

IN THE APPELLATE DIVISION OF THE SUPERIOR COURT  
COUNTY OF KERN, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF )  
CALIFORNIA, )

No. AP002615A

Plaintiff and Respondent )

Kern County Superior Court

No. P29052

vs. )

OPINION

██████████ BEVACQUA, pro per )

Defendant and Appellant )

PROCEDURAL HISTORY

On January 19, 2010, a traffic court trial was held before Judge Charles R. Brehmer. Appellant ██████████ Bevacqua was found guilty of a violation of Vehicle Code section 21453(c), failure to stop at red arrow signal. At the trial, the court admitted evidence of a video, and photographic images taken from a red light camera which purport to show the incident in question. Attached to the exhibit (People's exhibit 2) was a declaration from the custodian of records of Redflex Traffic Systems, the company which operates the red light cameras. The declaration was submitted under Evidence Code 1280, official records.

## DISCUSSION

Evidence code section 1280 states:

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies:

- (a) The writing was made by and within the scope of duty of a public employee.
- (b) The writing was made at or near the time of the act, condition, or event.
- (c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

In the instant case there was a failure to establish (a) and (c). The custodian of records works for a private company, which installs and services red light cameras. There was no evidence to establish that he or she is a public employee. Furthermore, the witness who testified at trial was unable to establish the method and time of preparation of the evidence offered, so as to indicate its trustworthiness. Therefore, the People failed to establish the foundation necessary for the admission of the video and photographs. Without the video and photographs, there is insufficient evidence to convict the appellant.

## CONCLUSION

The evidence submitted at the trial was admitted in violation of the hearsay rule. Since there is insufficient to support a conviction, the judgment is reversed. This case has now been twice tried and twice reversed. The court finds that there is significant prejudice to the appellant, and the case is barred from re-trial.

  
\_\_\_\_\_  
HUMPHREY, J.

**PROOF OF SERVICE BY MAIL**

**STATE OF CALIFORNIA, COUNTY OF KERN**

I am employed by the County of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 1415 Truxtun Avenue, Bakersfield, California 93301.

On 12/23/10, I served the foregoing document described as RULING MINUTE ORDER ON APPEAL , AP 2615A, on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SCOTT SPIELMAN  
DISTRICT ATTORNEY  
1215 TRUXTUN AVENUE  
BAKERSFIELD, CA 93301  
(via interoffice mail)

BAKERSFIELD BRANCH, TRAFFIC  
DIVISION  
(VIAL INTEROFFICE MAIL)

██████████ BEVACQUA  
██  
██  
APPELLANT IN PRO PER

HON. JOSEPH GIANQUINTO  
SUPERIOR COURT COMMISSIONER  
(VIA INTEROFFICE MAIL)

BY MAIL, I caused such envelope to be deposited in the mail at Bakersfield, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the County's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California in the ordinary course of business.

Executed on 12/23/10, at Bakersfield, California.

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

  
\_\_\_\_\_  
S. RANEY