

Court of Appeal Case No. B229748
(Appellate Div. Case No. BR048012)
(Trial Court Case No. BI 20734)
(Citation No. BI20734)

IN THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

People of the State of California **Plaintiff and Respondent,**

v.

Annette B. [REDACTED] **Defendant and Appellant.**

Appeal from the Appellate Division of the Superior Court for
Los Angeles County,
Justices Wasserman, Dymant and Kumar

OBJECTION TO REQUEST FOR JUDICIAL NOTICE

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I.

INTRODUCTION

On July 8, 2009, a traffic citation was issued in a red light photo enforcement case in the City of Beverly Hills alleging a violation of Vehicle Code section 21453, subdivision (a) by the Appellant. (People’s Exhibit “1”) A trial was held in the matter. People’s only witness at trial was Officer Butkus. There was no prosecutor representing the People of California (hereafter “Respondent.”) Respondent’s only exhibit was People’s Exhibit “1,” (hereafter Respondent’s Exhibit “1”) containing altered digital photographs, a video, a maintenance record, a certificate of mailing and citation containing digital photographs.

The **sole issue** raised in this Appeal is whether trial court erred in finding that Officer Butkus was a **qualified witness** to proffer People’s Exhibit “1” into evidence over Appellant’s **hearsay, foundation and Confrontation Clause objections**.

II.

**THE MATTERS FOR WHICH JUDICIAL NOTICE IS SOUGHT
ARE IRRELEVANT TO THIS APPEAL**

Appellant, in her appeal, respectfully submits that the record lacks any evidence that Officer Butkus was a qualified witness for any of the purposes for which his testimony was submitted at trial and that the trial court erred in admitting People’s Exhibit “1” over Appellant’s repeated objections. Appellant contends that the Judicial Officer in this case did not scrupulously uphold the Defendant’s right to a fair trial according to the law and **allowed the People to use shortcuts to improperly get evidence into the record without complying with the Rules of Evidence.**

According to California Penal Code section 19.7, “[E]xcept as otherwise provided by law, **all provisions of law relating to misdemeanors shall apply to infractions including, but not limited to,** powers of peace Officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof.”(emphasis added)

Pursuant to Vehicle Code section 40901(e), “... nothing contained herein shall be interpreted to permit the **submission** of evidence **other than in accordance with the law**, nor to prevent courts from adopting other rules to provide for **trials in accordance with the law.**” [emphasis added] Hence, the Rules of Evidence apply to infraction trials under California’s Vehicle Code.

The Request for Judicial Notice allegedly containing public policy and various studies on ARLES is irrelevant to this Appeal. This is because **Appellant has made no argument regarding the constitutionality** or efficacy of the Automated Red Light Enforcement System (ARLES). Rather, Appellant’s challenge lies in the fact the that Judicial Officer did not scrupulously protect her right to receive a fair trial and allowed the People to use shortcuts to garner a quick conviction.

Public policy and studies on ARLES contained in the Request for Judicial Notice (Exhibits “A” –“D”) are irrelevant as the **same evidentiary rules** regarding foundation/authentication/hearsay and the Sixth Amendment Right of Confrontation apply to all trials **no matter what offense is being alleged** by the government. There is no different standard for foundation/ authentication/hearsay for different kinds of violations.

The law is clear in that the Rules of Evidence and the law relating to misdemeanors apply to infractions. There is no double standard treatment for people charged with infractions before California law. Hence the

double standard created by the trial court to move infraction cases along faster is unfair and unlawful.

Respondents' desire to make this case about public policy is a red herring. This Appeal is not about automated red light systems or the danger of running red lights or the efficacy of automated red lights – rather this case is about whether Officer Butkus was a qualified witness to lay the foundation for photographs, a video and a maintenance log and whether the trial court allowed the People to improperly use a shortcut to admit evidence.

While public policy is important, it does not trump a defendant's right to a fair trial or the trial court's obligation to insure that a defendant's **conviction was based on a trial according to the law**. There is a strong public policy against committing many public offenses and crimes. This does not mean that a person accused of such an offense/crime can be denied a fair trial because of the public policy against such a offense/crime. In fact, there is a **stronger public policy for the right of every accused to receive a fair trial**.

III.

EXHIBIT "A" IS NOT SUBJECT TO JUDICIAL NOTICE NOR IS IT RELEVANT TO THE ISSUE OF WHETHER THE TRIAL COURT ERRED IN ADMITTING EVIDENCE

Evidence Code section 452 provides that Judicial Notice **may** be taken of materials specifically identified in sections (a) through (h). It is therefore discretionary and not mandatory.

Despite the argument in the Request for Judicial Notice, a bill analysis of an Assembly Bill does not fall under sections c, b or h, as it is not a decisional, constitutional, or statutory **law** of any state of the United States (section c), nor **regulation** and legislative **enactment** issued by or under the authority of the United States or any public entity in the United

States (section b). Nor does it fall into section (h) which provides for notice when facts and propositions that are **not reasonably subject to dispute** and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Further, as stated above, this bill analysis is irrelevant to the issue of whether the trial court correctly applied the rules of evidence and case precedents to admit evidence over Appellant's objections.

IV.

EXHIBITS B-D ARE NOT SUBJECT TO JUDICIAL NOTICE AND ARE IRRELEVANT TO THE ISSUE OF WHETHER THE TRIAL COURT ERRED IN ADMITTING EVIDENCE

Exhibit "B" - the **Insurance Institutes biased study** on red light camera enforcement, Exhibit "C" - a 2005 publication which states on page 2 states "[T]his report does not constitute a standard, specification, or regulation" and Exhibit "D" - a dated 2002 study are not "[F]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy..." (Evidence Code 452(h))

Furthermore, these publications have **nothing to do with whether Defendant received a fair trial** and whether the Judicial Officer in this case scrupulously upheld the Defendant's right to a fair trial **according to the law.**

IV.

CONCLUSION

This Appeal is not about a red light or a "busy intersection in the City of Beverly Hills..." (Respondent's Brief – p. 1) Nor is it an "attack on the automated red light enforcement system ('ARLES')." (Respondent's Brief – p. 1) This Appeal is about whether the trial court erred in admitting

evidence over Defendant's evidentiary objections. The matters requested to be Judicially Notices are irrelevant.

For the foregoing reasons, Appellant respectfully requests that the Court deny Amici Curiae's Request for Judicial Notice.

Dated: July 14, 2011

Respectfully submitted,

By: _____
Annette B. [REDACTED] Esq.