

<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE <i>Central Justice Center</i> 700 Civic Center Drive West P.O. Box 1138 Santa Ana, CA 92702</p>	<p>FOR COURT USE ONLY</p> <p>FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER</p> <p>SEP 23 2009</p> <p>ALAN CARLSON, Clerk of the Court <i>H. Potter</i> BY H. POTTER</p>
<p>People of the State of California (<i>Respondent/Appellant</i>) vs. [REDACTED] Khaled</p> <p>Defendant (<i>Appellant/Respondent</i>): [REDACTED] Khaled</p>	
<p>CERTIFICATION OF _____ STATEMENT ON APPEAL</p>	<p>CASE NUMBER: SA128676PE</p>

30-2009

00304893

In accordance with California Rules of Court, Rule 8.788, I hereby certify that the foregoing Court's _____ is a true and correct statement of the proceedings held in the above entitled action.

Dated:

5/27/09

By _____

[Signature]

Judge/Commissioner/Pro Tempore

CERTIFICATION OF STATEMENT ON APPEAL

PROPOSED SETTLED STATEMENT ON APPEAL
CASE NO. SA128676PE 1 A P v. [REDACTED] Khaled

Trial was held on December 10, 2008 in Dept. C-52, the Hon. Daniel M. Ornelas, Commissioner presiding. All witness were sworn and testified as follows:

Go to deft's proposed statement

Defendant's motion was denied. The Court reviewed the photographs and video of the incident, this evidence enclosed with the engrossed settled statement on appeal, and found the defendant guilty of not stopping for a red light.

Respectfully submitted, Daniel M. Ornelas, Commissioner of the Superior Court.

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2. Officer Berg offered People's Exhibit # 1: Two single-sided pages of front and back of citation with four color photographs of vehicle and defendant at intersection marked for identification. Defense counsel objected to the admissibility of the People's exhibits for lack of foundation and hearsay. The Court overruled the objection pending further testimony regarding foundation.
3. The Court allowed defense counsel to examine Officer Berg on voir dire regarding his personal knowledge of the document's method of preparation and trustworthiness.
4. On voir dire, Officer Berg testified to the following as to People's exhibit #3 "DECLARATION OF CUSTODIAN OF RECORDS," which purports to lay the foundation for all of the People's exhibits:
 - a. He did not have any personal knowledge as to which of the three Redflex employees whose digital signatures appeared on the document as "co-custodian of records" actually prepared the document.
 - b. The document does not state which intersection the data and photographs were collected from.
 - c. He had no personal knowledge of how the "verification routine" mentioned in the document works.
 - d. He had no personal knowledge of whether or not any of the three co-custodians of records observed the processing, who may have actually observed the process.
 - e. He had no personal knowledge of what the "daily average" mentioned in the document was.
 - f. He had no personal knowledge of who maintains the Redflex "back office" hardware and software to ensure that it was functioning properly.
 - g. He had no personal knowledge of how the data collected at the intersection is matched to the photographs to ensure that the data printed on the upper edge of the photographs is in fact the correct data for the subject violation.

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- h. He had no personal knowledge of which employee of Redflex actually processed the photographs by way of enlarging or enhancing the images.
- 5. The Court overruled defense objection and found that, based on the certification of the records, all of the People's exhibits were admissible as business records and/or evidence of the offense.
- 6. Officer Berg offered People's Exhibit # 2: Statement of Smartcam Red Light Camera Technology describing the various processing functions of the red light camera systems marked for identification.
- 7. Officer Berg offered People's Exhibit # 4: Two single-sided pages of City of Santa Ana's automated Red Light Enforcement System and its compliance with vehicle code requirements marked for identification. This document contains the following statement: "Prior to issuing citations, the city of Santa Ana initiated a warning period that began May 18th 2003 and concluded on June 30th 2003. This warning period lasted 44 days, exceeding the statutory requirement of 30 days."
- 8. Officer Berg offered People's Exhibit # 5: Four pages of color photographs showing a person alleged to be defendant driving the vehicle committing violation of 21453(a) marked for identification.
- 9. Officer Berg offered People's Exhibit # 6: One color Soundex Photo Image Record from the Department of Motor Vehicles along with thumbprint and signature of defendant marked for identification.
- 10. Officer Berg offered People's Exhibit # 7: One 12 second video recorded on a CD Rom Media, showing the vehicle committing the violation marked for identification. Defense counsel objected to the admissibility of the video and photographs for lack of foundation, that a chain of custody had not been established and that the video and photos were hearsay. The objection was overruled.

1 On Cross-examination, Officer Berg testified to the following:

- 2 1. He had not personally issued any warning notices for the first 30 days of
3 operation of any of the automated enforcement systems located in Santa Ana, or
4 for the system located at the intersection of First Street and Euclid.
5 2. He did not have personal knowledge of any warning notices having been issued
6 for the first 30 days of operation of any of the automated enforcement systems
7 located in Santa Ana or the system located at the intersection of First Street and
8 Euclid.

9
10 On closing, defense counsel argued:

- 11 1. There was insufficient evidence before the court indicating that the city of Santa
12 Ana had complied with the Vehicle Code §21455.5(b) requiring that the city issue
13 warning notices for the first 30 days of operation of the automated enforcement
14 system at the subject intersection prior to issuing citations based on use of the
15 system.
16 2. There was insufficient evidence before the court indicating that the city of Santa
17 Ana had complied with the Vehicle Code §21455.7, requiring that the yellow
18 phase meet the minimum requirements established the Department of
19 Transportation.
20 3. There was insufficient evidence before the court to establish beyond reasonable
21 doubt that defendant Khaled was in fact driving the vehicle at the time of the
22 violation, as a significant portion of the driver's face obscured in the photographs
23 taken by the automated system.

24
25 Counsel argued that, absent sufficient evidence of the City's compliance with the
26 authorizing statutes, the City operated in excess of its authority when it issued the citation in
27 this case. Therefore, the case should be dismissed.

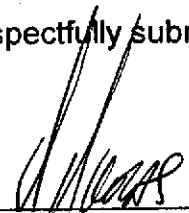
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Defendant's motion was denied. The Court reviewed the photographs and video of the incident, this evidence enclosed with the engrossed settled statement on appeal, and found the defendant guilty of not stopping for a red light.

Respectfully submitted,

Dated: May 26, 2009



DANIEL M. ORNELAS
Commissioner of the Superior Court