

No. S202483

SUPREME COURT
FILED

SEP 11 2012

Frank A. McGuire Clerk
Deputy

**IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA**

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff & Respondent,

vs.

STEVEN EDWARD GRAY

Defendant & Appellant.

After Decision by Court of Appeal, Second District, Div. Three
Appeal Transferred from Appellate Division
of Los Angeles Superior Court
Appeal No. B236337; App. Div. No. BR048502;
Trial Court No. C165383
Hon. Lawrence H. Cho, Judge

**APPELLANT'S MOTION FOR
JUDICIAL NOTICE**

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STEVEN EDWARD GRAY

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STEVEN EDWARD GRAY

MOTION FOR JUDICIAL NOTICE

Pursuant to California Rules of Court, Rule 8.520 and Rule 8.252(a), appellant Steven Gray respectfully requests that this Court take judicial notice of the attached documents pursuant to Evidence Code §§ 459 and 452, *et seq.* The attached documents include (1) the trial transcript from another Culver City red light camera case (People v. Barr, et al, *infra*), where the trial court adopted the same position that is advocated by appellant Gray in this case and (2) an appellate division decision (People v. Fields, *infra*) that is inconsistent with the decision reached by the same appellate division (that of Los Angeles Superior Court) in Gray's case.

These documents are not being presented for any precedential value. They are merely presented to show that the statute is ambiguous in light of the conflicting interpretations adopted by the lower courts over the identical issue raised in this case.

LEGAL DISCUSSION

“The reviewing court may take judicial notice of any matter specified in Section 452.” Evidence Code § 459, subdivision (a). For example, under section 452(d)(1), records of “any court of this state” are subject to judicial notice.

Applying the latter statute, courts have granted motions for judicial notice in various contexts. See, e.g., *Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1173 (taking judicial notice of unpublished court of

appeal opinions pertinent to vexatious litigant order); *Taus v. Loftus* (2007) 40 Cal.4th 683, 726 (granting judicial notice of records from other state court proceedings involving plaintiff submitted to discredit plaintiff's present intrusion-into-private-matters lawsuit).

* * * *

Rule 8.1115(b) provides as follows: "An unpublished opinion may be cited or relied on:

(1) When the opinion is relevant under the doctrines of law of the case, *res judicata*, or collateral estoppel; or

(2) When the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action."

The first document presented with this motion fits the second category contemplated by this rule. The trial court's ruling reflected in the transcript presented as Exhibit "A" "affect[s] the same ... respondent in another" red light camera action because Culver City lost the same argument that it raised in Gray's case in another red light camera case. See Exhibit "A". Gray contends that this illustrates the ambiguity of the red light camera statute.

Similarly, the unpublished decision by the same appellate division in another red light camera case, *People v. Tammany Kay Fields* (filed May 24, 2011) is being presented to show that the Los Angeles Superior Court's appellate division has contradicted itself with respect to the issues presented here (as to whether the 30-day warning notice and public announcement requirements imposed by the red light camera statute are program-general or intersection-specific). Gray contends that this further illustrates the ambiguity of the statute. For this reason, this court can take judicial notice of Exhibit "B". See *Mangini v. J.G. Durand Int'l* (1994) 31 Cal.App.4th 214, 219 (citing depublished opinions "simply to illustrate" that the issue presented remained unresolved).

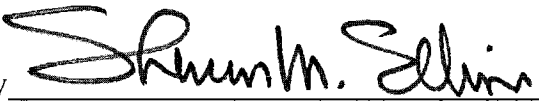
CONCLUSION

The motion should be granted based on the reasons articulated above.

Respectfully submitted,

Dated: September 7, 2012

SHERMAN M. ELLISON

By 

Sherman M. Ellison
Attorney for Defendant and Appellant
STEVEN E. GRAY

DECLARATION

I, Sherman M. Ellison, declare:

1. I am an attorney at law duly licensed to practice before the courts of the State of California. I represent appellant in this appeal. I have personal knowledge of the facts set forth herein. If called to testify as a witness, I would competently testify thereto.

2. A true and correct copy of the trial transcript in another red light camera matter (Barr, *infra*) from the Los Angeles Superior Court, also the Santa Monica Judicial District, involving respondent Culver City is attached as Exhibit "A". In the Barr, et al, matters, the Santa Monica trial court rejected the same argument raised by Culver City with respect to the issue presented in this case. This transcript of a peer level judicial officer in Barr was not the subject of, nor previously ruled upon as a request to take judicial notice in Gray.

3. A true and correct copy of the Los Angeles Superior Court Appellate Division's decision in another red light camera case is presented as Exhibit "B", *People v. Fields, supra*. In the Fields case, the court reversed a red light camera conviction. Gray contends that the decision in the Fields case is inconsistent with the same appellate division's ruling in the Gray case, thus further demonstrating the ambiguity of the statute in question.

4. As to the Barr transcript (Exhibit "A"), the attorneys for respondent-Culver City herein were in fact the very same attorneys of record as in the instant Gray matter. The issue in the Gray and Barr matters, *inter alia*, was the identical issue ruled upon and is subject of the transcript in Exhibit "A", the April 30, 2009 transcript of the ruling before the Honorable Craig D. Karlan, Judge, Los Angeles Superior Court, Santa Monica Judicial District.

5. As for the Fields decision, I had presented the argument relating to the ruling in *People v. Fields*, Exhibit "B" hereto, at the oral argument in the Gray matter before the appellate division. I also attached the Fields opinion to my petition/application to transfer/certify the Gray matter to the court of appeal.

6. It should also be noted that counsel for respondent herein was present at the oral argument, heard the discussion regarding Fields in the appellate division and participated in the oral argument.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 7, 2012 at Sherman Oaks, California.

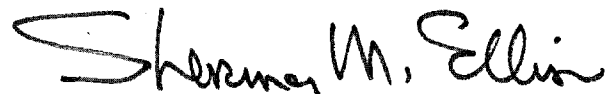

Sherman M. Ellison, Esq.

EXHIBIT "A"

EXHIBIT "A"

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WE N

HON. CRAIG D. KARLAN, JUDGE

PEOPLE OF THE STATE OF)
CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. C126694, C141778
C150324, C129781

ERIC M. BARR, DAVID H.)
KARON, JOSEPH H. GLIDE)

DEFENDANT.)

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

THURSDAY, APRIL 30, 2009

APPEARANCES:

FOR PLAINTIFF:

DAPEER, ROSENBLIT & LITVAK, LLP
BY: CAROLINE KARABIAN CASTILLO,
ATTORNEY AT LAW
11500 W. OLYMPIC BLVD.
SUITE 550
LOS ANGELES, CA 90064

FOR DEFENDANTS:

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15303 VENTURA BOULEVARD
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ORIGINAL

TANYA D. MCCOWAN, CSR NO. 10147
OFFICIAL REPORTER

1 SANTA MONICA, CA; THURSDAY, APRIL 30, 2009; 10:50 A.M.
2 DEPARTMENT WE N HON. CRAIG D. KARLAN, JUDGE

3 APPEARANCES:

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (TANYA D. MC COWAN, OFFICIAL REPORTER.)

6

7 MR. ELLISON: YOUR HONOR, THANK YOU VERY MUCH.

8 IN REGARD TO THE KARON AND GLIDE MATTERS, THE
9 PEOPLE AND I ARE GOING TO STIPULATE THAT THE COURT CAN
10 RECEIVE THESE TWO DOCUMENTS. ONE IS THE CONTRACT WITH
11 CULVER CITY AND REDFLEX, THE 2007 CONTRACT, WHICH WE
12 ERRONEOUSLY STIPULATED TO THE COURT WAS PART OF THAT PACKET
13 OF MATERIALS IN THE SEPTEMBER 18TH PACKET. THE 2002
14 CONTRACT IS THERE. I HAVE GIVEN THE PEOPLE, OF COURSE, EVEN
15 THOUGH THEY HAVE IT, COPIES OF THAT CONTRACT. AND I WANT TO
16 GIVE THE COURT, SO THE RECORD IS CLEAR, THAT THAT IS WHAT WE
17 INTENDED TO BE PART OF THIS COURT RECORD.

18 THE CLERK: ARE THESE EXHIBITS?

19 THE COURT: YES. THEY ARE PART OF THE EXHIBITS. HOW
20 ARE THEY MARKED, COUNSEL?

21 MR. ELLISON: IF THE COURT WOULD LIKE, THEY CAN BE
22 MARKED AS PEOPLE'S EXHIBITS 6 OR THEY CAN BE COURT'S
23 EXHIBIT.

24 MS. CASTILLO: DEFENDANT HAD A IF YOU WANT TO MAKE IT
25 DEFENDANTS B AND C.

26 MR. ELLISON: B AND C FOR IDENTIFICATION PURPOSES, THEN,
27 YOUR HONOR, AT THIS POINT.

28 THE COURT: B AND C FOR THE DEFENDANT.

1 MS. CASTILLO: C IS THE CONTRACT.

2 (DEFENSE EXHIBIT B AND C WERE MARKED FOR
3 IDENTIFICATION.)

4 THE COURT: BOTH SIDES ARE RESTED; AM I CORRECT?

5 MR. ELLISON: WE HAVE RESTED FROM THE PRESENTATION OF
6 ANY ADDITIONAL EVIDENCE.

7 THE COURT: SO LET ME TURN IT OVER TO THE PARTIES. BUT
8 I WANT TO PREFACE WITH MY OBSERVATIONS OVER THE LAST WEEK OR
9 TWO.

10 I HAD AN OPPORTUNITY TO REVIEW AGAIN THE TRIAL
11 BRIEF MEMORANDUM OF LAW IN SUPPORT OF THE MOTION IN LIMINE,
12 YOUR REPLY, MR. ELLISON. EACH OF THOSE ARE FROM YOUR SIDE
13 AS WELL AS THE CITY OF CULVER CITY'S RESPONSE TO TRIAL BRIEF
14 AND OBJECTIONS.

15 MY TENTATIVE IS TO OVERRULE THE HEARSAY AND
16 FOUNDATION OBJECTIONS WITH RESPECT TO THE EVIDENCE, THE
17 ISSUE THAT I AM FOCUSING ON, BECAUSE I DO BELIEVE THE
18 OFFICER HAS OVERCOME THOSE OBJECTIONS.

19 THE ISSUE THAT I AM FOCUSING ON IS FOR PURPOSES OF
20 THIS CASE THE GUIDELINES WEREN'T PUT BEFORE THE COURT. I'M
21 NOT -- IT'S NOT CLEAR TO ME WHETHER GUIDELINES EXIST OR NOT.
22 I'M NOT EVEN GOING TO SPECULATE ALTHOUGH I WOULD CERTAINLY
23 ASSUME THEY EXIST IN THE ABSOLUTE SENSE.

