

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

VIKTORS ANDRIS REKTE

Defendant and Appellant.

Court of Appeal
No. E060272

Superior Court
No. APP1300118

APPEAL FROM THE SUPERIOR COURT OF

RIVERSIDE COUNTY

Honorable William Anderson, Commissioner
Case No. RR182259VR

APPELLANT'S REPLY BRIEF

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STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This appeal arose from a red light camera citation generated on October 26, 2012 by a Redflex SmartCam Automated Traffic Enforcement System (ATES) installed and operated by Redflex Traffic Systems of Phoenix, Arizona and the City of Riverside at the Tyler St.-SR 91 intersection.¹ Trial was thereafter held on May 7, 2013 in Department MV “2” of the Riverside Superior Court before Commissioner William Anderson. There was no appearance by either the District Attorney or the Riverside City Attorney on behalf of Respondent whose interests were attended to by Don Teagarden, a retired City of Riverside police officer. Appellant Viktors Andris Rekte was represented by D. Scott Elliot.

During argument on Appellant’s Motion in Limine to Exclude Evidence of the red light camera citation and again during trial, Appellant’s engineering expert, Sean Paul Stockwell, opined that the subject red light camera system was not installed and operated in accord with the provisions of the California Manual on Uniform Traffic Control Devices² (“MUTCD”) in light of the approximate 24° rotation of the traffic signal on the vertical axis, away from the driver and towards the ATES camera on the Tyler St. median such that the ATES camera had an unobstructed view of the signal whereas the signal visors over each lens caused an approximate 40% view obstruction of the traffic signal for drivers such as Appellant travelling in the right-hand turn lane. Based on four video clips shot on site visits both

¹ Appellant’s Opening Brief referred to Respondent’s Redflex SmartCam red light camera system as an Automated Red Light Enforcement system or “ARLE” system. However, in deference to the California Supreme Court’s recent opinion in *People v. Goldsmith* (2014) 2014 Cal. LEXIS 376 which refers to such systems as Automated Traffic Enforcement Systems or “ATES,” Appellant hereby adopts the Supreme Court’s nomenclature in his Reply Brief where possible.

² <http://www.dot.ca.gov/camutcd>

before and after the date Appellant received his citation, Mr. Stockwell observed that the yellow light interval was 3.5 seconds (plus or minus .07 seconds) which he indicated was below the MUTCD-mandated minimum of 3.6 seconds.

In support of Appellant's Motion to Exclude Evidence concerning violations of the MUTCD and Vehicle Code with regard to the ATES installation, 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*," (an apparent reference to the red light camera case of *People v. Gray* (2011) 199 Cal. App.4th Supp. 10, 131 Cal. Rptr.3d 220; affirmed by *People v. Gray* (2012) 204 Cal. App.4th 1041, 139 Cal.Rptr.3d 489) the Court denied Appellant's Motion in Limine to Exclude Evidence.³ (RT 2:8-23).

Appellant also argued that his Constitutional Right to Due Process as construed in *Brady v. Maryland* (1963) 373 U.S. 83 (which holds that withholding exculpatory evidence violates due process "where the evidence is material either to guilt or to punishment") was violated as a result of Respondent's failure to make available the actual 12 second video of Appellant's ATES-generated violation available for copying so as to allow the use of computerized video indexing software to measure the precise time of the yellow light interval in order to determine whether the system

³ During 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 593 and thus neither the L.A. Superior Court Appellate Division opinion nor the Second District Court of Appeal opinion could be cited, or relied upon for any purpose. After Appellant's Opening Brief was filed in September, 2013, the California Supreme Court handed down its decision in *People v. Gray* (2014), 58 Cal.4TH 901 on March 13, 2014.

had operated in accord with the provisions of MUTCD and the Vehicle Code at the time it generated Appellant's citation.

Following the denial of Appellant's pretrial motions, trial commenced with the direct testimony of Officer Teagarden, a retired City of Riverside police officer. Despite continuing objections, Mr. Teagarden sought and obtained a ruling from the Court allowing him to introduce all documents in the Redflex Court Evidence Package (copies of which had not been provided to defense counsel) including a CD containing the 12 second video along with four photographs depicting the alleged violation. Over objection, the Court also admitted the Declaration of an out-of-state Redflex Custodian of Records regarding the technology of the Redflex SmartCam ATES that generated Appellant's October 26, 2012 citation (RT 6:7 to 7:27).

