

1 JOSEPH W. FLETCHER
CITY ATTORNEY (SBN 96813)
2 RYAN O. HODGE
DEPUTY CITY ATTORNEY (SBN 234047)
3 CITY OF SANTA ANA
20 CIVIC CENTER PLAZA M-29
4 P.O. BOX 1988
SANTA ANA, CALIFORNIA 92702
5 TELEPHONE: (714) 647-5201
FACSIMILE: (714) 647-6515

6 Attorneys for Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA

7
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

10
11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 vs.

14 [REDACTED] CALHOON,
15 [REDACTED] CHAPMAN,
16 [REDACTED] COLLINS,
17 JAMES F [REDACTED]
18 [REDACTED] GREENE,
19 [REDACTED] SAAVEDRA,
20 [REDACTED] TRUONG,

21 Defendants.

) Case No.: SA151929PE
SA154656PE
SA153758PE
SA154550PE
SA154097PE
SA154608PE
SA152672PE

22 PEOPLE'S RESPONSE TO SUPPLEMENT
TO DEFENDANTS' TRIAL BRIEF

Date: August 18, 2010
Time: 1:30 p.m.
Dept.: C-52

23 TO DEFENDANTS, DEFENDANTS' ATTORNEY, AND THE HONORABLE
24 COURT:

25 COMES NOW Plaintiff, The PEOPLE OF THE STATE OF CALIFORNIA, in response
26 to the Supplement to Defendants', [REDACTED] CALHOON, [REDACTED] CHAPMAN, [REDACTED]
27 COLLINS, JAMES F [REDACTED] GREENE, [REDACTED] SAAVEDRA, and [REDACTED] TRUONG,
28 Trial Brief on the following grounds:

///

- 1 1. The proper foundation and authentication was laid for the admissibility of the
2 People's evidence;
- 3 2. The Santa Ana Police Officer's testimony provided sufficient foundation for the
4 admission of the People's evidence;
- 5 3. The Redflex Declaration is admissible and provided further foundation for the
6 People's evidence;
- 7 4. Photographs, videos, and other electronic data are presumptively accurate;
- 8 5. The evidence presented by the People does not violate the Confrontation Clause.
9 Accordingly, all of the People's evidence should be found admissible and sufficient.

10 Plaintiff's response is based upon this Memorandum of Points and Authorities, upon all
11 documents already on file in these matters, and upon any additional oral or documentary evidence
12 offered at the hearing on Defendants' Supplemental Brief.

13 I. ARGUMENT

14 A. ***THE PROPER FOUNDATION AND AUTHENTICATION WAS LAID FOR***
15 ***THE ADMISSIBILITY OF THE PEOPLE'S EVIDENCE***

16 The foundational evidence necessary to admit photographs and videos into evidence
17 depends upon the way in which the photographs and video are presented and used. Photographs
18 and video may be used to supplement oral testimony. However, photographs may also be
19 admitted as evidence and establish guilt beyond a reasonable doubt notwithstanding the fact that
20 no human witness can verify the truth of what the photos depict. The photographs and video
21 submitted in this matter depict Defendants running a red light in violation of *Vehicle Code*
22 section 21453. Therefore, the photographs and video submitted as part of the People's exhibits
23 are themselves probative evidence of the offense.

24 The rule for admission of photographs into evidence was first stated by *People v. Bowley*,
25 (1963) 59 Cal.2d 855. Noting that photographs are useful for different purposes, the California
26 Supreme Court focused on the value of photographs and video as "probative evidence of what
27 they depict. Used in this manner they take on the status of independent 'silent' witnesses." *Id.* at
28 860; see also, *United States v. Taylor*, 530 F.2d 639, 642 (5th Cir. 1976). In this regard, the

