

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF RIVERSIDE**  
**APPELLATE DIVISION**

**PEOPLE OF THE STATE OF CALIFORNIA**

Plaintiff and Respondent,

**VS.**

**VIKTORS ANDRIS REKTE**

Defendant and Appellant.

**APP. 1300118**

---

Appeal From a Judgment of  
The Superior Court of California, County of Riverside  
The Honorable William A. Anderson, Commissioner

---

**APPELLANT'S OPENING BRIEF**

---

Viktors Andris Rekte,  
Defendant and Appellant

By

D. Scott Elliot, Attorney at Law (SBN 076323)  
Riverside, CA 92503

**TABLE OF CONTENTS**

	Page
<b>Table of Contents</b> .....	i
<b>Table of Authorities</b> .....	i-ii
<b>Statement of the Case</b> .....	1
<b>Statement of Appealability</b> .....	6
<b>Argument</b> .....	6
<b>1. The Trial Court Committed Error By Referring to <u>People v. Gray</u> Which Resulted in a Miscarriage of Justice</b> .....	6
<b>2. The Trial Court Committed Error in the Application of Evidence Code Sections 1552 and 1553 Which Ultimately Resulted in a Miscarriage of Justice</b> .....	9
<b>3. The Trial Court Committed Error Regarding the Burden Of Proof As It Applies to t he Trial of Infraction Cases</b> .....	15
<b>Conclusion</b> .....	17
<b>Certificate of Word Count</b> .....	18

**TABLE OF AUTHORITIES**

<u><b>CASES</b></u>	Page
<i>Brady v. Maryland</i> (1963) 373 U.S. 83.....	2,3,11,12
<i>College Hospital v. Superior Court</i> (1994) 8 Cal.4 <sup>th</sup> 704.....	14
<i>People v. Gray</i> (2011) 199 Cal. App.4 <sup>th</sup> Supp. 10, 131 Cal. Rptr.3d 220.....	2,6,7,8

<i>People v. Gray</i> (2012) 204 Cal. App.4 <sup>th</sup> 1041, 139 Cal.Rptr.3d 489.....	2,6,7,8
<i>People v. Gray (Steven)</i> (2012) 279 P.3d 1022, 143 Cal. Rptr. 3d 529, 2012 Cal. LEXIS 593.....	2,7,8
<i>People v. Park</i> (2010) 187 Cal. App. 4 <sup>th</sup> Supp. 9, 115 Cal.Rptr.3d 337.....	7
<i>People v. Watson</i> (1956) 46 Cal.2d 818.....	14

**STATUTES**

California Evidence Code Section 1552(a).....	9,10,12,13,14,17
California Evidence Code Section 1553.....	9,10,12,13,14,17
California Government Code Section 11340.9(h).....	13,14
California Penal Code Section 19.7.....	15
California Penal Code Section 1096.....	14,15
California Penal Code Section 1466(b)(1).....	6
California Vehicle Code Section 21400.....	1,13,14
California Vehicle Code Section 21453(a).....	1,5,17
California Vehicle Code Section 21455.5(b).....	6,7,16
California Vehicle Code Section 21455.7.....	16

**OTHER AUTHORITIES**

California Manual on Uniform Traffic Control Devices, 2012 Edition, (Abbreviated “MUTCD”).....	1,2,5,7,8,9,11,13
Judicial Council of California Criminal Jury Instructions, No. 220 (Abbreviated “CALCRIM”).....	14,15

## **STATEMENT OF THE CASE**

This is a red light camera case arising from a citation for violation of California Vehicle Code Section 21453(a) generated by a “SmartCam” Automated Red Light Enforcement camera system (hereinafter referred to as an “ARLE system”) installed and operated by Redflex Traffic Systems of Phoenix, Arizona in the City of Riverside at the Tyler St.-SR 91 intersection.<sup>1</sup>

Appellant requested a trial and accordingly, the matter came before the Honorable William Anderson, Commissioner, for Trial on May 7, 2013 in Department MV “2” of the Riverside Superior Court. There was no appearance by the District Attorney on behalf of Respondent. Appellant Viktors Andris Rekte was represented by D. Scott Elliot.

