

Judge Quentin L. Kopp (Ret.)

COPY

March 4, 2013

California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: Petition for Writ of Certiorari, S208927

To: THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF
CALIFORNIA:

Pursuant to California Rules of Court, Rule 8.500(g), I urge the Court to grant the Petition for Writ of Certiorari filed on or about February 27, 2013, in the above-referenced matter which the Court is now considering.

ISSUE PRESENTED IN PETITION FOR WRIT

The sole issue presented by the petition is whether the Appellate Division of the San Francisco Superior Court acted in excess of its jurisdiction, thus depriving petitioner David of his right to a meaningful appeal on an issue of first impression and statewide importance. This Court should grant the requested relief so that the case can be heard and decided on its merits and thereby settle an important question of law.

NATURE OF REQUESTER'S INTEREST

I am not affiliated with the underlying litigation in any capacity. I was, however, the state senator who introduced the 1995 legislation (SB833) creating Vehicle Code section 21455.5, subdivision (a)(1) (hereinafter §21455.5(a)(1)), the interpretation of which constitutes the primary legal issue in petitioner's appeal in the courts below. The City and County of San Francisco ("City and County") appears to have systematically failed to comply with the requirements of that legislation which failure forms a basis of the petition herein. I, therefore, join petitioner in requesting this Court to order the Court of Appeal to transfer the case from the Appellate Division and decide the appeal on the merits.

Moreover, as a retired judge of the San Mateo Superior Court and Assigned Judges Program, serving for 11 years until 2010, I was astounded by the manner in which the Appellate Division failed and refused to comply with the California Rules of Court governing notice to the People of the State of California (“People”) at various stages of the appeal and, the Appellate Division’s opinion, which ignored and did not decide the issues on appeal. As a 46-year member of the State Bar and ex-Superior Court judge, I agree with petitioner that the Appellate Division has acted significantly in excess of its jurisdiction, thus necessitating this court’s review and remand to the Court of Appeal for transfer of the case from the Appellate Division.

INTRODUCTION AND BRIEF STATEMENT OF FACTS

According to trial evidence, petitioner was charged with illegally entering the Hayes and Polk Streets' intersection in the City and County 3/10 of a second after a traffic light turned from amber to red. The prosecution was based exclusively on evidence generated by a red light camera automated enforcement system. There was no posted sign indicating the presence of the camera system either at the intersection where the alleged violation occurred or at the only northern entrance to the City and County at the location of the north tower of the Golden Gate Bridge. At the time of the alleged violation, Vehicle Code §21455.5(a)(1) required cities using such camera systems to post warning signs indicating the camera system’s presence in one of two locations: either (1) facing traffic in all directions at the automated enforcement intersection or (2) at “all major entrances to the city” including “at a minimum freeways, bridges and State highway routes.”

The City has apparently chosen a third method of posting warning signs, namely, facing motorists at the first signal encountered by a motorist after being within the city limits a mile or more from the actual entrance. The trial judge in petitioner’s case convicted petitioner, finding such third method (although unauthorized by the statute), was “better” than §21455.5(a)(1)’s requirements and, therefore, constituted Vehicle Code compliance.

Petitioner appealed to the Appellate Division principally on the ground that the prosecution was not authorized by reason of the failure of the City to comply with Vehicle Code §21455.5(a)(1). To my knowledge, there is no published appellate decision interpreting §21455.5(a)(1), thereby rendering petitioner’s appeal a case of first impression.

In processing the appeal to the Appellate Division, the court clerk failed to comply with numerous Rules of Court pertaining to notice to be served upon the People. (I believe in red light camera traffic cases the People are represented by the San Francisco City Attorney.) After the rules violations were brought to the attention of the presiding judge by petitioner’s request that

the rules be obeyed, the request was denied without explanation. As a result of the foregoing, the People did not participate in the appeal. The People filed no papers and failed to appear at the hearing of the appeal. Thereafter, the Appellate Division filed a written opinion affirming the conviction based on an unbriefed and irrelevant issue, but neither mentioning nor deciding the actual issues raised on appeal.

The Appellate Division refused to rehear or certify the case for transfer to the Court of Appeal, and the Court of Appeal denied transfer of the case in response to petitioner's timely application therefor.

REASONS WHY THE WRIT SHOULD ISSUE

My request for the issuance of the writ in the above-referenced matter is based on the following specific grounds:

1. It is necessary that, and is ripe for decision by, an appellate court interpreting the meaning of §21455.5(a)(1) and determining whether San Francisco's warning sign-posting method complied with the Vehicle Code.
2. The trial court's holding that San Francisco's warning sign method complied with the statute because it is "better" is directly contrary to the express requirements the Legislature enacted and fails to satisfy the legislative concerns underlying the legislation as disclosed in the legislative history of §21455.5(a)(1).
3. Indeed, it appears that San Francisco uses the cameras as revenue-raising machines instead of using them to make the City and Country streets safer.
4. Because of the novelty and statewide importance of the issues presented on appeal, the Appellate Division should have invited the City Attorney to participate fully in the appellate litigation instead of distorting the judicial process by failing to give required notices and thereby encouraging the City Attorney to disregard the appeal.
5. The Appellate Division should have considered and decided the issues presented in a reasoned manner, rather than substituting its own irrelevant issue on appeal and ignoring the actual issues raised.

