

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.

 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  
 MARTIN IN SUPPORT OF DEFENDANT/APPELLANT**

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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 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 Redflex Traffic Systems, Inc. ("Redflex"). 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.<sup>1</sup>

Amicus ██████ Martin advances only one argument in support of Appellant. He contends that Appellant's conviction should be reversed because Redflex purportedly was not licensed as a contractor when Appellant's citation was issued and thus the prosecution was barred from relying on photographic and video evidence generated by the Redflex system.

This Court should wholly disregard Appellant's argument for two independent reasons. First, no party has raised any issues regarding Redflex's status as a licensed contractor, either at trial or in this appeal. As such, because amicus briefs cannot raise issues not already raised by the parties, the Court should disregard Amicus's argument. Additionally, under principles of waiver and theory of trial, Appellant is barred from taking

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<sup>1</sup> Amicus ██████ Martin did not file his amicus curiae brief ("Amicus Brief") until August 25, 2011. Because Amicus failed to file his brief within the time limit set by this Court, this Court should disregard the brief.

advantage of any arguments regarding Redflex's licensure status because she failed to raise any such argument at trial.

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 COURT SHOULD WHOLLY DISREGARD THE AMICUS BRIEF BECAUSE IT IMPROPERLY ADVANCES A LEGAL THEORY NOT RAISED BY EITHER PARTY IN THIS APPEAL

This Court should disregard the Amicus Brief in its entirety because it advances an argument that the parties themselves have not raised in this appeal. "The general rule . . . is that amicus curiae may not raise new issues but must 'accept the case as it finds it.'" Bruno v. Superior Court (1990) 219 Cal.App.3d 1359, 1365 (quoting Pratt v. Coast Trucking, Inc. (1964) 228 Cal.App.2d 139, 143); E.L. White, Inc. v. City of Huntington Beach (1978) 21 Cal.3d 497, 510-11. "Amici curiae are not allowed to expand the issues raised by the parties." Pan Asia Venture Capital Corp. v. Hearst Corp. (1999) 74 Cal.App.4th 424, 429 n.4; see also United Parcel Service v. Lewis (1981) 451 U.S. 56, 61 n.2 (refusing to consider amicus's arguments because they were not raised by the parties). The California Court of Appeal has aptly summarized this principle as follows:

The rule is universally recognized that an appellate court will consider only those questions properly raised by the appealing parties. Amicus curiae must accept the issues made and the propositions urged by the appealing parties, and any additional questions

presented in a brief filed by an amicus curiae will not be considered.<sup>2</sup>

Eggert v. Pacific States Sav. & Loan Co. (1943) 57 Cal.App.2d 239, 251.

In Eggert, a proposed amicus "urge[d] various propositions for the modification of the judgment which [were] not presented by either plaintiffs (respondents) or defendant (appellant)." Id. The court refused to consider the arguments because they were not raised by the parties in the appeal. Id.; see also Longval v. W.C.A.B. (1996) 51 Cal.App.4th 792, 798 n.5 (refusing to consider amicus's contentions of violations of certain constitutional and statutory provisions because such claims were not raised by either party).

Here, the Amicus Brief is filled with arguments not raised by either party to this appeal. In her Opening Brief, Appellant contends that her conviction should be reversed for exclusively the following reasons: (1) the yellow light interval at the intersection in question did not comply with the California Vehicle Code; (2) the prosecution failed to authenticate photographic and video evidence of Appellant's offense; (3) the evidence was inadmissible because the prosecution failed to demonstrate that the red light camera system was in proper working order at the time of the offense; and (4) the evidence constituted inadmissible hearsay. [See generally Opening Brief.]

