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[REDACTED] GOLDSMITH

**IN THE COURT OF APPEAL STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION 3**

PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff/*Respondent*,

vs.

[REDACTED] GOLDSMITH,

Defendant/*Appellant*

) Case No.: B231678

) Trial Court Case:  
) 102693IN  
) BR048189

) **APPLICATION FOR PERMISSION**  
) **TO FILE AN AMICUS CURIAE**  
) **BRIEF; AMICUS CURIAE BRIEF OF**  
) **THE LAW OFFICE OF RICHARD**  
) **ALLEN BAYLIS**  
) **[CRC, RULE 8.200(c)]**

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

TO THE HONORABLE PRESIDING JUSTICE JOAN DEMPSEY  
KLEIN, AND THE HONORABLE ASSOCIATE JUSTICES OF THE  
CALIFORNIA COURT OF APPEAL, SECOND DISTRICT, DIVISION  
THREE:

The Law Office Of Richard Allen Baylis respectfully requests  
permission to file the attached Amicus Curiae Brief. This brief supports  
[REDACTED] GOLDSMITH, Defendant and Appellant.

The applicant has expertise in the issues to be decided and was  
counsel of record for [REDACTED] KHALED, Defendant and Appellant in  
*People v. Khaled* (2010) 186 Cal.App.4th Supp. 1. Applicant has closely  
followed the case at bar and has read and is familiar with the briefs.  
Applicant believes that additional briefing and argument on these points  
will be helpful to the Court. For these reasons, applicant asks 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.

The Law Office of Patrick T. Santos has assisted applicant in the  
formatting of this request, but the opinions and legal analysis contained in  
the proposed amicus brief are solely the applicant's.

DATE: August 15, 2011

R. A. BAYLIS & ASSOCIATES

By:   
R. Allen Baylis

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## TABLE OF CONTENTS

	<u>Page</u>
<i>Table of Authorities</i> .....	<i>iv</i>
I. THE TRIAL COURT IMPROPERLY ADMITTED EVIDENCE THAT LACKED FOUNDATION AND WAS NOT AUTHENTICATED.	1
A. The Photographs And Video Were Not Admissible Due To The People's Failure To Authenticate The Evidence. ....	1
B. The People's Evidence As To The Date And Time Of The Alleged Violation. And Length Of The Yellow Light Were Admitted In Spite Of The People's Failure To Lay A Foundation For The Admissibility Of The Evidence.....	4
II. CONCLUSION .....	7
III. CERTIFICATE OF COMPLIANCE .....	8
IV. PROOF OF SERVICE .....	9

TABLE OF AUTHORITIES

Page

**Cases**

*People v. Albert Jerome Beckley Jr.* 185 Cal.App. 4th 509 .....1, 2  
*People v. Bowley* (1963) 59 Cal.2d 885 .....1  
*People v. Doggett* (1948) 38 Cal.App.2d 405 .....1  
*People v. Hawkins* (2002) 98 Cal.App.4th 1428 .....4  
*People v. Hawkins* (2002) 98 Cal.App.4th 1428 .....5  
*People v. Khaled* 186 Cal.App.4th Supp. 1 .....5, 6  
*St. Clair v. Johnny’s Oyster & Shrimp, Inc.*(S.D.Tex.1999) 76 F.Supp.2d  
773.....2

**Statutes**

Evidence Code §1552 .....2  
Evidence Code §1553 .....2  
Evidence Code §1553 .....3  
Evidence Code §403(a).....6

**Other Authorities**

Parry, Digital Manipulation and Photographic Evidence: Defrauding The  
Courts One Thousand Words At A Time (2009) 2009 J.L. Tech.& Pol’y  
175.....2

**BRIEF OF AMICUS CURIAE**  
**THE LAW OFFICE OF RICHARD ALLEN BAYLIS**

**I. THE TRIAL COURT IMPROPERLY  
ADMITTED EVIDENCE THAT LACKED  
FOUNDATION AND WAS NOT  
AUTHENTICATED**

**A. The Photographs And Video Were Not Admissible**

**Due To The People's Failure To Authenticate The  
Evidence.**

*People v. Albert Jerome Beckley Jr.* 185 Cal.App. 4th 509 addresses the issue of authentication of digital photographs. The Court in *Beckley* brings *People v. Doggett* (1948) 38 Cal.App.2d 405, and *People v. Bowley* (1963) 59 Cal.2d 885, into the 21<sup>st</sup> century. A photograph is a writing and authentication is required before it can be admitted into evidence. (*Beckley, supra* at 514) In 1948 and 1963 when *Doggett* and *Bowley* were decided, in order for one to manipulate photographic images and movies one would have to possess the equipment (i.e. special cameras, dark room, equipment and chemicals) and skills to do what was at the time considered "trick photography." This was especially difficult with moving pictures (video). In *Doggett* a photography expert testified that the photo that was admitted was not a composite and had not been faked. The court in *Beckley* stated:

"Such expert testimony is even more critical today to prevent the admission of manipulated images than it was when *Doggett* and *Bowley* were decided.... Indeed, with the advent of computer software programs such as

Adobe Photoshop "it does not always take skill, experience, or even cognizance to alter a digital photo." (Parry, Digital Manipulation and Photographic Evidence: Defrauding The Courts One Thousand Words At A Time (2009) 2009 J.L. Tech.& Pol'y 175, 183.) Even the Attorney General recognizes the untrustworthiness of images downloaded from the internet, quoting the court's warning in *St. Clair v. Johnny's Oyster & Shrimp, Inc.*(S.D.Tex.1999) 76 F.Supp.2d 773, 775 that "[a]nyone can put anything on the Internet. No website is monitored for accuracy and *nothing* contained therein is under oath or even subject to independent verification absent underlying documentation. Moreover, the Court holds no illusions that hackers can adulterate the content of *any* website from *any* location at any time."

