

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
APPELLATE DIVISION

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff and Respondent,

VS.

VIKTORS ANDRIS REKTE

Defendant and Appellant.

APP. 1300118

Application for Certification Re: Transfer to the Court of Appeal

Following a Decision by The Hon. Jeffrey J. Prevost of The Riverside
Superior Court, Appellate Division, on November 20, 2013

APPLICATION FOR CERTIFICATION RE: TRANSFER
TO THE COURT OF APPEAL

Viktors Andris Rekte,

Defendant and Appellant

By

D. Scott Elliot, Attorney at Law (SBN 076323)

Riverside, CA 92503

FACTUAL AND PROCEDURAL BACKGROUND

This appeal involves a red light camera citation dated October 26, 2012 generated by a “SmartCam” Automated Red Light Enforcement (ARLE) camera system installed and operated by Redflex Traffic Systems of Phoenix, Arizona in the City of Riverside at the Tyler St.-SR 91 intersection. The matter came before the Hon. William Anderson, Commissioner for Trial on May 7, 2013 in Department MV “2” of the Riverside Superior Court. Prior to the commencement of witness testimony, the Court heard and denied Appellant's Motion in Limine to exclude the citation on the ground that the red light camera system installed at the Tyler St.-SR 91 intersection failed to comply with several provisions of the California Manual on Uniform Traffic Control Devices (MUTCD) and was thus in violation of California Vehicle Code Section 21400 at the time it generated Appellant’s citation.

During argument on the motions in limine, the Court made reference to the red light camera case of *People v. Gray* (2011) 199 Cal. App.4th Supp. 10, 131 Cal. Rptr.3d 220; affirmed by *People v. Gray* (2012) 204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489) apparently unaware that a Petition For Review had been granted by the California Supreme Court on June 20, 2012 in *People v. Gray (Steven)* (2012) 279 P.3d 1022, 143 Cal.Rptr. 3d 529, 2012 Cal. LEXIS 5930 and thus neither the L.A. Superior Court Appellate Division opinion in *People v. Gray* (2011) 199 Cal. App.4th Supp. 10, 131 Cal. Rptr.3d 220 nor the Second District Court of Appeal Div. 3 opinion in *People v. Gray* (2012) 204 Cal. App. 4th 1041, 139 Cal.Rptr. 3d 489) could be cited, or relied upon for any purpose.

Appellant then moved to assert that his Constitutional Right to Due Process as construed in *Brady v. Maryland* (1963) 373 U.S. 83 was

violated as a result of The People's failure to make available the 12 second video of the alleged violation generated by the red light camera system available for copying so as to allow the use of video indexing software to measure the precise time of the yellow light interval in order to determine whether the system had operated properly at the time it generated Appellant's citation. The Court disagreed and accordingly, denied Appellant's motion under *Brady*, supra.

Thereafter, the Court proceeded to overrule Appellant's objections on hearsay grounds to Respondent's anticipated attempts during its case in chief to lay the foundation for introduction of documentary evidence from out-of-state Redflex employees pertaining to Appellant's traffic citation including the 12 second video along with still photos appended with data pertaining to vehicle speed and signal light interval based on the declarations of out-of-state Redflex employees regarding operation of the subject red light camera system.

Following the denial of Appellant's pretrial motions, trial commenced with Officer Teagarden's attempts to lay the foundation for the 12 second video and the still photos containing computer data pertinent to the citation. He also testified that the red light camera system was inspected by Redflex which was responsible for the system's overall operation notwithstanding the fact that the signal light timing intervals were controlled by the City of Riverside. Significantly, Officer Teagarden testified that he had received no training regarding the types of intersections where the geometry of a particular intersection was inappropriate for installation of red light camera systems.