Prior to the commencement of witness testimony, the Court heard Appellant’s Motion in Limine to Exclude Evidence of City of Riverside Automated Traffic Light Enforcement Citation No. RR182259 issued on October 26, 2012 based upon the Declaration of Appellant’s engineering expert, Sean Paul Stockwell, that the ARLE system at the Tyler St.-SR 91 intersection failed to comply with several provisions of the California Manual on Uniform Traffic Control Devices (MUTCD) and thus in violation of California Vehicle Code Section 21400 at the time it generated Appellant’s citation.

Appellant argued based upon Mr. Stockwell's Declaration that the ARLE system at the Tyler Street-SR 91 intersection was not installed in accord with the provisions of the MUTCD in light of: 1) the approximate

---

<sup>1</sup> Note that in addition to being referred to as “ARLE systems,” red light camera systems are also commonly referred to as Automated Traffic Enforcement Systems or “ATES systems.”

20° variance between the sight line a driver uses to maintain separation from the car in front and the sight line he uses to view the traffic control signal; and 2) the fact that the traffic control signal had been rotated toward the ARLE camera on the median and away from on-coming drivers in the right-hand turn lane causing a 40% occlusion of the diameter of the traffic control signal's lenses from the perspective of oncoming drivers.

In support of Appellant's Motion to Exclude Evidence predicated on violations of the MUTCD and Vehicle Code, defense counsel asked for leave of court to call Mr. Stockwell to testify which the Court disallowed. After stating: "We still have to get around *People v. Gray*," (a reference to the red light camera case of *People v. Gray* (2011) 199 Cal. App.4<sup>th</sup> Supp. 10, 131 Cal. Rptr.3d 220; affirmed by *People v. Gray* (2012) 204 Cal. App.4<sup>th</sup> 1041, 139 Cal.Rptr.3d 489) the Court proceeded to deny Appellant's written Motion in Limine to Exclude Evidence.<sup>2</sup> (RT 2:8-23).

Appellant then moved to assert that his Constitutional Right to Due Process as construed in *Brady v. Maryland* (1963) 373 U.S. 83 was violated as a result of The People's failure to make available the 12 second video of the alleged violation generated by the ARLE system available for copying so as to allow the use of video indexing software to measure the precise time of the yellow light interval in order to determine whether the

---

<sup>2</sup> At the time of Trial on May 7, 2013, the Court was apparently unaware that a Petition For Review had been granted by the California Supreme Court on June 20, 2012 in *People v. Gray (Steven)* (2012) 279 P.3d 1022, 143 Cal. Rptr. 3d 529, 2012 Cal. LEXIS 5930 and thus neither the L.A. Superior Court Appellate Division opinion in *People v. Gray* (2011) 199 Cal. App.4<sup>th</sup> Supp. 10, 131 Cal. Rptr.3d 220 nor the Second District Court of Appeal Div. 3 opinion in *People v. Gray* (2012) 204 Cal. App. 4<sup>th</sup> 1041, 139 Cal. Rptr. 3d 489) could be cited, or relied upon for any purpose. Parenthetically, it should also be noted that while the Court did not provide the foregoing citations to *People v. Gray*, a LexisNexis search revealed that there is only one red light camera case with "Gray" as a named party.

system had operated properly at the time it generated Appellant's citation. The Court disagreed and accordingly, denied Appellant's Motion under *Brady*, supra.<sup>3</sup>

Thereafter, the Court proceeded to overrule Appellant's objections on hearsay grounds to Respondent's anticipated attempts during its case in chief to lay the foundation for introduction of documentary evidence from Redflex pertaining to Appellant's traffic citation including the 12 second video along with photos appended with data pertaining to the yellow light interval based on the declarations of out-of-state Redflex employees regarding operation of the subject ARLE system.

Following the denial of Appellant's pretrial motions, Trial commenced with the direct testimony of retired police officer Don Teagarden of the Riverside Police Department who appeared on behalf of Respondent. As a preliminary matter, Mr. Teagarden requested that Appellant sign a Red Light Camera Foundational Statement (People's Exhibit "1") relating to the Court Evidence Package prepared by Redflex (People's Exhibit "2"); however, Appellant refused to do so upon advice of counsel. Despite continuing objections as to foundation, Officer Teagarden nevertheless sought and obtained a ruling from the Court allowing him to introduce all documents in the Redflex Court Evidence Package including the 12 second video, along with the photographs in addition to the citation. The Court also admitted the Declaration of the out-of-state Redflex Custodian of Records, pertaining to foundation regarding the operation of the Redflex ARLE system authentication of the 12 second video clip upon which Appellant's October 26, 2012 citation is based (RT 6:7 to 7:27).

