

1-25-12

[REDACTED] WINTERS

[REDACTED]

HESPERIA, CA 92345

760-[REDACTED]

Pro Per Defendant

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO, APPELLATE DIVISION

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

[REDACTED] WINTERS,

Defendant.

Case No. ACRAS 1100151

Trial Court No. V053926ADW

OPENING BRIEF

Victorville Court  
Commissioner Patrick L. Singer

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## STATEMENT OF FACTS

Appellant incorporates by reference the Clerk's Transcript on Appeal.

## GROUND FOR APPEAL

### **I. Judicial Error: Commissioner Singer erred in ruling the evidence was admissible.**

Here, no employees of Redflex testified at trial. Instead, the prosecution relied on the testimony of Sheriff's Service Specialist Barbara Hill to lay the foundation for the "red light" photographs and videotape. Sheriff's Service Specialist Hill did not testify she made the photographs or videotape herself. She did not testify she was present at the time of appellant's alleged vehicle code violation, and witnessed the events depicted in the photographs. She did not testify to any personal knowledge of the contents of the photographic images or the method of their creation, storage or transmission. She did not testify regarding the background, training or qualifications of any of the Redflex employees involved in any of those activities.

At most, Sheriff's Service Specialist Hill testified she had undergone training in the past in the operation and procedures involving the "red light" camera system, and that she was aware of some of the general operating procedures for the system. She did not, and could not, attest that the photos or videos were true representations of what they purported to depict because she had no such personal knowledge. In short, Sheriff's Service Specialist Hill failed to provide any of the evidence necessary to lay a foundation for the admission of the photographs or the videotape into evidence.

We note a striking similarity between the facts of this case and the facts in *People v. Khaled* (2010) 186 Cal.App.4th Supp. 1, a recent decision by the appellate division of the Orange County Superior Court. In that case, the appellant was given a traffic citation generated by a red light camera system

operated by the same company involved in this case. The only prosecution witness was a local police officer, who testified about the general process by which "red light" camera photographs are used to generate traffic citations. After noting the prosecution bore the burden of establishing the admissibility of the evidence in support of its case, the appellate division held the police officer was not competent to lay a foundation for the admission of the photographs into evidence:

Here, Officer Berg did not qualify as the appropriate witness and did not have the necessary knowledge of underlying workings, maintenance, or recordkeeping of Redflex Traffic System. The foundation for the introduction of the photographs and the underlying workings of the Redflex Traffic System was outside the personal knowledge of Officer Berg. (*Khaled*, supra, at p. 8.)

In the absence of a proper foundation, the photographic evidence was held inadmissible. Because the sole evidence supporting the conviction was the inadmissible photographs, the court reversed the judgment and ordered the charges dismissed. (*Id.* at pp. 8-9.)

The same holds true in this case. The settled statement establishes that the only evidence supporting the conviction was the photographs and videotape from the red light camera system. The sole foundation offered for the admissibility of that evidence was the testimony of Sheriff's Service Specialist Hill, who was not competent to lay that foundation. Accordingly, the evidence was inadmissible under Evidence Code section 1401, and the trial court abused its discretion by admitting it. In the absence of any admissible evidence to support the conviction, the judgment must be reversed.

[Note: If the above sounds familiar it is because it was taken almost verbatim from this court's decision in *People v Macias*, Case Number ACRAS900155, unpublished, filed December 21, 2010, in which this court overturned Commissioner Singer. Changes were made to the name, title and gender of pronouns.]

**II. Commissioner Singer erred in ruling it was the defendant's job to subpoena witnesses from Redflex.**

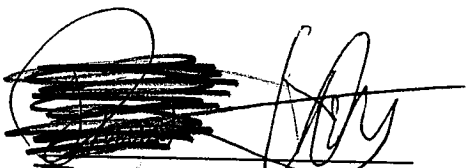
If the above were not sufficient to make it obvious, this point alone leaves no room for doubt that the commissioner ignored the *Macias* decision, in which he was overturned. It clearly said, "The prosecution bore the burden of establishing the admissibility of the evidence in support of its case." (*Macias*, supra, at page 8).

**CONCLUSION**

Given the above, Appellant respectfully requests that this court:

1. Remand this case to the lower court with instructions that the decision be reversed and the case dismissed.
2. Per Code of Civil Procedure 1209(a)(3-5) find Commissioner Patrick L. Singer in contempt for ignoring the *Macias* decision (supra).

Submitted this the 25<sup>th</sup> day of January, 2012.

  
Winters  
Pro Per / Appellant