

SEP 08 2008

ALAN CARLSON, Clerk of the Court

H. Potter
BY H. POTTER

No. 30-2008-00093057

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

PEOPLE)	Court of Appeal
Plaintiff and Respondent,)	No. 30-2008-00093057
)	
vs.)	
)	(Superior Court No.
FRANCO)	FL45261PE)
Defendant and Appellant.)	
)	

Appeal From a Judgment of

The Superior Court of California, County of Orange
North Justice Center

The Honorable Allen Kelley Stone, Commissioner

APPELLANT'S OPENING BRIEF

Franco, self-represented

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STATUTES

Vehicle Code § 21455.5 (g) (1)
Vehicle Code § 21455.5 (g) (2)
Vehicle Code § 41501 (a)

STATEMENT OF THE CASE

This is a Red Light Camera case. The Defendant/Appellant is seeking *de novo* review by the Appellate Court in this case. First, the Defendant/Appellant alleges that evidence presented by the People was legally inadmissible. Second, Defendant/Appellant alleges that certain of her legal rights were denied by the Trial Court without just cause. The Defendant/Appellant is calling upon the Appellate Court for interpretation of relevant statute as a matter of law and to determine whether or not the Trial Court came to a fair judgment with regard to this case.

On November 16, 2007, Defendant/Appellant entered a NOT GUILTY plea and posted bail in the amount of \$346.00. The case came on regularly for court trial on December 26, 2007, before Allen Kelley Stone, Commissioner. The Commissioner reviewed the evidence submitted by Defendant/Appellant and the People and the same day found Defendant/Appellant guilty and ordered the payment of fine and penalty totaling \$346.00 to be upheld. Defendant/Appellant filed a Notice of Appeal on January 11, 2008, and a Statement on Appeal on January 11, 2008. Defendant/Appellant attended a hearing for the Settled Statement on Appeal on April 2, 2008, after which the final Settled Statement on Appeal was completed. The final Statement on Appeal was certified by Commissioner Stone and made a part of the record on July 17, 2008. Defendant/Appellant received Notice of Filing Record on Appeal and Notice of Briefing Schedule on August 20, 2008. A due date of September 8, 2008 was set for the opening brief. Having not received a copy of the Settled Statement on Appeal, Defendant/Appellant went in person to the Superior Court, North Justice Center on August 28, 2008, to request a copy. After reviewing the Settled Statement of Appeal, Defendant/Appellant filed a Motion to Augment the Record on September 4, 2008.

STATEMENT OF APPEALABILITY

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

STATEMENT OF FACTS

The Settled Statement on Appeal (SS) and Motion to Augment said statement is incorporated by reference.

On the morning of September 4, 2007, at approximately 6:32 a.m., in Orange County, California, Defendant/Appellant proceeded straight heading south on Harbor Blvd. across Orangethorpe Ave., in her A video camera, comprising the main component of an AES (Red Light Camera), was installed at that intersection. That system automatically took photographs of the intersection, Defendant/Appellant's front license plate on the vehicle and the driver of the vehicle (admittedly Defendant/Appellant). Subsequently, on or about September 11, 2007, seven days after the alleged offense, a City of Fullerton Automated Enforcement Traffic Violation was issued to the Defendant/Appellant by First Class Mail. The Citation, numbered FL45261PE, contained reprints of four photographs mentioned earlier, and commanded Defendant/Appellant to appear before the County of Orange Superior Court, North Justice Center.

Defendant/Appellant entered a plea of NOT GUILTY and posted bail in the amount of \$346.00 on November 16, 2007. A trial date was set for December 26, 2007, in Department N1 of the North Justice Center.

The case came on regularly for court trial on December 26, 2007, before Allen Kelley Stone, Commissioner. At the trial, Defendant/Appellant was found Guilty, and assessed a fine and penalty totaling \$346.00. The Defendant/Appellant filed a timely Notice of Appeal and Proposed Statement on Appeal. This appeal ensued.

