


APPELLATE DEPARTMENT OF THE SUPERIOR COURT
IN AND FOR THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff/RESPONDENT

VS

 SCHMIDT
Defendant/APPELLANT


FILED
SAN MATEO COUNTY

OCT 27 2009

Clerk of the Superior Court
By 
DEPUTY CLERK

APPEAL FROM THE SUPERIOR COURT CENTRAL JUDICIAL DISTRICT

HON. COMM. SUSAN GREENBERG

Superior Ct. No. C372 

APPELLANT'S OPENING BRIEF

On Appeal from Judgment After Trial
San Mateo Superior Court
The Honorable Susan Greenberg

Defendant/Appellant is
Acting as his own Attorney

TABLE OF CONTENTSLAWS CITED

- CC-21455.5 and 21455.6 (Traffic signal automated Enforcement: Photograph Records)
18USC-2721 (Prohibition of Release and Use of Certain Personal Information from State Records)

INTRODUCTION

(See Page 3)

STATEMENT OF THE CASE

A. Defendant received a Notice of Traffic Violation from Redflex Traffic Systems of Phoenix Arizona concerning a Traffic Violation that had occurred at 3:43 PM on Dec. 2008 at the intersection of E. Fourth Avenue and S. Humboldt Street in the City of San Mateo. This notice contained photographs of him and his car, and of the intersection in question. It also contained confidential information about him that had been obtained from the State Motor Vehicle Records such as his address, date of birth, height, weight, hair color, eye color, and drivers license number. It also included a warning to respond to the Superior Court in San Mateo on or before Jan. 5, 2009. (See Attachment #1.)

B. Defendant studied the photos with a magnifying glass and learned that all of the traffic lights appeared equally bright as a result of the low December sun, and observed that there were no warning signs about the presence of an automated photo enforcement system at the intersection. By reading Section CC-21455.5 of the Motor Vehicle Code he also learned that "only a governmental agency, in cooperation with a law enforcement agency, may operate such a system", and that the governmental agency must meet a number of requirements such as "identifying the system by means of signs that clearly indicate its presence and are visible to traffic approaching from all directions, or posts warning signs at all major entrances to the city, including at a minimum freeways, bridges, and state highway routes".

C. Defendant went to Court on Jan. 12, 2009 prepared to defend himself and was told by Commissioner Greenberg that his evidence could not be heard without an Officer present to represent the San Mateo Police Department.

D. Defendant returned for trial on March 25, 2009, with

Officer Pangalos, the Director of San Mateo's Red Light Photo Enforcement Program present. At the trial Officer Pangalos testified that the violation was based on electrical signals from wires buried in the pavement, and not on the appearance of the traffic lights; and that the need for warning signs at the intersection where the violation occurred, and at the major entrances from [REDACTED] into San Mateo was obviated by the presence of 24 Photo Enforced Warning Signs located throughout the City of San Mateo. Commissioner Greenberg refused to hear any other subjects raised by the Defendant, such as the use of Redflex Systems to do work for San Mateo which according to law can only be performed by a governmental agency.

E. At the conclusion of the trial Commissioner Greenberg stated that she needed to obtain more information before announcing her decision, and then (according to the notes of the Settled Statement Hearing) viewed the intersection and the traffic lights in question during March, when the sun light was very different than in December. She then found the Defendant guilty of VC21453A and imposed a fine of \$375.50.

INTRODUCTION

This case involves some simple facts and a single, simple legal issue. All three of the traffic lights appeared equally bright when the Defendant entered the intersection, and the Defendant could not have any knowledge of electrical signals from wires buried in the pavement. Redflex Traffic Systems is not a governmental agency, and the City of San Mateo's Red Light Photo Enforcement Program does not meet all of the requirements specified by law for such a system.

ARGUMENT

The Trial Court Committed Prejudicial Error by Refusing to Consider All of the Defendant's Arguments, and by Siding with Officer Pangalos on the Adequacy of the Warning Signs for the Automated Photo Enforcement System.

A. Commissioner Greenberg refused to accept the photographic evidence from Redflex which showed that all three of the traffic lights appeared equally bright at the time of the violation.

