 21453 have been shown to possess a significant risk
22 to life and property. On May 27, 2003, Santa Ana Police Chief Paul Walters and Lt. (now
23 Deputy Chief) Tony Levetino, conducted a public press announcement at the intersection of
24 Harbor and McFadden, regarding the installation of the first red light camera.¹ Reporters
25

26
27 ¹ At the public briefing, these Santa Ana Police officials told the public that the red light cameras would save
28 the city innumerable lives; that no dollar amount could be put on the benefits that would occur; that research
has shown it will make the community much safer, and that the purpose is to make the streets safer and avoid
accidents, not to make money. Nothing in this opinion should be taken as an inference that this Court doubts
the sincerity of these recitations and representations.

1 from the Orange County Register and the Los Angeles Times were present; and these
2 papers thereafter published articles regarding the announcement. This public press briefing
3 qualifies as a legal public announcement. (cf. People vs. Squire, 15 Cal. App. 4th 775,782,
4 (1993)).

5 At the briefing, Chief Walters announced the completion of the first week of
6 successful operation of the system; which had been activated 442 times during the first 5
7 days of operation from May 19-23. He stated that the city officially began its 30 day warning
8 period on May 19th and that warning notice letters (pursuant to VC 21455.5(b)) were being
9 sent out. Effective June 19th, the chief indicated that the system would begin to issue real
10 traffic citations. VC 21455.5(b) states: "The local jurisdiction shall also make a public
11 announcement of the automated enforcement system at least 30 days prior the
12 commencement of the enforcement program" (emphasis added). In another case
13 interpreting VC 21455.5 et. seq., the court has held that statutes must be construed to
14 ascertain and give effect to the Legislature's intent; and to give the words of a statute their
15 usual and ordinary meaning. (Leonte vs. ACS State & Local Solutions, Inc., 123 Cal. App.
16 4th 521, 526-7, (2004)). The public announcement here which was made after the warning
17 period commenced, and only 24 days prior to the actual enforcement program, was legally
18 insufficient. On this basis alone, the verdict of not guilty must be entered.

19 Advanced publicity engendered by a public announcement serves the purpose of
20 deterring the violative driving conduct, legitimizes the law enforcement tool in question, and
21 lessens intrusiveness by reducing surprise, fear, and inconvenience. (People vs. Squire,
22 supra). While not a DUI checkpoint, a traffic device which flashes a bright camera light at a
23 driver deserves similar considerations. The public announcement herein was not only
24 legally untimely, it created factual problems as well. On May 27th, Chief Walters announced
25 that "when the yellow light comes on, you have 4.4 seconds before it turns red". Yet it has
26 been adduced in court that the only yellow light of that duration in Santa Ana's automated
27

1 system is at the original Harbor/McFadden intersection; which has been increased to 4.5
2 seconds, none of the other 18 intersection approaches currently in operation (with the
3 possible exception of Harbor & Warner, where the speed limit is 45 mph) have a yellow
4 signal which exceeds 4.0 seconds. Today, July 8, 2009, in addition to the above cases,
5 there are 13 red light camera cases set for trial in Department C54, Central Justice Center.
6 In 8 of the 13, the Defendant is alleged to have been behind the limit line at a red light for
7 less than the .4 seconds. In still 2 others, the violation time would have been an impossible
8 to discern .08 and .09 of a second.² Therefore, none of these 10 cases would have been
9 before the court if the yellow light duration was of the time stated at the only public
10 announcement on the subject, versus the duration the yellow lights actually are on at the
11 intersections. While there was never any requirement for such a statement, that it was
12 made at all has additional bearing on the issue of Notice, as will herein be set forth.

13 14 The Contract and the Warning Notice

15 This opinion has discussed the automated enforcement system as a whole. That is
16 because this Court does not necessarily agree with other respected conclusions which
17 would appear to require a separate 30 day warning period as a matter of law for each
18 camera at each intersection. For example, the very definition of "intersection" (VC 365) is
19 the area embraced by the boundary lines of the highways which join each other. There
20 would seem to be no logic basis for parceling out notices for each 1/4th approach to the
21 intersection itself.³

22
23
24 ² Vinson, SA135721PE, .26 seconds; Han, SA136762PEA, .18 seconds; Mez██████████ SA138138PE, .21
25 seconds; Coen, SA138633PEA, .26 seconds; Monge, SA139103PE, .23 seconds; Kim, SA139860PE, .23
26 seconds; Mahmud, SA140421PE, .27 seconds, Kelly, SA140606, .30 seconds, Crockett, SA137660PE, .48
seconds, speed limit 45 mph; A██████████ SA111098PE, .49 seconds

27 ³ On the other hand, this Court doesn't subscribe to the fear that every time a new intersection is added to the
28 automated camera system, then a new public city council meeting has to be held. VC 21455.6 clearly states
that the initial hearing is for "authorizing the city...to enter into a contract for the use of the system" only
(emphasis added).