24 BUT FOR PURPOSES OF MY DECISION THEY ARE NOT BEFORE
25 ME. SO THE QUESTION I HAVE IS IS THAT FATAL OR IS IT A
26 RIGHT WITHOUT A REMEDY SUCH AS IN A CRIMINAL CASE WHERE ONE
27 GETS ARRESTED, HAS A RIGHT GUARANTEED BY THE UNITED STATES
28 SUPREME COURT TO A PROBABLE CAUSE DETERMINATION WITHIN

1 48 HOURS. BUT WHEN THAT DOES NOT HAPPEN, THE CASES DON'T
2 GET THROWN OUT. THERE MIGHT BE CIVIL LIABILITY. THERE
3 MIGHT BE GROUNDS FOR AN INJUNCTION. THERE MIGHT BE OTHER
4 GROUNDS. THAT'S ONE OF THE WAYS I HAVE BEEN THINKING
5 THROUGH THIS CASE BECAUSE MY INITIAL REACTION WAS IF THEY
6 DON'T PUT GUIDELINES IN FRONT OF ME AND THE STATUTE REQUIRES
7 GUIDELINES, THEN THE COURT SHOULD RULE FOR YOUR CLIENT. IT
8 SEEMS APPROPRIATE.

9 BUT THE STATUTE DOESN'T SAY IF THESE GUIDELINES --
10 IT SAYS THAT THE CITY SHALL DO THE FOLLOWING THINGS. IT
11 DOES NOT SAY "DO." OTHERWISE, ANY TICKETS ISSUED THAT ARE
12 NOT IN CONFORMITY HEREWITH SHALL BE DEEMED NULL AND VOID OR
13 NO CONVICTION SHALL BE PERMITTED WITHOUT THESE STEPS.

14 NOW, I RECOGNIZE THAT AS TO THE ACCURACY,
15 AUTHENTICITY, ALL OF THE UNDERLYING FOUNDATIONAL ISSUES
16 REQUIRED FOR THE COURT TO REACH THE CONCLUSION THAT THE
17 TICKETS ARE JUSTIFIED AND THAT THE PROPER METHODOLOGY WAS
18 FOLLOWED. IF ANY OF THOSE WERE NOT HANDLED PROPERLY, THEN I
19 WOULD AGREE WITH YOU BECAUSE CLEARLY IF THERE ISN'T
20 SUFFICIENT PROOF THAT YOUR CLIENTS ACTUALLY RAN THE RED
21 LIGHT OR THERE WAS PROOF THAT THE MACHINERY WASN'T WORKING
22 PROPERLY, THEN I WOULD HAVE TO RULE FOR YOU.

23 IT'S NOT A CLOSE CALL. HERE IT'S NOT A QUESTION OF
24 THE ACCURACY OF EQUIPMENT OR WHETHER YOUR CLIENTS RAN THE
25 RED LIGHTS. IT'S A QUESTION OF THERE ISN'T EVIDENCE BEFORE
26 ME THAT THEY COMPLIED WITH ESTABLISHING GUIDELINES. AND
27 WHILE AT FIRST BLUSH, AS I INDICATED, I AGREED WITH YOU,
28 MR. ELLISON, THAT THE TICKETS SHOULD BE DISMISSED, THE MORE

1 I THINK ABOUT IT I QUESTION WHETHER THAT'S THE APPROPRIATE
2 REMEDY OR WHETHER THAT'S COMPELLED.

3 THE SECOND ISSUE, WHICH MAY OR MAY NOT BE AN ISSUE,
4 IS THE CONTRACT. HAVE YOU GONE THROUGH THAT AND IS THERE
5 ANY ISSUE WITH RESPECT TO THE LEGALITY OF THE CONTRACT?

6 MR. ELLISON: YES, THERE IS, YOUR HONOR.

7 THE COURT: WELL, I'LL TURN IT OVER SINCE I JUST
8 RECEIVED THE CONTRACT AND I HAVE NOT HAD THE OPPORTUNITY TO
9 REVIEW IT. BUT THOSE -- THAT FIRST ISSUE IS ONE I HAVE BEEN
10 GIVING A GREAT DEAL OF THOUGHT TO.

11 THE SECOND ISSUE I'LL LET YOU DISCUSS WHILE I TAKE
12 A LOOK. WHY DON'T I TURN TO THE PEOPLE SINCE YOU HAVE THE
13 BURDEN OF PROOF AND WE WILL TURN IT OVER TO YOU,
14 MR. ELLISON. ARE YOU FAMILIAR WITH THE ISSUE THAT HE
15 BELIEVES THERE IS WITH THE CONTRACT? IF NOT, I'LL LET HIM
16 START.

17 MS. CASTILLO: I AM FAMILIAR WITH THE ISSUE, YOUR HONOR.
18 IT'S PART OF HIS BRIEFING.

19 THE COURT: LET'S GO THROUGH THE CONTRACT. I KNOW THE
20 LAW WAS CHANGED AS TO ALL NEW CONTRACTS THAT WERE EXECUTED
21 AS OF A DATE CERTAIN, BUT PRIOR CONTRACTS WERE ALLOWED TO
22 REMAIN.

23 MS. CASTILLO: TO NARROW DOWN THE ISSUE -- AND
24 MR. ELLISON WILL JUMP IN IF I'M MISQUOTING HIS DEFENSE -- IS
25 IN THIS EXHIBIT B THAT HE PRESENTED TO THE COURT.

26 THE COURT: I HAVE IT.

27 MS. CASTILLO: HIS ISSUE IS NOT WHETHER OR NOT THE
28 CONTRACT WAS AMENDED AND PURSUANT TO THE STATUTE OR

1 AMENDMENT IN 2004. WE ARE PAST BEYOND THAT. WHAT MR. --
2 THE DEFENSE'S POSITION IS THAT THIS CONTRACT DOES NOT MEET
3 THE REQUIREMENTS OF SECTION IS 21455.5(G).

4 THE COURT: HOLD ON.

5 MS. CASTILLO: 21455.5.

6 THE COURT: SUBSECTION?

7 MS. CASTILLO: SUBDIVISION G.

8 THE COURT: ARE YOU BOTH IN AGREEMENT WITH ME THAT THE
9 LEGISLATION STATES THAT YOU CAN'T HAVE A PERCENTAGE OF THE
10 REVENUE GENERATED AS ANY PART OF THE CONTRACT? THE THEORY
11 WOULD SEEM TO BE TO ME THAT THAT REDUCES THE RELIABILITY OF
12 THE EQUIPMENT IF THE PEOPLE WHO HAVE INSTALLED IT HAVE A
13 FINANCIAL INTEREST IN HOW MANY TICKETS WERE ISSUED.

14 SO THE LEGISLATURE IN THEIR WISDOM SAID THESE ARE
15 GOING TO BE FIXED FEE CONTRACTS. YOU GET X AMOUNT
16 REGARDLESS OF HOW MANY CITATIONS ARE ISSUES REGARDLESS OF
17 WHAT REVENUE IS GENERATED. THAT WAY WE ARE LIKELY TO GET
18 HONEST AND ACCURATE RESULTS THAN IF YOU HAD A CUT OF THE
19 REVENUE BECAUSE THEN YOU MIGHT BE MORE INCLINED TO FIND MORE
20 FAULTS THAN ACTUALLY EXISTED, MORE VIOLATIONS THAN ACTUALLY
21 EXISTED.

22 SO STARTING WITH THAT PREMISE, WHAT'S THE FLAW
23 HERE? EXHIBIT B TALKS ABOUT A FIXED AMOUNT PER
24 INTERSECTION.

25 MS. CASTILLO: YES. AND COUNSEL'S ARGUMENT IS THAT
26 THERE'S A PARAGRAPH IN THERE THAT SAYS THAT GOES BEYOND
27 THAT.

28 MR. ELLISON: YOUR HONOR, IT'S THE THIRD PARAGRAPH IN B.

1 AND PART OF EXHIBIT B, OF COURSE, I THINK, IS THE DISPUTE --
2 RESOLUTION ISSUE IN PARAGRAPH TEN WHICH TALKS ABOUT -- IT'S
3 THE SECOND PAGE OF WHAT YOU HAVE THERE IN EXHIBIT B, YOUR
4 HONOR.

5 THE COURT: I UNDERSTAND IT. IN ESSENCE, WHAT IT SAYS
6 IS WE ARE PAYING YOU X DOLLARS PER CAMERA. BUT IF WE DON'T
7 BRING IN AT LEAST X DOLLARS PER CAMERA, THEN WE WILL WORK
8 OUT A LESSER FIGURE, IT LOOKS LIKE.

9 MR. ELLISON: RIGHT.

10 MS. CASTILLO: BUT THAT'S THE DISAGREEMENT, YOUR HONOR.
11 THAT'S THE ARGUMENT.

12 THE COURT: WHY IS IT THERE? WHY IS THAT PARAGRAPH
13 THERE? THE REALITY IS THE LEGISLATURE SAID THESE ARE FIXED
14 FEE CONTRACTS.

15 MS. CASTILLO: BUT IT IS A FIXED FEE CONTRACT. ON THE
16 FACE OF THE CONTRACT THE CONTRACT IS A FIXED FEE CONTRACT.
17 THE STATUTE DOES NOT -- THE CONTRACT DOES NOT VIOLATE THAT
18 SECTION G BECAUSE IT MAY VIOLATE THE SPIRIT OF THE STATUTE.
19 IT DOES NOT VIOLATE THE STATUTE ITSELF.

20 THE COURT: WELL, HERE IS THE PROBLEM, THOUGH, IS IT'S
21 THE LAST PORTION OF THE SENTENCE. TO ENSURE THAT
22 OPERATIONAL COSTS DO NOT EXCEED PROGRAM REVENUE. THAT'S THE
23 PROBLEM IS THERE'S NO -- IF YOU WANT TO INSTALL THESE
24 CAMERAS, THE LEGISLATURE DOESN'T WANT THERE TO BE AN
25 INCENTIVE AT ALL FROM ANYBODY FOR ANYTHING OTHER THAN
26 ACCURATE PHOTOS AND ACCURATE CITATIONS.

27 I MEAN THE UNFORTUNATE REALITY OF OUR COUNTY IS WE
28 HAVE HAD SINCE I HAVE BEEN ON THE BENCH NOW -- I'M IN MY

1 EIGHTH YEAR. I CAN REMEMBER AT LEAST ONE, IF NOT TWO, HUGE
2 REFUNDS OF HALF A MILLION DOLLARS OR MORE FOR PROBLEMS WITH
3 THE SYSTEM NOT FUNCTIONING PROPERLY. THAT'S WHAT THE
4 LEGISLATURE IS TRYING TO AVOID.

5 MS. CASTILLO: THIS PROVISION JUST SAYS WE WOULD MEET.
6 IT DOES NOT MEAN THEY WOULD CHANGE IT. IT'S A CONTRACT
7 BETWEEN THE CITY AND A VENDOR, AND THE VENDOR MAY CHOOSE NOT
8 TO CHANGE IT OR AT THE MEETING MAY CHOOSE TO INCREASE IT
9 BECAUSE THE EXPENSE TO THE VENDOR IS HIGH. IT'S NOT A -- IT
10 DOES NOT INDICATE WHETHER OR NOT THAT FIXED FEE IS GOING TO
11 GO UP OR NOT. IT JUST SAID WILL MEET. WHETHER OR NOT
12 SOMEBODY HAS A PROVISION IN THEIR CONTRACT, IT'S A CONTRACT
13 INTERPRETATION AS TO WHAT THAT COULD MEAN TO THE WRITERS OF
14 THAT CONTRACT.