Appellant's case in chief focused on the testimony of engineering expert Sean Stockwell who testified with regard to his site inspections of the Tyler St.-SR 91 ATES on September 14, 2012 and September 17, 2012 (performed in connection with another case) and again on April 4, 2013, the results of which he integrated into a PowerPoint presentation which the Court admitted into evidence. During the site inspections, Mr. Stockwell shot four video clips of the red light camera system in operation, two *prior* to the issuance of Appellant's citation (RT 18:10-19) and two during a subsequent site visit (RT 19:2-9). His analysis (using Microsoft 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 noted 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 also testified regarding additional violations of the MUTCD pertaining to the installation of the ATES 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 from Google Earth, a commonly accepted reference for such calculations (RT 25:9-14). A driver in the right-hand turn lane attempting to maintain separation from a vehicle ahead while looking ahead has 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). Mr. Stockwell stated that 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 red light 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 optimized the visibility of the signal in favor of the ATES camera instead of the driver 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 red light 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 Appellant guilty of violating Vehicle Code 21453(a) and imposed a fine of \$490. A Notice of Appeal was subsequently filed on May 22, 2013. Thereafter, Appellant's Opening Brief was filed in the Appellate Division of the Superior Court in September 13, 2013 and oral argument was set for November 15, 2013 before the Hon. Jeffrey J. Prevost. Following oral argument, the Court took the matter under submission. On November 20, 2013, the Appellate

Division affirmed the decision of the trial court; notice of the Appellate Division decision was served by the clerk that same day.

Appellant thereafter filed an Application for Certification Re: Transfer to the Court of Appeal in the Appellate Division of the Superior Court on December 13, 2013 which was granted by the Hon. Jeffrey J. Prevost on December 19, 2013. On January 9, 2014 the case was ordered transferred to the Court of Appeal, Forth District, Division 2 by Acting P.J. Jeffrey King. On March 7, 2014, Acting P.J. Thomas Hollenhorst ordered that Appellant's Opening Brief filed in the Appellate Division of the Superior Court be deemed Appellant's Opening Brief in the Court of Appeal.

On June 12, 2014 Respondent appeared by counsel for the first time when the Riverside City Attorney filed a Respondent's Brief on its behalf. Respondent also filed a Motion to Augment Record on Appeal containing all the exhibits that comprised the "Court Pack" prepared by Redflex for the trial. The exhibits included a Declaration by Redflex custodian of records Joseph Alexander which referenced a document entitled "Statement of Technology: SmartCamred with Video" along with a CD containing a computerized version of the 12 second video in MPEG format depicting Appellant's red light violation in addition to four photos in JPEG format. None of the foregoing documents were disclosed by the Prosecution to defense counsel prior to trial.

ARGUMENT

1. Evidence Turned Over By the Prosecution With Their Motion to Augment Has Significant Exculpatory Value and Should Have Been Provided to Appellant Prior To Trial Under *Brady v. Maryland* and Its Progeny.

Two of the documents recently turned over by the Prosecution as exhibits to its Motion to Augment include the Declaration of the Redflex Custodian of Records, Joseph Alexander, of Phoenix, Arizona which references several exhibits including a Statement of Technology relative to the RTS (Redflex Traffic Systems, Inc.) Red Light Camera Enforcement system which purportedly "*explains how the equipment functioned at or near the time of the events depicted in this case.*" A separate document with the Redflex Traffic Systems logo in the upper left hand corner entitled: "STATEMENT OF TECHNOLOGY: SMARTCAMred with Video" (document number RTSO-00010-1.1) accompanied Mr. Alexander's Declaration containing text on the left side and four rectangular diagrams on the right which describes how a Redflex SmartCam ATES records both video and still photos at an intersection following installation.

