

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY ORANGE
APPELLATE DIVISION

JAN 13 2010

ALAN CARLSON, Clerk of the Court

A. Thau
BY A. THAU

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff/Respondent

Appellate Number: 30-2009-00304893

Vs.

[REDACTED] KHALED

Case No.: SA128676PE

Defendant/Appellant

**APPELLANT [REDACTED] KHALED'S OPPOSITION TO CITY OF SANTA ANA'S
MOTION TO INTERVENE**

On Appeal from the Superior Court of California – County of Orange

HONORABLE Commissioner Daniel Ornelas Presiding

For Defendant/Appellant:

R. ALLEN BAYLIS
Attorney at Law
State Bar No.: 194496
9042 Garfield Ave., Suite 306
Huntington Beach, CA 92646
Telephone: 714-962-0915
Facsimile: 714-962-0930
Attorney for Defendant/Appellant

CASE NUMBER: 30-2009-00303675-CL-MC-CJC – SA123981PE
PEOPLE V. KHALED

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ARGUMENT

I

THE CITY LACKS STANDING PURSUANT TO GOVERNMENT CODE §72193

ABSENT ESTABLISHMENT OF A CITY PROSECUTOR'S OFFICE BY CITY CHARTER, GOVERNMENT CODE §72193 DOES NOT AUTHORIZE CITY ATTORNEYS TO PROSECUTE VIOLATIONS OF STATE LAW.

Government Code §72193 reads as follows:

72193. Whenever the charter of any city creates the office of city prosecutor, or provides that a deputy city attorney shall act as city prosecutor, and charges such prosecutor with the duty, when authorized by law, of prosecuting misdemeanor offenses arising out of violations of state laws, the city prosecutor may exercise the following powers:

(a) The city prosecutor shall prosecute all such misdemeanors committed within the city, and handle all appeals arising from it. The city prosecutor shall draw complaints for such misdemeanors, and shall prosecute all recognizances or bail bond forfeitures arising from or resulting from the commission of such offenses.

It is settled law that, absent specific authority pursuant to a city charter and acting within Municipal Courts, only the District Attorney has the authority to prosecute violations of state law.

"Here are two classes of cases which it is, or may become, the duty of the prosecuting attorneys to conduct on behalf of the people: First, those involving a violation of the state law or a county ordinance; second, those involving a violation of the city law (charter or ordinance). The prosecution of the first class of offenses cannot be said to be any part of the duty of the municipality. The offenses are created general state law or county ordinance, and are punishable under such law or ordinance whether committed within or without the limits of a municipality. The burden of so prosecuting is to be assumed by the state or the counties into which the state is, for governmental purposes, subdivided, and it has, in fact, always been so assumed in this state." *City of Merced v. County of Merced* (1966) 240 Cal.App.2nd 763, 766, citing *Fleming v Hance* (1908) 153 Cal 162 168 94 P 620 622

Santa Ana City Charter:

Sec. 703. City attorney; qualifications, power and duties.

- (d) Prosecute on behalf of the people such criminal cases for violation of this charter, or City ordinances, and of misdemeanor offenses and infractions arising upon violations of the laws of the state as in his opinion, or that of the City Council, or of the City Manager, warrant his attention;

While the Santa Ana City Charter has authorized the City Attorney to prosecute violations of state law within the city, Santa Ana has not established a City Prosecutor's office pursuant to Government Code §72193. Even though the City Charter may authorize the City Attorney to prosecute state law infractions "as in his opinion, or that of the City Council, or of the City Manager, warrant his attention" Government Code §72193 clearly states that if city prosecutors are authorized to prosecute violations of state law the city prosecutor "shall prosecute all such misdemeanors committed within the city, and handle all appeals arising from it."

The city cannot pick and choose which state law misdemeanor and infraction cases it wishes to prosecute. The legislature made clear that if the city establishes a city prosecutor's office to prosecute all state law misdemeanor and infraction cases, it must act as the prosecuting agency for all such violations.