15 THE COURT: IT DOES NOT SAY THAT, THOUGH, COUNSEL. IT
16 SAYS TO ASSURE THAT OPERATIONAL COSTS DO NOT EXCEED PROGRAM
17 REVENUE GENERATED BY CUSTOMER. IT DOES NOT SAY TO MEET TO
18 REEVALUATE WHETHER OR NOT WE SHOULD REDUCE THE COST PER
19 CAMERA. IT JUST SAYS WILL MEET TO ASSURE THAT THIS WILL NOT
20 HAPPEN. AND THAT'S THE PROBLEM IS THAT GOES NOW BACK TO THE
21 RELIABILITY BECAUSE THEY ARE GUARANTEEING, IN ESSENCE, A
22 MINIMUM NUMBER OF TICKETS.

23 MS. CASTILLO: IT DOES NOT GIVE -- THE REASON WHY THE
24 STATUTE CHANGED FROM PERCENTAGE TO A FIXED FEE IS NOT TO
25 GIVE THE POWER TO THE VENDOR. THIS GIVES THE POWER TO THE
26 CITY. IF IT'S GOING TO BE -- IF THE RATE IS GOING TO
27 CHANGE, IT'S GOING TO GO DOWN. IT'S NOT GIVING ANY BIAS TO
28 THE VENDOR. IT'S GIVING POWER TO THE CITY.

1 THE COURT: DOESN'T IT GIVE THE VENDOR -- IF THE
2 VENDOR -- IF THIS PARAGRAPH ISN'T THERE, THE VENDOR CHARGES
3 WHAT THE VENDOR CHARGES. AND IF THERE WAS A CONTRACT, THIS
4 CONTRACT IS FOR -- HOW MANY YEARS IS THIS CONTRACT FOR?

5 MR. ELLISON: MY MEMORY, YOUR HONOR, IS IT'S FIVE YEARS
6 AND ONE YEAR OPPOSITE. BUT IT'S SOMETHING FOR A NUMBER OF
7 YEARS.

8 THE COURT: IT'S A MULTI-YEAR CONTRACT. DO YOU AGREE
9 WITH THAT?

10 MS. CASTILLO: I AGREE WITH THAT. THIS WAS A 2007
11 CONTRACT. WE ARE ALREADY 2009. I'M SURE IT PROBABLY IS
12 GOING TO EXPIRE.

13 THE COURT: IT'S A SEVEN-YEAR CONTRACT WITH THREE
14 ADDITION AT ONE-YEAR RENEWALS. SO IT'S A POTENTIAL TEN-YEAR
15 CONTRACT, BUT IT'S A FIXED SEVEN-YEAR TO BEGINNING WITH.
16 THAT'S THE PROBLEM.

17 MS. CASTILLO: MAY I ALSO ARGUE WHAT I WAS GOING TO
18 INITIALLY START WITH IF I MAY? CAN I TAKE THE COURT BACK TO
19 NOT AN ARGUMENT WHICH IS ACTUALLY THE ARGUMENT THAT THE
20 COURT MADE IN REFERENCE TO THE GUIDELINES? IN MY BRIEF --
21 I'M NOT SURE IF I CAN DIRECT THE COURT TO MY BRIEF -- IS
22 THAT I ARGUED THAT BOTH THE GUIDELINES IN SECTION G ARE NOT
23 NECESSARILY REQUIREMENTS OF THE --

24 THE COURT: LET'S WALK THROUGH THAT AGAIN. I HAVE THE
25 CODE IN FRONT OF ME. SO WALK ME THROUGH AGAIN. I READ
26 THROUGH YOUR ARGUMENT.

27 MS. CASTILLO: IN REFERENCE TO --

28 THE COURT: SO WALK THROUGH. THE GUIDELINES ARE IN

1 2155.5.

2 MS. CASTILLO: SECTION SMALL (C) (2) (A) (2).

3 THE COURT: TWO CAPITAL A?

4 MS. CASTILLO: YES. AND THIS CONTRACT PROVISION IS IN
5 SMALL G TOWARDS THE END. SO MY ARGUMENT AS TO (C) (2) (A)
6 WOULD APPLY TO G AS WELL BECAUSE IT'S NOT A REQUIREMENT OF
7 THE TRAFFIC VIOLATION OF, FIRST OF ALL, 21453(A) RUNNING A
8 RED LIGHT. SECOND, THE STATUTE ITSELF DOES NOT MAKE IT A
9 REQUIREMENT THAT YOU HAVE TO MEET SECTION G. OTHERWISE, YOU
10 CAN'T CITE A VIOLATOR FOR RUNNING A RED LIGHT UNDER PHOTO
11 ENFORCEMENT. IT APPLIES TO AND THE COURT IS CORRECT TO SAY
12 THAT THE APPROPRIATE REMEDY IS NOT HERE.

13 THE COURT: I DON'T FOLLOW YOUR ARGUMENT ON (2) (A). SO
14 WALK ME THROUGH THAT AGAIN. YOU ARE SAYING IT'S NOT
15 MANDATORY?

16 MS. CASTILLO: IT'S NOT MANDATORY. THE ONLY MANDATORY
17 LANGUAGE IN 21455.5, YOUR HONOR, IS IN A AND B.

18 MR. ELLISON: SHE'S SAYING A AND B ARE REGULATORY AND C,
19 D, E, F, ET CETERA ARE ALL JUST ADVISORY BY THE LEGISLATURE.

20 MS. CASTILLO: I'M NOT SAYING -- YOU ARE PUTTING WORDS
21 IN MY MOUTH.

22 THE COURT: BUT I'M NOT FOLLOWING WHAT YOU ARE SAYING.
23 SO HELP ME AGAIN. WHAT ARE YOU SAYING?

24 MS. CASTILLO: I'M SAYING SECTION G IS NOT A REQUIREMENT
25 OR A CONDITION PRECEDENT TO THE VIOLATION TO SIGHTING OF THE
26 VIOLATION.

27 THE COURT: SO WHAT HAPPENS -- LET ME ASK THE QUESTION
28 THIS WAY.

1 MS. CASTILLO: THE SAME ISSUE AS IT'S NOT FATAL.

2 THE COURT: IF CULVER CITY HAD A CONTRACT THAT WAS --
3 THAT GAVE A PERCENTAGE OF REVENUE TO THE RED LIGHT CAMERA
4 COMPANY, YOU ARE SAYING THAT WOULDN'T BE FATAL?

5 MS. CASTILLO: UNDER THIS STATUTE, NO.

6 THE COURT: UNDER WHAT STATUTE?

7 MS. CASTILLO: UNDER THE STATUTORY -- THE WAY THE
8 STATUTE IS WRITTEN.

9 THE COURT: SO WHAT'S THE REMEDY HERE? IT SAYS YOU
10 CAN'T DO IT. IT SAYS YOU SHALL NOT DO THIS. IT ACTUALLY
11 SAYS MAY NOT. SO IF YOU INCLUDE THAT, THEN WHAT HAPPENS?
12 IT'S NOT DISCRETIONARY. IT'S NOT RECOMMENDING. IT'S
13 TELLING YOU AS A CITY, YOU CANNOT ENTER INTO A CONTRACT.

14 MS. CASTILLO: THE CONTRACT IS NOT FOR A FIXED FEE. SO
15 IF YOU TAKE MY -- THE CONTRACT IS FOR A FIXED FEE.

16 THE COURT: AND YOU ARE NOT ANSWERING MY HYPOTHETICAL.
17 MY HYPOTHETICAL IS LET'S ASSUME YOU HAD A CONTRACT THAT SAID
18 THAT RED LIGHT CAMERA WILL GET 30 PERCENT OF ALL REVENUE
19 GENERATED.

20 MS. CASTILLO: NO. I DON'T THINK THAT'S VALID. THAT
21 WOULD NOT BE VALID.

22 THE COURT: WHAT WOULD HAPPEN TO THE TICKET?

23 MS. CASTILLO: THE CONTRACT WOULD NOT BE VALID.

24 THE COURT: I UNDERSTAND THE CONTRACT WOULDN'T BE VALID,
25 BUT THE TICKET WOULD STILL BE VALID.

26 MS. CASTILLO: MY ARGUMENT IS THE TICKET MAY STILL BE
27 VALID BASED ON MY INTERPRETATION OF THE STATUTE.

28 THE COURT: WHY?

1 MS. CASTILLO: BECAUSE IT'S NOT FATAL TO THE VIOLATION
2 BECAUSE THEY ARE NOT MAKING IT A MANDATORY. IT'S NOT PART
3 OF THE MANDATORY SECTIONS.

4 THE COURT: THIS IS MANDATORY. WHAT DO YOU MEAN BY IT'S
5 NOT PART OF THE MANDATORY SECTIONS?

6 MS. CASTILLO: BECAUSE THE ONLY SECTION THAT HAS -- AND
7 I'M GOING TO READ, YOUR HONOR, IS THE ONLY SECTION THAT
8 MANDATES THAT ALL OF THE FOLLOWING MUST BE DONE BEFORE THE
9 CITY CAN ISSUE CITATIONS IS GOING BACK TO SECTION A.
10 SECTION A IS THE ONLY ONE THAT SAYS THAT WHERE A DRIVER IS
11 REQUIRED TO STOP MAY BE EQUIPPED WITH AN AUTOMATED
12 ENFORCEMENT SYSTEM IF THE GOVERNMENT AGENCY UTILIZES THE
13 SYSTEM AND MEETS ALL THE FOLLOWING REQUIREMENTS. THAT'S THE
14 ONLY TIME THAT THE STATUTE SAYS ALL THE FOLLOWING
15 REQUIREMENTS. IF THE STATUTE SAID THOSE LANGUAGE IN EACH
16 AND EVERY SUBDIVISION, THEN WE WOULD NOT BE HERE.

17 THE COURT: SO ONLY THAT?

18 MS. CASTILLO: YES.

19 THE COURT: NOT B?

20 MS. CASTILLO: NO. B HAS DIFFERENT LANGUAGE. PRIOR TO
21 ISSUING CITATIONS UNDER THE SECTION A LOCAL JURISDICTION
22 UTILIZES. SO THAT HAS AGAIN A PRIOR TO ISSUING CITATIONS
23 LANGUAGE. SOMETHING THAT THE CITY HAS TO DO PRIOR TO
24 ISSUING. THOSE ARE THE TWO ONLY SECTIONS THAT SAY THAT THE
25 CITY HAS TO DO SOMETHING BEFORE ISSUING CITATIONS. AND ANY
26 OTHER SECTION YOU READ FOLLOWING DOES NOT HAVE THAT
27 REQUIREMENT. THE ONLY TWO SECTIONS THAT PUT A REQUIREMENT
28 TO THE CITY BEFORE THEY HAVE TO ISSUE CITATIONS IS THE ONLY

1 TWO. WHY WOULD THE LEGISLATURE DECIDE TO PUT SPECIFIC
2 LANGUAGE IN THE FIRST TWO SECTIONS REQUIRING THE CITY PRIOR
3 TO ISSUING CITATIONS TO DO SOMETHING AND THEREAFTER NOT
4 INCLUDE THAT KIND OF LANGUAGE IN ANYWHERE ELSE? THE
5 OMISSION MEANS SOMETHING, YOUR HONOR. AND THAT'S WHAT I
6 ARGUED IN MY BRIEF. THE OMISSION OF A PRIOR REQUIREMENT
7 BEFORE ISSUING CITATION MEANS SOMETHING, MEANS THAT THEY DID
8 NOT WANT THAT TO BE A CONDITION PRECEDENT TO ISSUING
9 CITATIONS. THAT'S THE WAY I INTERPRET THE STATUTE, AND THE
10 DEFENSE DISAGREES WITH ME, AND WE DO HAVE AN UNPUBLISHED
11 OPINION THAT AGREES WITH ME.

