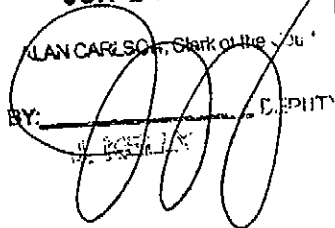


ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER


JUN 17 2010

CLAN CARLSON, Clerk of the Court
BY:  DEPUTY

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

10 PEOPLE OF THE STATE OF) Case No. SA151929PE
11 CALIFORNIA)
12) DEFENDANT'S TRIAL BRIEF
13 PLAINTIFF) \$21455.5 et. seq.
14 v.) EVIDENCE CODE §§ 1271; 1280
15  CALHOON) GOVERNMENT CODE §72193
16 DEFENDANT) PENAL CODE §§ 684; 19.7
17) CAL RULES OF COURT 8.1115
18) 6TH Amendment United States
19) Constitution
20)

21 TO THE ABOVE-ENTITLED COURT:

22 The defendant in the above-entitled action submits this
23 trial brief in order to inform the Court as to issues unique to
24 red light camera cases. These cases involve testimony
25 concerning and evidence obtained through the City of Santa Ana's
26 use of an Automated Enforcement System (AES) operated pursuant
27 to its contract with Redflex Traffic Systems, Inc.

28 The defendant contends that the evidence obtained from the
use of the AES is inadmissible as lacking foundation and is
hearsay not falling within any exception to the hearsay rule,
and that the defendant's right to confront and cross examination

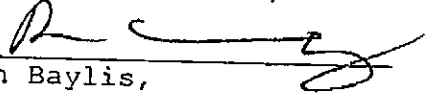
B

1 under the 6th amendment to the United States Constitution is
2 violated on following grounds:

- 3 1. Any such evidence is inadmissible hearsay because the
4 officer cannot lay a foundation for documents produced
5 by its contractor, Redflex Traffic Systems Inc.
6 (Hereafter "Redflex") (See *People v. Khaled* 30-2009-
7 3048893 (May 21, 2010) Orange County Superior Court
8 Appellate Division, Certified for publication May 25,
9 2010 attached)
- 10 2. Any such evidence is inadmissible as hearsay because it
11 does not fall within the Business Records exception of
12 the hearsay rule. (Evid. Code §1271)
- 13 3. Any such evidence is inadmissible as hearsay because it
14 does not fall within the Official Records exception of
15 the hearsay rule. (Evid. Code §1280)
- 16 4. Failure to have prosecution witnesses (employees of
17 REDFLEX, Inc.) available for cross-examination violates
18 the defendant's Sixth Amendment right to confront
19 witnesses against him. (*Melendez-Diaz v. Massachusetts*
20 (June 25, 2009) 129 S.Ct 2527).

21
22 The defendant submits the following points and authorities
23 as in support of this trial brief.

24
25 Date: 6-17-10

26 Respectfully submitted,
27 
28 R. Allen Baylis,
Attorney for Defendant

R

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 THE PHOTOGRAPHS AND OTHER DOUCMENTS PRODUCED BY REDFLEX ARE
4 INADMISSIBLE HEARSAY

5 a) Business Records

6 Evidence Code § 1271 has four requirements that must be met
7 before a document can be admitted under the business records
8 exception to the hearsay rule. There is nothing here to indicate
9 that the People's documents to be offered into evidence meet any
10 of the following:

11 (a) The writing was made in the regular course of a
12 business;

13 (b) The writing was made at or near the time of the act,
14 condition, or event;

15 (c) The custodian or other qualified witness **testifies** to
16 its identity and the mode of its preparation; and

17 (d) The sources of information and method and time of
18 preparation were such as to indicate its trustworthiness.
19

20 In this case, the custodian of records is not available to
21 testify as to the identity and mode of preparation. The police
22 officer is not a qualified whiteness, as he cannot testify as to
23 the exact manner in which the documents in this case were
24 prepared. (*Khaled, supra.*)
25

26 Here, the documents produced by REDFLEX were prepared for
27 the specific purpose of supporting litigation by a corporate
28 entity whose fortunes depend on providing evidence of suspected

1 criminal activity. The profit motive for the contractor is
2 inherently untrustworthy, as evidenced by the fact that REDFLEX
3 routinely processes and the police department files criminal
4 charges against people they know to be innocent. This occurs
5 routinely where the registered owner is not the driver at the
6 time of the alleged violation. Therefore, the source of the
7 information and method of its preparation are not such as to
8 indicate its trustworthiness.

