

1 Bruce Thomas Murray (SBN 306504)
2 1931 E Street
3 San Diego, CA 92102
4 murray@sagelaw.us
5 (619) 501-8556

6 Defendant, *in propria persona*

7 SAN DIEGO TRAFFIC COURT

8 PEOPLE OF THE STATE OF CALIFORNIA) Citation No. Y2124717
9 vs.)
10) REQUEST FOR TRIAL BY WRITTEN
11 BRUCE T. MURRAY,) DECLARATION; DECLARATION OF
12 Defendant) BRUCE T. MURRAY IN DEFENSE
13) AGAINST CHARGE OF ALLEGED
14) VIOLATION OF CAL. VEH. CODE § 21950;
15) POINTS & AUTHORITIES
16)
17) Trial Date: May 23, 2018
18) Adjudicator: TBA
19) Issuing officer: Hinds
20) Ticket issued: March 25, 2018
21) Bail submitted: \$238.00

22 **REQUEST FOR TRIAL BY WRITTEN DECLARATION**

23 Defendant Bruce T. Murray hereby requests a trial by written declaration, in accordance
24 with Cal. Veh. Code § 40902 and the local rules of court, in the matter relating to citation
25 number Y2124717.

26 **SUMMARY**

27 Contrary to the charge in this citation, Defendant Bruce T. Murray did in fact yield to all
28 pedestrians at the time and place described. Defendant did not violate Cal. Veh. Code § 21950.
Therefore, Defendant contests this citation.

Declaration of Bruce T. Murray in Defense Against Citation No. Y2124717

1 This declaration of facts, memorandum of points & authorities, and supporting evidence
2 demonstrate that the elements of the alleged infraction are not satisfied, and no violation took
3 place.

4 **DECLARATION**

5 I, Bruce Thomas Murray, declare under penalty of perjury and under the laws of the State
6 of California that this statement is true and correct:

7 1. I am an attorney licensed in the state of California, and I am representing myself in this
8 matter, *in propria persona*.

9 2. I have personal knowledge of the following facts and, if called as a witness, could and
10 would testify competently thereto.

11 3. A true and correct copy of Bruce T. Murray's current USAA auto insurance declarations
12 are included here as Exhibit 1.

13 4. A true and correct copy of Bruce T. Murray's USAA auto insurance declarations, from
14 Jan. 1, 1999, are included here as Exhibit 2.

15 5. At approximately 5:45 p.m., Sunday, March 25, I was driving northbound on Mission
16 Bay Blvd. in Pacific Beach, when I stopped at the red light at Grand Ave. I was stopped in the
17 right-hand turn lane. I was lawfully stopped outside of the crosswalk. I was the first car in line,
18 and I had a clear view of the crosswalk, the sidewalk, and the pedestrians.

19 6. As I waited at the red light, about 10 pedestrians were crossing Grand Ave., with groups
20 walking both southward, toward me ("oncoming"), and northward, away from me ("forth-
21 going").

22 7. I waited for the oncoming pedestrians to completely finish crossing Grand Ave. and
23 proceed onto the sidewalk.

24 8. The "forth-going" pedestrians – the group walking with their backs to me – were at least
25 three quarters of the way across Grand Ave. before I commenced my right hand turn onto
26 eastbound Grand Ave. Thus, even if my vehicle could somehow accelerate from 1-100 mph in a
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1 split second, it would have been impossible for me to hit them while turning right. Nor would
2 these pedestrians have apprehended imminent harmful contact or any sudden peril from my
3 vehicle, because they were completely out of any zone of danger that my vehicle may have
4 potentially posed. (At this point, the only vehicle that could have possibly imperiled these
5 pedestrians would have been a vehicle traveling in the right hand lane of westbound Grand Ave.)

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7 9. When I did commence my right hand turn, I did so at 1-3 mph, contrary to Officer Hinds
8 account, which puts my speed at 5-10 mph. Officer Hinds' account is factually and logically
9 impossible, because I commenced the turn from a complete stop, so I could not have somehow
10 suddenly begun the turn at 5-10 mph – nor did I accelerate to that speed while negotiating the
11 turn.

12 10. As noted above, this situation transpired late Sunday afternoon. I had just finished a jog
13 and calisthenics on the beach, and I was fully alert. For the remainder of the day, I had no
14 appointments. I was in no rush; I was not in a hurry; and had no reason **not** to yield to
15 pedestrians. And in fact, I did yield to all pedestrians on this journey.

