

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CLERK OF COURT

14 APR -2 AM 10:00

ALAN CARROLL, CLERK OF THE COURT

1 R. Allen Baylis Bar No. 194496  
2 9042 Garfield Ave., Suite 202  
3 Huntington Beach, CA 92646  
4 Voice: (714) 962-0915  
5 Fax: (714) 962-0930

6 Attorney for Defendant

BY \_\_\_\_\_ DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ORANGE

10 PEOPLE OF THE STATE OF  
11 CALIFORNIA  
12 PLAINTIFF

13 v.

14 [REDACTED] THO [REDACTED]  
15 DEFENDANT

) Case No. LW024 [REDACTED] PEA  
)  
) DEFENDANT'S BRIEF ON PEOPLE'S  
) CHARGING DEFENDANT WITHOUT  
) PROBABLE CAUSE.  
)  
) Date: April 2, 2014  
) Time: 10:00 AM  
) Dept: H14  
)

17  
18 TO THE ABOVE-ENTITLED COURT:

19  
20 The defendant in the above-entitled action submits the  
21 following brief in order to bring certain issues to the Court's  
22 attention.  
23

24 I  
25 FACTS

26 The statement of facts submitted by the City omitted  
27 certain testimony which bears correction:  
28

1 Defense counsel's cross examined Mr. Underwood included  
2 his testimony regarding the fact that Redflex has, at all  
3 times that Laguna Woods has been operating its photo  
4 enforcement program, made available the ability to send a  
5 "Notice of Violation" or "Courtesy Notice" in situations  
6 where the officer is not able to verify that the registered  
7 owner was the driver of the vehicle at the time of the  
8 alleged red light violation.

9  
10 Deputy Spratt testified that Sheriff's deputies  
11 reviewing "incidents" for possible prosecution do not  
12 compare the registered owner's Soundex to the face picture  
13 taken at the intersection prior to approving the issuance  
14 of a citation and the filing of charges in the court.

15  
16 The Court received into evidence a certified copy of  
17 the Minutes of the Laguna Woods City Council meeting held  
18 on April 17, 2013, wherein the City Manager stated: "[T]he  
19 City still does issue tickets for violations where the  
20 person driving the car is not the registered owner, in  
21 hopes that the registered owner will nominate whoever was  
22 driving the vehicle."

23  
24 The evidence at trial, and based upon the citations  
25 filed with the Court, indicated that Deputy Spratt did not  
26 issue any of the subject citations. The Citations issued to  
27 [REDACTED] Mor [REDACTED] (LW024 [REDACTED] PEA & LW024 [REDACTED] PEA) were issued by  
28 Deputy Buechler. The Citations issued to C [REDACTED] Mor [REDACTED]

1 (LW024 [REDACTED] EB & LW024 [REDACTED] PEB) were issued by Deputy Jurado. The  
2 Citation issued to [REDACTED] (LW024 [REDACTED] PEA) was issued by Deputy  
3 Buechler. The Citation issued to [REDACTED] Mis [REDACTED] (LW024 [REDACTED] PEB)  
4 was issued by Deputy Jurado. The Citation issued to [REDACTED]  
5 Tho [REDACTED] (LW024 [REDACTED] EA) was issued by Deputy Jurado. The Citation  
6 issued to [REDACTED] Red [REDACTED] (LW025 [REDACTED] EA) was issued by Deputy  
7 Buechler.

8  
9 II  
10 STATUTORY ANALYSIS

11 a. Vehicle Code §21453 et seq.

12 Vehicle Code §21453 subsections (a) and (c) clearly  
13 indicate that; (a) **A driver** facing a steady circular red signal  
14 alone shall stop.... And; (c) **A driver** facing a steady red arrow  
15 signal shall not enter the intersection.... There is no  
16 provision of law that allows for any person (or business entity)  
17 to be charged with a violation of these sections of the Vehicle  
18 Code. (Under Vehicle Code § 40001(a) the people would have to  
19 prove that the owner "employ[ed] or otherwise direct[ed] the  
20 driver of any vehicle to cause the operation of the vehicle upon  
21 a highway in any manner contrary to law) Thus, only the **driver**  
22 of the vehicle can legally be charged and held criminally liable  
23 for a violation of §21453(a) or (c).

24 b. Vehicle Code §21455.5.

25 Vehicle Code § 21455.5 (c)(2)(F) states that the government  
26 agency operating an automated enforcement system is charged  
27 with: "Maintaining controls necessary to ensure that only those  
28

1 citations that have been reviewed and approved by law  
2 enforcement are delivered to violators."