1 This divergence does not resolve the fundamental notice question. The Santa
2 Ana/Redflex contract specifically defines "Warning Period" as "the period of thirty (30) days
3 after the Installation Date of the first intersection approach". Not surprisingly then, at the
4 public announcement, Chief Walters said: "They'll be a one month period and the
5 subsequent ones, if they're within that one month period, they'll be a warning. If not, if
6 they're after the first month of warning, then they'll be issued citations unless we decide
7 otherwise. Administratively we could, but technically by the law after the first month warning
8 then any that we install we can issue citations right from the start".

9 Eighty-four years ago, in Fleming vs. Superior Court (Orange County), 196 Cal. 344,
10 349 (1925), the Supreme Court upheld the constitutionality of speed trap laws which had
11 been enacted two years earlier. As the Court in People vs. Sullivan, 234 Cal. App. 3d 56,
12 58 (1991), stated, the Fleming court observed that the Legislature "clearly expressed its
13 conviction that the presence of traffic officers actually patrolling the highways would have a
14 most salutary effect in securing the observance of each and all of the regulations imposed
15 upon drivers of vehicles upon the public highways". Originally, the speed trap law related
16 solely to a section of the highway within the vision of a law enforcement officer who
17 calculated the speed of a vehicle by the time it took for the vehicle to enter and exit the
18 section.

19 For several years though, the law has additionally prohibited law enforcement officers
20 from testifying about the speed of a vehicle when "enforcement of the speed limit involves
21 the use of radar or any other electronic device that measures the speed of moving objects."
22 (VC 40802, et. seq.). Thus such evidence is excluded in court proceedings, unless the
23 prosecution prima facie (ie. as a condition precedent) generally establishes the appropriate
24 training of the officer, the reliability of the electronic device, and that a traffic and
25 engineering survey has been conducted which justifies the speed limits on posted signs that
26 drivers would pass by. In other words, the law requires the driver to be put on notice when
27 he sees a speed limit sign, that a reliable electronic device can be used to show he is in
28 violation of the vehicle code. On the other hand, the basic statutory faith in an overt police

1 presence remains. VC 21455.5 establishes its own statutory procedure for the use of an
2 electronic device to detect red light violations; and it also requires as a condition precedent
3 that "prior to issuing citations under this section a local jurisdiction ...shall commence a
4 program to issue warning notices for 30 days" (emphasis added). In this Court's opinion, this
5 is really quite similar in scope and intent to basic speed trap legislation.

6 At the public announcement, the Chief correctly observed: "If you think about it, in
7 order for us to put someone out here 24 hours a day, seven days a week, you would need 5
8 around the clock full time officers that did nothing else. And the fact that they can't watch or
9 record the same type of evidence that you could get; they can't possibly humanly do what
10 technology can do." This Court finds nothing wrong with new electronic tools to monitor
11 traffic; which will reduce accidents and save lives. However, when the law favors "the
12 presence of traffic officers actually patrolling the highways" (Fleming, supra), then statutory
13 notice requirements like those in VC 21455.5 take on an enhanced significance and must
14 be strictly obeyed.

15 In Santa Ana, these notice requirements were to be virtually eliminated. Thus the
16 following exchange at the press conference:

17 Chief Walters: "The other thing you have to remember is, these are not permanent; these
18 can be moved. If we determine that this is no longer a high accident location, in a year or
19 two we'll move it to another site. But we have 20 systems that we can move to wherever
20 the need is in the city; the whole idea again is to change the way people behave".

21 Question: "So basically, the key here that's different is that you have a floating red light
22 camera program?"

23 Chief Walters: "Yes, very much so".

24 Generally speaking, the terms of a contract may not be contradicted by evidence of
25 any prior agreement or contemporaneous oral agreement. However, where the validity of
26 an agreement is the fact in dispute, evidence relevant to that issue will not be excluded.
27 Further, the parole evidence rule does not exclude evidence which establishes the illegality
28 of the agreement. Finally, the parole evidence rule is not applicable to a controversy as to

1 the meaning of a writing between a party to the writing (here, Santa Ana) and a stranger to
2 the writing (here, the defendants). (Code of Civil Procedure section 1856; Pecarovich vs.
3 Becker, 113 Cal. App. 2d 309, 314-15, 1952). The statements by Santa Ana police officials
4 are therefore relevant, material and admissible to determining whether or not the contract in
5 question complies with the warning notice requirements of VC 21455.5 on which it is
6 founded.