2

1 *Bowley* Court concurred with *People v. Doggett*, (1948) 83 Cal.App.2d 405, a case in which the
2 only evidence of the crime was a photograph. The *Bowley* Court noted that the photograph in
3 *Doggett* was admitted into evidence even though no human witness testified that it accurately
4 depicted what it purported to show. *Bowley*, 59 Cal.2d at 860. The *Doggett* Court found that
5 evidence as to when the photograph was taken, the place the photograph was taken, and that the
6 defendants were the persons shown in the photograph was sufficient to establish a foundation for
7 the photograph's admissibility. The *Bowley* Court agreed that the picture was allowed to "speak
8 for itself" and that "this seems to be a sound rule." *Bowley*, 59 Cal.2d at 860-61. Specifically,
9 the *Bowley* Court explained:

10 "There is no reason why a photograph or film, like an X-ray, may not, in a proper
11 case, be probative in itself. To hold otherwise would illogically limit the use of a
12 device whose memory is without question more accurate and reliable than that of a
13 human witness. It would exclude from evidence the chance picture of a crowd
14 which on close examination shows the commission of a crime that was not seen by
15 the photographer at the time. It would exclude from evidence pictures taken with
16 a telescopic lens. It would exclude from evidence pictures taken by a camera set
17 to go off when a building's door is opened at night. (citation omitted) We hold,
18 therefore, that a photograph may, in a proper case, be admitted into evidence not
19 merely as illustrated testimony of a human witness but as probative evidence in
20 itself of what it shows." *Bowley*, 59 Cal.2d at 861.

21 As *Bowley* holds, photographs are admissible and may be the sole evidence used to
22 convict a defendant notwithstanding the fact that a person cannot testify to the truth of the matter
23 depicted in the photos. The fact that the photographs were digitally stored on a computer does
24 not inject additional foundational requirements, as the printout of the photograph is presumed to
25 be accurate under *Evidence Code* section 1553, as detailed more fully below.

26 Defendants cite to *People v. Beckley, Jr.*, (2010) 185 Cal.App.4th 509, in an attempt to
27 argue that *Doggett* and *Bowley* are no longer applicable law to the admission of photographic and
28 video evidence. However, the *Beckley* Court cites to the same rules created by *Doggett* and

2

1 *Bowley* when making its determination on the admissibility of the evidence. While the *Beckley*
2 Court found a lack of foundation for the admission of the photographs, the facts of that case are
3 clearly distinguishable from the facts in the instant cases. The *Beckley* Court was dealing with a
4 photograph that was pulled off of MySpace, an internet website that has no control over content.
5 In the instant matters, the People presented photographs that were captured and stored through a
6 secured automated enforcement system.

7 In the instant matters, the People introduced evidence as to when the photos were taken,
8 where the photos were taken, and that the defendants were the individuals driving the vehicles
9 depicted in the photographs. This showing was sufficient for the admission of the People's
10 evidence.

11 ***B. THE SANTA ANA POLICE OFFICER'S TESTIMONY PROVIDED***
12 ***SUFFICIENT FOUNDATION FOR THE ADMISSION OF THE PEOPLE'S***
13 ***EVIDENCE***

14 When the silent witness approach is used to admit photographs and video into evidence, a
15 witness must explain the reliability of the process by which the photograph or video was created.
16 In the instant matter, the People presented Santa Ana Police Officer Mark Bell, who had personal
17 training, experience, and knowledge pertaining to the City of Santa Ana's red light camera
18 enforcement system.