According to Redflex's printed diagrams, their SmartCam ATES utilizes two cameras: a Main Camera located behind the subject vehicle at the right curb slightly to the right of the traffic signal and a Face Camera situated directly across the intersection close to the traffic signal which captures an image of the driver's face. On April 1, 2014, Mr. Alexander signed his Declaration on a signature line directly under the following statement: "I hereby declare under penalty of perjury under the laws of the State of California, that the aforementioned is true and correct."

While Appellant is appreciative of the Prosecution's belated attempt comply with its obligations under *Brady* (which stands for the proposition

that withholding exculpatory evidence violates due process “where the evidence is material either to guilt or to punishment”). The stark differences between the ATES installation specified by Mr. Alexander and his cohorts at Redflex as depicted in their diagrams and the actual installation of the ATES at the Tyler St.-SR 91 intersection become clearly apparent upon reviewing the Redflex video, the four still photos and the overhead images of the intersection entered into evidence as part of the PowerPoint presentation generated by Appellant's expert engineer, Mr. Stockwell. In the actual installation, the Main Camera (which the diagrams indicate is supposed to be located behind the subject vehicle on the right curb) is actually located diagonally across the street to the left rear of the subject vehicle on the median which bisects Tyler St. (a lateral variation from Redflex's specifications equivalent to five lanes of traffic). This variation is the sole reason the traffic signal facing Appellant was rotated toward the Main Camera on the median and away from vehicles traveling in the right-hand turn lane such that 40% of the traffic signal's lens faces were obscured from the view of oncoming motorists. This creates an inescapable inference that in order for the Redflex ATES to work properly, the traffic signal's lens faces had to be aimed so as to optimize visibility of the signal for the benefit of the Redflex system's Main Camera to the corresponding detriment of drivers like Appellant approaching the traffic signal in the right-hand turn lane. Put simply, the manner in which the ATES was installed by Redflex in this case “stacked the deck” in favor of a computerized red light traffic camera system at the expense of drivers and pedestrians whose safety (the *raison d'etre* for traffic signals to exist) depends on traffic signals being clearly visible to the people who use them.

Although Appellant argued at the trial court level that rotation of the traffic signal toward the Redflex camera on the median and away from

oncoming traffic constituted a violation of Section 4D.12⁴ of the MUTCD (and therefore a violation of California Vehicle Code Section 21400 et seq.), recent disclosure of Redflex's printed design diagrams reflect a complete departure from the actual installation of the SmartCam ATES at the Tyler-SR 91 intersection which should serve to negate application of the presumptions of accuracy and authenticity granted by the Legislature to ATES devices in Evidence Code Sections 1552 and 1553 in this case. Regrettably, Appellant was precluded from making the foregoing argument at trial inasmuch as the Prosecution failed to disclose evidence of a material nature to defense counsel in the form of the Redflex Statement of Technology that we now know is clearly exculpatory.

In *People v Ruthford* (1975) 14 Cal. 3d 399, 406; 534 P.2d 1341; 121 Cal. Rptr. 261; 1975 Cal. LEXIS 292, the California Supreme Court after reviewing *Brady, supra*, and *In re Ferguson* (1971) 5 Cal.3d 525; 96 Cal.Rptr. 594; 487 P.2d 1234, among other cases, stated:

We recognize the foregoing cases as establishing a duty on the part of the prosecution, even in the absence of a request therefor, to disclose all substantial material evidence *favorable to an accused*, whether such evidence relates directly to the question of guilt, to matters relevant to punishment, or to the credibility of a material witness. (Emphasis in original.)

The fact that a major discrepancy exists between the ATES design on the printed Redflex diagrams authenticated by Joseph Alexander with regard to the location of the Main Camera being depicted behind the subject vehicle on the right curb versus its actual location across five lanes of traffic on the median (thereby requiring the traffic signal to be rotated

⁴ MUTCD Section 4D.12 provides: "The primary consideration in signal face placement, aiming, and adjustment shall be to optimize the visibility of signal indications to approaching traffic."

towards it to enhance visibility) most certainly constitutes evidence favorable to the accused since it dovetails with and supports Appellant's argument that the ATES was installed improperly. Accordingly, there is no question that the document should have been made available to Appellant by the Prosecution prior to trial.

