

R A. BAYLIS & ASSOCIATES  
R. Allen Baylis, Esq.  
State Bar No.: 194496  
9042 Garfield Ave., Suite 306  
Huntington Beach, CA 92646  
Telephone: (714) 962-0915  
Facsimile: (714) 962-0930

THE TICKET DUMP, A.P.C.  
Patrick T. Santos, Esq.  
State Bar No.: 265982  
P.O. Box 6159  
North Hollywood, CA 91603  
Telephone: (310) 424-3050  
Facsimile: (310) 424-3051

Attorneys for Amicus Curiae  
R A. Baylis & Associates | The Ticket Dump, A.P.C.

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

THE PEOPLE,  
Plaintiff and Respondent,  
vs.  
~~██████████~~ GOLDSMITH,  
Defendant and Appellant.

) Docket No.: S201443

) APPLICATION TO FILE  
) AMICUS CURIAE BRIEF,  
) AND AMICUS CURIAE  
) BRIEF OF R. ALLEN BAYLIS AND  
) THE TICKET DUMP, A.P.C.

**APPLICATION FOR PERMISSION TO FILE**  
**AMICUS CURIAE BRIEF**

TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE,  
CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF  
THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The Law Offices of R. A. Baylis & Associates and The Ticket Dump, A.P.C. respectfully request permission to file the attached Amicus Curiae Brief in support of ██████████ GOLDSMITH.

R. A. Baylis & Associates has expertise in the issues to be decided and attorney R. Allen Baylis was counsel of record for ██████████ Khaled in *People v. Khaled* (2010) 186 Cal.App.4th Supp. 1. Mr. Baylis has defended hundreds of drivers and vehicle owners charge with alleged violations of *Vehicle Code* §§ 21453(a) and 21453(c) issued through the use of Automated Traffic Enforcement Systems (“ATES”). Having litigated red light camera cases in Orange, Los Angeles, San Diego, Riverside, San Bernardino and Ventura Counties, applicant is familiar with the testimony and evidence presented by the prosecution in these cases. Additionally, applicant has represented appellants in approximately forty appeals arising from the use of red light camera systems. For these reasons, applicant asks this Court to permit the filing of the attached brief.

The Ticket Dump, A.P.C. is a licensed professional corporation owned and operated by attorney Patrick Thomas Santos, which handles a voluminous amount of ATES cases. Applicants have closely followed the case at bar and believe that additional briefing and argument on the questions presented will be helpful to the Court. For these reasons, applicants ask this Court to permit the filing of the attached brief.

No party or any counsel to a party to this appeal has made any monetary contribution intended to fund the preparation or submission of the

proposed amicus brief. No person or entity other than amicus curiae, its members, and its counsel made any monetary contribution intended to fund the preparation or submission of the proposed amicus brief.

R A. BAYLIS & ASSOCIATES

THE TICKET DUMP, A.P.C.

By: \_\_\_\_\_  
R. Allen Baylis, Esq.  
April 24, 2013

By: \_\_\_\_\_  
Patrick T. Santos, Esq.  
April 24, 2013

R A. BAYLIS & ASSOCIATES  
R. Allen Baylis, Esq.  
State Bar No.: 194496  
9042 Garfield Ave., Suite 306  
Huntington Beach, CA 92646  
Telephone: (714) 962-0915  
Facsimile: (714) 962-0930

THE TICKET DUMP, A.P.C.  
Patrick T. Santos, Esq.  
State Bar No.: 265982  
P.O. Box 6159  
North Hollywood, CA 91603  
Telephone: (310) 424-3050  
Facsimile: (310) 424-3051

Attorneys for Amicus Curiae  
R A. Baylis & Associates | The Ticket Dump, A.P.C.

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

THE PEOPLE,  
Plaintiff and Respondent,  
vs.  
[REDACTED] GOLDSMITH,  
Defendant and Appellant.

} Docket No.: S201443  
} AMICUS CURIAE  
} BRIEF OF R. ALLEN BAYLIS AND  
} THE TICKET DUMP, A.P.C. IN  
} SUPPORT OF [REDACTED] GOLDSMITH

**TABLE OF CONTENTS**

	<u>Page</u>
<i>Table of Authorities</i> .....	iv
I. INTRODUCTION.....	1
II. THE PROSECUTION MUST BE HELD TO A HIGH STANDARD TO PROVE THE RELIABILITY OF THE ATES EVIDENCE IN ORDER TO PROTECT DEFENDANTS' RIGHTS TO DUE PROCESS AND A FAIR TRIAL. ....	4
A. The Testimony Of Police Officer Alone Should Not Be Deemed Sufficient To Authenticate Photos, Video And Documents Produced By An ATES Contractor.....	4
B. The Use Of ATES To Cite Large Numbers Of Drivers With Red Light Violations Has Resulted In Abuses Of The Police Power. ....	5
III. CONCLUSION .....	6
IV. CERTIFICATE OF COMPLIANCE .....	8