B. Commissioner Greenberg refused to consider whether San Mateo's Photo Enforced Traffic Signal System met all of the requirements for such a system as required by law.

CONCLUSIONS

A. The City of San Mateo's Automated Photo Enforced Stop Light System has become a lucrative stop light trap as a result of (a) not having warning signs at the intersections where the equipment is located, and (b) by not having clearly visible warning signs at all major entrances to the city.

B. The Trial Court Committed Prejudicial Error by Refusing to Consider Several of the Defendant's Important Arguments, and by Siding with Officer Pangalos on the Adequacy of the Posted Warning Signs.

C. For all of the above Reasons This Court Should Reverse the Judgement of the Trial Court and Return the \$375.50 Fine to the Defendant/Appellant.

D. This Appeal is Similar to an Earlier Situation Which Resulted in Section CC-21455.6 Being Added to the Motor Vehical Code to Prohibit the Use of Photo Radar for Speed Enforcement Purposes.

Attachments

- #1. Notice of Traffic Violation as Received from Redflex (2 pages).
- #2. Enlarged Photo from Redflex Showing that the Red, Yellow and Green Traffic Lights Appeared Equally Bright to the Defendant.
- #3. List of 34 Warning Signs in the City of San Mateo.
- #4. 3 Pages from CR-143 "Proposed Statement on Appeal (Infraction)"



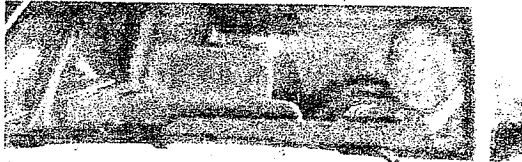
Incident No: 74774

Individual

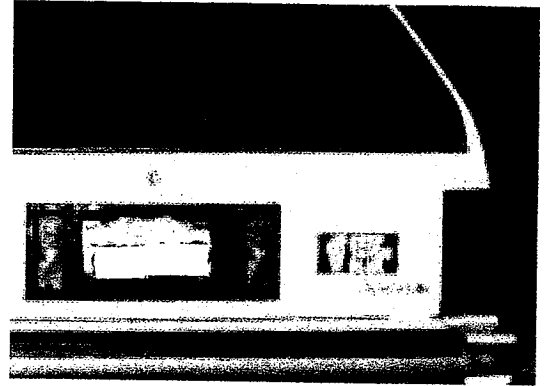
Incident Details

Date: 12/17/2008
 Time: 3:43:02 PM
 Type: R
 Time in d: [REDACTED]
 Time in d: 3.60
 Location: E. 4th Ave & S. Humboldt St
 Speed Limit: 30
 Actual Speed: 26

FACE

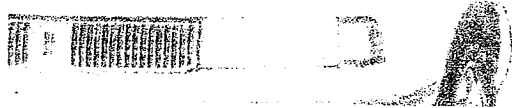


PLATE



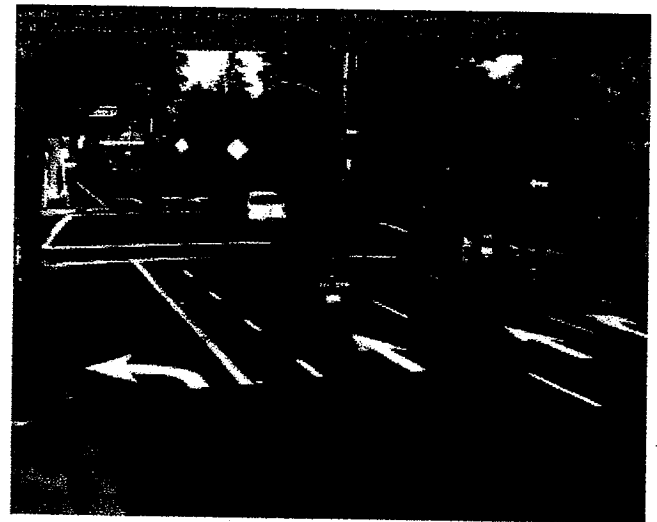
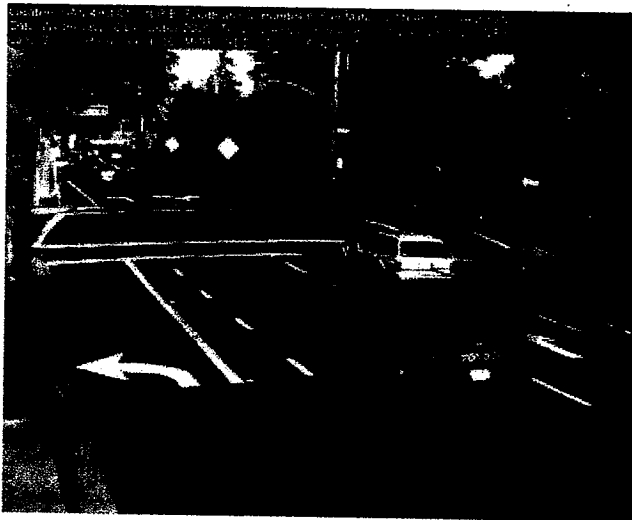
Vehicle Details