16 11. Although motorists in California need only observe an ordinary duty of care (see citations
17 below), as a matter of habit, I consciously, deliberately and consistently apply a heightened
18 standard of care.

19 12. My observation of a heightened duty of care has resulted in a spotless driving record – no
20 citations and no accidents.

21 13. Because of my exemplary driving record, I receive a substantial discount on my
22 automobile insurance. (See Exhibit 1.)

23 14. My exemplary driving record is unbroken for as long as I keep my insurance records,
24 going back to 1999. (Exh. 2.) That's an almost 20-year spotless driving record. Older documents,
25 if I still had them, would extend my documented driving record even further. My perfect driving
26 record is not a fluke, but the result of methods that I consciously and consistently apply, and a
27 strict observance to the letter of the law.
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POINTS & AUTHORITIES

1. The court should find in Defendant’s favor, because he yielded to pedestrians in accordance with the applicable statute – and the long-established common law interpretations of it.

15. The California Vehicle Code states, “The driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk ...” Cal. Veh. Code § 21950. The applicable California Jury Instruction defines “right-of-way” as follows: “When the law requires a [driver] to ‘yield the right-of-way’ to [a pedestrian], this means that the [driver] must let the [pedestrian] go first.” CACI § 701.

16. The court has explained the statute and the instruction this way: “The rule established by this section applies only under circumstances when the different courses of the vehicle and the pedestrian render it dangerous for both to proceed on their respective ways without delay. You [the trier of fact] are instructed that when a pedestrian crossing a roadway in a crosswalk is proceeding beyond the path of the approaching vehicle so that no interference between them is reasonably to be expected, the driver need not wait and yield the right of way. You are further instructed that if a driver, after having allowed a pedestrian in a crosswalk to proceed in front of him and reach a place of safety out of the way of his automobile, with no apparent further danger of conflict between them, may then proceed to drive across and through said crosswalk and he need not wait until the pedestrian has cleared the entire roadway.” *Giles v. Happely*, 123 Cal.App.2d 894, 897 (1954).

17. Here, Defendant lived up to the law in every respect: He waited for all oncoming pedestrians to clear the crosswalk completely before commencing his right hand turn, and he waited for all forth-going pedestrians (those with their backs to him) to completely clear the eastbound lane of Grand Ave. before commencing his right hand turn. At this point, it was physically impossible for Defendant to hit any pedestrians while turning right, even if it were somehow possible for his vehicle to accelerate with rocket speed. Furthermore, because

1 Defendant allowed the forth-going pedestrians to substantially complete their crossing of Grand
2 Ave., Defendant did not place any pedestrians in apprehension of imminent harm. There was
3 simply no conceivable way that Defendant could have struck any of the pedestrians in the
4 sidewalk in the course of making his right-hand turn. In fact, Defendant completely yielded to all
5 pedestrians and negotiated his right-hand turn in an entirely safe and reasonable manner. There
6 was no violation of the Vehicle Code.
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8 18. Officer Hinds, however, seeks to impose on Defendant a non-existent bright-line
9 prophylactic rule, which states that any and all pedestrians must be totally and completely
10 beyond the crosswalk before a driver may proceed – even after the driver has already yielded to
11 them and no danger exists. This is not what the law says. In fact, this is the exact opposite of the
12 *Giles* court’s instruction, i.e., “If a driver, after having allowed a pedestrian in a crosswalk to
13 proceed in front of him and reach a place of safety out of the way of his automobile, with no
14 apparent further danger of conflict between them, may then proceed to drive across and through
15 said crosswalk and he need not wait until the pedestrian has cleared the entire roadway.” *Id.*

16 19. The proper construction of the law – and whether Defendant comported with it – are
17 questions that rightly lie with the fact-finder and the court. Whether or not a motorist “was
18 keeping a proper lookout for the approach of persons who might be about to step into the path his
19 car was traveling ... was a question of fact for the jury to determine.” *Id.* at 899. Further,
20 “whether vehicle is approaching so closely to intersection as to constitute immediate hazard to
21 persons attempting to cross intersection is question of fact.” *Van Cise v. Lencioni*, 106
22 Cal.App.2d 341, 346 (1951).