**TABLE OF AUTHORITIES**

Page(s)

**Cases**

*Elkins v. Superior Court* 41 Cal.4th 1337 ..... 1  
*People v. Khaled* 186 Cal.App.4th Supp. 1 ..... 2, 5  
*People v. Mayfield* (1997) 14 Cal.4th 668, 767 ..... 3

**BRIEF OF AMICUS CURIAE R. ALLEN BAYLIS AND  
THE TICKET DUMP, A.P.C.**

**I. INTRODUCTION**

It is important for this court to understand how these types of cases are dealt with at the trial court level throughout California. Arguably, the best way for this Court to gain such insight is to hear from practitioners who are “in the trenches” on a daily basis.<sup>1</sup> To that end, Applicants relate the following brief examples in an effort to show the extent to which many trial courts will go to insure that those charged with red light violations through the use of ATEs are found guilty.

In *People v. Lim* (L.A.S.C. Case No. 76364HA, Los Angeles Superior Court Appellate Division Case No. BR050061), at trial, Hawthorne Police officer S. Jimenez presented the People’s evidence to the court. From the beginning of his testimony it became clear that he was sent to court to present writings and evidence of which he had no personal knowledge, given to him by a third party who was not present at trial. His testimony began by reading from a document purporting to lay a foundation for the photos, video and other documents provided to him by Redflex. Defense counsel (Mr. Baylis/Applicant) objected to the officer simply reading from a document. The court sustained this objection. However, the officer’s reading from the document continued, and counsel objected to the statements read from the document as lacking foundation and hearsay. The court overruled the objections. The officer admitted that he had no personal knowledge of any facts other than his training in how the system works and that he had been to the intersection at some unspecified date and timed the

---

<sup>1</sup> See generally, *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1366 (discussing practitioner’s amicus briefs from the trial court perspective).

yellow lights with a stopwatch. In the words of the trial court, the officer was testifying based on “a random collection information that has come your way.”

Defense counsel also objected to the use of an unauthenticated photo purporting to be a DMV Soundex picture of the defendant. The actual Soundex print-out was not presented to the court. Instead, the Court saw a Microsoft Word document presented on an in-court computer screen, and the Soundex had not been signed under penalty of perjury by the person who printed it - - so to provide sufficient indicia of trustworthiness.

On cross-examination of Officer S. Jimenez, it became clear that the officer was relying entirely on a document consisting of out-of-court statements made by persons not present in court for the truth of the matters asserted therein - - *i.e.*, a declaration of the Custodian of Records provided to the office by Redflex.

As this court is aware, in *People v. Khaled* (applicant My. Baylis’ case) the court found that documents, photographs and video obtained through the use of an ATEs were not admissible based solely on the testimony of a police officer, where all of the evidence at issue was provided by a private company that contracts with the City to obtain, store and retrieve the evidence for use in court. (*Khaled*, at pp. 5-6.) The facts, evidence and issues presented in the *Lim* case were nearly identical to those presented in *Khaled*, in that Officer Jimenez could only repeat hearsay and testimonial hearsay statements in an attempt at laying a foundation for the admissibility of the evidence he presented.

At the conclusion of the bench trial in *Lim*, the trial court stated that that the evidence was “flimsy”. Upon finding Mr. Lim guilty, the trial court stated “[t]he fact is that the evidence is flimsy, yes. But it is not so



flimsy as to warrant an acquittal.” Clearly, by the court’s own admission, the court’s findings were supported only by flimsy evidence, and were not supported by substantial evidence as required by law.<sup>2</sup> On appeal to the Los Angeles Superior Court Appellate Division, *Lim*’s conviction was affirmed.

In another recent case that is still on appeal, the police officer produced no evidence to support the fact that the defendant was either the owner of the vehicle depicted in the photographs, other than the citation itself. He also provided no evidence - - not even a DMV Soundex as in *Lim* - - to prove that the defendant was the driver. On closing argument, defense counsel argued that there was insufficient evidence to prove an essential element of the offense: that the defendant was driving the vehicle at the time of the alleged violation. The trial court responded, “There is sufficient evidence to prove that the defendant was the person cited. If he wanted to dispute that he was the driver, he should have come into court and testified.” This statement, in a nut shell, is indicative of the trial courts’ prevailing “presumption of guilt” regarding red light camera defendants.

The forgoing is but two examples of how trial courts handle red light camera cases. The trial courts see several of these cases every week, the majority of which are *pro per* defendants attempting to defend themselves against police officers and, in some cases, prosecuting attorneys. The courts have heard the “foundational” testimony of these police officers

---

<sup>2</sup> *People v. Mayfield* (1997) 14 Cal.4th 668, 767 (To determine if the sufficiency of the evidence to support a conviction of a criminal offense, the court of appeal reviews “the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.”)

hundreds of times, and perhaps, find it difficult to justify finding one defendant not guilty simply because he or she has retained competent counsel.