ARGUMENT

Issue 1

THE TRAFFIC SIGNAL VIOLATION VIDEO-MONITORING SYSTEM SERVICES AGREEMENT BETWEEN THE CITY OF FULLERTON AND NTS TRAFFIC SYSTEMS, INC., CONTAINS LANGUAGE IN DIRECT VIOLATION OF CALIFORNIA VEHICLE CODE 21455.5.

The contract between the City of Fullerton and NTS Traffic Systems, Inc. (formerly Nestor Traffic Systems, Inc.) was initially signed into agreement on June 19, 2002. At that time, Vehicle Code § 21455.5 (g) (2) exempted the contract from being held to the legal restrictions of that code regarding payment to the manufacturer or supplier 1) based on the number of citations generated or 2) as a percentage of the revenue generated as a result of the use of the equipment authorized as the contract was signed prior to January 1, 2004. However, as said contract included, at the time of Defendant/Appellant's citation, no less than three addendums, with the latest being dated January 16, 2007, Vehicle Code § 21455.5 (g) (1) did apply at the time of Defendant/Appellant's citation and subsequent trial court. Section 4.2 of Addendum Number Three of the AES contract states, "...NTS will perform an initial annual financial review of the program on the first anniversary of this Addendum, and every twelve months after the first annual review, and agrees to renegotiate its service fees (down or up, but not to exceed the service fees in Section 4.1) if it is determined that fees paid to NTS exceed net program revenues being realized." This language is in violation of Vehicle Code § 21455.5 (g) (1) in that the income received by NTS is directly tied to the revenue generated by the AES. As written, if there are not enough tickets issued to meet or

exceed the fees paid by the City of Fullerton to NTS, then the fees are mandated to be reduced by NTS.

Where evidence is obtained from sources subject to legislative standards, there should be substantial compliance with those standards before the evidence is admitted. The defects in the operation of the City's system are similar to the defects in the operation of Preliminary Alcohol Screening (PAS) tests discussed in *People v. Williams* (2001) 89 Cal.App.4th 85. Just as there should be substantial compliance with Title 17 before a PAS test can be admitted to insure reliability and trustworthiness, 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. To uphold lawful intent, the failure to comply with explicit requirements of Vehicle Code § 21455.5 (g) (1) must render meaningless citations issued by the defiant AES. Defendant/Appellant alleges that the trial court overstepped judicial discretion when overruling Defendant/Appellant's objection to the People's photo and video evidence resulting from the AES contract.

Issue 2

THE SYSTEM ACCESS LOGS (AS MAINTAINED AND PROVIDED BY NTS TRAFFIC SYSTEMS, INC.) INDICATING MULTIPLE DAILY ERRORS OF THE VIDEO-MONITORING SYSTEM DURING THE WEEK IN WHICH THE CITATION BEING APPEALED WAS ISSUED WERE DEEMED IRRELEVANT BY THE COURT AS EVIDENCE FOR THE DEFENSE.

Defendant/Appellant requested from the City of Fullerton the maintenance logs as compiled by NTS Traffic Systems, Inc., to verify the correct operation of the AES at the intersection of Harbor Blvd. and Orangethorpe Ave at the time of her citation. Upon review, Defendant/Appellant saw in the logs that there had been reoccurring problems with said AES multiple times between Monday, August 27, 2007 and Friday, September 7, 2007. These problems, as recorded on the maintenance log, included such items as 1) "USB cable replaced" but "errors still occurring"; 2) "black box for Ultraks needs to be replaced due to no camera control"; and 3) "errors...causing switched context and signal video". Despite Defendant/Appellant's introduction of said maintenance logs, as recorded by the AES service provider, as evidence that the cameras may not have been one hundred percent reliable at the time of her citation, the trial court ruled that the People's testimony that the cameras had been working properly was of greater value and should be weighed more heavily. The People have not provided any rational or documentation in support of their testimony versus what the AES service provider had recorded.

Issue 3

DEFENDANT/APPELLANT'S RIGHT TO A RECORDED COURT SESSION WAS DENIED.