2. The Trial Court Had a Duty to Bring Out the Facts

With Regard to Evidence Proffered by the Prosecution
That Was Not Disclosed to the Defense.

While it is a long established practice California to dispense with the presence of a prosecutor at trial in virtually all traffic infraction cases in order to facilitate their swift disposition, that does not relieve the trial judge of any of his or her duties as a judicial officer. In the traffic infraction case *People v. Carlucci*, (1979) 23 Cal.3d 249, 590 P.2d 15, 152 Cal.Rptr. 439, the California Supreme Court observed:

“It apparently cannot be repeated too often for the guidance of a part of the legal profession that a judge is not a mere umpire presiding over a contest of wits between professional opponents, but a judicial officer entrusted with the grave task of determining where justice lies under the law and the facts between the parties who have sought the protection of our courts. Within reasonable limits, it is not only the right but the duty of a trial judge to clearly bring out the facts so that the important functions of his office may be fairly and justly performed.” [Citation omitted.]

A review of the reporter's transcript in this case reveals that the Trial Court was either unaware of or chose to ignore the substantial discrepancy between the Main Camera as depicted in the printed Redflex design diagrams (located behind on the curb to the right of the offending vehicle) and the Main Camera as installed (located on the median diagonally to the left of the offending vehicle across five lanes of traffic) at the Tyler-SR 91 intersection as can be seen on both the Redflex video and still photos. As a result, the Court apparently failed to appreciate the significance of the

rotation of the traffic signal on its axis which had the effect of enhancing visibility of the traffic signal for the benefit of the ATES at the expense of the visibility of oncoming drivers (whose view of the signal face was thereby diminished on the order of 40%). Instead, after making a cryptic reference to *People v. Gray, supra*, the Court seemed to limit the parameters of his decision-making to whether or not the video shows Appellant running the red light.

A review of the recent California Supreme Court opinion in *People v. Gray* (2014), 58 Cal.4TH 901 (handed down in March, 2014, long after trial in this case) has not revealed any particular reason why the Trial Court specifically referenced the underlying opinions in *Gray* (RT 2:22-23). The underlying facts in *Gray, supra*, are entirely dissimilar to this case with the exception the fact that both cases involve ATES devices. *Gray* dealt with the question of a city's compliance with Veh. Code Section 21455.5(b) regarding the sufficiency of notice concerning the installation of additional ATES devices which involved alleged ambiguity over of the meaning of the word "systems." In this case, there was never any issue regarding the sufficiency of notice by the city of Riverside with respect to the installation of the ATES at the Tyler St.-SR 91 intersection. Accordingly, irrespective of the propriety of a trial judge referring to a case on appeal, there is no rational basis for the Trial Court to have concluded that *Gray* had any bearing on the issues in this case and thus his mention of *Gray* was inappropriate.

In light of the foregoing, the conduct of the Court during trial for failing to properly deal with the foundational issues arising from the significant disparity between the Redflex Statement of Technology attached to Mr. Alexander's Declaration and the actual ATES installation at the Tyler St.-SR 91 intersection coupled with the Court's oblique reference to

the *Gray* case compels the conclusion that the Court abused its discretion in finding Appellant guilty.

3. The Trial Court Erred in Its Determination That the Yellow Light Interval in This Case Met The Legal Minimum As Specified by the MUTCD.

Respondent has made a number of erroneous claims in its Brief regarding the applicability of the MUTCD in a case where a red light citation is generated by an ATES running the gamut between arguing that MUTCD provisions do not apply but if they do, the standards set forth therein were met in this case. As a preliminary matter, Appellant would agree that the MUTCD would not usually apply to ATES devices that are properly installed and operated per MUTCD Section 1A.08, Paragraph 6B inasmuch as they are not traffic control devices. However, Appellant submits that in a case involving an ATES that is not properly installed or operated, the foregoing proscription should not necessarily apply.

