

CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION THREE

SEP - 7 2011

No. B231678

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

[REDACTED] GOLDSMITH,

Defendant and Appellant.

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 Sanjay Kumar
Appellate Division Case No. BR048189
Superior Court Case No. 102693IN

**RESPONDENT'S ANSWER TO THE AMICUS CURIAE BRIEF OF
THE LAW OFFICE OF RICHARD ALLEN BAYLIS**

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

The trial court convicted Appellant ██████ Goldsmith ("Appellant") for driving through a red light in violation of California Vehicle Code ("CVC") section 21453(a). Appellant's conviction was based on photographic and video evidence generated by a red light camera system maintained and operated by the City of Inglewood in conjunction with Reflex Traffic Systems, Inc. ("Reflex"). The Appellate Division of the Los Angeles Superior Court affirmed Appellant's conviction and the case was subsequently transferred to the California Court of Appeal. After oral argument, this Court gave anyone interested until August 19, 2011 to file an amicus brief, and the parties until September 2, 2011 to file answers to amicus briefs.

The Amicus Curiae Brief of the Law Office of Richard Allen Baylis ("Amicus Brief") fails to offer any argument justifying reversal of Appellant's conviction. Amicus contends that the photographic and video evidence of Appellant's violation was inadmissible because the prosecution failed to establish the accuracy or reliability of the photographs and video. It is well established, however, that California law does not require a proponent of photographic evidence to establish the accuracy of the photographs or the reliability of the camera for the photographs to be admissible. Such matters affect only the weight of the evidence, and not its admissibility, and can be addressed on cross-examination.

Amicus also contends that the prosecution was required to call a photographic or computer expert to the stand to authenticate the evidence. Again, Amicus ignores longstanding California law, which permits, but does not require, the use of such an expert to authenticate photographs. Rather, such evidence can be authenticated with testimony from anyone qualified to testify that the representation is accurate.

Amicus further argues that Investigator Young of the Inglewood Police Department lacked sufficient personal knowledge to authenticate the evidence. Though Appellant failed to overcome the presumptions of authenticity applying to the evidence under California Evidence Code sections 1552 and 1553, Investigator Young's testimony was independently sufficient to authenticate the evidence because he testified in great detail (based on over six years of red light camera experience) as to the operation of the red light camera in question. Investigator Young's experience and expertise on this subject matter plainly enabled him to establish that the photographs and videos were a reliable portrayal of the data and images contained therein. Tellingly, Amicus fails to offer any analysis or explanation as to why it believes that Investigator Young was not qualified to authenticate the evidence.

Accordingly, the Amicus Brief fails to offer any argument to support a reversal of Appellant's conviction. Appellant's conviction should therefore be affirmed.

II. ARGUMENT

A. THE PROSECUTION WAS NOT REQUIRED TO DEMONSTRATE THE RELIABILITY OR ACCURACY OF THE PHOTOGRAPHIC AND VIDEO EVIDENCE

Amicus argues that the photographic and video evidence was not properly authenticated because the prosecution failed to establish the reliability of the photographs and videos themselves. [See Amicus Brief, pp. 1-3.] Amicus's argument fails, however, because a proponent of photographic evidence is not required to establish the accuracy of the photographs or the reliability of the camera for the photographs to be admissible.

California courts have long refused to require as a condition of admissibility of computer-generated records "testimony on the

acceptability, accuracy, maintenance, and reliability" of the evidence. People v. Lugashi (1988) 205 Cal.App.3d 632, 642. Questions as to the accuracy of computer printouts affect only the weight of the evidence, and have no bearing on their admissibility. People v. Martinez (2000) 22 Cal.4th 106, 132. Rather, the opponent of the evidence has the burden of establishing that the machine-generated evidence or the device that produced the evidence is unreliable. People v. Nazary (2010) 191 Cal.App.4th 727, 754. This can be done on cross-examination. Lugashi, supra, 205 Cal.App.3d at 642. This rule is "especially [applicable] where . . . the data consists of retrieval of automatic inputs rather than computations based on manual entries." Lugashi, supra, 205 Cal.App.3d at 642.

Here, contrary to Amicus's position, California law did not require the prosecution to show that the photographs and video depicting Appellant's violation were accurate and reliable. Such matters affect only the weight to be given to the evidence, but not its admissibility. If Appellant had an issue with the accuracy or reliability of the photographs or video, she should have raised the issue on cross-examination and/or offered evidence that the photographs and video were in fact altered or otherwise unreliable.

