

No. AP-14168

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

PEOPLE,

Plaintiff and Respondent,

v.

FISCHETTI,

Defendant and Appellant.

Court of Appeal

No.AP-14168

(Superior Court No. CM46167PE)

Appeal From a Judgment of
The Superior Court of California, County of Orange
The Honorable Mark Sheedy, Commissioner

APPELLANT'S OPENING BRIEF

Fischetti, self-represented

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STATUTES

Vehicle Code § 21453 (c)
Vehicle Code § 21455.5
Vehicle Code § 21455.7

STATEMENT OF THE CASE

This is a Red Light Camera case. The Defendant/Appellant is seeking *de novo* review by the Appellate Court in this case. First, the Defendant/Appellant alleges that his opportunity to bring a motion for summary judgment was unfairly precluded by People's failure to produce information requested during discovery, which was later exposed in trial, allowed and made part of the record. Second, Defendant/Appellant alleges that despite objections, People's testimony lacking foundation and presented under perjury was admitted into evidence and obscured matters of law. The Defendant/Appellant is calling upon the Appellate Court for interpretation of relevant statute as a matter of law and to determine whether or not the Trial Court abused judicial discretion in its measure of an automated enforcement system's conformance to statutory requirements allowing its use.

Defendant/Appellant appeared on March 1, 2004, in Department H14 of the Superior Court, was duly advised of his rights as an infraction defendant, and entered a plea of Not Guilty; a trial date was set. The case came on regularly for court trial on April 15, 2004, before Officiating Judge Mark J. Sheedy, Commissioner. The Commissioner initially took the matter under submission and later that same day found Defendant/Appellant guilty and ordered payment of fine and penalty totaling \$321. Defendant/Appellant filed a Notice of Appeal on May 13, 2004, and a Statement on Appeal on May 28, 2004. Defendant/Appellant attended a hearing for the Settled Statement on Appeal on July 7, 2004, after which the final Settled Statement on Appeal was completed. The final Statement on Appeal was certified by Commissioner Sheedy and made a part of the record on July 13, 2004. Failing to receive notice of the Briefing Schedule, the Defendant/Appellant did not file an opening brief and the case was dismissed. At the request of the Defendant/Appellant, after showing good cause in a hearing on October 27, 2004, the dismissal was vacated and a due-date of November 29, 2004 was set for the opening brief.

STATEMENT OF APPEALABILITY

This appeal is from the judgment of the County of Orange Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1).

STATEMENT OF FACTS

The Settled Statement on Appeal (SS) is incorporated by reference.

On the afternoon of January 12, 2004, at approximately 12:51 p.m., in Orange County, California, Defendant/Appellant made a left turn, from the left turn lane along southbound Newport Boulevard onto eastbound 19th Street, in his 1993 Lexus Sedan. A video camera, comprising the main component of an AES (Red Light Camera), was installed at that intersection. That system automatically took photographs of the intersection, Defendant/Appellant's front license plate on the vehicle and the driver of the vehicle (admittedly Defendant/Appellant). Subsequently, on or about January 19, 2004, seven days after the alleged offense, a City of Costa Mesa Automated Enforcement Traffic Violation was issued to the Defendant/Appellant by First Class Mail. The Citation, numbered CM46167PE, contained reprints of four photographs mentioned earlier, and commanded Defendant/Appellant to appear before the County of Orange Superior Court, Harbor Justice Center, on March 1, 2004.

Defendant/Appellant appeared on March 1, 2004, in Department H14 of the Superior Court, was duly advised of his rights as an infraction defendant, and entered a plea of Not Guilty; a trial date was set. Later the same day, after the Costa Mesa Police Department rejected his request for important information to aid in his defense, the Defendant/Appellant reappeared asking the Court to issue an order for the Costa Mesa police Department to provide the Defendant/Appellant with copies of all written materials/computer printouts or other data including timing records as requested by the Defendant/Appellant. The court order was issued.

The case came on regularly for court trial on April 15, 2004, before Officiating Judge Mark J. Sheedy, Commissioner,. The trial was scheduled on the 1:30 p.m. Calendar. At the trial, Defendant/Appellant was found Guilty, and assessed a fine and penalty totaling \$326.00. The Defendant/Appellant filed a timely Notice of Appeal and Proposed Statement on Appeal. This appeal ensued.