In this case, the Redflex ATES was **not** installed according to the vendor's own plans. In order to make the system functional, a "traffic signal device" in the form of traffic signal, mounted on a pole that was already well to the left of the right-hand turn lane drivers' centerline line-of-sight, was rotated about its vertical axis, away from oncoming drivers, to allow the ATES Main Camera (mounted across the street on the median) a view that was not obstructed by the signal visors, while drivers heading south on Tyler St. were forced to deal with a 40% obstruction of the signal lens faces as measured by the signal diameter that was obstructed by signal visors, a clear violation of MUTCD Section 4D.12. In this case, the Redflex ATES was not a passive computerized observer of traffic moving through an intersection. Rather, it was a device whose presence caused an illegal modification to an existing traffic signal that materially increased the

risk of death or serious bodily injury to thousands of people on a daily basis.

Respondent has also claimed that the right-hand turn lane in which Appellant's car was traveling was a dedicated right-hand turn lane or "protected right-hand turn phase" and accordingly, the yellow light interval was 3.0 seconds per MUTCD Table 4D-102 – the obvious inference being that it matters not whether the yellow change interval was set at 3.65 seconds (above the legal minimum) as listed on the ATES photos or 3.5 seconds (below the legal minimum) based on the testimony of Appellant's expert. However, Respondent is incorrect: both Respondent, and Officer Teagarden have erroneously used the terms "dedicated" and "protected" as synonyms, with respect to the MUTCD.

MUTCD Standard 1A.13 entitled "Definitions of Headings, Words Phrases in this Manual" states in pertinent part commencing at page 76:

The following words and phrases, when used in this Manual, shall have the following meanings...

144. Permissive Mode—a mode of traffic control signal operation in which left or right turns are permitted to be made after yielding to pedestrians, if any, and/or opposing traffic, if any. When a CIRCULAR GREEN signal indication is displayed, both left and right turns are permitted unless otherwise prohibited by another traffic control device. When a flashing YELLOW ARROW or flashing RED ARROW signal indication is displayed, the turn indicated by the arrow is permitted.

160. Protected Mode—a mode of traffic control signal operation in which left or right turns are permitted to be made when a left or right GREEN ARROW signal indication is displayed.

It is evident from both the video and three of the four still photos taken by the Redflex ATES in this case that there is no green arrow signal for the right-hand turn lane and accordingly, it cannot be said that the right-hand turn lane is a "dedicated" or "protected" turn lane. In fact, the traffic

control signal operation at the Tyler St.-SR 91 intersection vis-à-vis the right-hand turn lane falls within the definition of “Permissive Mode” not a “Protected Mode” as those terms are defined by the MUTCD. Consequently, the correct yellow light interval in a posted 35 mph zone is 3.6 seconds according to Table 4D-102(CA) of the MUTCD (at p. 936) and not 3.0 seconds as claimed by Respondent.

As evidenced by both the Declaration of Appellant's engineering expert, Sean Stockwell, in support of the Motion in Limine and his subsequent trial testimony, a total of four videos were taken of the traffic signal in the subject intersection (all of which he included in his PowerPoint presentation); two videos were taken several months prior to Appellant's citation and two videos were taken several months following Appellant's citation which were analyzed on a computer using Windows Movie Maker video indexing software.

Significantly, all four video clips showed the yellow light interval to be 3.5 seconds plus or minus .07 seconds which gives rise to the inference that the yellow light interval was 3.5 seconds and thus *below* the legal minimum specified by Table 4D-102(CA) on the date Appellant received his ATES-generated citation, not 3.65 seconds as listed at the top of the photos.

4. It Was Reversible Error for the Trial Court to Admit the ATES-Generated Photographic and Video Evidence in This Case Inasmuch as the ATES Device Was Improperly Installed and Operated.

As discussed at length above, the Redflex ATES in this case was not properly installed at the Tyler St.-SR 91 in light of the fact that the actual installation was not done in accord with the Redflex diagrams and specifications (authenticated by Redflex Custodian of Records, Joseph

Alexander, in the course of his Declaration) which required the Main Camera to be located behind the subject vehicle on the right curb. Instead, the Main Camera was located diagonally across five lanes of traffic in the middle of the street on the median and the traffic signal had been rotated on the pole for the benefit of the Main Camera's visibility to the detriment of approaching traffic which thereby caused a 40% view obstruction for drivers such as Appellant in the right-hand turn lane.