Year: [REDACTED]
 Make: [REDACTED]
 Model: [REDACTED]



SCENE A - TIME IN RED [REDACTED]

SCENE B - TIME IN RED [REDACTED]



Station Wagon

NO

Owner Details

Name: [REDACTED]
 SCHMIDT

Address: [REDACTED]

Color: GRY

Color: BLU

Weight: [REDACTED]

Gender: M

Age: [REDACTED]

Sex: NO

Driver Details

Name: [REDACTED]
 SCHMIDT

Address: [REDACTED]

Color: [REDACTED]

Color: [REDACTED]

Weight: [REDACTED]

Gender: M

Age: [REDACTED]

Sex: NO

Flag for Supervisor

[Review Images](#)

[View Video](#)

2871 Hold:

Close Incident

NOTICE OF TRAFFIC VIOLATION

The City of San Mateo Police Department

NOTICE TO APPEAR Automated Traffic Enforcement SM3 [REDACTED]

DATE OF VIOLATION: December 15, 2008 TIME: 15:43

NAME (FIRST, MIDDLE, LAST): [REDACTED] SCHMIDT

ADDRESS: [REDACTED]

CITY: [REDACTED] STATE: CA ZIP CODE: [REDACTED]

DRIVER LIC. NO. [REDACTED] STATE: CA CLASS: C COMMERCIAL: YES NO AGE: [REDACTED] BIRTH DATE: [REDACTED]

SEX: M HAIR: [REDACTED] EYES: [REDACTED] HEIGHT: [REDACTED] WEIGHT: [REDACTED]

VEH. LIC. NO. [REDACTED] STATE: CA COMMERCIAL VEHICLE (Veh. Code, § 15210(b))

YR. OF VEH. [REDACTED] MAKE: [REDACTED] BODY STYLE: Station Wagon HAZARDOUS MATERIAL (Veh. Code, § 353)

REGISTERED OWNER OR LESSEE: [REDACTED] SCHMIDT

ADDRESS: [REDACTED]

CITY: [REDACTED] STATE: CA ZIP CODE: [REDACTED]

CODE AND SECTION: VC 21453(a) DESCRIPTION: Failure to Stop at Red Light

LOCATION OF VIOLATION: At E. 4th Ave & S. Humboldt St (EB) CITY/COUNTY OF OCCURRENCE: San Mateo/San Mateo County

VIOLATION WAS NOT COMMITTED IN MY PRESENCE. THE ABOVE IS DECLARED ON INFORMATION AND BELIEF AND IS BASED ON PHOTOGRAPHIC EVIDENCE.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THE FOREGOING IS TRUE AND CORRECT.

15-Dec-08 WARREN GRIFFIN 606
DATE ISSUED DECLARANT SIGNATURE ID NO

YOU MUST RESPOND TO THE COURT ON OR BEFORE:
WHEN: 5-Jan-09

Clerk's Office Hours
Monday-Thursday
7:30 AM - 4:00 PM
Friday
8:00 AM - 4:00 PM

WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.