(*Beckley* at 514-516.)

The printouts of the photos etc. in these cases are presumed to be an accurate representation of the data stored on the computer. (Evid. Code §§ 1552, 1553) "The issue, however, was not whether the computer's printer could be trusted to reliably print out what was on the computer's screen or stored on some site but whether the content of what was on the site was reliable."

(*Beckley, supra* at 517) Such is the situation here. Are the images presented here reliable reproductions of the images that passed through the lens and struck the image sensor? Are the data presented here reliable reproductions of the information gathered by the computers? Has any of it been altered since the time of alleged violation? Do the People have witness who can authenticate the writings?

The Appellate Division in *Goldsmith* took an extremely broad view of the effects of Evid. Code §§ 1552 and 1553. While it is true that a

machine cannot make a statement, it is also true that machines, such as computers (as well as human beings) can make errors. Even more important, data such as digital photographs and video can be altered through mistake, malfunction or malfeasance. For example: A person could use any one of the readily available photo-editing programs to make an altered version of a digital photograph. Once this digital photograph is stored on a computer, it can be printed. Evidence Code §1553 only creates the presumption that the computer and printer correctly converted the altered and stored digital data to a photograph on paper. §1553 does not create a presumption that the photograph printed is an accurate representation of the original unaltered photograph.

Digital photographs can be corrupted due to a software error or perhaps by a hacker or disgruntled employee altering data on the computer's storage media. This is exactly why, in the absence of a witness who took the photograph or someone with personal knowledge of what it depicts, a photograph such as those produced by the RedFlex system, require the testimony of a computer or photography expert to provide testimony indicating that the photograph was examined and found to be authentic and not faked. Investigator Young was not such an expert. Ultimately, all Investigator Young was able to testify to was that the photographs appeared to be of the type produced by the city of Inglewood's



photo enforcement contractor, RedFlex. None of what RedFlex told him about how the system works or any of the citation specific facts were verified as being accurate by Investigator Young. Perhaps Investigator Young's testimony was sufficient to establish that the writings (photographs) were what they purported to be; that is, photographs produced by RedFlex. However, that alone is not sufficient to authenticate them or the data bar information as an accurate representation of what occurred at the intersection at the time of the appellant's alleged red light violation.

**B. The People's Evidence As To The Date And Time Of The Alleged Violation, And Length Of The Yellow Light Were Admitted In Spite Of The People's Failure To Lay A Foundation For The Admissibility Of The Evidence.**

The type of computer generated date and time information at issue here is readily distinguishable from that presented in *People v. Hawkins* (2002) 98 Cal.App.4th 1428 in that the date and time information contained in the "data bar" of the Redflex digital images, is not merely a print-out of the computer's internal operations as they were in *Hawkins*. The Witness's testimony indicates that he had no independent personal knowledge as to the date and time of the alleged violation, nor had he verified that any of the citation specific facts contained in the data bar was correct. Thus

authentication of the date, time, length of yellow phase and length of time the light is alleged to have been red must be subject to the analysis for proof of authenticity presented in *Hawkins*.

In *People v. Khaled* the court found that documents, photographs and video obtained through the use of an automated enforcement system 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 5-6 The facts, evidence presented at trial, and issues presented on appeal are nearly identical to those presented in *Khaled*.

In order for the evidence to have been properly admitted at trial in this case, each exhibit and all of the testimony must have been either direct testimony of a witness with personal knowledge of the facts to which he testified; or, admissible evidence for which a proper foundation could be laid and sufficient authentication provided.

The information contained in the "data bar" included as part of the photographs produced by Redflex, in addition to the photographs themselves, lacked sufficient foundation, such that the Trial Court should not have admitted them into evidence. Investigator Young did not testify as to having personal knowledge of the facts stated on the data bar, and all of the violation specific facts stated therein were outside his personal

knowledge, most importantly, the date and time of the alleged violation and the length of the yellow phase. The witness failed to provide a foundation for the admissibility of the information contained in the data bar.

Additionally, the data was prepared by Redflex in contemplation of litigation, and as such fails to meet the indicia of trustworthiness prong of either the business records or official records exception to the hearsay rule.

*(Khaled, id. at 8)*

In this case, as in *Khaled*, the Officer did not provide sufficient evidence as to the time in question, the method of retrieval of the photographs, or that the photographs or the video were a “reasonable representation of what it is alleged to portray...” *(Khaled, id. at 5)*

Therefore, the photographs and video should not have been admitted into evidence due to the witnesses failure to establish a foundation for the documents and the information contained in them. Absent the Officer laying a proper foundation for the data bar information himself, the People’s Exhibit was inadmissible. (Evidence Code §403(a) .

At Goldsmith’s trial, that evidence fell short of being admissible based on the fact that the evidence was not authenticated by a competent witness with the knowledge and expertise to provide testimony proving that the citation specific information in the data bar was accurate and what it purported to be.

## II. 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 automated enforcement systems have been enjoying the benefit of producing specious evidence in order to convict thousands of *pro per* defendants. They and the trial courts have been getting away with playing fast and loose with the rules of evidence. 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 facts that these are infraction cases or that the cities and/or the camera contractors claim some safety benefit cannot justify allowing the People and the courts to apply a lower standard of proof, or a departure from the Evidence Code, in order to achieve convictions more easily. This Court should reverse the conviction.

DATE: August 15, 2011

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