3  
4 c. Vehicle Code §40518.

5 The City's analysis takes a logical leap in concluding that  
6 §40518 requires that the section requires that the law  
7 enforcement officer must charge the registered owner even  
8 without probable cause, and even worse, in situations where the  
9 evidence before, and/or easily obtained by, the officer clearly  
10 indicates that the owner is not the violator. Defense Counsel  
11 provided the Court and opposing counsel with a copy of the  
12 SB1303 Assembly Committee on Judiciary Analysis. Of great  
13 importance to the issue before the court here, is the section  
14 starting on page 4 of that document under the heading: The  
15 "Courtesy Notice" or "Notice of Non-Liability". In reading the  
16 following passage, it becomes clear that the legislature has  
17 ALWAYS intended that the officers perform an investigation into  
18 the identity of the driver BEFORE issuing a citation and causing  
19 the charges to be filed in court:

20 The law enforcement agency reviews the information and  
21 decides if there is enough evidence of a violation to justify  
22 sending a citation or a "notice of non-liability" (sometimes  
23 called a "courtesy notice"). In short, if law enforcement  
24 decides that the zoom image of the driver that is captured by  
25 the red light camera appears to match up with the driver's  
26 license photograph of the registered car owner, then a citation  
27 (or ticket) and notice to appear is sent to the registered owner  
28 of the vehicle. However, if the photograph captured by the red  
light camera appears to be a different person than the one on  
the driver's license picture of the registered owner - or if it  
is impossible to say whether it is the same person - then law  
enforcement sends the "notice of non-liability" or "courtesy  
notice" to the registered owner. The "courtesy notice" informs  
the owner that his or her vehicle was photographed failing to

1 stop for a red light, and then gives the owner the opportunity  
2 to detach and return a "notice of non-liability" that asks the  
3 owner to identify the actual driver, or to provide some other  
4 explanation for why the owner is not liable for the violation.  
5 (For example, the owner may have sold the car to someone else  
6 before the violation or the system may have simply made  
7 mistake.) Critics of the red-light camera system refer to the  
8 notices as "snitch tickets," because they encourage the owner to  
9 "snitch" on the person who was actually driving the vehicle.

10 As stated above, the "Courtesy Notice/Notice of Non-  
11 Liability" process has always been available to the City of  
12 Laguna Woods. However, the City has undertaken a conscious  
13 decision to file criminal charges against vehicle owners without  
14 first making any effort to support the charges with probable  
15 cause, and in many cases, with full knowledge that the person  
16 charged is innocent of the alleged offense.

17 It should be noted that the California State Bar Rules of  
18 Professional Conduct, Rule 5-110 states:

19 A member in government service shall not  
20 institute or cause to be instituted criminal  
21 charges when the member knows or should know that  
22 the charges are not supported by probable cause.  
23 If, after the institution of criminal charges, the  
24 member in government service having responsibility  
25 for prosecuting the charges becomes aware that  
26 those charges are not supported by probable cause,  
27 the member shall promptly so advise the court in  
28 which the criminal matter is pending.

Clearly, a law enforcement officer cannot legally initiate  
criminal prosecutions where the charges are not supported by  
probable cause simply because he or she is not acting in the  
capacity of an attorney.

1           The City laments the fact that some drivers who are alleged  
2 to have run a red light will not be prosecuted if law  
3 enforcement must conform to the constitutional mandate that the  
4 filing of criminal charges be supported probable cause. This  
5 argument falls squarely into the realm of "The end justifies the  
6 means." In providing for the "Courtesy Notice/Notice of Non-  
7 Liability" process, the legislature clearly understood that  
8 those who cannot be identified via the simple process of  
9 comparing the registered owners Soundex with the pictures taken  
10 at the intersection may not be prosecuted, as obviously, the  
11 owner that receives a "Courtesy Notice/Notice of Non-Liability"  
12 is under no legal duty or obligation to provide the driver's  
13 information to law enforcement, or anyone else. If some  
14 violators go free so be it; but the Constitution remains intact.  
15 If the City can clearly comply with the constitutional mandate  
16 that charges be brought only upon probable cause and the "15 day  
17 rule". They simply have to accept that it will require more work  
18 on the part of the officer reviewing the evidence, and they will  
19 have to accept the fact that there will be fewer successful  
20 prosecutions. If the City is unhappy with the "15 day rule" set  
21 out in §40518, they could argue a "good faith" exception to the  
22 court; or (as they could have done years ago) they could lobby  
23 the legislature to clarify the statute.

