

CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION SEVEN

No. B229748

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

ANNETTE B [REDACTED],

Defendant and Appellant.

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SECOND APPELLATE DISTRICT
COURT OF APPEALS

Appeal from the Appellate Division of the Superior Court of the State of
California for the County of Los Angeles

The Honorable Patti Jo McKay, Anita H. Dymant and Fumiko H.
Wasserman

Appellate Division Case No. BR048012

Superior Court Case No. BI020734

AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT

SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP

Michael D. Stewart, Bar No. 161909

Gregory P. Barbee, Bar No. 185156

John M. Hynes, Bar No. 265778

333 South Hope St., 43rd Floor

Los Angeles, California 90071

Tel: (213) 620-1780

Attorneys for *Amicus Curiae*

Redflex Traffic Systems, Inc.

CITY OF SANTA ANA CITY
ATTORNEY'S OFFICE

Joseph Straka, Bar No. 128877

Jose Sandoval, Bar No. 131471

Melissa M. Crosthwaite, Bar. No.
228131

20 Civil Center Plaza M-29

P.O. Box 1988

Santa Ana, California 92702

Tel: (714) 647-5201

Attorneys for *Amicus Curiae* the City
of Santa Ana

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to subdivision (f) of Rule 8.360 and subdivision (c) of Rule 8.200 of the California Rules of Court, Redflex Traffic Systems, Inc. ("Redflex") and the City of Santa Ana (the "City") respectfully request permission to file a brief as *amici curiae* in support of Respondent The People of California.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Statement of Relevant Facts

Redflex Traffic Systems, Inc. ("Redflex") and the City of Beverly Hills jointly operate and obtain information from red light camera systems in Beverly Hills. [Clerk's Transcript ("CT"), p. 18.] On July 3, 2009, a Redflex red light camera system photographed Appellant driving through a red light in Beverly Hills. [CT, p. 29.] The Beverly Hills Police Department issued Appellant a citation for failure to stop at a red light in violation of California Vehicle Code ("CVC") section 21453(c). [CT, p. 1.] The red light camera that photographed Appellant driving through a red light was inspected and serviced on June 23, 2009, shortly before Appellant's violation. [CT, p. 29.]

B. Relevant Procedural History

1. Trial Court Proceedings

At trial on January 21, 2010, Officer Mike Butkus of the Beverly Hills Police Department testified for the prosecution. [CT, pp. 28-29.] He testified that he was trained in the operation of and had experience working with Redflex red light camera systems. [CT, p. 28.] More specifically, he testified that he had five years of experience in red light automated enforcement and that he had completed 40 hours of automated enforcement training. [CT, p. 18.]

Officer Butkus then gave Appellant a packet containing photographs of her violation, a Maintenance Log pertaining to the red light camera that captured her violation for before and after her violation occurred and other documents related to her citation. [CT, p. 28.] Officer Butkus testified in detail how the Redflex red light camera system works and is maintained. [CT, p. 28.] He testified as to the meaning of the data boxes imprinted on the photographs and how they are generated. [CT, p.28.] He also explained the workings of the triggering mechanism that causes the system to take photographs and a video of drivers in the intersection during a red light. [CT, p. 18.] For the sake of clarity, he used enlarged photographs for purposes of demonstration and urged Appellant to refer to her own citation to understand how his testimony related to her particular citation. [CT, p. 28.]

Officer Butkus testified that he personally reviewed the photographs captured by the red light camera to determine whether Appellant should have been issued a citation. [CT, pp. 18, 29.] He testified that Appellant's violation occurred at approximately 7:08 p.m. on Wednesday, June 3, 2009 at the intersection of Beverly Drive and Wilshire Boulevard in the City of Beverly Hills. [CT, p. 29.] Based on his review of the photographs and video depicting Appellant's violation, Officer Butkus testified that the traffic light at issue had been yellow for 3.15 seconds before it turned red, and that such an interval is compliant with California law. [CT, p. 29.] He further testified that the light had been red for 0.28 seconds when Appellant entered the intersection at a speed of 29 miles per hour and that the driver in the photograph appeared to be Appellant. [CT, p. 29.] He then played the video of Appellant's violation, both in real-time and in slow motion. [CT, p. 29.]