WHERE: SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO
800 NORTH HUMBOLDT STREET
SAN MATEO, CA 94401
650-573-2622

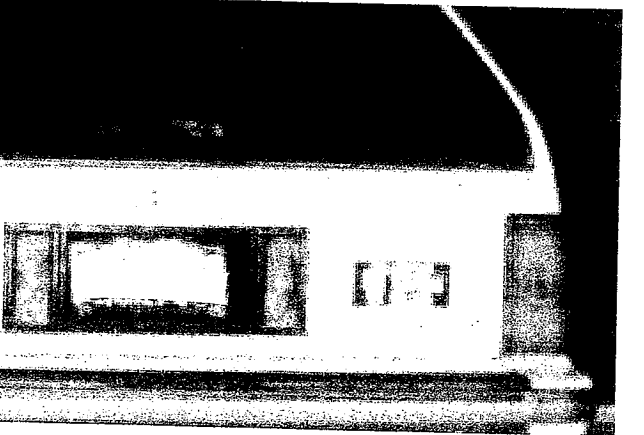
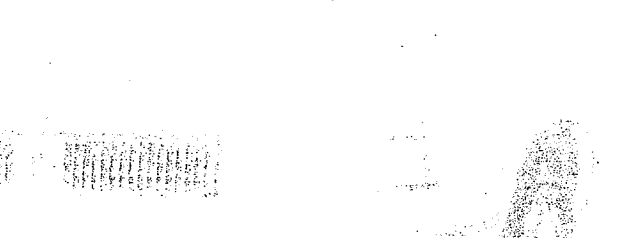
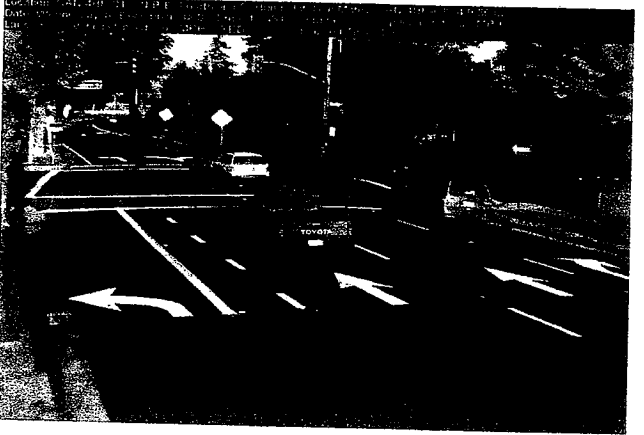
Notice to Appear form approved by the Judicial Council of California
Rev. 09-20-05 (Veh. Code, § 40518) SEE REVERSE TR-115

Certificate of Mailing

I, COREY KOZAR of Redflex Traffic Systems Inc., 23751 N. 23rd Avenue, Suite 150, Phoenix, Arizona 85085-1854, do certify that I am over 18 years old and not a party to the above entitled case. On Monday, December 15, 2008, I placed this Notice to Appear in an envelope addressed to the registered owner or lessee as shown above, sealed it, and deposited the envelope in a United States Postal Service receptacle located at the United States Postal Service office in Phoenix, Arizona. In the ordinary course of business, the envelope is sealed, affixed with proper postage, and mailed. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Corey Kozar
COREY KOZAR

Dated: 15-Dec-08 Code of Civil Procedure 1013a(3) 2015.5



[REDACTED] SCHMIDT

Location: SAN-4HU-01 N/B E. Fourth and S. Humboldt, San Mateo (SAN-4HU-01 v4.9.30.0)
Date: December 2008 Time: 15:43:03 Frame: 8 Speed Limit: 30 MPH
3 Vehicle Speed: 26 MPH RED Elapsed Time:

ATTACHMENT # 2



Does not include Intersec-
tions with photo recording
equipment or entrances
from Hillsborough