12 MR. ELLISON: I OBJECT TO ANY REFERENCE TO ANY
13 UNPUBLISHED DECISION BECAUSE THERE ARE SOME THAT FAVOR
14 DEFENDANTS AND SOME THAT DON'T.

15 MS. CASTILLO: I WAS ABOUT TO FINISH THAT.

16 THE COURT: I'M NOT CONSIDERING THAT. GO AHEAD,
17 MR. ELLISON.

18 MR. ELLISON: I WAS OBJECTING.

19 MS. CASTILLO: I'M DONE.

20 THE COURT: GO AHEAD.

21 MR. ELLISON: THE PEOPLE WANT THE DEFENDANT TO FOLLOW
22 THE LAW. THE DEFENDANTS THROUGH COUNSEL WANTS THE PEOPLE TO
23 FOLLOW THE LAW. IN THIS PARTICULAR CASE THE LEGISLATURE HAS
24 PROMULGATED 21453(A), THE RED LIGHT. AND THEY SAY IF YOU
25 WANT TO USE AUTOMATED ENFORCEMENT, YOU HAVE TO USE THE
26 CRITERIA IN 21455. IT'S MUCH LIKE THE SPEEDING TICKET LAW.
27 IT'S NOT IDENTICAL BECAUSE THERE ARE SPECIFIC PROVISIONS
28 BECAUSE THEY SAY 22350, THE BASIC SPEED LAW, IS ILLEGAL.

1 BUT IF YOU USE RADAR, LASER, OR SOME FORM OF TECHNOLOGY, YOU
2 HAVE TO COMPLY WITH THE SPEED TRAP LAWS THAT COMPLY WITH
3 SURVEY, AND THE LANGUAGE IS COMPARABLE TO THIS TYPE OF
4 LANGUAGE.

5 SO THE ARGUMENT THAT THE PEOPLE ARE MAKING IS THAT
6 A AND B OF 21455.5 IS REGULATORY, BUT C IS ESTABLISHING THE
7 GUIDELINES. D, WHAT MAY OR MAY NOT BE DELEGATED TO
8 MANUFACTURER. E AND F -- F AND G IN PARTICULAR WE ARE
9 TALKING ABOUT THE VALIDITY OF A CONTRACT. THOSE ARE JUST
10 ADVISORY TO THE CITIES AND WE ARE NOT GOING TO SAY THAT IF
11 THERE'S AN ILLEGAL CONTRACT OR AN INVALID CONTRACT, THAT WE
12 ARE ARGUING THERE'S A CONTRACT THAT VIOLATES THE STATUTE AND
13 MRS. CASTILLO IS SAYING YES, IT APPEARS IT DOES NOT MEET THE
14 SPIRIT OF THE STATUTE. AND I'M SAYING THE EXPRESS LANGUAGE
15 OF THE STATUTE IS VIOLATED.

16 THE COURT: LET ME MAKE YOUR ARGUMENT SLIGHTLY EASIER
17 AND FOCUS YOU WHERE I WOULD LIKE TO ADDRESS. I DON'T SEE
18 THESE AS ADVISORY. I DON'T THINK THERE'S ANY WAY TO READ C,
19 D, E, F, AND G AS ADVISORY. THEY ARE REQUIREMENTS.

20 THE QUESTION THAT I HAVE IS SIMPLY IS IT FATAL IF
21 THE REQUIREMENTS HAVEN'T BEEN MET? AND LET'S START WITH G.
22 I MEAN I RECOGNIZE THAT A AND B ARE CONDITIONS PRECEDENT.
23 BUT IT DOESN'T MEAN C THROUGH G CAN BE IGNORED. THE
24 LEGISLATURE SAYS THAT EACH OF THESE IS TO BE COMPLIED WITH.
25 THEY DON'T GIVE REMEDIES. THEY SAY NONCOMPLIANCE SHALL
26 RESULT IN THE TICKET BEING DISMISSED. AND THAT'S THE PART
27 THAT I'M HAVING SOME TROUBLE WITH HERE BECAUSE ON THE OTHER
28 HAND, THE EVIDENCE IS CLEAR THAT YOUR CLIENTS RAN THE RED

1 LIGHT. THE VIDEOS WERE CLEAR. THE PICTURE WERE CLEAR.
2 THERE ISN'T ANY ISSUE IN THIS COURT'S MIND. THE ONLY ISSUE
3 IS WHAT'S THE REMEDY FOR FAILURE TO COMPLY WITH ONE OF THE
4 SUBSECTIONS C THROUGH G, NUMBER ONE? NUMBER TWO, GIVE ME
5 ONE SECOND. I WANT TO LOOK AT THIS LANGUAGE ON THE
6 COMPENSATION, EXHIBIT B.

7 I'LL SAY THIS. I DON'T UNDERSTAND WHY THE LANGUAGE
8 IS THERE. LET ME SAY IT DIFFERENTLY. I COMPLETELY
9 UNDERSTAND WHY IT'S THERE. I'M SURPRISED THEY PUT IT THERE.
10 BUT YOU DON'T KNOW THAT IT VIOLATES THE LETTER OF G.
11 CERTAINLY IN MY MIND IT WOULD VIOLATE THE SPIRIT BUT NOT
12 NECESSARILY THE LETTER BECAUSE IT DOESN'T GIVE THEM WHAT G
13 PROHIBITS WHICH IS A PERCENTAGE OF THE REVENUE GENERATED.
14 WHAT IT DOES IS PROTECTS CULVER CITY SHOULD THE REVENUE
15 GENERATED BE SUFFICIENT TO --

16 MR. ELLISON: WHICH CREATES THE INCENTIVE FOR REDFLEX TO
17 ISSUE AS MANY CITATIONS AS THEY CAN WITHOUT PROPER -- WHICH
18 IS RIGHT OUT OF SUBSECTION C, PROPER SCREENING, AND ISSUING
19 GUIDELINES THAT CULVER CITY WAS SUPPOSED TO PROMULGATE. AND
20 THAT TIES INTO THAT INCENTIVE FOR REDFLEX TO ISSUE AS MANY
21 CITATIONS AS POSSIBLE.

22 THIS COURT MAY BE AWARE IN THE HANDLING OF TRAFFIC
23 MATTERS OF A CITATION BEING ISSUED TO A MARY SMITH AND IT'S
24 ACTUALLY THE PHOTOGRAPH OF A MAN. WHERE I'M GOING IS THAT
25 IF THERE WERE PROPER SCREENING ISSUING AND SCREENING
26 GUIDELINES BY CULVER CITY THAT SAY, "WELL, WHERE THERE IS
27 THIS ISSUE OF CLEARLY A GENDER ISSUE, YOU MUST GO TO THE
28 DMV, GET A COPY OF THE DMV PHOTOGRAPH OF THE DRIVER,

1 WHATEVER THEY HAVE TO DO TO MAKE SURE THAT THE ISSUING AND
2 THE SCREENING IS CORRECT." OTHERWISE, REDFLEX HAS THIS
3 INCENTIVE TO ISSUE OUT EVERY CITATION THAT IS A marginally
4 CLEAR PHOTOGRAPH OF A DRIVER AND LET THE CITIZEN COME INTO
5 COURT AND SAY EITHER THAT'S NOT ME OR IT'S NOT A CLEAR
6 PHOTOGRAPH. THE INCENTIVE FOR REDFLEX IS TO ISSUE AS MANY
7 CITATIONS.

8 I'M REPEATING MYSELF, BUT THAT IS WHERE THE
9 INCENTIVE TIES IN. IF YOU WILL, THE ESTABLISHMENT OF
10 UNIFORM GUIDELINES PER SCREENING AND ISSUING OUT OF (C) (1)
11 TIES RIGHT INTO G. AND THE ISSUES OF IN EXHIBIT B,
12 DEFENDANT'S EXHIBIT B, NOW THAT SAYS IF YOU DON'T MAKE
13 ENOUGH MONEY, WE CAN TALK ABOUT THIS.

14 AND THEN IF YOU LOOK AT PARAGRAPH TEN, IT GIVES
15 THIS WHOLE PROCESS OF IF WE ARE UNABLE TO RESOLVE THIS, THEN
16 WE ARE GOING TO GO TO BINDING OR NONBINDING ARBITRATION.

17 SO THERE'S THIS INCREDIBLE INCENTIVE TO MAKE SURE
18 THERE'S ENOUGH REVENUE IN THE CITY BY THE TERMS OF THE
19 CONTRACT. AND OF COURSE THAT TIES BACK INTO MY ARGUMENT
20 THAT (C) (1) REQUIRES THE CITY TO ESTABLISH UNIFORM
21 GUIDELINES. THE COURT IS SAYING WHAT'S THE REMEDY FOR THAT?
22 YOU AGREE THERE'S THIS OBLIGATION. YOU ARE SAYING WHAT IS
23 THE REMEDY? WELL, WHAT IS THE REMEDY OF, FOR EXAMPLE --
24 WELL, I'LL LEAVE THAT TO THE COURT'S CALL. IT SEEMS TO ME
25 THAT IF THERE'S A VIOLATION OF THE STATUTE REGARDING THE
26 ISSUING OF TICKETS REGARDING HOW ABOUT LET'S TALK ABOUT --

27 MS. CASTILLO: MAY I RESPOND BEFORE WE MOVE FORWARD?

28 THE COURT: LET HIM FINISH.

1 MS. CASTILLO: GO AHEAD.

2 MR. ELLISON: THIS TIES INTO THE NOTICE REQUIREMENTS
3 REGARDING THE USE OF THE AUTOMATED ENFORCEMENT SYSTEM.

4 LET'S TALK WASHINGTON AND BEETHOVEN WHICH INVOLVES
5 ONE OF THE TWO CASES BEFORE YOU. THERE'S NO EVIDENCE
6 PRESENTED IN THIS RECORD OF 120 OR 130 PAGES IN THE
7 TESTIMONY THAT THEY EVER GAVE PUBLISHED ANNOUNCEMENTS
8 REGARDING THAT INTERSECTION. THERE WAS NEVER ANY EVIDENCE
9 IN THIS RECORD. AND, BY THE WAY, I FILED A SUPPLEMENTAL
10 BRIEF THAT I SERVED THE PEOPLE THIS MORNING. I KNOW YOU
11 HAVEN'T LOOKED AT IT. IT'S A SUPPLEMENT TO WHAT I'M SAYING
12 NOW. BUT IT CHARACTERIZES THIS ARGUMENT THAT I'M MAKING
13 AND, IN MY OPINION, SHOWS THE ILLOGICAL ARGUMENT THAT THE
14 PEOPLE ARE MAKING B, C THROUGH G. AND THE COURT IS AGREEING
15 THAT C THROUGH G IS REGULATORY. IT'S JUST WHAT'S THE REMEDY
16 IF THERE'S NO ANNOUNCEMENT TO THE PUBLIC THAT WE ARE USING
17 AUTOMATED ENFORCEMENT AT WASHINGTON AND BEETHOVEN.