---

<sup>3</sup> *Brady v. Maryland* (1963) 373 U.S. 83 provides that withholding exculpatory evidence violates due process "where the evidence is material either to guilt or to punishment."

Officer Teagarden then proceeded to testify concerning his review of the video and photos: Appellant's vehicle had failed to stop approximately 6 feet behind the limit line after the light had been red for .96 seconds and it continued making a right turn. At the time, the vehicle was traveling 15 miles an hour in a 35 mile an hour roadway where the yellow light interval was set at 3.65 seconds (RT : 15-22).

Officer Teagarden thereafter testified concerning the operation and maintenance of the Tyler-SR 91 ARLE system: Redflex personnel perform monthly inspections (RT 8:26 to 9:10); the City of Riverside controls the signal light timing intervals (RT 9:9-24); Redflex is responsible for how the system operates overall (RT 9:22 to 10:1); and he and the other operators do routine inspections using stopwatches “to make sure that the amber light time is within the range that we are expecting it to be set.” (RT 13:1-22). He never sought to independently confirm the yellow light timing interval imprinted on the data bar on the photos using such customary computer programs as Windows Movie Maker (RT 14:13-25). Officer Teagarden further testified that he had no training regarding the types of intersections where the geometry was deemed inappropriate for installation of ARLE systems (RT 10:2-9).

Following Officer Teagarden’s testimony, Respondent rested and Appellant proceeded with his case in chief focusing on the testimony of engineering expert Sean Stockwell who testified with regard to his site inspections of the Tyler St.-SR 91 ARLE system on September 14, 2012 and September 17, 2012 (performed in connection with another case) and on April 4, 2013, the results of which he integrated into a PowerPoint presentation that was thereafter admitted into evidence by the Court. He then testified concerning the four video clips he took of the ARLE system, two in September, 2012 *prior to the issuance of Appellant’s citation* (RT

18:10-19) and two during a subsequent site visit on April 3, 2013 (RT 19:2-9). His analysis (using Windows Movie Maker software) revealed that in all four video clips, the yellow light interval at the subject intersection was 3.50 seconds, plus or minus .07 seconds, which he stated is less than the minimum specified by the MUTCD of 3.6 seconds in an intersection with a 35 mile per hour speed limit in the roadway approaching it (RT 19:5-28 to 20:1-16).

Mr. Stockwell then testified regarding additional violations of the MUTCD pertaining to the installation of the ARLE system at the Tyler St.-SR 91 intersection in light of the intersection's geometry. He measured lines of bearing using an overhead view of the intersection using Google Earth, a commonly accepted reference for such calculations (RT 25:9-14). A driver in the right-hand turn lane looking ahead would have to look left 20° in order to see the stop light (RT 26:19 to 27:10). In addition, the lenses on the traffic signal are obscured from the driver's view to some extent by the shade affixed to it (RT 27:13-17). According to the MUTCD, the primary consideration in signal phase placement shall be to optimize the visibility of signal indications to approaching traffic (RT 27: 18-22). In this case, the ARLE camera itself has a good view of the signal whereas a driver in the right-hand turn lane has a more obstructed view from which he concluded that the placement, aligning, aiming and adjustment was to optimize the visibility of the signal to the ARLE camera system which, based the MUTCD standard, constitutes a violation (RT 27:25-28 to 28:1-8). Mr. Stockwell concluded his testimony by stating that there is a total 24° difference between a driver at the limit line and the ARLE camera system so as the driver approaches the intersection he must look more and more to his left the closer he gets to the limit line (RT 28:14-26).

Following closing argument, the Court found the Appellant guilty of violating Vehicle Code 21453(a) and imposed a fine of \$490. A Notice of Appeal was thereafter filed on May 22, 2013

## STATEMENT OF APPEALABILITY

This appeal is being taken from a judgment of the County of Riverside Superior Court pursuant to California Penal Code Section 1466(b)(1).

## ARGUMENT

### **1. The Trial Court Committed Error By Referring to People v. Gray Which Resulted in a Miscarriage of Justice.**

As mentioned in Footnote 2, the red light camera case of *People v. Gray* (2012) 204 Cal. App.4<sup>th</sup> 1041, 139 Cal.Rptr.3d 489 referenced by the Court during Trial on May 7, 2013 (RT 2:22-23) could not be cited, referenced or relied upon for any purpose given the fact that a Petition For Review had been granted by the California Supreme Court on June 20, 2012. The fact that *People v. Gray* supra., was specifically referred to by the Court in this case gives rise to an inescapable inference that it played a part in his decision-making (RT 2:22-23).