MAJOR ENTRANCES TO SAN M
REDLIGHT PHOTO ENFORCEMENT LOCATIONS

- 1) NORTHBOUND EL CAMINO REAL @ BELMONT BOUNDARY
- 2) NORTHBOUND PACIFIC AT LAURIE MEDOWS
- 3) SR 92 WESTBOUND @ BAKER
- 4) WESTBOUND HYWAY 92 @ DELAWARE OFF RAMP
- 5) WESTBOUND HYWAY 92 @ NORTHBOUND EL CAMINO REAL OFF RAMP
- 6) WESTBOUND HYWAY 92 @ SOUTHBOUND EL CAMINO REAL OFF RAMP
- 7) WESTBOUND HYWAY 92 @ ALAMEDA OFF RAMP
- 8) WESTBOUND HYWAY 92 @ HILLSDALE BLVD OFF RAMP
- 9) SR 92 WESTBOUND @ DE ANZA OFF RAMP
- 10) POLHEMUS @ SR92 COMING OUT FROM BELMONT
- 11) SR 92 EASTBOUND @ DE ANZA OFF RAMP
- 12) EASTBOUND HYWAY 92 @ HILLSDALE BLVD OFF RAMP
- 13) EASTBOUND HYWAY 92 @ ALAMEDA OFF RAMP
- 14) EASTBOUND HYWAY 92 @ SOUTHBOUND EL CAMINO REAL OFF RAMP
- 15) EASTBOUND HYWAY 92 @ NORTHBOUND EL CAMINO REAL OFF RAMP
- 16) EASTBOUND HYWAY 92 @ DELAWARE OFF RAMP
- 17) NORTHBOUND HYWAY 101 @ EASTBOUND AND WESTBOUND HILLSDALE BLVD OFF RAMP
- 18) NORTHBOUND HYWAY 101 @ KEHOE OFF RAMP
- 19) NORTHBOUND HYWAY 101 @ 3RD AVE OFF RAMP
- 20) NORTHBOUND HYWAY 101 @ DORE OFF RAMP
- 21) BAYSHORE BLVD.. SOUTHBOUND @ PENINSULA OFF RAMP
- 22) WESTBOUND PENINSULA @ HUMBOLDT
- 23) SOUTHBOUND EL CAMINO REAL @ PENINSULA ← THE PHOTO SHOWS THIS WAS MADE HIDDEN
- 24) SOUTHBOUND SAN MATEO DR @ PENINSULA
- 25) SOUTHBOUND HYWAY 101 @ POPLAR OFF RAMP
- 26) SOUTHBOUND HYWAY 101 @ 3RD AVE OFF RAMP
- 27) SOUTHBOUND HIGHWAY 101 @ HYWAY 92 OFF RAMP (AT MARINERS ISLAND BLVD)
- 28) SOUTHBOUND 101 @ HILLSDALE BLVD EASTBOUND OFF RAMP
- 29) SOUTHBOUND 101 @ HILLSDALE BLVD WESTBOUND OFF RAMP
- 30) WESTBOUND HILLSDALE BLVD EAST OF NORFOLK.(FOSTER CITY BOUNDRY WESTBOUND)
- 31) J HART CLINTON @ SAN MATEO CITY LIMITS
- 32) CHESS DRIVE WEST AT CITY LIMITS
- 33) VISTA DEL MAR @ EDGEWATR BLVD
- 34) WB 92 to Tilia and Borel

According to Section 21455.5(a) of the Vehicle Code, the intersection where a driver is required to stop may be equipped with an automated enforcement system if the governmental agency utilizing the system meets all of the following requirements:

- (a)(1) Identifies the system by signs that clearly indicates the system's presence and are visible to traffic approaching from all directions, or posts signs at all major entrances to the city, including at a minimum freeways, bridges, and state highway routes.

Comment: There are 17 connecting streets between [REDACTED] and San Mateo, 6 of which are major entrances as evidenced by the presence of traffic lights. Yet there are no photo enforced warning signs on any of them. Commissioner Greenberg thought they were not needed because of warning signs on El Camino. The enclosed photo taken on El Camino one block from Burlingame shows the only one that I could find, which is near a power pole and is half hidden by a tree. A neighbor that I talked with didn't even know that it was there.