18 THERE'S NO EVIDENCE IN THIS RECORD OF 30-DAY
19 WARNING NOTICES FOR THE IMPLEMENTATION OF THE AUTOMATED
20 ENFORCEMENT SYSTEM FOR THAT INTERSECTION SO THE PUBLIC KNOWS
21 THAT IS AUTOMATED ENFORCEMENT, NOR IS THERE EVIDENCE BEFORE
22 THIS COURT ALTHOUGH THE OFFICER ALLUDED THAT THERE ARE
23 SIGNS. BUT I DON'T KNOW THAT HE SPECIFICALLY ADDRESSED IT.
24 AND HE MAY HAVE ON THE RECORD ABOUT SIGNS AT WASHINGTON AND
25 BEETHOVEN. HE PROBABLY ALLUDED TO THAT, BUT I DON'T
26 REMEMBER. CERTAINLY THE PUBLIC ANNOUNCEMENT THAT THEY ARE
27 GOING TO BE USING AUTOMATED ENFORCEMENT AND THE WARNINGS AT
28 THAT INTERSECTION HAVE NOT BEEN PRESENTED IN THIS RECORD.

1 THE COURT: DO YOU CONCUR?

2 MS. CASTILLO: I DO NOT REMEMBER. I REMEMBER THAT
3 OFFICER TESTIFIED ABOUT EACH INTERSECTION. SO I'M NOT SURE.
4 I DON'T WANT TO MISSTATE WHAT THE OFFICER TESTIFIED. I DID
5 PRESENT ALL THE PUBLICATIONS AND WARNING PERIODS THAT WERE
6 RELEVANT TO THIS CASE.

7 THE COURT: SO WHERE IS THE 30-DAY? WHERE IS PROOF OF
8 30-DAY WARNING?

9 MR. ELLISON: I WILL TELL THE COURT THAT I HAVE GONE
10 THROUGH ALL 129 PAGES METICULOUSLY LOOKING FOR THAT WARNING
11 NOTICE AT THIS INTERSECTION. AND I'LL REPRESENT --

12 MS. CASTILLO: IT'S EXHIBIT A.

13 THE COURT: A?

14 MS. CASTILLO: IT'S PART OF THE EXHIBIT A, THE PACKET.

15 THE COURT: WHERE? YOU HAVE TO PICK OUT THE PAGE.

16 MS. CASTILLO: YES. I MAY HAVE EXHIBIT A.

17 MR. ELLISON: ARE YOU TALKING ABOUT THE 129-PAGE THING?

18 MS. CASTILLO: YEAH.

19 MR. ELLISON: I'LL TELL YOU THE SPECIFIC PAGE REFERENCE
20 AND YOUR HONOR HAS THIS ALSO, THE ONE WITH THE BIG PAPER
21 CLIP ON IT. IF YOU LOOK AT PAGES STARTING AT 34.

22 MS. CASTILLO: PAGE 44, YOUR HONOR, IS A SAMPLE OF A
23 WARNING PERIOD NOTICE.

24 THE COURT: IS THAT FOR THIS INTERSECTION?

25 MS. CASTILLO: IT'S NOT SPECIFIC TO ANY INTERSECTION,
26 YOUR HONOR. IT'S SPECIFIC TO THE WHEN THE SYSTEM WAS
27 IMPLEMENTED.

28 MR. ELLISON: IN 1998.

1 THE COURT: RIGHT. WHAT'S THE EVIDENCE THAT THE 30-DAY
2 PERIOD WAS COMPLIED WITH?

3 MS. CASTILLO: THERE'S NO REQUIREMENT THAT EACH
4 INTERSECTION BE -- THERE SHOULD BE A WARNING PERIOD FOR EACH
5 INTERSECTION. THE STATUTE DOES NOT SAY EACH INTERSECTION.
6 THE STATUTE SAYS THE SYSTEM. BEFORE THE SYSTEM IS
7 IMPLEMENTED. THAT'S ANOTHER LEGAL ARGUMENT. THAT WOULD BE
8 SECTION B, YOUR HONOR, ANOTHER LEGAL ARGUMENT THAT WE ARE
9 BOTH FAMILIAR WITH.

10 THE COURT: YOU ARE SAYING THAT YOU ONLY --

11 MS. CASTILLO: IF I MAY, YOUR HONOR, I'M NOT EVEN SURE
12 IF WHAT THE EVIDENCE -- I'M MAKING A LEGAL ARGUMENT THAT THE
13 WARNING PERIOD NEED NOT BE EVERY TIME. IT ONLY NEEDS TO BE
14 WHEN THE SYSTEM IS IMPLEMENTED IN THE CITY BY THE
15 GOVERNMENT. HOWEVER, THE EVIDENCE MAY REFLECT OTHER BECAUSE
16 I DON'T REMEMBER THE OFFICER'S TESTIMONY.

17 THE COURT: WAIT A SECOND. EACH NEW LOCATION YOU ARE
18 SUPPOSED TO GIVE 30 DAYS.

19 MS. CASTILLO: NO, YOUR HONOR.

20 THE COURT: MR. ELLISON, WHAT'S YOUR POSITION?

21 MR. ELLISON: ABSOLUTELY. THIS IS NOTICE, A DUE PROCESS
22 NOTICE TO THE PUBLIC THAT WE ARE GOING TO BE DOING AUTOMATED
23 ENFORCEMENT AT WASHINGTON AND BEETHOVEN. WE SEND OUT
24 WARNING TICKETS FOR THE FIRST 30 DAYS THAT YOU ARE USING THE
25 AUTOMATED ENFORCEMENT SYSTEM, AND THEN THEY CAN START OF
26 COURSE ISSUING CITATIONS. THAT'S WHY I WAS DEALING WITH THE
27 DISCOVERY BEING SPECIFIC. I DETAILED THIS IN THE REMAINING
28 ISSUES IN DISCOVERY. I DETAILED AT THE HEARING THAT WE

1 LITIGATED BEFORE THE COURT AND THEY SAID, "WE HAVE GIVEN
2 MR. ELLISON THIS IN THIS PACKET OF MATERIALS. MR. ELLISON
3 HAS THIS IN THIS PACKET OF MATERIALS THAT WE JUST REFERRED
4 TO THE SEPTEMBER 18, 2008, LETTER WITH SOME 129 PAGES
5 ALTOGETHER."

6 MS. CASTILLO: IT'S SECTION B, YOUR HONOR, IF I MAY
7 DIRECT THE COURT. IT SAYS, "PRIOR TO ISSUING CITATIONS
8 UNDERSTAND THE SECTION, A LOCAL JURISDICTION UTILIZING AN
9 AUTOMATED TRAFFIC ENFORCEMENT SYSTEM SHALL COMMENCE THE
10 PROGRAM TO ISSUE ONLY WARNING NOTICES FOR 30 DAYS."

11 MR. ELLISON: THIS IS THE STATUTE PROVISION YOU SAID --

12 MS. CASTILLO: IS A REQUIREMENT. AND I'M SAYING THE
13 REQUIREMENT IS FOR THE SYSTEM. DOESN'T SAY FOR EACH AND
14 EVERY INTERSECTION.

15 THE COURT: BUT THEY ARE NOT CONNECTED TO SEARCH AND
16 SEIZURE OTHER. THE WAY -- THESE ARE ALL INDEPENDENT. EACH
17 ONE CAN BE REPLACED AND REMOVED.

18 MS. CASTILLO: YES.

19 THE COURT: I'M JUST GOING TO WALK THROUGH WHAT I SEE
20 ARE THE ISSUES. ONE IS THE 30-DAY NOTICE AT WASHINGTON AND
21 BEETHOVEN. NEXT.

22 MR. ELLISON: THE PUBLIC ANNOUNCEMENTS. WAS THE COURT
23 GROUPING THOSE TWO TOGETHER, THE 30-DAY WARNING NOTICES AND
24 THE 30-DAY PUBLICATION?

25 THE COURT: THOSE ARE BOTH UNDER B?

26 MR. ELLISON: THOSE ARE BOTH UNDER B.

27 MS. CASTILLO: AND THE DOCUMENTS REFERENCE BACK IN --
28 WHAT WAS THE YEAR?

1 THE COURT: I UNDERSTAND. I JUST WANT TO GET THE ISSUES
2 ON THE TABLE. GO AHEAD. NEXT.

3 MR. ELLISON: NEXT, OF COURSE, TIES INTO (C) (1) WHICH
4 DEALS WITH THE UNIFORM GUIDELINES FOR SCREENING AND ISSUING
5 CITATIONS FOR THAT INTERSECTION IF YOU WOULD LIKE TO BE
6 SPECIFIC. AND IT ALSO REQUIRES THE CITY TO HAVE PROCEDURES
7 TO ENSURE COMPLIANCE WITH THE SCREENING AND ISSUING
8 GUIDELINES THAT THEY ARE REQUIRED TO HAVE.

9 WE ARE BACK TO THE ISSUE THAT YOU ASKED ABOUT
10 EARLIER. WHAT'S THE REMEDY? THIS IS WHAT'S MISSING FROM
11 THIS RECORD ARE THESE -- ALSO THESE GUIDELINES. AND THEN
12 UNDER (C) (2) (A), OF COURSE, THE GUIDELINES FOR SELECTING AN
13 INTERSECTION.

14 THE COURT: SO DO I HAVE ANY EVIDENCE IN FRONT OF ME,
15 COUNSEL, THE UNIFORM GUIDELINES FOR SCREENING AND ISSUING
16 VIOLATIONS?

17 MS. CASTILLO: THE ONLY -- NOT A DOCUMENT, YOUR HONOR.
18 THE ONLY TESTIMONY IN REFERENCE TO THE GUIDELINES WAS THE
19 OFFICER'S TESTIMONY THAT HE WAS PRESENT AT THE TIME OF THE
20 INITIATION OF ALMOST EVERY INTERSECTION. HE SAID EVERY
21 INITIAL STATUS CONFERENCE BECAUSE HE HASN'T STOPPED WORKING
22 SINCE BACK IN THE EARLY 90S. HE WAS INVOLVED IN HOW THE
23 POLICE DEPARTMENT SELECTED AND DECIDED WHICH INTERSECTION.
24 AND AS AN EXPERT IN THE FATALITIES DIVISION, HE WAS
25 CONSULTED AT ALL TIMES.

26 THE COURT: I RECALL ALL OF THAT. WHAT I DON'T HAVE ANY
27 RECOLLECTION OF IS EVIDENCE THAT THERE ARE UNIFORM
28 GUIDELINES FOR SCREENING AND ISSUING VIOLATIONS AND FOR THE

1 PROCESSING AND STORAGE OF CONFIDENTIAL INFORMATION AND
2 ESTABLISHING PROCEDURES TO ENSURE COMPLIANCE WITH THOSE
3 GUIDELINES.