The issue in *People v. Gray*, supra., concerned whether or not Vehicle Code Section 21455.5(b) allowed a municipality to provide one 30-day warning notice/announcement period prior to the first installation of an ARLE system irrespective of the number of additional systems that might thereafter be installed or whether each additional ARLE system installation required a separate 30-day warning notice/announcement period. In affirming the decision in *People v. Gray* (2011) 199 Cal. App.4<sup>th</sup> Supp. 10, 131 Cal. Rptr.3d 220 by the Los Angeles County Superior Court Appellate

Division, the Court of Appeal, Second Appellate District, Div. 3 held in *People v. Gray* (2012) 204 Cal. App.4<sup>th</sup> 1041, 139 Cal.Rptr.3d 489 that additional 30-day warning notice periods were not required; that compliance by the municipality with Vehicle Code Section 21455.5(b) was not jurisdictional and that such compliance was not an element of the crime with which the defendant need be charged. In so holding, the Court specifically declined to follow a previous Orange County Superior Court Appellate Division case entitled *People v. Park* (2010) 187 Cal. App. 4<sup>th</sup> Supp. 9, 115 Cal.Rptr.3d 337.<sup>4</sup>

In *People v. Gray*, supra., the trial court held that despite the municipality's failure to provide a 30-day warning notice with regard to the specific ARLE camera system that cited defendant Steven Gray, the evidence generated by the system was nevertheless admissible in light of the testimony of Sgt. Corrales, the police officer in charge of automated traffic enforcement systems who testified regarding the installation, function, operation and maintenance of the system. The trial court found that Mr. Gray had failed to stop for the red light and accordingly, convicted him.

As can be seen from even a cursory review, the facts of *People v. Gray*, supra. and the facts of the present case are completely dissimilar. *Gray* involved a claimed procedural defect arising from the manner in which a municipality chose to give warning notices and announcements concerning the ARLE systems it had installed whereas the present case involves claims of significant substantive defects resulting from violations

---

<sup>4</sup> According to the Petition For Review filed in *People v. Gray* (2012) 279 P.3d 1022, 143 Cal. Rptr. 3d 529, 2012 Cal. LEXIS 5930 granted by the California Supreme Court on June 20, 2012, the basis for the Petition resulted from the conflict between *People v. Gray*, supra., and *People v. Park*, supra.

of the MUTCD pertaining to the operation and installation of the specific ARLE system at the Tyler St.-SR-91 intersection. In *Gray*, there was no expert testimony concerning violations of the California MUTCD regarding the installation and operation of the ARLE system—indeed, the rationale the trial court resorted to was to focus solely on whether or not the defendant had driven his vehicle through the intersection against a red light based on based on the video evidence generated by the municipality’s automated traffic enforcement system (which the defendant did not object to).

Notwithstanding the dissimilar facts of *People v. Gray* and the present case, it is evident from the record that the Court resorted to the same rationale as the trial court presumably used in *Gray* supra. In the present case, despite expert testimony concerning video clips taken during multiple site visits both *before* and *after* the date of Appellant's citation showing the yellow light interval to be less than the minimum time interval mandated by the MUTCD, the Court simply borrowed the following decisional algorithm from *People v. Gray*: *Does the video appear to show the defendant running the red light? Yes?... Guilty!*

Of perhaps even greater significance in the present case is the issue of whether it was appropriate for the city of Riverside to have installed an ARLE system at the Tyler St.-SR 91 intersection in the first place in light of its peculiar geometry resulting from the orientation of the right-hand turn lane to the traffic signal. Appellant's engineering expert testified that the traffic signal was a total of 24° off to the left of the sightline of the drivers in the right-hand turn lane and that the signal light itself was rotated toward the red light camera located on the median so that 40% of the diameter of the signal lens face was occluded to oncoming drivers in the right-hand turn lane—another clear violation of the MUTCD and the Vehicle Code. Again, it appears that the Court followed the *Gray* rationale on this issue as well:

*Does the video appear to show the defendant running the red light? Yes?... Guilty!* This, despite the fact that The People offered *no evidence whatsoever* on such a fundamental issue. Moreover, the fact that the Trial Court failed to contemplate this issue in making his decision can be clearly seen from an exchange during the cross-examination of Officer Teagarden:

THE COURT: Well, we're not talking policy here. We're talking about whether or not this individual on this particular day violated Vehicle Code Section 21453 (a).