19 Santa Ana Police Officer Mark Bell testified regarding the operation and use of the
20 Redflex red light camera system by the City of Santa Ana. Officer Bell testified as to his duties
21 in the Traffic Division, including the administration of evidence obtained by the Redflex
22 automated enforcement system. Officer Bell detailed his hours of extensive on site and field
23 training, certification from Redflex, and experience and with the system. In addition, Officer Bell
24 testified in detail as to the following: the contract between the City of Santa Ana and Redflex;
25 how the Redflex automated enforcement system works, including how the cameras operate at the
26 intersection, how the information on the data bar is automatically encrypted on the image by the
27 computer at the intersection, how it is electronically transmitted from the computer at the
28 intersection to Redflex via a secured internet server, and how the data is digitally stored; the

1 public hearings conducted by the City prior to implementation of the system; the guidelines for
2 selecting locations for the system; the warning notice phase and public announcements; the
3 warning signs for the system; the Police Department guidelines for screening evidence and
4 determining whether to approve the issuance of a citation; as well as the specific facts related to
5 the subject violations of *Vehicle Code* section 21453(a) in the City of Santa Ana. Based on his
6 training and experience, Officer Bell has sufficient knowledge and understanding of the Redflex
7 automated enforcement system to provide the referenced testimony to properly authenticate and
8 lay the foundation for the admission of the People's evidence.

9 The Courts recognize the competency level required of a testifying officer, as well-
10 illustrated and explained in *People v. Flaxman*, (1997) 74 Cal.App.3d Supp. 16. In *Flaxman*, the
11 Court addressed a defendant's challenge that the testifying officer could not "competently testify
12 as to appellant's speed because there was no proof of the (radar gun's) accuracy." In rejecting
13 that argument, the Court held as follows:

14 "It is a daily occurrence in our courts for witnesses to rely on the accuracy of
15 machinery such as X-ray cameras and various kinds of testing devices without
16 being required to explain the functioning of the machine or to vouch for its
17 accuracy. Otherwise, we would constantly be 're-inventing the wheel' thereby
18 imposing an inordinate cost on litigants and causing a great waste of judicial time.
19 It is sufficient that the operator of a radar machine be familiar with the device and
20 its operation and, recognizing that the device might not be properly functioning
21 upon occasion, take a reasonable amount of precautionary measures to assure that
22 it is properly operating." *Flaxman*, 74 Cal.App.3d Supp. at 24.

23 The People presented a knowledgeable witness with training, experience, and familiarity
24 with the process who properly laid the foundation as to the operation and reliability of the
25 Redflex automated enforcement system. The People are not required to present the individual
26 who designed the software for the system, or every person who has physically touched the
27 system. In *People v. Lugashi*, the Court noted:

28 ///

R

1 "That some of her knowledge came from hearsay discussions with fellow workers
2 ... no more renders her testimony incompetent than if it resulted from reading
3 hearsay information manuals from hardware or software manufacturers ... If
4 appellant were correct, only the original hardware and software designers could
5 testify since everyone else necessarily could understand the system only through
6 hearsay." *People v. Lugashi*, (1988) 205 Cal.App.3d 632, 641.

7 Based on the training and experience of Officer Bell, the testimony provided regarding the
8 Redflex automated enforcement system was sufficient to properly authenticate and lay the
9 foundation for admission of the People's exhibits into evidence.

10 **C. *THE REDFLEX DECLARATION IS ADMISSIBLE AND PROVIDED***
11 ***FURTHER FOUNDATION FOR THE PEOPLE'S EVIDENCE***

12 In addition to the photographic and video evidence, the People submitted a Declaration
13 from the Redflex Custodians of Record. The Redflex Declaration qualifies for the official
14 records exception to the hearsay rule pursuant to *Evidence Code* section 1280, as well as the
15 business records exception under *Evidence Code* section 1271. Both the business records
16 exception and the official records exception require that the evidence presented must have been
17 made in the regular course of business, at or near the time of the event, and that there is an
18 indication of trustworthiness. The official records exception does not require testimony, so long
19 as the evidence was made by and within the scope of duty of a "public employee", which is
20 defined by *Evidence Code* section 195 as "an officer, agent, or employee of a public entity."