4 MS. CASTILLO: I'M SORRY.

5 THE COURT: (C) (1). THAT'S THE ONE THAT I DON'T RECALL
6 ANY EVIDENCE TO THAT EFFECT. I RECALL EVERYTHING YOU
7 TESTIFIED TO. I AGREE WITH YOU. HE TESTIFIED TO ALL OF
8 THAT.

9 MS. CASTILLO: BUT HE ALSO TESTIFIED THAT THEY ARE IN
10 CONTROL AND THEY ARE THE ONES WHO -- AND THEY ARE THE ONES
11 WHO ISSUED THE CITATIONS AND THE PROCEDURES ARE -- THAT THEY
12 ARE THE ONES WHO ESTABLISHED THE PROCEDURES. HE TESTIFIED
13 IN HIS FOUNDATIONAL TESTIMONY, YOUR HONOR, BEFORE ANY
14 SPECIFIC TO EACH CITATION.

15 THE COURT: BUT I DIDN'T HEAR WHAT THE UNIFORM
16 GUIDELINES WERE OR THAT THEY EVEN EXIST. I DIDN'T HEAR THAT
17 THEY HAD GUIDELINES FOR SCREENING AND ISSUING VIOLATIONS FOR
18 PROCESSING AND STORAGE OF CONFIDENTIAL INFORMATION FOR
19 ESTABLISHING PROCEDURES TO ESTABLISH PROCEDURE OF THOSE
20 GUIDELINES.

21 MS. CASTILLO: I HAVE TO SPEAK FROM MY MEMORY BECAUSE
22 THIS IS PART OF HIS FOUNDATIONAL TESTIMONY. AND HE SAYS
23 THAT HE'S IN CONTROL AND THEN HE IS THE ONE WOULD ISSUES THE
24 CITATIONS. THERE'S A PARAGRAPH. I'M NOT SURE.

25 THE COURT: DON'T YOU SEE THE DIFFERENCE BETWEEN WHAT
26 YOU ARE SAYING AND WHAT I'M SAYING?

27 MS. CASTILLO: I COULD BE WRONG, YOUR HONOR. I'M NOT
28 SURE.

1 THE COURT: NO. EVERYTHING YOU SAID DOESN'T COMPORT
2 WITH (C) (1). I'M LOOKING FOR SOME EVIDENCE THAT (C) (1) WAS
3 COMPLIED WITH.

4 MS. CASTILLO: I BELIEVE HE TESTIFIED IN REFERENCE TO
5 (C) (1), YOUR HONOR, AS PART OF HIS FOUNDATIONAL TESTIMONY.
6 I DO REMEMBER WE HAD A DISCUSSION IN REFERENCE TO THE
7 DOCUMENT THAT I PRODUCED TO COUNSEL IN REFERENCE TO (C) (1).
8 AND THEN IT'S NOT PART OF THE RECORD. AND I TOLD COUNSEL
9 THAT HE HAD A COPY. AND IF HE WANTED TO QUESTION THE
10 OFFICER, HE SHOULD HAVE BROUGHT THE DOCUMENT IN. IT'S NOT
11 PART OF THE PEOPLE'S CASE AND HE HAS A DOCUMENT THAT WAS
12 PRODUCED.

13 THE COURT: NEXT ISSUE IS 21455.5(C) (2) (A).

14 MR. ELLISON: CORRECT, YOUR HONOR.

15 THE COURT: AND THE OFFICER DID ORALLY TESTIFY THAT
16 AGAIN HE'S -- HE THOUGHT THERE WERE WRITTEN GUIDELINES, BUT
17 HE WASN'T ABLE TO LOCATE THEM. NOR HAVE ANY BEEN PRESENTED
18 TO THE COURT. HE DID TESTIFY THAT HE HAS BEEN A TRAFFIC
19 OFFICER AND AN ACCIDENT RECONSTRUCTION EXPERT AND THAT THESE
20 ARE DANGEROUS INTERSECTIONS THAT WERE SELECTED. AND HE
21 KNOWS THAT BECAUSE HE'S BEEN ON THE FORCE FOR A LONG TIME.

22 BUT I STILL DON'T HAVE GUIDELINES IN FRONT OF ME AS
23 TO IS THE CRITERION INTERSECTIONS WITH OVER 10,000 CARS PER
24 DAY OR 12,000 CARS PER DAY OR INTERSECTIONS WHERE THEY HAVE
25 HAD MORE THAN FIVE ACCIDENTS PER MONTH OR PER WEEK OR PER
26 YEAR? INTERSECTIONS WHERE THEY HAVE HAD FATALITIES. I HAVE
27 NOT HEARD ANY OF THAT INFORMATION.

28 MR. ELLISON: IN THAT REGARD, YOUR HONOR, SECTION

1 (C) (2) (A) THAT WE ARE TALKING ABOUT ESTABLISHING GUIDELINES
2 IS CLEARLY, THE PEOPLE HAVE AGREED, ONE THAT CANNOT BE
3 DELEGATED TO REDFLEX.

4 THE COURT: THEY ARE ARGUING FROM WHAT I'M HEARING IS
5 IT'S A RIGHT WITHOUT A REMEDY.

6 MR. ELLISON: THAT'S ONE OF THE THINGS THAT THEY ARE
7 ARGUING. BUT THEY ARE CLEARLY AGREEING THAT (C) (2) (A)
8 CANNOT BE DELEGATED TO REDFLEX. IN PAGE 51 OF THIS MATERIAL
9 THAT WAS SENT TO US ON SEPTEMBER 18, 2008, THAT YOU HAVE
10 SOMEPLACE IN SOME BIG PAPER CLIPPED OR MAYBE IT'S -- BUT ON
11 PAGE 51.

12 THE COURT: WHAT DOES IT SAY? MINE AREN'T STAMPED.

13 MR. ELLISON: YOU SHOULD HAVE BATES NUMBERING ON THE
14 BOTTOM. IT WOULD BE EXACTLY THIS PACKET THAT I'M HOLDING IN
15 MY HAND WITH THIS BIG PAPER CLIP. IF IT'S NOT IN THE
16 MATERIALS THAT THE COURT HAS, THEN I CERTAINLY WILL --

17 THE COURT: I HAVE IT.

18 MR. ELLISON: I WILL SHOW COUNSEL BECAUSE I DON'T
19 BELIEVE THEY HAVE IT WITH THEM TODAY.

20 THE COURT: OKAY.

21 MR. ELLISON: IN THE MIDDLE PARAGRAPH IT SAYS -- AND BY
22 THE WAY, THIS IS FROM 2007. IT SAYS, "POLICE LIEUTENANT ED
23 BONN, WHO RESPONDED TO THE VENDOR, WILL BE MONITORING THE
24 INTERSECTIONS TO SEE IF IT WARRANTS PLACEMENT OF A CAMERA.
25 IT PRESENTLY IS BEING EVALUATED."

26 IT SEEMS IF JUST LOOKING AT THAT, IT'S A SUBISSUE.
27 BUT IT'S AN ISSUE THAT THEY ARE ACTUALLY DELEGATING THIS TO
28 REDFLEX TO MONITORING TO TELL THEM THIS IS AN INTERSECTION

1 WE THINK YOU SHOULD USE. AND ON THE LIST WE DON'T HAVE
2 CULVER CITY'S GUIDELINES FOR DOING THIS. I THINK IT'S GOING
3 TO BE A FUNCTION OF IF WE HAVE A LOT OF TRAFFIC AT THIS
4 INTERSECTION. I HOPE I'M NOT BEING OVERLY ARGUMENTATIVE.
5 BUT AN INTERSECTION WITH A LOT OF ACTIVITY BECAUSE THAT'S
6 WHERE WE CAN GENERATE A LOT OF CITATIONS. AND THEREFORE,
7 OUR CONTRACT WE WON'T HAVE TO LITIGATE THE ISSUES OF 21455.G
8 IF WE DON'T HAVE ENOUGH INTERSECTION INCIDENTS FOR AT THAT
9 INTERSECTION. AND I BELIEVE THE COURT HEARD ALL OF MY
10 ARGUMENTS, AND I SUPPLEMENTED THAT WITH THE DEALING WITH THE
11 ISSUE THAT THERE HAS TO BE NOTICES TO EACH INTERSECTION.
12 THERE HAS TO BE COMPLIANCE AS TO EACH INTERSECTION.
13 OTHERWISE, THE STATE IS SORT OF LIKE --

14 THE COURT: WE HAVE TWO INTERSECTIONS. WASHINGTON AND
15 BEETHOVEN. AND THE OTHER INTERSECTION IS?

16 MR. ELLISON: SEPULVEDA AND SLAUSON.

17 THE COURT: DO YOU HAVE THE SAME ISSUE WITH SEPULVEDA
18 AND SLAUSON?

19 MR. ELLISON: SEPULVEDA AND SLAUSON THERE'S NO TESTIMONY
20 REGARDING THE 30-DAY WARNING TICKETS. THERE IS IN THIS
21 PACKET OF MATERIALS, IN THE SEPTEMBER 18TH PACKET OF 2008
22 MATERIALS, REFERENCE TO PUBLIC ANNOUNCEMENT THAT THEY ARE
23 GOING TO CONSIDER SEPULVEDA AND WEST SLAUSON AS A LOCATION
24 FOR RED LIGHT AUTOMATED ENFORCEMENT. SO THAT'S IN THIS
25 PACKET OF MATERIALS WHICH IS PART OF THIS RECORD BUT NOT THE
26 WARNING TICKETS AND NOT THE OTHER COMPLIANCE ISSUES THAT WE
27 DISCUSSED.

28 THE COURT: LET ME GIVE LAST WORD AND LOOK THROUGH THESE

1 EXHIBITS AND COME BACK IN A FEW MINUTES.

2 MS. CASTILLO: IF I MAY, JUST TWO MINUTES.

3 NO ONE CAN MAKE DEFENDANTS RUN A RED LIGHT. WE
4 KNOW THAT'S A BASIC CONCEPT OF RUNNING A RED LIGHT.

5 THE COURT: YOU'VE WON ON THAT ISSUE. THEY RAN THE RED
6 LIGHTS. THE ISSUE IS ALL THESE OTHER PROBLEMS.

7 MS. CASTILLO: AND I WANT TO GO THROUGH THE 30-DAY
8 NOTICE THING. THE 30-DAY NOTICE REQUIREMENT COUNSEL IS
9 SAYING IT WASN'T PART OF THE EVIDENCE. I'M SAYING IT WASN'T
10 PART OF -- IT IS PART OF THE EVIDENCE AND THE INTERPRETATION
11 OF COUNSEL.

12 THE COURT: WHERE IS THE PART -- YOU ARE SAYING IT ONLY
13 HAS TO BE GIVEN ONCE?

14 MS. CASTILLO: YES.

15 THE COURT: SO THE FIRST TIME ANY CITY -- LET'S TAKE LOS
16 ANGELES CITY AS AN EXAMPLE. THEY PUT A RED LIGHT CAMERA IN
17 BOYLE HEIGHTS. THEY HAVE TO GIVE A 30-DAY PUBLIC
18 ANNOUNCEMENT. AND THEN THEY HAVE TO ISSUE WARNING CITES FOR
19 30 DAYS. IF THEY THEN WANT TO PUT A RED LIGHT CAMERA AT
20 SEPULVEDA AND OLYMPIC BOULEVARD. THEY NO LONGER HAVE TO DO
21 ANY OF THOSE?