In addition to Officer Butkus's testimony, the prosecution offered into evidence photographs and a video depicting Appellant's

violation and a Maintenance Log for the red light camera system at issue . [CT, pp. 25, 29.] Officer Butkus testified that he reviewed the Maintenance Log and that based on his review, the camera system was working properly on the date and at the time of Appellant's violation. [CT, p. 29.]

Appellant made an oral motion in *limine* to exclude the photographs and video depicting her violation and the Maintenance Log on grounds of lack of foundation, hearsay and a violation of the Confrontation Clause of the Sixth Amendment. [CT, p. 28.] The court denied the motion. [CT, p. 28.] Appellant then asked for and was granted an opportunity to conduct *voir dire* of Officer Butkus, and once again objected to the introduction of the evidence. [CT, p. 29.] The trial court overruled Appellant's objection and admitted the evidence, holding that testimony of a Redflex employee was not required to authenticate and lay the foundation for admissibility of the evidence. [CT, p. 28.] The court made clear that the prosecution had never been required to offer testimony of a Redflex employee (such as the custodian of records or a field service technician) for the evidence to be admissible. [CT, p. 28.] According to the court, Officer Butkus was qualified to authenticate the evidence and lay the foundation for its admission. [CT, p. 28.] The court also noted that Appellant could have filed a discovery motion or subpoenaed a Redflex employee, but she chose not to do so. [CT, p. 28.]

On the basis of the evidence described above, the trial court found Appellant guilty of violating CVC section 21453(a). [CT, p. 15.] The trial court ordered Appellant to pay a fine in the amount of \$435.00. [CT, p. 16.]

2. **Appellate Division Proceedings**

Appellant appealed her conviction to the Appellate Division of the Superior Court, which affirmed her conviction. See People v.

B [REDACTED] (Los Angeles Super. Ct., App. Div. Nov. 24, 2010), No. BR-048012, at 6. The Appellate Division rejected Appellant's contentions that the photographic and video evidence of her violation and the related Maintenance Log were not properly authenticated and constituted inadmissible hearsay and that their admission violated her rights under the Confrontation Clause. Id. at 3-6.

The Appellate Division held that Officer Butkus's testimony was sufficient to authenticate the evidence of Appellant's violation. Id. at 3-4. The court also held that the photogarphic and video evidence did not constitute hearsay because a photograph is not a "statement" to which the hearsay rule applies. Id. at 4. Even if it were to constitute hearsay, the court held that the evidence was admissible under the business records exception to the hearsay rule because Officer Butkus's testimony that he was familiar with the creation of the evidence based on his knowledge of how the Redflex red light cameras worked rendered him a "qualified witness" under the exception. Id. at 3-4.

The court also rejected Appellant's Confrontation Clause argument, holding that the photographs and video did not constitute testimonial hearsay because they did not contain "statements" to which the hearsay rule applies. Id. at 4. The court also held that the Maintenance Log did not constitute testimonial hearsay because to the extent that it was a computer generated testing report, it too was not a "statement" to which the hearsay rule applies. Id. The court explained that the Maintenance Log would not be hearsay even if it contained entries by a human technician because it was created for the purpose of determining the accuracy of the camera; thus, it was not an out-of-court analog to trial testimony and lacked the formality of such testimony. Id. Alternatively, the court held that the Maintenance Log was not testimonial because it qualified is a document prepared in the ordinary course of equipment maintenance. Id. at 6.