9
10 b) Official Records

11 Evidence Code §1280 has three requirements that must be met
12 before a document may be admitted under the official records
13 exception to the hearsay rule. There is nothing in the court
14 record to indicate that People's documents met any of the
15 following:

16 (a) The writing was made by and within the scope of duty
17 of a public employee.

18 (b) The writing was made at or near the time of the act,
19 condition, or event.

20 (c) The sources of information and method and time of
21 preparation were such as to indicate its trustworthiness.

22 In this case, the writings (photographs and other
23 documents) were not made by and within the scope of duty of a
24 public employee. Employees of Redflex are not public employees,
25 with the legal duties and obligations placed on public employees
26 making reports (such as autopsy reports or the results of
27 laboratory tests) Therefore, they do not fall within the
28 official records exception to the hearsay rule. (*Khaled, supra.*)

1 SIXTH AMENDMENT RIGHT TO CONFRONT WITNESSES
2

3 The photographs and supporting documents produced by
4 REDFLEX are accusatory in nature, as the sole purpose of
5 them is to provide prima facie evidence of the alleged
6 violation.
7

8 The United States Supreme Court's recent decision in
9 *Melendez-Diaz v. Massachusetts* clearly brings the Sixth
10 Amendment into play in red light camera cases, as the
11 evidence produced by the automated enforcement system
12 contractor is accusatory in nature.

13 "Here, moreover, not only were the affidavits " 'made
14 under circumstances which would lead an objective
15 witness reasonably to believe that the statement would
16 be available for use at a later trial,' " *Crawford,*
17 *supra*, at 52, 124 S.Ct. 1354, but under Massachusetts
18 law the *sole purpose* of the affidavits was to provide
19 "prima facie evidence of the composition, quality, and
20 the net weight" of the analyzed substance" (*Melendez-*
21 *Diaz v. Massachusetts* 129 S.Ct. 2527, 2532)
22

23 Since the REDFLEX photographs and documents are accusatory
24 statements, the Sixth Amendment is implicated. Absent
25 availability of the technicians and other employees of REDFLEX
26 which were involved in the preparation of the evidence in this
27 case for cross-examination, the documents and evidence must be
28

1 deemed inadmissible as a violation of the defendant's right to
2 confront the witnesses against him.

3
4 The *Melendez-Diaz* Court also found that a defendant's Sixth
5 Amendment rights are violated where the lab technician is not
6 available for cross-examination in order to test the witness not
7 only for the possibility of fraudulent analysis, but also for
8 his or her competence. "Confrontation is designed to weed out
9 not only the fraudulent analyst, but the incompetent one as
10 well. (*Melendez-Diaz* at 2536)

11
12 Employees of Redflex conduct preliminary screening of
13 photographic and video evidence obtained from the company's
14 equipment. Additionally, Redflex employees process the
15 photographic data by enlarging, cropping or enhancing the
16 photographs, and correlating the traffic signal data to the
17 photographs. This is the type of processing encompassed within
18 defendant's right to confront and cross-examine witnesses in
19 accordance with the Court's ruling in *Melendez-Diaz*.

20
21 The fact that documents may be admissible as business
22 records does not vitiate the defendant's right to confrontation
23 under the Sixth Amendment. "Documents kept in the regular course
24 of business may ordinarily be admitted at trial despite their
25 hearsay status.... But that is not the case if the regularly
26 conducted business activity is the production of evidence for
27 use at trial. (*Melendez-Diaz* at 2538)

1 In red light camera cases, the sole purpose of Redflex's
2 business is to provide evidence for use at trial. Again, this is
3 exactly the kind of evidence that triggers a defendant's right
4 to confront and cross-examine the witnesses who produced the
5 evidence in accord with the Court's holding in *Melendez-Diaz*.
6

7 The People have the burden of producing witnesses adverse
8 to the defendant. "More fundamentally, the Confrontation Clause
9 imposes a burden on the prosecution to present its witnesses,
10 not on the defendant to bring those adverse witnesses into
11 court. Its value to the defendant is not replaced by a system in
12 which the prosecution presents its evidence via *ex parte*
13 affidavits and waits for the defendant to subpoena the affiants
14 if he chooses." (*Melendez-Diaz* at 2540)
15