One traffic court Referee all but deemed the foundational requirements to have been met at the outset based on his having heard the testimony on previous occasions; and decided the cases based only on whether the face picture taken at the intersection was sufficient to establish that the defendant was the driver.

Even though the abuses are rampant, few convictions are ever taken on appeal. The reality of the situation is that even where a defendant has retained counsel, the legal issues in these cases are manifold and complex. Most defendants find it too costly and time consuming to appeal a traffic conviction. As a result, nearly every ATES traffic conviction where the defendant has retained counsel has been taken on appeal because counsel has taken it upon themselves to handle the appeal on a pro bono basis.

## **II. THE PROSECUTION MUST BE HELD TO A HIGH STANDARD TO PROVE THE RELIABILITY OF THE ATES EVIDENCE IN ORDER TO PROTECT DEFENDANTS' RIGHTS TO DUE PROCESS AND A FAIR TRIAL.**

### **A. The Testimony Of Police Officer Alone Should Not Be Deemed Sufficient To Authenticate Photos, Video And Documents Produced By An ATES Contractor.**

The Courts below have allowed the evidence collected by Redflex and other red light camera contractors to be admitted upon a minimal, if not non-existent, foundational burden as to how the data was collected and its' reliability. As a practical matter, the reasoning adopted by the courts below

in this case has resulted in the trial courts treating red light camera case defendants as all but “guilty-until-proven-innocent.”

To make matters worse, trial courts have permitted police officers and, in some cases, non-sworn city employees to review the evidence, approve the issuance of the Notice to Appear, and to testify in court. As is demonstrated by the examples above, the trial courts have allowed police officers, and in some cases non-sworn civilian police department employees to present the evidenced and testify in court. The result has been that the People have been allowed, and therefore encouraged, to prevail having presented a minimal, if not downright sloppy case to the court.

**B. The Use Of ATEs To Cite Large Numbers Of Drivers With Red Light Violations Has Resulted In Abuses Of The Police Power.**

Since *People v. Khaled* 186 Cal.App.4th Supp. 1 was published, the cities in Orange County that continued to operate red light camera systems found it necessary to have an employee of the camera system contractor appear as a witness in order to authenticate the evidence. However, it soon became apparent that a prosecuting attorney was needed to call the camera company witness, conduct direct examination of the witness and introduce the evidence. As in most counties in California, the Orange County District Attorney has chosen not to appear on traffic cases. (See *People v. Carlucci* 23 Cal.3d 249.) As such, the cities of Santa Ana and Laguna Woods, in Orange County, have retained a private law firm to purportedly represent “The People of the State of California” in the prosecution of ATEs cases! It is not surprising that a city like Santa Ana would find it necessary to hire private counsel to protect its’ interest in maintaining a high conviction rate

on ATES cases. (The City's authority to prosecute these violations of state law and to retain private counsel to do so is a matter of dispute, and perhaps not appropriate to discuss at this juncture.)

A quick review of the ATES cases filed by the Santa Ana Police Department reveals that the City charges nearly 2000 drivers per month with red light violations through the use of its ATES. As an example of the extent to which Santa Ana will go to maximize the conviction rate, on several occasions, Santa Ana Police Officers have testified under oath that it is the policy of the Department to approve the issuance of an ATES Notice to Appear to the registered owner of the vehicle even where the photographic evidence before him clearly indicates that the owner is not the driver. In other words, they knowingly file charges against innocent people. This results in more cases being filed in the court system and effectively invokes the power of the court to assist in the police investigation.

### **III. CONCLUSION**

The City of Inglewood has undertaken to operate several automated enforcement systems. However, in order to prosecute these cases, they must be held accountable to come into court with admissible evidence of the alleged violations, and compliance with the enabling statutes. For several years now, the cities which operate ATES have been enjoying the benefit of producing specious evidence in order to convict thousands of *pro per* defendants. However, when a defendant undertakes to hold the People accountable to follow the rules and produce admissible evidence, the courts should do their part and require that the evidence proffered by the People meets the standards of admissibility under the law. The fact that these are infraction cases or that the cities and/or the camera contractors claim some

safety benefit does justify allowing the People and the courts to apply a lower standard of proof, or a departure from the California Evidence Code, in order to achieve convictions more easily.

This Court should reverse the conviction.

R A. BAYLIS & ASSOCIATES

THE TICKET DUMP, A.P.C.

By: \_\_\_\_\_  
R. Allen Baylis, Esq.  
April 24, 2013

By: \_\_\_\_\_  
Patrick T. Santos, Esq.  
April 24, 2013

**IV. CERTIFICATE OF COMPLIANCE**

I certify that the attached APPLICATION TO FILE AMICUS CURIAE BRIEF, AND AMICUS CURIAE BRIEF uses 13-point Times New Roman font and the word-count feature of my word processing program reports that these documents together contain 2,306 words.

DATE: April 24, 2013

By: \_\_\_\_\_  
PATRICK T. SANTOS