In rejecting Appellant's Confrontation Clause argument, the Appellate Division distinguished Melendez-Diaz v. Massachusetts (2009) 129 S.Ct. 2527 on the ground that that case involved "sworn affidavits" prepared by human analysts concerning laboratory testing. Id. at 5. In contrast, according to the court, this case involves photographs and videos automatically generated by a machine with no input by human technicians. Id. Moreover, the court noted that the Melendez-Diaz Court expressly refused to extend its holding to accuracy-testing reports like the Maintenance Log. Id.

3. The Present Appeal

In this appeal, Appellant once again argues the trial court improperly admitted the evidence of her violation because the evidence was not properly authenticated, the evidence constituted inadmissible hearsay and she was not given an opportunity to confront the witnesses against her in violation of the Confrontation Clause. [See Appellant's Opening Brief, pp. 11-40.]

II. MEMORANDUM OF LEGAL AUTHORITIES

A. Reflex and the City's Interest in this Case

Redflex is the largest and longest-established photo enforcement technology provider in the United States. Redflex has been operating for over 20 years and has over 1,200 photo enforcement systems in more than 240 communities in 21 states. As the industry leader, Redflex pioneered the expansion of fixed and mobile red light cameras. Redflex's mission is to reduce the risk of tragedy on the road by making an impact on dangerous driving behavior. Consistent with that mission, Redflex has innovated photo enforcement technology that provides unsurpassed accuracy in reducing red light-related automobile collisions.

Redflex and the City of Inglewood operate and obtain information from the red light camera system that photographed Appellant failing to stop at the subject red light, leading to Appellant's conviction and this appeal. The trial court found Appellant guilty of failing to stop at the red light on the basis of the photographs and videos taken by Redflex's red light camera system.

The City operates several fixed red light cameras throughout its jurisdiction, and has an interest in ensuring that it has the ability to effectively enforce traffic laws and promote public safety. The City also has a critical interest in ensuring that the Court understands that the City has the ultimate discretion to determine if a citation is to be issued using data obtained from a red light camera.

The City has a unique interest in this case because the red light camera violation in the primary case relied upon by Appellant – People v. Khaled (2010) 186 Cal.App.4th Supp. 1 – occurred in the City. As such, the City has a critical interest in showing this Court why Khaled is critically distinguishable from this case and thus should be wholly disregarded.

Redflex and the City would be harmed by a ruling in favor of Appellant. The red light automated enforcement industry is often in the public eye, as are municipalities who use red light camera systems to enforce traffic laws and promote public safety. Private automated enforcement companies like Redflex, as well as municipalities who seek to institute or renew red light camera programs are keenly aware of the legal issues affecting the industry. A ruling in favor of Appellant would affect the provision of red light camera enforcement systems across California and would therefore harm Redflex's photo enforcement business, as well as the ability of the City and other cities across California to enforce traffic laws and promote public safety. Moreover, Redflex, as a manufacturer and

operator of red light camera systems, and the City, as the end user of such systems, are uniquely positioned to explain why the trial court properly admitted the evidence offered against Appellant and why Appellant's conviction should therefore be affirmed.

B. Leave Should be Granted to Allow Redflex and the City to File an *Amici Curiae* Brief in Support of Respondent.

Subdivision (f) of Rule 8.360 and subdivision (c) of Rule 8.200 of the California Rules of Court provide for the filing of briefs as *amicus curiae* in support of any party in the California Court of Appeal. Redflex and the City believe that this case presents unique issues of interest to manufacturers, operators and users of automated enforcement systems, thereby necessitating additional argument on the issue of whether the trial court correctly admitted the evidence of Appellant's violation and found Appellant guilty of violating the red light statute.