After Respondent rested, Appellant's engineering expert testified concerning the aspects in which the red light camera system at the Tyler-SR91 intersection violated multiple sections of the California MUTCD

which specifies minimum yellow light intervals in addition to standards pertaining to the placement, alignment and optimization of traffic signals. During site visits both before and after the date of appellant's citation, the expert found the Tyler-SR 91 red light camera system's yellow light intervals to be below the applicable minimum interval specified by the MUTCD by .1 seconds. Significantly, he also found that the angle between the sight line of a driver in the right-hand turn lane and the lens faces of the traffic signal increased to a total of 24° during the driver's approach to the intersection which was exacerbated by the fact that the traffic signal itself had been rotated on the axis of the signal pole to point toward the red light camera located on the median which ultimately resulted in a 40% occlusion of the traffic signal lens face. The upshot of the expert's testimony was that the Tyler-SR 91 automated red light enforcement camera system had been installed and was being operated by the City of Riverside in violation of both the MUTCD and California Vehicle Code Section 21400 at the time Appellant's citation was issued.

After Appellant rested, the Trial Court ruled in Respondent's favor. Thereafter, Appellant filed a Notice of Appeal. Although Respondent was duly served with a copy of Appellant's Opening Brief, they did not file a brief in response nor did they appear for oral argument on November 15, 2013 before the Hon. Jeffrey J. Prevost (who had been assigned by the Appellate Division to hear the matter pursuant to California Code of Civil Procedure Section 77). Following oral argument, the Court took the matter under submission and the decision of the trial court was subsequently affirmed on November 20, 2013. Notice of the Appellate Division's decision was served by mail by the clerk on that same date.

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ARGUMENT IN FAVOR OF
APPLICATION FOR CERTIFICATION

1. A Case May be Certified for Transfer By the Appellate Division to the Court of Appeal Upon Its Own Motion or Upon the Application of a Party.

Rule 8.1005 of the California Rules of Court provides in pertinent part as follows:

(a) Authority to certify

(1) The Appellate Division may certify a case for transfer to the Court of Appeal on its own motion or on a party's application if it determines that transfer is necessary to secure uniformity of decision or to settle an important question of law...

(b) Application for certification

(1) A party may serve and file an application asking the Appellate Division to certify a case for transfer at any time after the record on appeal is filed in the appellate division but no later than 15 days after:

(A) The decision is filed...

(3) The application must explain why transfer is necessary to secure uniformity of decision or settle an important question of law.

(c) Time to certify

The Appellate Division may certify a case for transfer at any time after the record on appeal is filed in the appellate division and before the Appellate Division decision is final in that court.

2. Because California Case Law Relating to Automated Red Light Camera Systems is Dynamic and Unsettled, The Novel Issues Posed by This Case Have Not Been Addressed.

It will become abundantly clear upon a review of the facts and issues in this case when compared to the facts and issues in the limited number of other red light camera cases currently in various stages of the appellate process that important questions of law are posed by this case which either have not been addressed by the appellate courts or have been dealt with in different ways such that a uniformity of decision does not exist.

This case poses novel legal issues that have not been addressed in previous red light camera cases. The case arose as the product of a unique set of circumstances stemming from the installation of a red light camera system at an intersection where both the *installation* of the system and its subsequent *operation* violated the California MUTCD and California Vehicle Code Section 21400.

Evidence adduced at trial in the form of the testimony of an expert engineer revealed that the angle between the traffic signal at the Tyler-SR 91 intersection and the sight line of a driver such as appellant proceeding in the right-hand turn lane increased to 24° by the time he reached the limit line—which was caused in part by the traffic signal itself having been rotated on the pole away from the driver and toward the red light camera located on the median strip which had the effect of optimizing the view of the traffic signal for the benefit of the camera and not the hapless driver—a clear violation of MUTCD standards. In order to further increase the chances of the red light camera system ensnaring an unsuspecting motorist, the yellow light interval was set 1/10 of a second below the minimum specified by the California MUTCD of 3.6 seconds in a 35 mph zone. With regard to the 12 second video that purportedly showed appellant running

the red light, Officer Teagarden confirmed that Redflex does not make the video available to download to anyone (including the City of Riverside) which thus precludes any independent analysis of the yellow light interval depicted therein. The sum total of the foregoing facts leads to the following issue: Can an automated red light camera enforcement system installed in violation of the California MUTCD and operated in violation of the California MUTCD generate legally enforceable citations?