While the language of the Santa Ana City Charter is more direct than that at issue in *Merced* the same analysis gives the same result. "It only purports to furnish an alternative method for prosecution of such offences by the city attorney, if he or the city council or the city manager sees fit; for the reasons already given, even the prosecution of these violations of law by the city attorney would violate the Constitution and the statutes." *City of Merced* at 768,

It is certainly true that the City of Santa Ana has a keen interest in the outcome of red light camera prosecutions and certainly in the outcome of this appeal. However, the City did not take enough of an interest to be present at trial. Additionally, the City has not established an office of City Prosecutor which is required if it is to prosecute violations of state law. Therefore, the City Attorney is not legally authorized to represent the People of the State of California in the trial of an infraction violation of state law.

The Appellant takes the position that the only role the City Attorney could possibly have in these proceedings would be resolving the issue of whether or not the City complied with the provisions of Vehicle Code §21455.5(b) by issuing warning notices at only the first intersection to be equipped with an automated enforcement system. Issues involving the sufficiency of, and admissibility of, the evidence presented at trial is properly left to the party on whose behalf the evidence was presented. In this case, that party is the People of the State of California. The only authorized representative of that party in this case is the District Attorney.

The City attempts to justify their claim that it should be allowed to intervene by showing that it responded to an informal discovery request. If the issue in this case were a discovery dispute, such as whether or not the City's response to the discovery request was sufficient, then the City's participation in these proceedings would be proper. However,

this is simply not the case, as there is no discovery dispute here.

In addition to the fact that the City Attorney was not authorized under the law to prosecute this case in the Trial Court, the City Attorney, having been absent at the trial has no personal knowledge of the proceedings. To suggest that the case be remanded to the trial court so the City Attorney can be heard on settling the statement on appeal is absurd.

II CONCLUSION

Based on the City's failure to comply with the statutory provisions which would allow it to prosecute this alleged violation of state law, the City of Santa Ana lacks standing as "Real Party in Interest."

This Court should deny the City of Santa Ana's motion to intervene as real party in interest.

Dated: January 12, 2010



R. Allen Baylis
Attorney for Defendant/Appellant

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

THE UNDERSIGNED DECLARES AS FOLLOWS:

I AM EMPLOYED IN THE County of Orange, State of California. I am over the age of eighteen and not a party to the within action. My business address is 9042 Garfield Ave., Suite 306, Huntington Beach, CA 92646, County of Orange, State of California.

On 1-12, 2010, I served the following documents describe as:
DEFENDANT ██████████ KHALED'S OPPOSITION TO CITY OF SANTA ANA'S MOTION
TO INTERVENE, APPEAL CASE # 30-2009-00304893, TRIAL COURT CASE #
SA128676PE

Addressed as follows:

See Service list - attached

By Placing the true copies thereof enclosed in sealed envelope addressed as stated on the attached mailing list.

(BY MAIL) I caused such envelope(s) with postage fully prepaid thereon to be placed in the United States Mail at Huntington Beach, California.

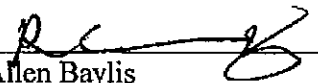
(BY PERSONAL SERVICE) I caused such envelope to be hand-delivered to the address listed above.

(BY FACSIMILIE MACHINE) I caused the above-referenced document(s) to be transmitted to the above named person(s) at the following telecopier number:

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U. S. Postal Service on the same day in the ordinary Course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on 1-12, 2010 at Huntington Beach, California.


R. Allen Baylis

SERVICE LIST

People v. Khaled

Appellate Department Case No. 30-2009-00304893

Trial Court Case No. SA128676PE

Orange County District Attorney

P.O. Box 808,

Santa Ana, CA 92701

Via U.S. Mail

Santa Ana City Attorney's Office

20 Civic Center Plaza M-29

P.O. Box 1988,

Santa Ana, CA 92702

Via U.S. Mail

Honorable Daniel Ornelas, Commissioner

Orange County Superior Court

Central Justice Center

700 Civic Center Drive West

Santa Ana, CA 92701

Via U.S. Mail