According to case law set forth in *In re Armstrong* (1981) 126 Cal.App.3d 565, all misdemeanor proceedings must, on the defendant's request, be recorded electronically or by a stenographic court reporter. This requirement is incorporated into infraction proceedings by Penal Code Section 19.7, which states, "Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions..." According to *People v. Matthews* (1983) 139 Cal.App.3d 537, this statute incorporates into infraction procedure all

constitutional procedural protections applicable to misdemeanor procedure, even where not required by the Constitution for infraction procedure per se. Thus, infraction trials must be recorded or reported at the defendant's request.

Defendant/Appellant requested at the time she entered her NOT GUILTY plea (using the general information and payment phone number for the court, 714-449-8100) that her trial as scheduled for December 26, 2007, be recorded by the court. Defendant/Appellant was told by the customer service representative recording her plea that the Superior Court, North Justice Center does not do recordings for civil cases for a low-level case such as the Defendant/Appellant's. When the Defendant/Appellant pressed to have arrangements made for the recording, she was placed on hold. Defendant/Appellant was then told that, per the customer service representative's supervisor, it was too costly to record lower level civil cases such as hers, and as such, recording the trial would not be an option for her. Defendant/Appellant contends that her right to have her trial recorded by the court was arbitrarily waived based on cost alone and did not reflect proper judgment by the court's administrators.

Issue 4

DEFENDANT/APPELLANT'S RIGHT TO TRAFFIC SCHOOL WAS DENIED.

Vehicle Code § 41501 allows an individual who is in violation of any statute relating to the safe operation of a vehicle the opportunity to have the violation removed from his or her record in consideration of attending a licensed school for traffic violators. Vehicle Code § 41501 (a) allows for an offense committed within 12 months of another offense dismissed under this section to be dismissed at the court's discretion with a minimum of twelve hours of instruction at a licensed school for traffic violators. Defendant/Appellant had attended traffic school for a previous violation ten months fourteen months prior to her red-light

ticket. Defendant/Appellant was told by the Superior Court customer service representative at the time she entered her NOT GUILTY plea (using the general information and payment phone number for the court, 714-449-8100) that she was not eligible for traffic school due to the timing of her previous attendance of traffic school. Defendant/Appellant was told not to bother asking the trial court for traffic school as Orange County, and more specifically, Commissioner Stone, did not allow twelve-hour traffic school. No rationale was given to the Defendant/Appellant as to why it would and could not be a consideration of the court. Defendant/Appellant was denied the right to request traffic school attendance for the purpose of dismissing the red-light violation from her record.

CONCLUSION

Based on all of the foregoing, Defendant/Appellant respectfully asks this Court to reverse the Judgment of the Trial Court, set aside the Verdict, and find the Defendant/Appellant NOT GUILTY.

Dated: 9/5/08

By: (SIG) Defendant/Appellant

Defendant and Appellant in Pro Per

APPELLATE DIVISION OF THE SUPERIOR COURT
OF CALIFORNIA, COUNTY OF ORANGE

PEOPLE OF THE STATE OF CALIFORNIA,)	
Plaintiff and Respondent,)	Superior Court No. 30-2008-00093057
v.)	
FRANCO)	PROOF OF SERVICE
Defendant and Appellant)	

I, _____ declare:

1. I am over the age of eighteen and not a party to the within action.
 2. My business address is _____ Street, Los Angeles, CA 90071, in the county within which the mailing herein mentioned occurred.
 3. On September 5, 2008, I served the within Opening Brief by placing true copies thereof in separate envelopes, said envelopes being addressed to:

Appellate Division, Superior Court of California, County of Orange, Central Justice Center, 700 Civic Center Drive West, Santa Ana, CA 92701.

Orange County District Attorney's Office,* 401 Civic Center Drive West, Santa Ana, CA 92701.

Commissioner Allan Kelley Stone, Orange County Superior Court, North Justice Center, 1275 North Berkeley Avenue, Fullerton, CA 92832-1258.
- Each said envelope was then, on September 5, 2008, sealed and deposited in at Fed Ex at Los Angeles in Los Angeles County, with the postage thereon fully prepaid.
4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 9/5/08

(SIG)
not defendant/appellant

* highway robbery - net recommends serving both the DA and the city attorney or city prosecutor!