MR. ELLIOT: That's true, Your Honor.

THE COURT: **We're not here to set policy or determine whether it's good policy or not. The evidence today is whether or not--and what I have to determine is whether or not he ran a red light.**

MR. ELLIOT: Well, I'm trying to understand the--

THE COURT: **Not whether it was a good idea to have a red light camera system there.** (RT 11:8-18). (Emphasis added.)

The fact that the Trial Court erred by consciously ignoring evidence in the form of significant violations of the MUTCD concerning the operation and installation of the ARLE system at the Tyler St.-SR 91 intersection as testified to by Appellant's engineering expert can only be construed as a miscarriage of justice.

**2. The Trial Court Committed Error in the Application of Evidence Code Sections 1552(a) and 1553 Which Ultimately Resulted in a Miscarriage of Justice.**

The Court Evidence Package admitted by the Court into evidence in the present case at the request of Officer Teagarden consisted of the business records of Redflex Traffic Systems including the traffic citation, the 12 second video depicting Appellant's vehicle in the intersection and several still pictures of the vehicle with computer data relating to the

citation (including the yellow light interval) imprinted at the top in addition to the Declaration of Redflex's Custodian of Records verifying the "statement" of the SmartCam Red Light Camera Technology.

Evidence Code Section 1552(a) defines the evidentiary effect of the presumption relating to the printed representation of computer information as follows:

A printed representation of computer information or a computer program is *presumed* to be an accurate representation of the computer information or computer program that it purports to represent. ***This presumption is a presumption affecting the burden of producing evidence.*** If a party to an action introduces evidence that a printed representation of computer information or computer program is *inaccurate* or *unreliable*, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent. (Emphasis added.)

Similarly, Evidence Code Section 1553 defines the evidentiary effect of the presumption afforded the printed representation of images stored on a video or digital medium:

A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. ***This presumption is a presumption affecting the burden of producing evidence.*** If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is *inaccurate* or *unreliable*, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is inaccurate representation of the existence and content of the images that it purports to represent. (Emphasis added.)

At trial, the testimony of both witnesses in addition to several exhibits revealed a number of anomalies with regard to the installation and operation of the Redflex system at the Tyler St.–SR 91 intersection which made the data produced by the system inherently suspect, inaccurate and unreliable. First, although the still photographs taken from the video indicate that the yellow light change interval at the intersection was 3.6 seconds (according to the data printed at the top of the photos), *the video from which the photographs were taken did not contain a digital video index* that would allow an independent frame-by-frame analysis of the yellow light interval. Moreover, even though the video was made available online for *viewing purposes only* prior to trial, it could not be downloaded and analyzed with video indexing software thus precluding any independent corroboration of the yellow light interval.

In order to accurately assess the yellow light interval, Appellant's engineering expert took a total of four video clips of the traffic signal on dates *prior to* and *subsequent to* the date of Appellant's citation and analyzed them with Microsoft Movie Maker software at 80 frames per second which revealed the yellow light change interval to be 3.5 seconds in all the videos, ***1/10th of a second below the legal minimum*** set forth in the MUTCD. Accordingly, the video clips obtained by the Appellant's expert squarely place in issue the accuracy of the Redflex data indicating a yellow light change interval of 3.6 seconds on the still photographs taken from the video. Consequently, once the presumption afforded to The People by the Evidence Code had been rebutted, it became incumbent on them to introduce evidence at trial substantiating the reliability of the video and data generated by the Redflex SmartCam system installed at the Tyler St.–SR 91 intersection at the time it generated Appellant's citation. In order to do that, a digitally indexed copy of the video would have to be produced by

Respondent both to the Appellant prior to trial (under the Due Process requirements of *Brady v. Maryland* supra.) and to the Court during trial— an impossibility since Redflex does not make an indexed copy of the 12 second video available to anyone, including the City of Riverside as testified to by Officer Teagarden:

Q MR. ELLIOT: So is it your testimony that none of the videos that come from Redflex on these CDs or that are transmitted to the RPD have video indexing on them?