23 20. Here, it is clear that Defendant did not place any pedestrians in any danger whatsoever.
24 This was not a “near-miss.” Defendant yielded to the pedestrians, and he did everything – if not
25 more – that what the law requires. This is not a close call. Therefore, Defendant asks this court to
26 find that there was no violation as charged.
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1 **2. Defendant routinely drives through the most hazardous areas for pedestrians in**
2 **San Diego, and he always observes a heightened standard of care.**

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4 21. The California Jury Instructions describe the applicable standard of care for motorists:
5 “A person must use reasonable care in driving a vehicle. Drivers must keep a lookout for
6 pedestrians, obstacles, and other vehicles.” CACI § 700. Thus, a motorist need only use ordinary
7 care in anticipating presence of pedestrians on a highway. *Anthony v. Hobbie*, 85 Cal.App.2d
8 798, 802 (1948).

9 22. The *Hobbie* court described a heightened standard of care as the “duty to anticipate the
10 presence of persons on the highway, of keeping a vigilant lookout and of keeping his car under
11 such control as to avoid striking such persons.” *Id.*

12 23. “[E]vidence of habit or custom is admissible to prove conduct on a specified occasion in
13 conformity with the habit or custom.” Cal. Evid. Code § 1105.

14 24. As a matter of personal habit, Defendant always consciously applies the heightened
15 standard of care. Defendant lives in the Golden Hill neighborhood of San Diego (near the corner
16 of Broadway and 19th Street), and he routinely drives to the Thomas Jefferson School of Law
17 library in the East Village to conduct legal research. The route from Defendant’s home to the law
18 school is extremely hazardous for two reasons: (1) The multitude of homeless people in this part
19 of the city frequently wander and dart into the street – regardless of whether or not there is a
20 crosswalk and regardless of whether the traffic light is green or red; and (2) students at the New
21 School of Architecture and Design frequently wander into the street while texting – completely
22 oblivious to traffic. For almost six years, Defendant has consistently negotiated this dangerous
23 route without incident.

24
25 25. Defendant successfully avoids collisions because he always applies a heightened standard
26 of care, and he always yields to pedestrians. This fact is borne out by Defendants’ spotless
27 driving record. (Exhs. 1, 2.)

28 26. Defendant acted in accordance with his usual habit of care at the time and place of this

1 alleged violation. Defendant's habit of safety and care is so ingrained and longstanding, the
2 charge leveled against him by Officer Hinds is not plausible.

3 **3. Defendant's safe driving practices are in furtherance of public policy.**

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5 27. The Vehicle Code chapter on Pedestrians' Rights and Duties begins as follows: "The
6 Legislature hereby finds and declares that it is the policy of the State of California that safe and
7 convenient pedestrian travel and access, whether by foot, wheelchair, walker, or stroller, be
8 provided to the residents of the state." Cal. Veh. Code § 21949.

9 28. The California Driver Handbook, published by the Department of Motor Vehicles,
10 explains the law to the public this way, "Right-of-way rules, together with courtesy and common
11 sense, help to promote traffic safety ... Yield your right-of-way when it helps to prevent
12 collisions. It is important to respect the right-of-way of others, especially pedestrians, motorcycle
13 and bicycle riders. ... If you approach a crosswalk while driving, you are required to exercise
14 caution and reduce your speed to safeguard the safety of the pedestrian. You may need to stop to
15 ensure the safety of the pedestrian, as outlined in CVC § 21950."

16 https://www.dmv.ca.gov/portal/dmv/detail/pubs/hdbk/right_of_way

17 29. "Overzealous law enforcement" and "overzealous police practices" do not further public
18 policy. *People v. Barraza*, 23 Cal. 3d 675, 691 (1979); *People v. Wilson*, 145 Cal. App. 2d 1, 5,
19 (1956); *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

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21 30. Defendant's longstanding exemplary driving record demonstrates that he consistently
22 lives up to the policy set out by the legislature and the DMV. He is a safe and careful driver; he
23 respects the rules of the road, and he always yields to pedestrians.

24 **Conclusion**

25 31. Contrary to the charge in this citation, Defendant yielded to all pedestrians and did not
26 violate the Vehicle Code. Further, Defendant put no one in danger, and he put no one in
27 apprehension of danger. The charge that Defendant violated the Vehicle Code is simply
28 erroneous, and finds no support in the facts, the statute, case law, or public policy.

1 32. For all of the foregoing reasons, Defendant respectfully asks this court to find that he did
2 not violate Cal. Veh. Code § 21950, and to please return the Defendant's bail.
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5 DATED: March 30, 2018

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7 A handwritten signature in cursive script that reads "Bruce Murray". The signature is written in black ink and is positioned above the typed name.

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9
10 By: Bruce Thomas Murray, Esq.

11 Defendant *in propria persona*
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