22 MS. CASTILLO: THAT'S MY INTERPRETATION OF SECTION B,
23 YOUR HONOR. HOWEVER, I WANTED TO ALSO INCLUDE THE --
24 BECAUSE I DO NOT REMEMBER THE OFFICER'S TESTIMONY WHETHER OR
25 NOT HE INDICATED -- BECAUSE HE TESTIFIED ON
26 CROSS-EXAMINATION. I REMEMBER THE QUESTION. I JUST DON'T
27 REMEMBER THE TESTIMONY, PARTICULARLY FOR THESE TWO
28 INTERSECTIONS, WHETHER OR NOT SEPARATE WARNINGS WERE DONE.

1 SO I CAN'T QUOTE WHAT THE TESTIMONY WAS.

2 THE COURT: WHAT ABOUT PAGE 51 WHERE IN A COUNCIL
3 SESSION POLICE LIEUTENANT SAYS THE RED LIGHT CAMERA COMPANY
4 IS GOING TO GO OUT AND DETERMINE WHETHER OR NOT IT'S AN
5 APPROPRIATE INTERSECTION? ISN'T THAT A PROBLEM?

6 MS. CASTILLO: THAT'S JUST PART OF THE -- IT'S NOT PART
7 OF THE TESTIMONY HERE WHETHER THAT WAS DONE OR NOT, FIRST OF
8 ALL. SECOND --

9 THE COURT: IT'S IN EVIDENCE.

10 MS. CASTILLO: YES, IT'S EVIDENCE. I UNDERSTAND THAT.
11 BUT IT'S IN CONJUNCTION WITH THE POLICE DEPARTMENT. THE
12 VENDOR WOULD NOT BE ABLE TO DO ANYTHING WITHOUT THE
13 AUTHORITY OF THE POLICE DEPARTMENT.

14 THE COURT: THE POLICE DEPARTMENT IS SUPPOSED TO SELECT.
15 "THIS IS AN INTERSECTION WHERE WE ARE HAVING PROBLEMS. PUT
16 THE CAMERAS THERE."

17 IT'S NOT, "THIS IS AN INTERSECTION WHERE WE ARE
18 HAVING PROBLEMS. WHY DON'T YOU GO OUT AND LOOK AND TELL US
19 WHAT YOU THINK?"

20 THE LANGUAGE IS THE VENDOR WILL BE MONITORING THE
21 INTERSECTION TO SEE IF IT WARRANTS THE PLACEMENT OF A
22 CAMERA. DOESN'T THAT APPEAR TO BE A DELEGATION OF THEIR
23 RESPONSIBILITIES THAT THE CODE PLACES ON THE CITY? I MEAN
24 THE CITY HAS A DEPARTMENT OF TRANSPORTATION. THEY HAVE
25 POLICE. THEY HAVE ALL THE PEOPLE THAT CAN DO THE STUDIES.

26 MS. CASTILLO: WHICH THE TESTIMONY IN THIS CASE BY
27 OFFICER MARKS WAS THAT IT WAS DONE.

28 MR. ELLISON: I ASKED IF HE HAD ANY DOCUMENTS WITH HIM.

1 AND HE SAID NO, HE DIDN'T HAVE THEM WITH HIM.

2 THE COURT: WHAT ABOUT THE --

3 MS. CASTILLO: AS TO THE REST (C) (1) THROUGH G, YOUR
4 HONOR, MY ARGUMENT IS THE SAME. IT'S A RIGHT WITHOUT A
5 REMEDY. IT'S NOT A CONDITION PRECEDENT TO THE VIOLATION.

6 THE COURT: LET ME TAKE A COUPLE OF MINUTES. I'LL SEE
7 YOU IN ABOUT FIVE MINUTES.

8 (RECESS TAKEN.)

9 THE COURT: WE ARE BACK ON THE RECORD IN THE TWO
10 MATTERS. THE KARON AND GLIDE. PEOPLE VERSUS KARON AND
11 GLIDE. WE HAVE BOTH COUNSEL PRESENT.

12 I HAVE REREAD THE CODE SECTION AGAIN AND AGAIN AND
13 AGAIN. WITH RESPECT TO WASHINGTON AND BEETHOVEN, THAT
14 RELATES TO MR.?

15 MR. ELLISON: KARON, YOUR HONOR. AND GLIDE IS SEPULVEDA
16 AND WEST SLAUSON.

17 THE COURT: THE WAY I READ 21455.5(B) AND THE DEBATE
18 THAT COUNSEL ARE HAVING IS THE DEFINITION OF SYSTEM. IS
19 SYSTEM CITYWIDE OR IS IT SIMPLY AN INTERSECTION? AND I'M
20 JUST GOING TO TELL YOU THAT I READ THIS CODE SECTION AS
21 DEFINING SYSTEM AS BEING INTERSECTION SPECIFIC. AND I'LL
22 TELL YOU WHY. 21455.5(A) SAYS THE LIMIT LINE, THE
23 INTERSECTION, OR A PLACE DESIGNATED IN SECTION 21455 WHERE A
24 DRIVER IS REQUIRED TO STOP MAY BE EQUIPPED WITH AN AUTOMATED
25 ENFORCEMENT SYSTEM.

26 SO IT'S REFERRING SPECIFICALLY TO ONE INTERSECTION.
27 IT CAN BE EQUIPPED WITH A SYSTEM IF THE FOLLOWING ARE MET.
28 EXCUSE ME. THE ACTUAL LANGUAGE IS IF THE GOVERNMENTAL

1 AGENCY UTILIZING THE SYSTEM MEETS ALL OF THE FOLLOWING
2 REQUIREMENTS: ONE, IDENTIFIES THE SYSTEM BY SIGNS THAT
3 CLEARLY INDICATE THE SYSTEMS PRESENCE AND ARE VISIBLE TO
4 TRAFFIC APPROACHING FROM ALL DIRECTIONS OR POST SIGNS AT ALL
5 MAJOR ENTRANCES TO THE CITY INCLUDING, AT A MINIMUM, FREEWAY
6 BRIDGES AND STATE HIGHWAY ROUTES.

7 TWO, IF IT LOCATES A SYSTEM AT AN INTERSECTION AND
8 INSURES THAT THE SYSTEM MEETS THE CRITERIA SPECIFIED IN
9 21455.7. AND B SAYS PRIOR TO ISSUING CITATIONS UNDER THIS
10 SECTION A LOCAL JURISDICTION UTILIZING AN AUTOMATED TRAFFIC
11 ENFORCEMENT SYSTEM SHALL COMMENCE A PROGRAM TO ISSUE ONLY
12 WARNING NOTICES FOR 30 DAYS. FOR LOCAL JURISDICTION SHALL
13 ALSO MAKE A PUBLIC ANNOUNCEMENT OF THE AUTOMATIC PUBLIC
14 ENFORCEMENT SYSTEM AT LEAST PRIOR TO THE ANNOUNCEMENT OF THE
15 PUBLIC SYSTEM PROGRAM.

16 I THINK THE CITY'S ARGUMENT IS NOT OUTRAGEOUS OR
17 UNREASONABLE IN TERMS OF SYSTEMS USUALLY ARE CITYWIDE LIKE
18 THERE'S THE TRAFFIC CONTROL SYSTEMS THAT ARE UTILIZED. BUT
19 IT SEEMS TO THE COURT -- AND THIS IS THE FINDING I'M
20 MAKING -- THAT THE WAY THE LEGISLATURE IS DEFINING SYSTEM IS
21 INTERSECTION SPECIFIC. AND MY UNDERSTANDING OF THESE
22 SYSTEMS IS THEY ARE NOT CONNECTED TO EACH OTHER. THERE'S NO
23 NEED FOR THEM TO BE CONNECTED. EACH SYSTEM IS INDEPENDENT
24 UNLIKE A TRAFFIC CONTROL SYSTEM THAT WOULD CONTROL ALL OF
25 THE LIGHTS ON A STREET.

26 SO, FOR EXAMPLE, WASHINGTON BOULEVARD FROM
27 LA CIENEGA ALL THE WAY DOWN TO OVERLAND COULD BE CONTROLLED.
28 YOU COULD SIGNAL TIME THE LIGHTS AND MAKE THEM WORK TOGETHER

1 AS A UNIFIED SYSTEM OR UNIFORM SYSTEM. HERE EACH OF THESE
2 IS INDEPENDENT. THERE'S NOTHING THAT REQUIRES THEM TO BE
3 CONNECTED TO EACH OTHER TO FUNCTION. THEY ARE INDEPENDENT
4 AND THEY ARE THERE TO DETERMINE WHETHER OR NOT INDIVIDUALS
5 RUN RED LIGHTS. I DISAGREE WITH THE PEOPLE'S ANALYSIS THAT
6 THEY DON'T HAVE TO ISSUE WARNING CITATIONS FOR 30 DAYS.

7 AGAIN, I USE THE EXAMPLE OF LOS ANGELES CITY AND
8 BOYLE HEIGHTS TO THE EAST AND COME ALL THE WAY TO THE WEST
9 TO SEPULVEDA. IT SEEMS TO THE COURT THERE ARE TWO RATIONAL
10 REASONS FOR HAVING A WARNING PERIOD. ONE IS TO MAKE SURE
11 THE SYSTEM IS FUNCTIONING CORRECTLY. THE WARNING PERIOD
12 GIVES YOU THAT OPTION TO REVIEW AND MAKE SURE BEFORE THE
13 COURTS GET INVOLVED THAT THINGS ARE FUNCTIONING.

14 THE SECOND IS TO GIVE NOTICE SO THAT PEOPLE ARE NOW
15 AWARE BECAUSE THE PURPOSE OF THESE CAMERAS IS TO PROTECT THE
16 PUBLIC. IT'S NOT TO GENERATE REVENUE ALTHOUGH IT'S CLEAR
17 THAT IT DOES GENERATE REVENUE AND THERE'S NOTHING THAT
18 PROHIBITS THAT.

19 BUT THE PURPOSE IS TO PROTECT THE PUBLIC AND PUT
20 THESE AT INTERSECTIONS WHERE THERE ARE DANGERS. IF IT WAS
21 SIMPLY TO GENERATE REVENUE, THE LEGISLATURE WOULDN'T REQUIRE
22 ANY GUIDELINES. IT WOULD SIMPLY SAY, "YOU CAN PUT THEM AT
23 EVERY RED LIGHT IN THE CITY."

24 BUT IF A GUIDELINE SAID, "WE CAN PUT CAMERAS AT
25 EVERY INTERSECTION WHERE THERE'S A RED LIGHT," I DON'T KNOW
26 IF THAT WOULD BE WITHIN THE SPIRIT IF NOT THE ACTUAL INTENT
27 OF THIS STATUTE.