A MR. TEAGARDEN: I've never seen any.

Q Okay. And so is also correct, then, that on the citation, where the data is imprinted at the top, that's the only information that you have?--in terms of yellow light timing interval, for instance. Here it says—

A We obtain our yellow light timing information from that data bar, yes.

Q And you've never sought to independently confirm that using any of the computer programs that are customarily used, like Windows Movie Maker, for instance?

A No, I have not (RT 14:9-22).

Accordingly, it is clear from Officer Teagarden's testimony that the City of Riverside and/or Redflex, made a conscious decision to "hide the ball" with what might be regarded as the keystone piece of evidence in such a case: video of the yellow light interval. The failure of Redflex to make the video containing the yellow light timing interval available in a format that would provide defendants with the opportunity to corroborate the timing with digital video indexing software not only makes the data contained on video citations suspect, it has the legal effect of rendering the data unreliable so as to deprive The People of the advantage afforded by the presumptions in Evidence Code Sections 1552 (a) and 1553. As a corollary, under the principles set forth in *Brady v. Maryland*, supra, virtually every defendant who has not been provided access to a copy of the 12 second

video containing the yellow light timing interval prior to trial has been deprived of Due Process.

A second basis for establishing that both the data and video images relative to appellant's citation are inaccurate and unreliable stems from the evidence adduced at trial which revealed that the SmartCam ARLE system installed at the Tyler St.-SR 91 intersection was installed in violation of several provisions of California law, thereby making the computer data and video provided by the SmartCam system inherently inaccurate and unreliable. Perhaps the most flagrant violation involves the geometry of the signal placement in relation to the right hand turn lane. Section 21400 of the California Vehicle Code requires the Department of Transportation to adopt rules and regulations prescribing uniform standards and specifications for all traffic control devices. In the introduction to the California MUTCD, 2012 Edition, it states that the MUTCD shall be the standard for all official traffic control devices under Government Code Section 11340.9(h) and Vehicle Code Section 21400. MUTCD Section 4D.12, entitled "Visibility, Aiming, and Shielding of Signal Faces" provides: "The primary consideration in signal face placement, aiming, and adjustment *shall* be to optimize the visibility of signal indications to approaching traffic." (Emphasis added).

In this case, it is evident from the evidence adduced at trial which culminated in the Court finding Appellant guilty, that error was committed by the Court while considering the application of the presumptions in Evidence Code Sections 1552(a) and 1553. Instead of viewing them as *presumptions affecting the burden of producing evidence*, the Court erroneously viewed them as *presumptions affecting the burden of proof*. Given the fact that The People did not have counsel present at Trial to properly rebut Appellant's evidence that the SmartCam ARLE system had

been installed and operated in violation of multiple provisions of the MUTCD (which as noted previously, has the force of law pursuant to Vehicle Code Section 21400 and Section 11340.9(h) of the Government Code), any benefit that may have accrued to Respondent by application of the presumptions was thereby negated, leaving them with the burden of proving their case in accord with the provisions of Penal Code Section 1096 and CALCRIM 220 which require proof of guilt beyond a reasonable doubt.

Under the test set forth in *People v. Watson* (1956) 46 Cal.2d 818 at 836, an error is deemed harmless unless, "after an examination of the entire cause, including the evidence," it appears "reasonably probable" that the defendant would have obtained a more favorable result had the error not occurred. The so-called "*Watson* test" was further refined in the case of *College Hospital v. Superior Court* (1994) 8 Cal.4<sup>th</sup> 704 at 715 which held that under *Watson*, "probability" in this context does not mean more likely than not, but merely a *reasonable chance*, more than an *abstract possibility*. In the present case, there can be little doubt in light of the evidence presented by Appellant (which negated any benefit from the application of the presumptions in Evidence Code Sections 1552(a) and 1553 that might have accrued to the Respondent) that it was reasonably probable that the result would have been different. In fact, in order for the Respondent to prevail in this context, the answer to the question: *Can an ARLE system installed and/or operated in violation of the MUTCD and the California Vehicle Code generate legally enforceable citations?* would have to be answered "Yes." Accordingly, it can only be concluded that the Trial Court committed prejudicial error in its interpretation of the presumptions set forth in Evidence Code Sections 1552(a) and 1553 and that but for the error, the result would have been in Appellant's favor.