B. CALIFORNIA LAW DOES NOT REQUIRE TESTIMONY FROM A COMPUTER OR PHOTOGRAPHIC EXPERT TO AUTHENTICATE PHOTOGRAPHS

Amicus argues that in the absence of a witness who took the photograph or someone with personal knowledge of what it depicts, authentication requires testimony from a photographic or computer expert. [See Baylis Amicus Brief, p. 3.] Amicus does not (and cannot) cite to any authority in support of this incredible assertion.

The Court need look no further than the cases relied upon by Amicus itself to dispose of this argument. In Doggett, the court expressly

held that photographs may be authenticated "by the testimony of **anyone** who knows that the picture correctly depicts what it purports to represent." People v. Doggett (1948) 83 Cal.App.2d 405, 409 (emphasis added). In People v. Bowley (1963) 59 Cal.2d 855, 862, the court held that a photograph may be authenticated "by the testimony of a person who was present at the time the picture was taken, **or who is otherwise qualified to state that the representation is accurate.**" Id. at 862. (emphasis added). The Bowley court further explained that such authentication "**may** be provided by the aid of expert testimony." Id. (emphasis added). Similarly, in People v. Samuels (1967) 250 Cal.App.2d 502, the court held that a photograph may be authenticated "**either** by the testimony of the person who made it **or by one who is otherwise qualified.**" Id. at 512 (emphasis added).

Thus, while parties are free to introduce the testimony of a photographic or computer expert to authenticate a photograph, California law does not require such testimony. Tellingly, Amicus points the Court to no authority supporting such a requirement. Amicus's misinterpretation of California case law should therefore be disregarded in its entirety.

C. **INVESTIGATOR YOUNG'S TESTIMONY WAS SUFFICIENT TO AUTHENTICATE THE PHOTOGRAPHIC AND VIDEO EVIDENCE**

Amicus contends that Investigator Young lacked sufficient personal knowledge to authenticate the photographic and video evidence of Appellant's violation. However, Amicus does not offer any arguments in support of this position different than what Appellant has already advanced. Amicus argues merely that Investigator Young "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." [See Amicus Brief, p. 6

(citation and internal quotations omitted).] Amicus does not offer any details or analysis as to why Investigator Young's testimony was insufficient.

Amicus's argument fails for the reasons detailed in the Brief of Respondent. [See Brief of Respondent, pp. 18-27.] In summary, in addition to Appellant's failure to overcome the presumptions of authenticity that apply to the evidence under Evidence Code sections 1552 and 1553, Investigator Young's testimony was sufficient to authenticate the evidence because he offered expert testimony (based on his over six years of red light camera experience) regarding the operation of the red light camera at issue and the photographs and videos it produces. Goldsmith, supra, No. BR-048189 at 6. He explained how the camera is triggered, how the data is recorded and how the photographs, videos and other records are collected, maintained and sent to the police. Id. Investigator Young's experience and expertise on this subject matter plainly enabled him to establish that the photographs and videos were a reliable portrayal of the data and images contained therein. Indeed, because the prosecution offered the photographs and video as probative evidence of what they depict, they acted as "silent witnesses" and were admissible without eyewitness testimony that they accurately depicted what they purported to show. Bowley, supra, 59 Cal.2d at 860. Investigator Young's testimony was therefore sufficient to authenticate the evidence.

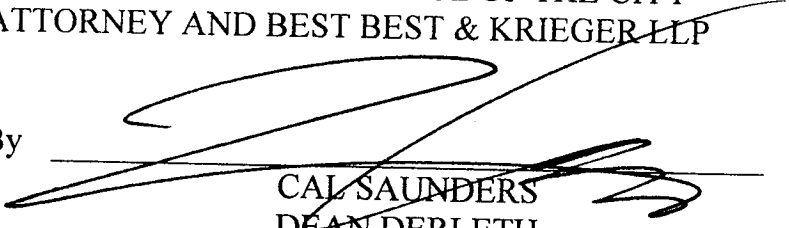
III. CONCLUSION

For the foregoing reasons, Respondent the People of the State of California respectfully request that this court affirm Appellant's conviction.

Dated: September 2, 2011

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