28 HAVING SAID THAT, WITH RESPECT TO MR. GLIDE --

1 EXCUSE ME. WITH RESPECT TO MR. KARON, SINCE THERE'S NO
2 EVIDENCE OF 30-DAY WARNING, THE COURT IS GOING TO FIND FOR
3 THE DEFENDANT. SO IT WOULD BE NOT GUILTY. AGAIN, I'M NOT
4 MAKING AN ABSOLUTE FINDING HERE. IT IS POSSIBLE THAT
5 WARNINGS WERE GIVEN, THAT THEY SIMPLY JUST WEREN'T PUT
6 BEFORE THE COURT. SO I'M NOT MAKING ANY FINDINGS THAT
7 SHOULD BE DEEMED PRECEDENT IN ANY OTHER CASES. BASED ON THE
8 EVIDENCE THAT'S BEFORE THIS COURT, THERE'S INSUFFICIENT
9 EVIDENCE TO FIND THAT THE PEOPLE HAVE NOT MET THEIR BURDEN
10 OF PROOF BEYOND A REASONABLE DOUBT THAT SUBSECTION
11 21455.5(B) WAS COMPLIED WITH NOR THAT (C)(1) AND (C)(2)(A)
12 WAS COMPLIED WITH.

13 I WANT TO ADDRESS THE ISSUE OF COMPENSATION. I
14 THINK IT'S MOOT, THE COMPENSATION. SO I DON'T KNOW THAT I
15 NEED TO ADDRESS IT WITH RESPECT TO MR. KARON. I WILL SAY
16 THE FOLLOWING. IT WOULD SEEM TO THE COURT THAT IF REVENUE
17 GENERATED DOES NOT EXCEED COSTS FOR ANY GIVEN INTERSECTION,
18 THAT THE SIMPLE SOLUTION IS TO REMOVE THE CAMERAS. THAT
19 WOULD SEEM TO ME TO BE A LEGAL AND APPROPRIATE TERM OR
20 CONDITION OF A CONTRACT. JUST REMOVE THE CAMERAS FROM THAT
21 LOCATION. THEY ARE NOT COST-EFFECTIVE. NOBODY WANTS THE
22 CITY TO LOSE MONEY.

23 OR ONE COULD ARGUE TO THE CONTRARY. LEAVE THEM
24 THERE BECAUSE THEY WERE PUT THERE TO PROTECT THE PUBLIC.
25 AND EVEN IF THEY ARE NOT GENERATING ENOUGH REVENUE TO COVER
26 THE COSTS, AS LONG AS THE INTERSECTION IS NOW SAFER OVERALL,
27 SOCIETY HAS BENEFITTED BECAUSE WE HAVE LESS INJURIES AND
28 LESS DEATHS. SO EITHER WAY THAT WOULD SEEM TO ME TO BE THE

1 PROPER OUTCOME. I'M NOT GOING TO ADDRESS THIS WITH RESPECT
2 TO MR. KARON BECAUSE I THINK IT'S MOOT AT THIS POINT.

3 WITH RESPECT TO MR. GLIDE WE HAVE THE SAME ISSUE,
4 THE 30-DAY WARNING TICKETS AND THE ABSENCE OF EVIDENCE TO
5 THAT EFFECT FOR THE PEOPLE'S BURDEN THAT WOULD MEET WITH THE
6 PEOPLE'S BURDEN OF PROOF. THAT ALONE IS FATAL.

7 OTHER ISSUES ARE INTERESTING SUCH AS TO WHETHER OR
8 NOT (C) (1), DEVELOPING UNIFORM GUIDELINES FOR SCREENING AND
9 ISSUING VIOLATIONS AND (C) (2) (A), WHETHER OR NOT FAILURE TO
10 PROVIDE EVIDENCE OF THAT WOULD ALSO BE FATAL. IT WOULD
11 APPEAR TO THE COURT THAT IT WOULD BE. BUT AGAIN, IT'S MOOT
12 AT THIS POINT SINCE THE COURT FINDS THAT THE 30-DAY WARNINGS
13 HAVE TO BE GIVEN FOR EACH INTERSECTION AND PROOF THEREOF HAS
14 TO BE PRESENTED TO THE COURT. SO EACH DEFENDANT WILL BE
15 FOUND NOT GUILTY. THAT'S THE COURT'S ORDER.

16 MR. ELLISON: THANK YOU, JUDGE, FOR TAKING THE TIME FOR
17 A NUMBER OF DAYS.

18 MS. CASTILLO: THANK YOU.

19 THE COURT: I HAVE TO TELL YOU YOU ARE BOTH EXCELLENT
20 LAWYERS. BOTH COUNSEL WERE FANTASTIC AND, UNFORTUNATELY,
21 ONE SIDE ALWAYS WINS AND LOSES. BUT AS I WAS TAUGHT MYSELF
22 AND AS I TEACH OTHER PEOPLE, YOU DON'T MAKE THE FACTS UP.
23 YOU ARE STUCK WITH WHAT YOU HAVE GOT AND BOTH OF YOU WERE
24 FANTASTIC AND MY HAT'S OFF TO YOU. THANK YOU, BOTH.

25
26 (THE PROCEEDINGS WERE CONCLUDED.)
27
28

EXHIBIT "B"

EXHIBIT "B"

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAY 24 2011

John A. Clarke, Executive Officer/Clerk
By *[Signature]* Deputy
GANNIE L. HUDSON

APPELLATE DIVISION OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

| | | |
|------------------------------------|---|-----------------------|
| PEOPLE OF THE STATE OF CALIFORNIA, |) | BR 048611 |
| Plaintiff and Respondent, |) | Lancaster Trial Court |
| v. |) | No. LC18300 |
| TAMMANY KAY FIELDS, |) | |
| Defendant and Appellant. |) | OPINION |

Defendant Tammany Kay Fields appeals from her conviction for violating Vehicle Code section 21453, subdivision (c), failure to stop for a red arrow signal light.¹

FACTUAL AND PROCEDURAL BACKGROUND

On April 14, 2010, Los Angeles County Sheriff Deputy Jonathan White issued a citation to defendant for the above-mentioned violation pursuant to the automated traffic

¹Vehicle Code 21453, subdivision (c) provides: "A driver facing a steady red arrow signal shall not enter the intersection to make the movement indicated by the arrow and unless entering the intersection to make a movement permitted by another signal, shall stop at a clearly marked limit line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and shall remain stopped until an indication permitting movement is shown."

All further statutory references are to the Vehicle Code unless otherwise indicated.

1 enforcement system statutes. (§§ 21455.5-21455.7.) The citation alleged that on April
2 14, 2010, defendant violated section 21453, subdivision (c) by failing to stop for a red
3 arrow signal at West Avenue I. and West 20th Street in the City of Lancaster. The
4 matter proceeded to trial on August 13, 2010.

5 Deputy White testified that he was assigned to the Lancaster traffic detail where
6 his job duties included reviewing evidence obtained from the Redflex automated
7 enforcement system and issuing citations. He had been involved in the coordination of
8 the photo enforcement program since the spring of 2006 and had attended a 24-hour
9 Redflex training class.² Deputy White testified as to the operation of the camera and its
10 activation, the synchronization of the date and time stamps, as well as the process
11 involved in downloading the photos and video, and the processing of the photographs
12 and issuance of citations. Deputy White testified regarding the accuracy of the
13 machines and their maintenance. He stated that he reviewed the photos obtained from
14 the system installed at the subject intersection on April 15, 2010. The information
15 imprinted thereon indicated that the light had been red for 0.79 seconds when a vehicle
16 driven by defendant drove through the intersection at approximately 33 miles per hour.
17 Deputy White stated that he had reviewed the video images and verified that the vehicle
18 in the photograph matched the vehicle description on the citation prior to issuing the
19 citation.

20 Deputy White then compared the "DMV/Cal-Photo" images to defendant, and
21 identified her as the driver of the vehicle. The deputy presented a "Court-Pack,"
22 consisting of photographs, video and other documents which was admitted into
23 evidence. Defendant objected to the documents created by the Redflex system on
24 hearsay, confrontation clause and foundational grounds. The court overruled
25 defendant's objections.

26 ///

27

28 ²Redflex was the photo enforcement program vendor.

1 Defendant testified that the light was yellow as she drove through the
2 intersection. Defendant introduced into evidence the contract between Redflex and the
3 City of Lancaster, photographs of the signage at the intersection, and the Orange County
4 Superior Court appellate division opinion in *People v. Khaled*.³

5 DISCUSSION

6 Defendant contends the following: (1) the contract between the City of Lancaster
7 and Redflex was illegal as it contained language in violation of section 21455.5,
8 subdivision (g)(1); (2) the location of the signs at the intersection violated section
9 21455.5, subdivision (a)(1); (3) the City failed to issue warning notices for 30 days prior
10 to using the automated traffic enforcement system, in violation of section 21455.5,
11 subdivision (b); and (4) the People did not provide an adequate foundation for the
12 admission of Deputy White's testimony and the documents created by the Redflex
13 system, and their admission was in violation of the confrontation clause of the federal
14 constitution.

15 *Compliance with notice requirement*

16 We first address defendant's contention that the City failed to comply with the
17 warning notice requirements of section 21455.5 subdivision (b). We find this
18 contention has merit and accordingly reverse.⁴

19 Section 21455.5, subdivision (b) states, "Prior to issuing citations under this
20 section, a local jurisdiction utilizing an automated traffic enforcement system shall
21 commence a program to issue only warning notices for 30 days. The local jurisdiction
22 shall also make a public announcement of the automated traffic enforcement system at
23 least 30 days prior to the commencement of the enforcement program." The record
24 contains the entirety of Deputy White's testimony regarding the issuance of the citation
25

26 ³*People v. Khaled* (2010) 186 Cal.App.4th Supp.1.


27 ⁴As we reverse on the grounds stated, we need not address defendant's remaining
28 contentions.

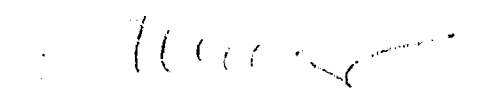
1 and the workings of the Redflex system. Yet the record contains no evidence that the
2 City complied with the 30-day warning notice period before issuing the citation in this
3 case. Furthermore, we do not know when the automated traffic enforcement system was
4 put into effect at this particular intersection. Accordingly, we find that the City has not
5 proved it was authorized to issue citations pursuant to section 21455.5, subdivision (b).

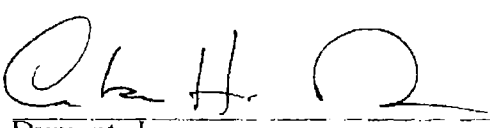
6 The judgment is reversed.⁵

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We concur.


Keosian, J.


P. McKay, P.J.


Dymant, J.

28 ⁵Retrial is barred by the double jeopardy clause of the Fifth Amendment. (*Burks v. United States* (1978) 437 U.S. 1, 11.)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen. I am not a party to this action. My business address is 15303 Ventura Blvd., Ninth Floor, Sherman Oaks, CA 91403.

On **September 10, 2012**, I caused the foregoing document described as **APPELLANT'S MOTION FOR JUDICIAL NOTICE** to be served on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

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- [X] (BY OVERNIGHT-FEDERAL EXPRESS) I caused said document(s) to be picked up by U.S. Federal Express Services for overnight delivery to the offices of the addressees listed on the Service List.

Executed on **September 10, 2012** at Los Angeles, California.

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


SHERMAN M. ELLISON, ESQ.

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Executed on **September 10, 2012** at Los Angeles, California.

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


SHERMAN M. ELLISON, ESQ.

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