**3. The Trial Court Committed Error Regarding the Burden of Proof As It Applies to The Trial of Infraction Cases.**

Penal Code Section 19.7 provides in pertinent part:

Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions including...burden of proof.

With regard to the burden of proof in criminal cases in California, Penal Code Section 1096 states:

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his or her guilt is satisfactorily shown, he or she is entitled to an acquittal, but the effect of this presumption is only to place upon the state the burden of proving him or her guilty beyond a reasonable doubt.

Similarly, CALCRIM 220 entitled "Reasonable Doubt" provides in relevant part:

A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt...Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

Based on the manner in which the Trial in this case was conducted, the foregoing Penal Code sections regarding the burden of proof in criminal cases and the application of the reasonable doubt standard seem to have gotten lost in the shuffle. Although Vehicle Code Sections 21455.5 through 21455.7 sanction the use of ARLE systems, they do not sanction any change to the burden of proof – nor do they invest in ARLE systems a "presumption of infallibility" due to the fact they are comprised of high-tech equipment like high definition video cameras, computers, traffic sensors and digital hard drives that are capable of generating the citations and transmitting them to an out-of-state vendor such as Redflex.

However, one need not look any further than Officer Teagarden's testimony to observe how imperfectly ARLE systems actually function in the real world and the corresponding negative impact they can have on the Due Process rights of people who have the misfortune to run afoul of them. Officer Teagarden testified that while Redflex personnel perform monthly inspections of ARLE systems (RT 8:26 to 9:10), the City of Riverside Traffic Department controls the signal light time intervals (RT 9:9- 24) although Redflex is responsible for how the system operates overall. Apparently the general public is supposed to take solace in the fact that Officer Teagarden and the other retired police officer/operators do routine inspections using *stopwatches* (RT 13:1-22) – a decidedly 16th-century technology. He testified that has never sought to independently confirm yellow light timing intervals imprinted on the data bar on top of the photos using digital video indexing programs such as Windows Movie Maker (RT 14:13-25), a late 20th century-early 21st century technology equivalent to that found in automated red light enforcement systems. He conceded that he has no training regarding intersections where the geometry might be deemed inappropriate for the installation of an ARLE system (RT 10:2-9)

which effectively dispenses with any sort of safeguard in a case where an ARLE system is installed where the geometry of the intersection makes such an installation inappropriate according to the provisions of the MUTCD.

Somewhere in the confused milieu of the Trial it appeared that the Court became intent on shifting the burden of proof to Appellant to prove that his conduct did not violate California Vehicle Code Section 21453(a) beyond a reasonable doubt. Whether it resulted from the Court's misinterpretation of the effect of the presumptions in Evidence Code Sections 1552(a) and 1553 or from a misplaced belief in the infallibility of the Redflex SmartCam ARLE system, it appears in hindsight that the burden was indeed placed on Appellant to *disprove* his guilt beyond a reasonable doubt. As a consequence, even after Appellant presented evidence of the MUTCD violations regarding the installation and operation of the SmartCam ARLE system at the Tyler St.-SR 91 intersection, the Court nevertheless found Appellant guilty and levied a fine of \$490. Accordingly, the Court's finding of guilt in light of the evidence presented by Appellant at trial can only be viewed as erroneous, arbitrary, capricious and as an abuse of discretion.

### **CONCLUSION**

For all the foregoing reasons, Appellant hereby requests that the Judgment imposed by the Trial Court in this matter be reversed and that Appellant be refunded the \$490 fine levied by the Court pursuant to Vehicle Code Section 21453(a).

**APPELLANT’S CERTIFICATE OF WORD  
COUNT PURSUANT TO CRC RULE 8.928(b)**

Appellant’s Opening Brief is hereby certified to be compliant with California Rules of Court 8.928 and 8.928(b) as hereinafter described: Appellant’s Opening Brief was produced using a font consisting of 13 point Times New Roman type with margins at the top and bottom measuring 1 inch and margins on either side measuring 1.5 inches. The line spacing was set at 1.5. The Brief, excluding the Title Page, Table of Authorities and Certificate of Word Count is 17 pages in length and consists of 5090 words (including footnotes) as counted by the word processing software used to generate it, Microsoft Word 2010.

Respectfully submitted,

DATED: September 5, 2013

By: \_\_\_\_\_

D. Scott Elliot (SBN 076323)  
Attorney for Defendant and  
Appellant, Viktors Andris Rekte