21 Redflex is an agent of the City of Santa Ana, which is a public entity, as permitted by
22 *Vehicle Code* section 21455.5(d). Since the City of Santa Ana entered into a contract with
23 Redflex to install and operate the red light camera system, documents prepared by Redflex in
24 their capacity as an agent of the City of Santa Ana fall within the scope of documents prepared by
25 a public employee. Therefore, documents prepared by Redflex, including the Declaration
26 prepared by the custodians of records, may be imbued with the trustworthiness of a public police
27 agency. See, *Imachi v. DMV* (1992) 2 Cal.App.4th 809, 816-817 (trustworthiness indicia
28 supplied by fact that private lab technician, acting on behalf of law enforcement agency, was

R

1 reporting first hand observations as well as presumption of official duty regularly performed,
2 citing *Evidence Code* section 664). The fact that Redflex serves as an agent for the City of Santa
3 Ana meets the chief foundation of the special reliability granted official and business records,
4 which is that they are based on first hand observation of someone whose job it is to know the
5 facts recorded. Thus, Redflex documents are not inadmissible hearsay and can be properly
6 admitted by the court.

7 The Redflex Declaration provides pertinent information regarding the red light camera
8 system utilized by the City of Santa Ana. Specifically, the document confirms that: Redflex
9 received the photographs and video from the intersection; a Redflex employee confirmed the
10 validity of the digital signature on the data; the evidence was prepared by Redflex and made
11 available to the Santa Ana Police Department; and, the evidence is a true copy of the original
12 information maintained by Redflex. The custodians of records who signed the Redflex
13 declaration are qualified to attest that the evidence presented at trial were digitally stored by
14 Redflex and sent to court in a medium that makes it possible for the court to view the evidence.
15 Thus, these statements are admissible pursuant to *Evidence Code* section 1280 because they
16 establish authenticity and chain of custody.

17 ***D. PHOTOGRAPHS, VIDEOS, AND OTHER ELECTRONIC DATA ARE***
18 ***PRESUMPTIVELY ACCURATE***

19 Printed representations of images stored on a video or digital medium are presumed to be
20 accurate representations of the images they purport to represent. Specifically, *Evidence Code*
21 section 1553 states that, "A printed representation of images stored on a video or digital medium
22 is presumed to be an accurate representation of the images it purports to represent." Similarly,
23 *Evidence Code* section 1552 states that, "A printed representation of computer information or a
24 computer program is presumed to be an accurate representation of the computer information or
25 computer program that it purports to represent."

26 Case law also demonstrates that the testimony required to admit computer generated data
27 enjoys a relatively low threshold. See, *People v. Lugashi*, (1988) 205 Cal.App.3d 632, 641-644
28 (discussing the national trend towards "less extensive foundational showings" required for

2

1 computer generated records); *Aguimatang v. California State Lottery*, (1991) 234 Cal.App.3d
2 769, 797 (witness for the purpose of admitting computer records need not be a computer expert,
3 but only needs to generally understand the system's operation and possess sufficient skill to use
4 the system and explain the resulting data).

5 The information in the data bar on the photographs, including the date, time, and location
6 of the alleged violation, is also presumed to be accurate. This information is automatically
7 generated by a computer and the computer software runs an internal check to verify the accuracy
8 of the time and date entry. There is no witness stamping the information into the data bar on the
9 photograph, and therefore no hearsay issues. The data bar is encrypted in the photograph by the
10 computer at the time the cameras take the photographs. The software program on the computer
11 maintains the information, runs internal tests to confirm the information is accurate, and
12 automatically encrypts the photographs with the data bar. See, *People v. Hawkins*, (2002) 98
13 Cal.App.4th 1428 (the timing of a "computer's clock" is presumed accurate under *Evidence Code*
14 section 1552.)

15 *Evidence Code* sections 1552 and 1553 create a presumption that digital images are
16 reliable depictions of the incident, unless a defendant introduces evidence that the computer
17 information is inaccurate or unreliable. In these cases, Defendants did not produce any evidence
18 to show that the cameras or the computer equipment malfunctioned, or that anyone tampered with
19 the evidence.