Perhaps due to the unique nature of the facts in this case, the Trial Court resorted to the decision-making methodology utilized by the trial court in *People v. Gray*, supra., which involved the legality of a citation issued by a red light camera system installed in an intersection where the municipality did not give the requisite 30 day warning notice but instead relied on the 30 day warning notice given prior to the installation of a red light camera system at another intersection in the city. In both cases, the scope of judicial inquiry was limited to whether or not the video depicted a driver running a red light. As previously noted, a petition for review by the California Supreme Court was granted in *People v. Gray* in June, 2012, approximately 11 months prior to the trial in this case which made the Trial Court's reference to the case clearly inappropriate.

As further evidence of the fact that California law regarding red light traffic camera systems is unsettled and in a state of flux, it would be instructive to review the red light camera cases currently pending before the California Supreme Court. In the cases of *People v. Goldsmith*, S201443 and *People v. Bozakian*, S201474 the lower appellate courts reached opposite conclusions regarding the questions of what testimony, if any, regarding the accuracy and reliability of red light camera systems is required as a foundational prerequisite to the admission of evidence generated by such systems and whether such evidence constitutes hearsay

(and if so, whether any hearsay exceptions apply). As for *People v. Gray*, supra., it has been fully briefed and is currently pending before the California Supreme Court under case number S202483.

In light of the fact that red light camera system citations are classified as infractions, the majority of the written decisions dealing with the subject matter have issued from the Appellate Divisions of various Superior Courts throughout California. Some of the decisions have been ordered published while many have not; most can only be found on Internet websites devoted to issues involving red light camera systems and the vendors who market them. Although it would be admittedly improper to cite such decisions as having any sort of precedential effect, it is nevertheless interesting to note the recurring themes mentioned in such opinions, most of which mirror the issues in the red light camera cases currently pending before the California Supreme Court. However, in addition to issues involving the 30 day warning notice requirement (*People v. Gray*) and questions involving the hearsay rule and exceptions thereto as they apply to red light camera systems (*People v. Goldsmith* and *People v. Bozakian*), there are virtually no cases in which the *installation* and *operation* of a specific red light camera system at a specific intersection is alleged to be a violation of the California MUTCD and the California Vehicle Code. In light of the astronomic increase in the use of computerized traffic control systems statewide by municipalities over the last decade, it is imperative that cases of first impression like this one involving the improper installation and operation of such computerized systems be subject to appropriate judicial scrutiny.

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CONCLUSION

For the foregoing reasons, appellant VIKTORS ANDRIS REKTE hereby requests that his Application for Certification Re: Transfer to the Court of Appeal be granted or in the alternative, that the Appellate Division of the Superior Court certify the case for transfer to the Court of Appeal on its own motion in the interests of justice.

APPELLANT’S CERTIFICATE OF WORD COUNT
PURSUANT TO THE CALIFORNIA RULES OF COURT

Appellant’s Application for Certification Re: Transfer to the Court of Appeal is hereby certified to be compliant with the California Rules of Court as hereinafter described: Appellant’s Application for Certification Re: Transfer to the Court of Appeal was produced using a font consisting of 13 point Times New Roman type with margins at the top and bottom measuring 1 inch and margins on either side measuring 1.5 inches. The line spacing was set at 1.5. The Application, excluding the Title Page, Table of Authorities and Certificate of Word Count is 8 pages in length and consists of 2,094 words as counted by the word processing software used to generate it, Microsoft Word 2010.

Respectfully submitted,

DATED: December 4, 2013

By:_____

D. Scott Elliot (SBN 076323)
Attorney for Defendant and
Appellant, Viktors Andris Rekte