While responsibility for the proper operation of an ATES device can be shared between the ATES vendor and governmental agency (California Veh. Code Section 21455.5(d)), there are duties imposed on governmental agencies which cannot be delegated. California Veh. Code Section 21455.5(c) provides in pertinent part:

(c) Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated traffic enforcement system. A governmental agency that operates an automated traffic enforcement system *shall* do all of the following...

- (2) Perform administrative functions and day to-day functions, including, but not limited to, all of the following:
 - (A) Establishing guidelines for the selection of a location....
 - (B) Ensuring that the equipment is regularly inspected.
 - (C) Certifying that the equipment is properly installed and calibrated, and is operating properly...
 - (E) Overseeing the establishment or change of signal phases and the timing thereof. (Emphasis added.)

The duties imposed by Veh. Code Section 21455.5(c) on governmental and law enforcement agencies must be competently discharged. It can be argued that Section 21455.5(c)(2)(A) requiring the establishment of guidelines for selection of appropriate locations for ATES was violated in this case in light of the fact that for the Redflex ATES to work properly, MUTCD Section 4D.12 (which requires that visibility of

traffic signals be optimized for approaching traffic) was violated when the signal was rotated toward the ATES Main Camera on the median.

Although the duties under Veh. Code Section 21455.5(c)(2)(B)&(C) which require a governmental agency to certify that ATES equipment be properly installed, calibrated, inspected and operated can be delegated to the manufacturer or supplier of the ATES equipment pursuant to Section 21455.5(d), where the manufacturer or supplier fails to properly discharge their contractual duties, it would appear that that the governmental agency still bears some responsibility. In this case, it seems evident that the duty under Code Section 21455.5(c)(2)(C) to make sure it that ATES equipment is properly installed calibrated and operating properly was clearly violated in light of the fact that the Redflex ATES system was not installed in accordance with Redflex's own design diagrams. A reasonable inference can be drawn that no one from the City of Riverside ever saw or appreciated the disparity between the ATES installation depicted on the Redflex diagrams and the actual ATES installation at the Tyler St.-SR 91 intersection in light of the ongoing operation of the ATES at the time Appellant received his citation.

Finally, Veh. Code Section 21455.5(c)(2)(D) which imposes a duty on a governmental agency to competently oversee the establishment and change of signal phases involving an ATES was not met in this case in view of Officer Teagarden's testimony. With regard to the efficacy and accuracy of the purported 3.65 second yellow light interval contained on the data bar at the top of the ATES-generated video and photos, there was no evidence at trial that Officer Teagarden (who had access to the Redflex "Court Pack" containing the actual video computer file in MPEG format) ever undertook to verify that the yellow light interval at the Tyler St.-SR 91 intersection was compliant with MUTCD Table 4D-102(CA). Since the Prosecution never made the MPEG video computer file available to the

defense as required by *Brady, supra*, Appellant's expert was precluded from analyzing it with his computer video indexing software.⁵

It seems hard to believe that in today's Internet culture where people upload videos of their pets doing silly things to YouTube by the thousands and commercial video sites like Netflix send streaming video all over the world, that a 12 second video clip from a City of Riverside ATES was not made available to a defendant charged with running a red light to download in order to verify that the yellow light interval listed on their citation complies with the legal minimum specified by MUTCD Table 4D-102(CA). In fact, in the top right-hand corner of Appellant's citation the following text appears: "Your video can also be *viewed* online for 60 days from the date of violation at: www.photonotice.com..." Consequently, it is reasonable to infer in light of the fact that Redflex and/or the City of Riverside had already integrated appropriate Internet technology into the process of handling ATES-generated citations but as a matter of policy, simply chose not to make the 12 second video clips available to download by defendants and/or their attorneys to allow them to independently verify yellow light interval data.

Respondent's likely justification for not making the 12 second video clips available can be found in Veh. Code Section 21455.5(e)(1) which requires all ATES-generated photographic records to be confidential. Veh. Code Section 21455.5(f) states that:

"…any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation."