20 ***E. THE EVIDENCE PRESENTED BY THE PEOPLE DOES NOT VIOLATE***
21 ***THE CONFRONTATION CLAUSE***

22 The Sixth Amendment of the *United States Constitution* provides a criminal defendant
23 with "the right... to be confronted with the witnesses against him." However, the Confrontation
24 Clause is not applicable to the red light camera photographs, video, data bar, or the Redflex
25 declaration.

26 In *Crawford v. Washington*, (2004) 541 U.S. 36, the United States Supreme Court
27 examined the history of the Confrontation Clause and stated that the "principle evil at which the
28 Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly

1 its use of *ex parte* examinations as evidence against the accused.” *Id.* at 50. *Crawford* concluded
2 that the Confrontation Clause “applies to ‘witnesses’ against the accused – in other words, those
3 who ‘bear testimony.’” *Id.* at 51 (citation omitted). “Testimony” in this regard, “is typically ‘[a]
4 solemn declaration or affirmation made for the purpose of establishing or proving some fact.’” *Id.*
5 at 56 (citation omitted). As such, only “testimonial” statements are subject to the Confrontation
6 Clause. *Id.* at 51; *United States v. Cervantes-Flores*, 421 F.3d 825, 831 (9th Cir. 2005); *United*
7 *States v. Lopez-Moreno*, 420 F.3d 420 (34) (5th Cir. 2005). Although *Crawford* declined to
8 provide a comprehensive definition of a “testimonial” statement (*Crawford*, 541 U.S. at 68,
9 fn.10), the Court did provide guidance as to what types of statements are and are not testimonial.
10 *Crawford* stated that most hearsay statements admissible through established exceptions to the
11 hearsay rules are not subject to the Confrontation Clause since “[m]ost of the hearsay exceptions
12 covered statements that by their nature were not testimonial – for example, business records or
13 statement in furtherance of a conspiracy.” *Crawford*, 541 U.S. at 56. The Court also gave
14 several examples of “testimonial” statements, including: prior testimony at a preliminary hearing,
15 before a grand jury, or at a former trial and police interrogations. *Id.* at 57-58.

16 These issues were further analyzed in *Melendez-Diaz v. Massachusetts*, (2009) 129 S.Ct.
17 2527, where the defendant was charged with distributing cocaine and objected to three
18 “certificates of analysis” showing the results of forensic analysis performed on the seized
19 substance. *Id.* at 2531. The certificates were not generated by computers or machines, but were
20 sworn statements prepared and signed by laboratory analysts reporting that the bags had been
21 examined by the analysts and found to contain cocaine. *Id.* The Court held that admission of the
22 certificates violated the defendant’s Sixth Amendment right to confront the witnesses against
23 him. *Id.* at 2542. The Court concluded that the certificates were testimonial statements within
24 the ambit of the Confrontation Clause because they were sworn declarations made for the purpose
25 of proving a fact. *Id.* at 2532. However, the *Melendez-Diaz* Court created an exception for
26 declarations concerning the authenticity and accuracy of machines, stating “we do not hold, and it
27 is not the case, that anyone whose testimony may be relevant in establishing chain of custody,
28 ///

1 authenticity of the sample, or accuracy of the testing device, must appear in person as part of the
2 prosecution's case." *Id.* at 2542, fn. 1.

3 The California Court of Appeal addressed whether *Melendez-Diaz* applied to accuracy
4 records relating to a breathalyzer testing machine. *People v. Chikosi*, (2010) 185 Cal.App.4th
5 238. In *Chikosi*, the defendant argued that the officer who supplied the breathalyzer accuracy
6 records did not testify, thus depriving the defendant of his rights under the Confrontation Clause.
7 In rejecting the defendant's argument, the Court held that the "accuracy records were non-
8 testimonial in nature," and therefore the evidence derived from those records was properly
9 admissible. In so holding, the *Chikosi* Court quoted with approval the following excerpt from
10 *United States v. Bacas*, 662 F.Supp.2d 481 (E.D. Va. 2009):

11 "Collateral facts that do not speak to a defendant's guilt or innocence have been
12 excepted from Sixth Amendment protection. (citation omitted) Neutral
13 statements that relate only to the operation of a machine constitute such collateral
14 facts. (citation omitted) Unlike the certificates at issue in *Melendez-Diaz*, in the
15 instant case (the calibration test results) propound neutral information relating only
16 to the proper operation of the radar equipment." *Id.* at 484.