The admissibility of evidence generated by red light camera systems has been heavily litigated in lower California courts for years. Given the unique procedural setting in which CVC infractions are adjudicated, the California Court of Appeal has not had the opportunity to speak on these issues and establish binding precedent for lower courts to follow – until now. Defendants convicted of red light statute violations often appeal their convictions to the Appellate Divisions of their respective Superior Court, which continue to issue conflicting decisions on the admissibility of automated enforcement evidence. See, e.g., *People v. Goldsmith* (2011) 193 Cal.App.4th Supp. 1 (finding automated enforcement evidence admissible over appellant's authentication, hearsay

and Confrontation Clause challenges);¹ People v. Khaled (2010) 186 Cal.App.4th Supp. 1 (holding that the testifying officer failed to provide testimony sufficient to lay the foundation for admission of automated enforcement evidence). In addition to these published decisions, California courts have issued numerous other conflicting unpublished decisions on these issues. See, e.g., People v. Tapp, No. 30-2010-00400115 (Orange County Sup. Ct., App. Div. Mar. 1, 2011); People v. Blumenthal, Nos. SA156171PE; SA158670PE; SA161657PEA; SA162212PE; SA158598PE; SA162876PE (Orange County Super. Ct. Feb. 9, 2011); In re 57 City of El Cajon Photo Red Light Cases (San Diego County Sup. Ct. Jan. 5, 2011); People v. Soriano, No. SA151252PE (Orange County Sup. Ct. June 18, 2010).

Because Appellate Division decisions are not binding on one another and are of questionable precedent altogether, the decision in this case will be the leading authority in California on the admissibility of automated enforcement evidence. As such, the holding in this case will have a substantial effect on Redflex's automated enforcement business, as well as the City's ability to use red light cameras to improve public safety. Moreover, given Redflex and the City's unique experience dealing with issues related to the admissibility of automated enforcement evidence, Redflex and the City's view on these issues will significantly assist the Court in deciding the critical issues raised in this case.

¹ Goldsmith is currently on review in the California Court of Appeal, Second District, Division Three. Oral argument was held on July 13, 2011.

Redflex and the City do not seek to expand the issues raised by Appellant,² but rather seek to offer their unique perspective on whether the trial court properly admitted evidence of Appellant's violation and found Appellant guilty of violating CVC section 21453(a), which are the primary issues Appellant has raised.³ Redflex and the City are familiar with the issues in this case, are keenly interested in their resolution, and believe it advisable for this Court to consider their arguments.

Redflex and the City's brief addresses the following points:

1. Why the current procedures in place for adjudicating automated enforcement violations are consistent with California's substantial public policy interest in the expeditious disposal of traffic infractions.
2. Why all evidence of Appellant's violation was properly authenticated.
3. Why none of the evidence of Appellant's violation constitutes inadmissible hearsay.
4. Why admission of the evidence of Appellant's violation did not violate her rights under the Confrontation Clause of the Sixth Amendment.
5. Why the current procedures in place for adjudicating automated enforcement violations promote public safety by making the maintenance of automated enforcement systems cost-effective.

² See Pan Asia Venture Capital Corp. v. Hearst Corp. (1999) 74 Cal.App.4th 424, 429 n.4; Bruno v. Superior Court (1990) 219 Cal.App.3d 1359, 1365; California Ass'n for Safety Educ. v. Brown (1994) 30 Cal.App.4th 1264, 1274-75; Longval v. W.C.A.B. (1996) 51 Cal.App.4th 792, 798 n.5.

³ Cornette v. Dep't of Transp. (2001) 26 Cal.4th 63, 77.


III. CONCLUSION

For the reasons set forth above, Redflex and the City respectfully request that this Court allow the filing of the brief accompanying this motion.

DATED: July 14, 2011

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By



MICHAEL D. STEWART
GREGORY P. BARBEE
JOHN M. HYNES

Attorneys for *Amicus Curiae* REDFLEX
TRAFFIC SYSTEMS, INC.

Dated: July 14, 2011

CITY OF SANTA ANA CITY ATTORNEY'S
OFFICE

By


JOSEPH STRAKA
JOSE SANDOVAL
MELISSA M. CROSTHWAITE

Attorneys for *Amicus Curiae* THE CITY OF
SANTA ANA