16 THE CITY FAILED TO COMPLY WITH THE STATUTORY REQUIREMENTS
17 AUTHORIZING THE USE OF AUTOMATED ENFORCEMENT SYSTEMS
18

19 21455.5(b) states: "Prior to issuing citations under this
20 section, a local jurisdiction utilizing an automated traffic
21 enforcement system shall commence a program to issue only
22 warning notices for 30 days. The local jurisdiction shall also
23 make a public announcement of the automated traffic enforcement
24 system at least 30 days prior to the commencement of the
25 enforcement program." Here, in keeping with the use of the term
26 "system" in the authorizing statute, "system" can only be read
27 to mean each system or intersection at which automated
28

1 enforcement equipment is to be used to issue citations for red
2 light violations.

3
4 The clear meaning intended by the legislature is that
5 Automated Enforcement System refers to the system in operation
6 at an individual intersection; not the overall use of one or
7 more sets of AES equipment.

8
9 Absent **admissible** evidence proving that the City of Santa
10 Ana complied with each of the statutory mandates set out in
11 subsection (b) (i.e. issuance of only warning notices for the
12 first 30 days of operation of the AES at the subject
13 intersection and, having made a public announcement 30 days
14 prior to issuing citations at each intersection) the City lacks
15 statutory authority to issue citations using evidence collected
16 by operation of the system.

17
18 THE EVIDENCE OBTAINED THROUGHOUT THE CITY'S OPERATION OF ITS
19 AUTOMATED ENFORCEMENT SYSTEMS IS IRRELEVANT AND THEREFORE
20 INADMISSABLE

21
22 Where evidence is obtained from sources subject to
23 legislative standards, there must be substantial compliance with
24 those standards before the evidence is admitted. There must be
25 substantial compliance with Vehicle Code section 21455.5 to
26 insure reliability and trustworthiness before red light camera
27 evidence can be admitted. The reason the legislature set forth
28 the requirements of Vehicle Code section 21455.5 was so the

1 evidence would be trustworthy and reliable. To implement the
2 legislative intent, the failure to comply with explicit
3 requirements of Vehicle Code § 21455.5(b) must render irrelevant
4 and inadmissible evidence collected by the defiant AES.
5

6 The legislature only granted local jurisdictions the
7 authority to operate AES's upon compliance with the mandates of
8 §21455.5 et.seq. Where the city fails to comply with the
9 authorizing statute, it is operating in excess of the authority
10 granted to it by the legislature. In issuing this citation to
11 defendant, just as the officer in *People v. Landis*, the City of
12 Santa Ana and the Santa Ana Police Department exceeded their
13 jurisdiction by commencing the prosecution of defendant without
14 having complied with the mandates of §21455.5(b). (*People v.*
15 *Landis* (2007)156 Cal.App.4th Supp. 12, 78Cal.Rptr.3d 267)
16

17 CONCLUSION

18

19 In this case, the Officer can produce no evidence for which
20 he can lay a proper foundation or would be admissible under any
21 exception to the hearsay rule. The unavailability of the
22 technicians and other REDFLEX employees which the defendant has
23 the right to cross-examine violates his Sixth Amendment right to
24 confront the witnesses against him. The City's failure to
25 provide admissible evidence that it complied with the 30 day
26 warning notice requirement set out in §21455.5(b) vitiates the
27 City's statutory authority to operate any AES within the City of
28 Santa Ana. Additionally, the City's failure to comply with

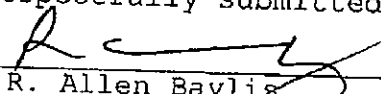
1 Vehicle Code §21455.5(g)(1) vitiates the City's statutory
2 authority to operate any AES within the City of Santa Ana.
3

4 The issues of the admissibility of the evidence produced by
5 the City's red light camera contractor has been decided in
6 *People v. Benhabelis*, and *People v. Romero* and all requirements
7 necessary for the application of the doctrine of collateral
8 estoppel have been met. This court should apply collateral
9 estoppel in finding that the city of Santa Ana's failure to
10 produce admissible evidence of the alleged violation bars
11 relitigation of that issue and bars prosecution of this case.
12

13 Therefore, the court should find that all of the evidence
14 collected by the AES is inadmissible, and dismiss this case in
15 the interest of justice.

16 Dated 6-17-10

Respectfully submitted:

17 
18 By: R. Allen Baylis
19 Attorney for Defendant
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