⁵ Regrettably, although Appellant's expert has finally been able to analyze the MPEG video file pertaining to Appellant's citation as a result of Respondent's Motion to Augment, his analysis of the yellow light interval on the video clip cannot be considered.

In order to resolve the apparent conflict between the need for government agencies to keep ATES-generated photographic records confidential versus the right of a defendant to meaningfully review photographic evidence of the alleged violation by being able to download an MPEG video file so that the yellow light interval can be accurately analyzed on a computer, the City of Riverside could have required defendants like the Appellant herein to sign a Confidentiality Agreement as is routinely done by many government agencies upon the state and Federal levels. However, there is no evidence that the City of Riverside ever considered such an option which arguably constitutes a violation of Veh. Code Section 21455.5(c)(2)(A), *supra*, which requires governmental agencies to formulate appropriate guidelines in order to fairly implement California's ATES legislation.

Taken as a whole, it is evident from Officer Teagarden's testimony that there are virtually no safeguards inherent in the system utilized by the City of Riverside Police Department to guarantee the accuracy of yellow light interval data. According to Officer Teagarden, *yellow light timing information is obtained from the data bar at the top of citations and is not independently confirmed by computer* (RT 14:9-22). Officer Teagarden went on to testify that he and the other retired police officer/operators do routine inspections of ATES devices *using stopwatches* (RT 13:1-22). It does not take a leap of faith to conclude that an ATES manufacturer/supplier like Redflex whose equipment depends on computers to operate might have problems with a governmental entity such as the City of Riverside whose personnel check yellow light intervals in the field with stopwatches and never check the yellow light intervals depicted on Redflex videos with computers or indeed, at all. When a non-standard ATES installation which requires violation of MUTCD Section 4D.12 in order to even function, is combined with multiple violations of the duties

enumerated in Veh. Code Section 21455.5(c) by both Redflex and City of Riverside, errors in data collection are virtually assured. In light of the foregoing, the presumptions afforded to properly installed and functioning ATES systems under the provisions of Evidence Code Sections 1552 and 1553 should not apply in this case.

CONCLUSION

When one attempts to put this case in perspective it is evident that both the City of Riverside and its ATES equipment vendor, Redflex Traffic Systems, dropped the ball with regard to the installation and operation of the ATES at the Tyler St.-SR 91 intersection. Although Respondent belatedly provided documents via their recent Motion to Augment that should have been turned over to Appellant prior to trial pursuant to *Brady, supra*, it is surprising that the major issue posed by the disparity between the planned installation of the ATES as depicted on Redflex diagrams and the actual installation of the ATES at the Tyler St.-SR 91 intersection with respect to the location of the Main Camera was not even addressed in Respondent's Brief.

While it is evident that the ATES as installed created a safety hazard secondary to the traffic signal being rotated toward the Main Camera on the median thereby creating a 40% obstruction of the signal lens faces (and violation of MUTCD Section 4D.12), the fact that the actual installation so significantly departed from the official Redflex design diagrams calls into question whether anyone on Respondent's behalf has ever reviewed the ATES installation documentation and noted the departure from the design diagrams with regard to the actual ATES installation at the Tyler St.-SR 91 intersection. The same can be said for the Court during trial who seemed preoccupied with the question of whether or not the 12 second video showed the appellant running the red light.

Respondent has not effectively countered any of Appellant's arguments in his Opening Brief and accordingly, Appellant remains steadfast in the belief that the Trial Court committed error and abused its discretion which ultimately resulted in a miscarriage of justice.

APPELLANT'S CERTIFICATE OF WORD COUNT
PURSUANT TO CRC RULES 8.928(b) & 8.1012(d)(2)

Appellant's Reply Brief is hereby certified to be compliant with California Rules of Court 8.928, 8.928(b) and 8.1012(d)(2) as hereinafter described: Appellant's Reply 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. Appellant's Reply Brief, excluding the Title Page, Table of Authorities and Certificate of Word Count is 19 pages in length and consists of 5,592 words (including footnotes) as counted by the word processing software used to generate it, Microsoft Word 2010.