Amicus makes one argument – that the Court should reverse Appellant's conviction because Redflex was purportedly not licensed as a contractor when Appellant's citation was issued. As a result, according to Amicus, the City of Inglewood's contract with Redflex was void, thus

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<sup>2</sup> Courts have recognized two narrow exceptions to this rule: (1) where the argument would result in affirmance of the lower court decision and (2) where the argument is jurisdictional. E.L. White, supra, 21 Cal.3d at 511.

barring the prosecution from relying on the photographs and videos collected by Redflex. Such an argument is nowhere to be found in Appellant's Opening Brief or Reply Brief, and has not otherwise been raised at any stage in this case. [See generally Opening Brief, Reply Brief.] Moreover, neither of the narrow exceptions to the rule limiting amicus arguments apply here because Amicus is seeking reversal (not affirmance) of Appellant's conviction and Amicus's argument is not jurisdictional in nature. See E.L. White, *supra*, 21 Cal.3d at 511.

Moreover, as a matter of policy and fairness, considering Amicus's argument at this stage in the case would be improper. Amicus's argument is not even remotely related to the purely evidentiary issues that are involved in this case. Assessing this argument would require an analysis of brand new evidence and legal issues. This Court should not permit Amicus to blindside the prosecution in such a manner. This Court should adhere to longstanding principles of California law limiting amicus curiae briefs to issues raised by the parties and wholly disregard the Amicus Brief.

**B. APPELLANT WAIVED THE ARGUMENT RAISED BY AMICUS BY FAILING TO ASSERT IT AT TRIAL**

This Court should wholly disregard Amicus's theory for reversal because Appellant did not raise the argument at trial. "Ordinarily, the failure to preserve a point below constitutes a waiver of the point." North Coast Business Park v. Nielsen Construction Co. (1993) 17 Cal.App.4th 22, 28; Sommer v. Martin (1921) 55 Cal.App. 603, 609-10. Under the related "theory of trial" principle, "[a] party is not permitted to change his position and adopt a new and different theory on appeal." Ernst v. Searle (1933) 218 Cal. 233, 240-41 North Coast Business Park, *supra*, 17 Cal.App.4th at 29. This principle is based on the rationale that to allow a party to adopt a new theory on appeal "would not only be unfair to the

trial court, but manifestly unjust to the opposing party." Ernst v. Searle (1933) 218 Cal. 233, 241; North Coast Business Park, supra, 17 Cal.App.4th at 29.

In North Coast Business Park, the trial court granted the defendant's motion for summary judgment on the plaintiff's design defect claim on statute of limitations grounds. North Coast Business Park, supra, 17 Cal.App.4th at 25. On appeal, the plaintiff argued for the first time that the defect the trial court concluded it had discovered was different from the defect that actually caused the damage, and that the date of its discovery of that defect raised triable issues of fact. Id. at 28. The California Court of Appeal held that the plaintiff was barred from making this argument under principles of both waiver and theory of trial because at trial it sued upon one defect of which it had notice, but on appeal switched theories and argued that the defect sued upon was a different defect of which it had no notice. Id. at 30.

Here, as in North Coast Business Park, Amicus advances a theory for reversal of Appellant's conviction that was not asserted at trial and is wholly unrelated to the evidentiary issues raised by Appellant at trial and in this appeal. By failing to argue that Redflex was not properly licensed at trial, Appellant forfeited the argument under principles of both waiver and theory of trial. Appellant cannot now take advantage of a new theory on appeal. Permitting her to do so would be manifestly unjust to Respondent. See North Coast Business Park, supra, 17 Cal.App.4th at 29. This Court should therefore reject Amicus's argument.

### III. CONCLUSION

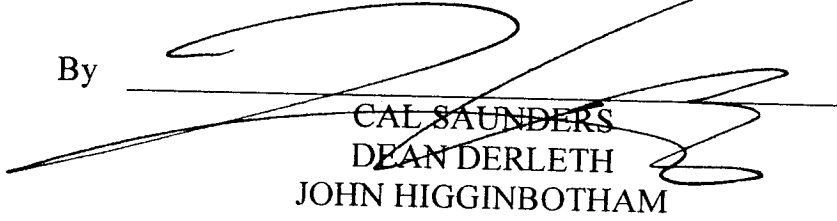
For the foregoing reasons, Respondent the People of the State of California respectfully request that this court affirm Appellant's conviction.



Dated: September 2, 2011

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