17 Essentially, not everyone whose testimony is relevant to establishing chain of custody,
18 authenticity, or accuracy of a testing device must testify in person to protect defendant's right to
19 cross-examine witnesses because the Confrontation Clause does not apply to facts that do not
20 relate to guilt or innocence.

21 Based on the above, the Redflex Declaration does not constitute a "testimonial" statement.
22 Thus, the Confrontation Clause does not apply to the Redflex Declaration because it merely
23 contains neutral or collateral facts that do not provide specific evidence that the defendant
24 committed the violation at issue. The Redflex Declaration simply establishes that Redflex has
25 cameras at the subject intersections that capture the incident, the date is stored on Redflex
26 computers, and the data is printed so that the court may review the evidence at trial.

27 Similarly, numerous cases hold that information generated by machines, such as the
28 photographs and video generated by the Redflex system, are non-testimonial statements outside

1 the ambit of the Confrontation Clause of the Sixth Amendment. *United States v. Washington*,
2 498 F.3d 225, 230-231 (4th Cir. 2007) (raw data contained in the machine printout constituted
3 'statements' of the machines themselves, not their operators); *United States v. Moon*, 512 F.3d
4 359, 361-362 (7th Cir. 2008) (machines do not constitute "witnesses against" defendants); *United*
5 *States v. Crockett*, 586 F.Supp.2d 877, 885 (E.D. Mich. 2008).

6 Here, the photographs and video constitute machine-generated raw data and thus are
7 outside the reach of the Confrontation Clause. Similar to the test results in *Moon* and
8 *Washington*, which were generated solely by machines, the photographs and video are produced
9 solely by red light cameras without the assistance of a human operator. As such, they are not
10 testimonial statements, but rather statements of machines that are not subject to the Confrontation
11 Clause.

12 In sum, under the *Chikosi* analysis, the People are not required to present a custodian of
13 record from Redflex to testify that the photographs and video presented at trial come from the
14 Redflex computers.


15 **II. CONCLUSION**

16 For the foregoing reasons, any objection or argument in the Supplement to Defendants'
17 Trial Brief as to the sufficiency and admissibility of the evidence in this matter should be
18 OVERRULED or DENIED.

19
20 Respectfully submitted,
21 JOSEPH W. FLETCHER
22 City Attorney

23 Dated: August 4, 2010

24 By:

25 
26 RYAN O. HODGE
27 Deputy City Attorney
28 Attorneys for THE PEOPLE OF THE STATE OF CALIFORNIA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
(C.C.P. SECTION 1013(a), 2015.5)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the aforesaid county; I am over the age of eighteen and not a party to the within action; my business address is 20 Civic Center Plaza, 7th Floor, Santa Ana, California 92702.

On August 4, 2010, I served the foregoing document scribed as: **PEOPLE'S RESPONSE TO SUPPLEMENT TO DEFENDANTS' TRIAL BRIEF** in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

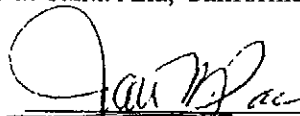
R. Allen Baylis
ATTORNEY AT LAW
9042 Garfield Avenue, Suite 306
Huntington Beach, CA 92646

MAIL: I am readily familiar with my employer's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit; and by

The document was transmitted by facsimile transmission and was reported as complete and without error, (714) 962-0930.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 4, 2010 at Santa Ana, California.



ALMA

2