ARGUMENT

Issue 1

THE CITY DID NOT PROVIDE A 30-DAY GRACE PERIOD WHEN THE INTERSECTION OF NEWPORT BOULEVARD AND 19TH STREET WAS EQUIPPED WITH AN AUTOMATED ENFORCEMENT SYSTEM. (SS – 2)

Uncontested by People, the AES at Newport Boulevard and 19th Street went into effect without the 30-day grace period mandated by Vehicle Code § 21455.5 for intersections equipped with AES. During the grace period, alleged red-light violators picked-up by an AES are issued warnings rather than citations. To uphold lawful intent, the failure to comply with explicit requirements of Vehicle Code § 21455.5 must render meaningless citations issues by the defiant AES. Defendant/Appellant alleges that the trial court overstepped judicial discretion when waiving the 30-day grace period required by Vehicle Code § 21455.5 for the AES at Newport Boulevard and 19th Street. The Defendant/Appellant notes that the undisputed nature of this issue, alone, could be the basis for summary judgment in favor of Defendant/Appellant, and brings forth the motion for Summary Judgment, herein.

Issue 2

THE YELLOW CHANGE INTERVAL FOR THE LEFT TURN MOVEMENT FROM SOUTHBOUND NEWPORT BOULEVARD TO EASTBOUND 19TH STREET IS TOO SHORT TO COMPLY WITH VEHICLE CODE § 21455.7

Vehicle Code § 21455.7 requires intersections in California that the minimum yellow change interval time for traffic signals equipped with AES must conform to a formula given in the California Department of Transportation Traffic Manual (hereafter Traffic Manual). One of the parameters in that formula is vehicle approach speed. In this case, the People's interpretation clashes with the Defendant's interpretation of just which speed should be used in that formula. Is it the posted speed limit or is it the "critical speed" (that is, the 85th percentile fastest measured speed of free flowing traffic)? Alternatively, as the People insist for left turn approaches, is it an arbitrary and lesser speed deemed by California Department of Transportation (CalTrans) officials to be the maximum safe and prudent speed for such movements? (SS-2)

Using either the speed limit or critical speed to establish the approach speed for the signal in question increases the time period when the yellow light is illuminated as the signal changes from green to red (referred to as the "yellow change interval") over its current setting of 3.2 seconds.

At question therefore is whether or not Vehicle Code § 21455.7 requires a minimum approach speed exceeding 30 mph for the signal in question. Stated differently, if a speed in excess of 30 mph was appropriate and reasonable when approaching the left turn signal in question, under Vehicle Code § 21455.7 AES would not be allowed at the intersection, and therefore could not be the basis of issuing citations.

Signal timing sheet submitted as evidence by Defendant establish that the yellow change interval of 3.2 seconds was available to Defendant as he entered the

left turn pocket on approach to executing a left turn from southbound Newport Boulevard onto eastbound 19th Street. (Defendant's Exhibits incorporated by reference into Settled Statement – SS – 4) Using Table 9-1 of the Traffic Manual, a 3.2 second Yellow Change Interval corresponds to an approach speed of 30 miles per hour. Therefore, to comply with Vehicle Code § 21455.7 it is essential that the fastest reasonable approach speed for the left turn signal be 30 mph or less.

To understand the rationale supporting the People's contention that the yellow change interval is correct at 3.2 seconds, People's witness testified that all left turn signals (in the city of Costa Mesa) are set for an approach speed of 25 mph, corresponding to a suggested minimum yellow change interval in Table 9-1 of the Traffic Manual of 3.2 seconds¹. At trial, Defendant/Appellant argued that a 30 mph approach speed was insufficient and underestimates the fastest reasonable speed to approach the signal. Keeping in mind that the Defendant need only cast reasonable doubt that the 30 mph approach speed was inappropriate, his argument need not establish the appropriate approach speed for the signal. Rationale suggesting higher approach speeds follow.

Case 1: Using an approach speed equal to the maximum speed a driver can legally enter the left turn pocket, in other words the 65 mph maximum legal speed at the terminus of the 55 Freeway, the Traffic Manual yields a suggested minimum yellow change interval of 5.8 seconds.

Case 2: Taking into consideration that the freeway is about to terminate into a state highway, assuming a 55 mph approach speed, and again referring to Table 9-1 of the Traffic Manual, the corresponding suggested minimum yellow change interval is 5.0 seconds.

¹ The testimony offered by People's witness was initially flawed by the fact that, under Table 1 of the Traffic Manual, the minimum yellow light interval for a 25 mph approach speed is 3.0 seconds and not 3.2 seconds as testified. In Table 1, the approach speed corresponding to a minimum yellow light interval of 3.2 seconds is 30 mph.

Case 3 and Case 4: Before examining these cases, discussion must ensue over the appropriate speed limit in the immediate vicinity of the signal in question.