DISCUSSION OF LEGAL ISSUES

A. Petitioner's Appeal Should be Ordered By This Court to be Heard on the Merits

Vehicle Code §21455.5(a)(1) was enacted in 1995 as part of SB833, which I introduced as a state senator. In my letter to Governor Pete Wilson on September 20, 1995, after legislative passage and enrollment, I informed the Governor the purpose of the two alternative requirements that there be posted "identification signs visible to approaching traffic" was to provide "improved public safeguards" and satisfy "due process requirements." (See Exh. 5, p.62 of the Petition for Writ).

The "improved public safeguards" component was satisfied by the legislation in one of two ways. If the signs were posted at every major entrance to the City, whether on a bridge or freeway (where there are usually no traffic signals), any motorist would understand that cameras could be found at any intersection within the City without further notice. It was contemplated that such knowledge on the part of the motorist would encourage caution in traveling through signal- controlled city intersections. Alternatively, if the signs were posted at the camera-installed intersections, motorists driving through those intersections would drive very cautiously, stopping at the amber light so as not to run the risk of an inadvertent, split-second violation such as that allegedly committed by petitioner.

The "due process" component for the motorist is satisfied by informing him or her in advance of the presence of the cameras either anywhere within the city or at particular camera-installed intersections so as not to be caught in what in effect would be a "red light trap" with an inadvertent split-second violation. It is exactly analogous to the advance notice given by "radar enforced" signs which are required throughout California to avoid the hidden "speed traps" of bygone years.

It is not an acceptable excuse such as was offered at the trial that the City and County has no right to erect signs on bridges and freeways because they are "State property." First, the statute authorizes--indeed requires--the posting of warning signs on freeways and bridges. Second, if for some reason the City is precluded or prevented from arranging for the posting of signs on freeways or bridges, a second alternative is available, namely, posting signs at the camera-installed intersections.

San Francisco's third method of posting warning signs at 67 signal-controlled intersections well within the City and County limits does not satisfy the requirements of §21455.5(a)(1), at least with respect to the 64 intersections which have no cameras. While the statute is silent as to the posting of signs at non-camera-installed intersections, it in no way authorizes a third substitute method of posting to comply with the Vehicle Code if neither of the two mandated requirements has been otherwise satisfied.

San Francisco's method does not satisfy the due process requirement because motorists are neither informed of the intersections where the cameras are installed nor are informed at the entrance to the City and County that they could be installed at any intersection. San Francisco's method misleadingly conveys to a motorist that there is a camera installed at each of the 67 intersections where the signs are posted. It, however, provides no due process notice that the cameras could be elsewhere.

The fact that San Francisco has elected not to post warning signs at 22 of 25 intersections with installed cameras strongly suggests its motivation is raising revenue by depriving motorists of their due process notice rights under §21455.5(a)(1) and trapping them with split-second violations. Doing nothing to discourage red light violations means that the method does not satisfy the legislative purpose of §21455.5(a)(1) to provide "improved public safeguards" and "due process" notice. There appears to be no other reasonable explanation for San Francisco's lack of signage at camera-installed intersections.

In my opinion as the author of the legislation, San Francisco has acted in violation of the Vehicle Code and has abused the privilege of using automated enforcement systems by failing to provide the requisite "identification signs visible to approaching traffic" (Exh. 5, p.62, *supra*) required by §21455.5(a)(1) at either of the two alternative mandated locations. Accordingly, petitioner's contention that the prosecution against him was unauthorized has merit, and his appeal should be heard and decided.

As a result of this appeal, not only San Francisco but also all other California municipalities using red light camera systems will be informed as to their sign-posting obligations under the Vehicle Code and the propriety of ongoing prosecutions of red light violations based on camera evidence which does not comply with the Vehicle Code.

B. The Appellate Division Abdicated Its Duty and Function

The conduct of the Appellate Division in this case was mystifying. After it learned from petitioner of its clerk's derelictions of duty under the Rules of Court to notify the People of various stages of the litigation, it then countenanced and ratified that failure by refusing to abide by the rules. The Rules of Court are "Applicable to All Courts." Rule 1.2. Litigants can be sanctioned for failing to follow the Rules of Court. Rule 8.23 suggests that court personnel can also be sanctioned for violations. It provides that if a clerk fails to perform a duty imposed by the Rules of Court, that omission may be treated as an unlawful interference with the court's proceedings and is sanctionable.

The only available sanction against the Appellate Division are the words of this Court.

As a result of the failure of the Appellate Division to comply with the Rules of Court, and no doubt facilitated by the lack of court notice, the People did not participate in the appeal. Instead of ruling in favor of petitioner by reason of the lack of opposition (since the City Attorney had actual notice by reason of petitioner's service of all the notices and papers he filed

with the Appellate Division), the prosecution's ignoring the issues on appeal was rewarded by the Appellate Division; it, too, ignored the issues on appeal and created a fictitious issue to insert in its opinion affirming the conviction.

The Appellate Division is in practice the only available appellate avenue for a defendant convicted of a traffic infraction. It is, therefore, necessary that appellate departments review cases with care. If an issue of substance – such as in this case – arises, the matter should be heard and decided with respect for the Rules of Court, the rights of all parties, and, most importantly, respect for the law as enacted by the Legislature and decided by higher courts. I have sat on appellate department panels. I have written at least one published opinion for the Appellate Division of San Mateo County Superior Court in a case involving novel issues of substance. The Appellate Division in this case showed no regard for the Rules of Court, the law, and the rights of petitioner. Such conduct on its face made it seem as if the Appellate Division can freely defy the law and rules, as if it is simply the enforcement arm and confederate of the City and County, not the independent dispenser of justice.

This court should act and order the matter heard on the merits by the Court of Appeal.

Respectfully submitted,

Quentin L. Kopp
Judge of the Superior Court (Ret.)