7 Whenever a statute is made for the protection of the public, a contract in violation of
8 its provisions is void. (Firpo vs. Murphy, 72 Cal. App. 249, 253, 1925). Here, VC 21455.5
9 et. seq., was enacted to allow automated system enforcement of VC 21453 violations; which
10 are punishable by a statutorily designated fine of \$100 (plus penalty assessments) (VC
11 42001.15). A contract contrary to terms of law designed for the protection of the public and
12 prescribing a penalty for violation is illegal and void, and no action may be brought to
13 enforce it. A court should, on its own motion, refuse to entertain an action when its illegality
14 appears as a matter of law from the whole case before the court. (Civil Code section 1667;
15 Industrial Indemnity Company vs. Golden State Company, 117 Cal. App. 2d 519, 527,
16 1953).

17 In the instant case, the evidence shows that Santa Ana created a contract for
18 enforcement of red light violations which expressly provided for only a single warning notice
19 and at a time when only one of a contemplated 20 red light cameras existed. The evidence
20 additionally shows that it was the intent of the city not to issue further warnings for other
21 cameras installed after the first 30 days even though it knew that was within its lawful
22 administrative powers. Finally the evidence shows a plan by the city to use the cameras as
23 a floating enforcement program so that installations and enforcement could occur at any
24 signalized intersection in Santa Ana at any time and literally without any warning.⁴
25 Whether or not 30 day warning notices are required for every signalized installation, this set
26

27
28 ⁴ Of course, a member of the public who did have notice of potential enforcement from the original public
announcement would find himself with almost ½ a second less time to make it through a yellow light. At 40
mph, the speed limit at the intersections of all but one of today's cases set for trial, this would be over 23 feet;
or about 1 ½ car lengths of yellow light time which turns red, instead.

1 of circumstances is so completely contrary to any reasonable interpretation of VC 21455.5's
2 notice requirements as to compel this Court, on its own motion, to declare the contract as
3 unenforceable as a matter of law. On this basis, the defendants are entitled to a verdict of
4 not guilty.

5 6 Compensation

7 The Santa Ana/Redflex contract provides for a monthly fee for each functioning
8 approach containing a red light camera operating system in the city. This "flat rate" is
9 consistent with VC 21455.5(g), which states that compensation cannot be based on the
10 number of citations or percentage of the revenue generated. However, in its "Miscellaneous
11 Provisions" section, the contract provides Santa Ana with "the option to renegotiate" the
12 compensation, "if the City determines it is unable to recover its costs..." Defendant
13 A [REDACTED] contends that this effectively negates the requisite flat rate, because it provides
14 an incentive for Redflex to generate as many citations as possible so that the fees received
15 from the city don't get renegotiated and reduced.

16 The defendant is wrong in this factual assertion. Under the "Standards of
17 Performance" section of the contract, "Contractor warrants that its camera systems will
18 detect and capture all red light violations that occur..." One can't generate more than 100%.
19 As seen from the short time in the red in several of the aforementioned cases, Redflex does
20 its job well. However, Santa Ana's contractual plan to move cameras to different locations "if
21 we determine this is no longer a high accident location" does itself put the compensation
22 issue directly into question. It's simply a matter of common sense to state that if violations
23 are decreasing, then so are accidents. Therefore, the contract contemplates moving a red
24 light camera which is no longer generating sufficient revenue to another signalized
25 intersection – again, without any warning – and a concomitant opportunity to renegotiate the
26 amount of compensation required. Giving the words of VC 21455.5(g) their usual and
27 ordinary meaning, (Leonte, supra) the contract fails because it potentially violates both the
28

1 number of citation and percentage of revenue proscriptions of the section.⁵ For this reason,
2 the compensation section violates the mandate of VC 21455.5, and the defendants are
3 entitled to a verdict of not guilty.
4

5
6 Dated: July 8, 2009

7
8 *FILED AUG 5, 2009*

9 _____
10 KENNETH SCHWARTZ
11 COMMISSIONER OF THE SUPERIOR COURT
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26 _____
27 ⁵ To be distinguished – especially in today’s economic times – is language which would allow for termination of
28 the contract if Santa Ana determined it was unable to recover its costs. This Court sees no legal problem from
this possibility, but this is not present in the contract’s “Termination” section. As presently agreed, a change
based on circumstances which by necessity mean less money just gives Santa Ana an opportunity to seek
different monetary circumstances and concessions. This is exactly what is to be avoided by VC 21455.5(g).
Termination, rather than renegotiation, would be consistent with the sincere statements of the police officials at
the public announcement; see ft. 1.