The intersection of southbound Newport Boulevard at 19th Street is located at the southern terminus of State Route 55 (SR55), a four lane divided freeway. The roadway, signage and traffic signals at the intersection are operated and maintained by Caltrans. Southbound Newport Boulevard, north of 19th Street, is a two-lane, one-way, “frontage road” paralleling the Highway. At a distance of about 500 feet north of the 19th Street intersection, the frontage road merges with traffic lanes that extend from SR55. The City of Costa Mesa operates and maintains Newport Boulevard north of the merge. A Citywide Speed Survey certified by the City of Costa Mesa documents a measured critical speed of 44.3 mph for southbound Newport Boulevard between Victoria Street (to the north) and 19th Street. The survey indicates Newport Boulevard has a posted speed limit of 40 mph up to 19th Street and indicates the roadway is clear of unsafe conditions that might influence a 5 mph reduction to the measured critical speed, after rounding down to the nearest 5 mph, to determine the *prima fascia* speed limit (SS-Exhibits). Similarly, the speed survey conducted and certified by Caltrans documents a measured critical speed 46 mph for the roughly half-mile segment of southbound Newport Boulevard extending 200 feet beyond the 19th Street intersection. This survey also indicates that the posted speed limit for southbound traffic through the 19th Street intersection is 40 mph. (SS-Exhibits)

Case 3, therefore assumes approach speed equal to the 40 mph speed limit and yields a yellow change interval of 3.9 seconds.

Case 4, assumes approach speed equal to the 35 mph speed limit and yields a yellow change interval of 3.7 seconds.

Defendant/Appellant concludes that all rational methods to determine possible yellow change intervals yield results that exceed the current 3.2 second setting, while People have not provided any rational or documentation in support of the current setting and at all other AES sites in Costa Mesa no other yellow change intervals for a left turn signal is as short as the signal in question.

Issue 3

FOR DEFENDANT'S CONVICTION TO STAND, THE LEFT TURN TRAFFIC SIGNAL'S YELLOW INTERVAL MUST CONFORM WITH THE REQUIREMENTS OF CALIFORNIA VEHICLE CODE § 21455.7, BUT IT DOES NOT.

California Vehicle Code (hereafter Vehicle Code) § 21455.7 states:

"At each intersection at which there is an automated enforcement system in operation, the minimum yellow light change interval shall be established in accordance with the traffic manual of the Department of Transportation."

The statute was signed into law in October 2001, to become effective on January 1, 2002. Defendant/Appellant contends that, due to arbitrarily diminished Yellow Change Interval settings for left turn traffic signals in Orange County, the AES (Red Light Camera) operating at the intersection of Newport Boulevard and 19th Street was an unlawful implementation. Vehicle Code § 21455.7 requires that minimum Yellow Interval times in California be set according to the Traffic Manual. That Traffic Manual, in turn, specifies a mathematical formula to be used in determining minimum Yellow Interval time. It also provides a tabulation showing examples of such calculations at various "Approach Speeds". The term "Approach Speed" is left vague and ambiguous in the Traffic Manual, necessitating resort to outside materials to interpret the statute (SS-Exhibits).

The *Campbell* Court addressed the process used to interpret a statute:

"The process that a reviewing court is mandated to undertake in interpreting a statute is well established. We begin our inquiry with the understanding that our essential responsibility in construing a statute is to ascertain the Legislature's intent."

The *Campbell* Court continued on to describe three steps of the process:

"Our obvious initial step is to examine the actual language of the statute.

(*People v. Mom* (2000) 80 Cal.App.4th 1217, 1221.)"...

"The second step is to refer to outside materials if the meaning of the words is unclear."...

" 'The final step...is to apply reason, practicality, and common sense to the language at hand. If possible, the words should be interpreted to make them workable and reasonable [citations], ...[citations], in accord with common sense and justice, and to avoid an absurd result [citations].' (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1239-1240.)"

Governor's Office Press Release (10/05/2001) provides a clue of Legislative intent. Further support for Defendant/Appellant's view is found in a press release from the State of California, Office of the Governor, shortly after Vehicle Code § 21455.7 was signed into law:

"SACRAMENTO Governor Gray Davis has signed legislation that seeks to ensure that automated enforcement systems (AES) traffic light technology is used in a responsible manner. By standardizing yellow traffic light

intervals, the motoring public can be assured that AES is not being used as a revenue generator for local governments. This bill will help prevent increases in traffic violations at intersections equipped with AES and with yellow light timing intervals that are set well below the recommended guidelines. SB 667 by Senator Steve Peace (D-El Cajon) requires AES located at intersections to comply with the Department of Transportation (Caltrans) traffic manual recommendations for minimum yellow light change intervals based on the posted speed limit...[emphasis added]"

Why are the left turn Yellow Change Intervals set shorter than those for through traffic? Defendant/Appellant contends there's no support for such a notion in either the authoritative literature of traffic signal engineering or in the Legislative History of Vehicle Code § 21455.7.