The second enclosed photo was taken on ^E~~M~~ Fourth Avenue at Humboldt where there is a Photo Enforced system but no warning signs.

The third enclosed photo was taken in San Carlos where there is a Photo Enforced system that is clearly identified with warning signs.

The fourth enclosed photo was taken in Redwood City on the off ramp from Highway 101 to Woodside Road, and shows a warning sign equipped with a blinking yellow light to attract attention.

Discussion: Traffic signals and warning signs are intended to reduce accidents and to improve safety. By not putting warning signs on intersections with Photo Enforced systems, San Mateo is using them as Red Light Traps, instead ~~to~~ helping to make things safer.

- (c)(2) Only a governmental agency, in cooperation with a law enforcement agency may operate an automated enforcement system. As used in this subdivision "operate" includes performing administrative functions and day-to-day functions.

Comment: The Redflex Traffic Systems are operated from Phoenix Arizona through "automated/secure VPN Connections" to the intersections where their systems are located. Redflex examines the images and data for quality before transmitting them to the cities that pay for their services. They also check the systems automatically once a day and do any needed maintenance on them.

In my case, much to my surprise, the Notice of Traffic Violation came from Redflex along with supporting photos and data, and with a Notice to Appear in Court. Even the certificate of mailing was signed by a Redflex employee, as though Redflex is a governmental agency.



Half-Hidden Photo Enforced Warning Sign on El Camino Near Burlingame



Hidden Photo Enforced Stop Light System On ^{E.} W. Fourth Avenue at S. Humboldt

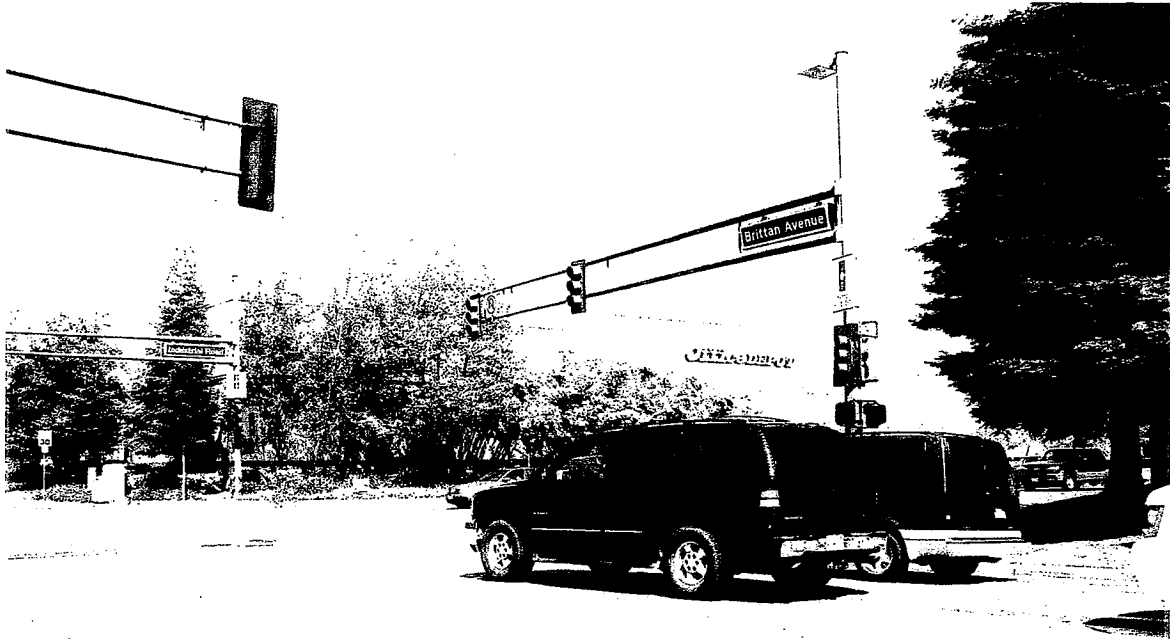


Photo Enforced Stop Light Intersection in San Carlos With Warning Signs



Warning Sign Equipped With Blinking Yellow Light to Attract Attention