24  
25           The City's analysis of the statutes claims that its  
26 interpretation is reasonable, because otherwise, many red light  
27 violations would go un-prosecuted. However, as set out above,  
28 the legislature clearly understood that this would be the case.

1 Additionally, to the extent that the statutes are ambiguous, the  
2 rule of lenity requires courts to resolve true statutory  
3 ambiguities in the criminal defendant's favor (See *People v.*  
4 *Anderson* (2002) 28 Cal.4th 767, 780) The City has pointed out  
5 the ambiguity, and the court must resolve the ambiguity in the  
6 defendant's favor. The legislature could not have intended that  
7 law enforcement be excused from the constitutional mandate that  
8 the filing of criminal charges be supported by probable cause  
9 simply because some alleged red light runners would go un-  
10 prosecuted.

11  
12 II

13 People v. Gray

14 The City's analysis of the effect of *People v. Gray* is  
15 essentially correct. However, each defendant in these cases, and  
16 in fact every owner or driver of a vehicle photographed by the  
17 City's red light camera system, are within the class of persons  
18 to be protected by the provisions of Vehicle Code § 21455.5  
19 (c) (2) (F). Only **violators** (i.e. drivers) are to be cited and  
20 charged with such violations. Additionally, each defendant is  
21 within the class of persons to be protected by the  
22 constitutional requirement that charges not be brought which are  
23 not supported by probable cause. Each of the original citations  
24 filed against the registered owner without probable cause was  
25 issued illegally, as the charges were filed in violation of the  
26 defendant's constitutional right to be free from criminal  
27 prosecution without probable cause.

1           Therefore, the citations were not issued in accordance with  
2 law, and as a consequence, its filing with the court was void *ab*  
3 *initio*. Therefore, no complaint to which the defendant may enter  
4 a plea has been filed with the court. Where no criminal  
5 complaint is filed, or a complaint is filed which was not issued  
6 in accordance with the law, the court lacks jurisdiction to do  
7 anything other than to quash the complaint and/or dismiss the  
8 case. When an officer, exceeds the authority conferred by law,  
9 the citation or complaint is not valid and must be dismissed.  
10 (See *People v. Municipal Court (Pelligrino)* 27 Cal.App.3d 193,  
11 206) Complaint filed by private citizen without approval of  
12 District Attorney a nullity, and municipal court lacked  
13 jurisdiction to do anything except to dismiss. (See also *Ralph*  
14 *v. Police Court* 84 Cal.App.2d 257, 259-260. Where no complaint  
15 is filed, Court lacked jurisdiction and judgment of conviction  
16 was void *ab initio*, even if upheld on appeal.)

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18                           APPLICATION TO "SECONDARY" DEFENDANTS

19           The City argues that, since the charges against [REDACTED]  
20 Mor [REDACTED] and [REDACTED] Mis [REDACTED] were filed after the "primary"  
21 citations that were filed without probable cause against  
22 innocent parties were dismissed, the court should not dismiss  
23 those cases. However, had the City followed the statutory scheme  
24 and not violated the constitutional mandate require probable  
25 cause, they would have issued a "Courtesy Notice/Notice of Non-  
26 Liability" to the innocent parties, who certainly would have  
27 been free to ignore them. In that case, these two defendants  
28 would not have been before the court in these cases. It was only

1 the City's illegal "issu[ing] tickets for violations where the  
2 person driving the car is not the registered owner, in hopes  
3 that the registered owner will nominate whoever was driving the  
4 vehicle" that forced the innocent parties to participate in the  
5 legal process which resulted in [REDACTED] Mor[REDACTED] and Mr. Mis [REDACTED]  
6 being charge with the alleged violations. Thus they do fall  
7 within the class of persons the legislature (and the  
8 constitution) intended to benefit from the statutory (and  
9 constitutional) requirements.

10  
11 CONCLUSION

12  
13 Based on the above, this court should find that the City  
14 failed to comply with the statutory and constitutional mandates  
15 that the filing of criminal charges be supported by probable  
16 cause. As such the prosecutions were initiated in violation of  
17 law, and the citations were, therefore, void *ab initio*. The  
18 Court should dismiss each of these cases.

19  
20 Dated 4-2-14

Respectfully submitted:

21 [REDACTED]  
22 R. Allen Baylis for Defendant  
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