The People's witness at trial offered testimony that all left turn signals (in the city of Costa Mesa) are set for an approach speed of 25 mph, corresponding to a suggested minimum yellow change interval of 3.2 seconds² in the Traffic Manual. The Trial Court admitted the testimony into evidence (SS-2). The testimony, however, was known to be untrue by the People's witness since he has full knowledge of, two other AES sites in Costa Mesa where both the left turn and through traffic yellow change interval is set to 3.9 seconds, and also knowledge of yellow change intervals at the City's AES located at the intersection of Newport Boulevard and 17th Street where a 3.5 second yellow change interval is in effect for protected left turn movement from eastbound 17th Street onto northbound Newport Boulevard (SS-3).

² The testimony offered by People's witness was initially flawed by the fact that, under Table 1 of the Traffic Manual, the minimum yellow light interval for a 25 mph approach speed is 3.0 seconds and not 3.2 seconds as testified. In Table 1, the approach speed corresponding to a minimum yellow light interval of 3.2 seconds is 30 mph. (SS-3)

Had that Yellow Interval been set using the correctly posted speed limit for approach speed, no red light violation by Defendant/Appellant would have occurred that day.

Issue 4

THE CITY OF COSTA MESA FAILED TO PROVIDE PUBLIC ANNOUNCEMENT AND CALIBRATE THE AUTOMATED ENFORCEMENT SYSTEMS AT NEWPORT BOULEVARD AND 19TH STREET

Vehicle Code § 21455.5 presents a battery of requirements, all of which must be met before governmental agencies are allowed to equip intersections with AES (Red Light Camera). To verify that AES at Newport Boulevard and 19th Street conformed to these requirements, Defendant/Appellant requested certain documents and records required or controlled by those provision. After Defendant/Appellant's request was initially rejected, Defendant/Appellant obtained a court order for Costa Mesa Police to produce review guidelines, certifications, public announcements, procedures, maintenance records, engineering calculations and contracts for AES at Newport Boulevard and 19th Street. The Police Department produced only 3 of the 12 items requested. Specifically, the Police Department failed to produce a copy of the public announcement for AES at Newport and 19th Street and failed to produce calibration records certifying the equipment is properly installed, calibrated and operational. In fact, synchronization between the traffic signal controller and AES timer is so askew that the 3.2 second yellow change interval setting for the signal in question is recorded and reported as 3.3 seconds by the AES. (SS-3) This blatant deficiency attests to improper calibration and raises suspicion as to the accuracy of AES. The apparent lack of calibration explains People's inability to produce certified calibration records required under Vehicle Code Section § 21455.5 in itself should be

sufficient to dismiss the matter completely in by summary judgment. In trial, however, abusive Judicial discretion allowed omitted calibration from the foundational requirements; Defendant /Appellant objection to People’s request to admit AES photographs into evidence, on the basis of insufficient foundation, was overruled. Defendant/Appellant alleges judicial prejudice lessened People’s burden to fully and completely lay foundation for AES conforming to California Vehicle Code requirements, undermined Defendant/Appellant’s chance for a fair trial.

Issue 5

THE CITY OF COSTA MESA DOES NOT OVERSEE NOR CONTROL
YELLOW CHANGE INTERVALS AT THE INTERSECTION OF NEWPORT
BOULEVARD AND 19TH STREET AS REQUIRED BY
VEHICLE CODE § 21455.5

Vehicle Code § 21455.5 mandates that only a governmental agency in conjunction with law enforcement may operate AES at intersections, providing the agency maintains overall control and supervision of AES and oversees establishment and changes to the yellow change interval. Although the City of Costa Mesa may maintain control of AES, it has no control over signal functions which are operated and maintained by CalTrans (SS-2). Defendant/Appellant alleges that AES at Newport Boulevard and 19th Street do not conform to Vehicle Code § 21455.5 because the City did not establish the yellow change intervals at Newport Boulevard and does not oversee changes to them. CalTrans, on the other hand, established yellow change intervals for the signals at Newport Boulevard and 19th Street, and oversees changes to them, absent interaction with local enforcement. Defendant/Appellant further alleges that this disjoint relationship between State, City and law enforcement is inconsistent with Vehicle Code § 21455.5 and dilutes accountability and control requirements intended by the Code for AES.

CONCLUSION

The issue here regarding interpretation of Vehicle Code § 21455.7 is not trivial. To preserve the uncharacteristically small time of the yellow change interval for the signal in question, seemingly arbitrary and inconsistent with certified speed surveys that unexplainably conflicting with field data without evaluating its significance to justice and equal protection would fail to serve the people it intends to protect. Based on all of the foregoing, Defendant/Appellant respectfully asks this Court to reverse the Judgment of the Trial Court, set aside the Verdict, and grant Defendant/Appellant a new trial.

Dated: _____

By: _____ Defendant/Appellant