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FILED
SAN MATEO COUNTY

NOV 05 2010

Clerk of the Superior Court

By

DEPUTY CLERK

8 SUPERIOR COURT OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN MATEO, TRAFFIC DIVISION
10

11 PEOPLE OF THE STATE OF
CALIFORNIA,

12 Plaintiff,

13 v.

14 BENJAMIN H. [REDACTED]

15 Defendant.
16
17
18 _____ /

APPEAL NO. AD-5201
CASE NO. 092072-C

APPELLEE'S BRIEF

Date: TBD
Time: TBD
Dept: TBD

19 **I. INTRODUCTION**

20 The PEOPLE OF THE STATE OF CALIFORNIA ("PEOPLE") submit this brief
21 regarding BENJAMIN H. [REDACTED] ("Defendant") appeal of Commissioner Susan Jukabowski's
22 decision finding Defendant guilty of running a red light. Defendant is charged with a violation
23 of California Vehicle Code §21453(a), running a red light, through the use of a red light
24 camera automated enforcement system. Defendant is accused of failure to stop at a red light
25 at the intersection of El Camino Real and Glenwood Avenue, Menlo Park, California ("City")
26 on September 30, 2009. This case came for trial on June 1, 2010, and Commissioner Susan
27 Jukabowski found Defendant guilty of running the red light. Defendant filed a proposed
28 Statement of Appeal on June 15, 2010.

1 Defendant raises four issues on appeal. First, Defendant argues that the court
2 committed error when it did not dismiss the citation pursuant to California Vehicle Code
3 Section 210, arguing that the photograph of the defendant was “not clear.” Second,
4 Defendant argues that the court committed error when it denied Defendant’s foundation and
5 hearsay objections regarding the Redflex Packet and DVD, citing to the case *People v.*
6 *Khaled* 30-2009-00304893 (Superior Court of Orange County, Appellate Division, May 25,
7 2010). Third, Defendant argues that the court committed error in denying his hearsay
8 objections and Sixth Amendment right to confrontation, citing to the case *Melendez-Diaz v.*
9 *Massachusetts* (2009) 129 Sect 2527. Fourth, Defendant argues that the citation should
10 have been dismissed on the grounds that the contract between the City of Menlo Park and
11 Redflex Traffic Systems, Inc. is not cost neutral as required by California Vehicle Code
12 Section 21455.5(g). At no point during the trial or in his appeal brief does Defendant state
13 that he did not run the red light and is not guilty of the citation at issue.

14 II. LAW AND ARGUMENT

15 Reversible error is an error committed in an action or proceeding in a lower court that
16 will compel a reversal of the judgment or order on appeal. It is almost universally agreed that
17 error is not reversible unless it is prejudicial. Witkin, *California Procedure*, 5th Edition,
18 Chapter 9 §416. As set forth in the California Constitution, Article VI, §13:

19 No judgment shall be set aside, or new trial granted, in any cause, on
20 the ground of misdirection of the jury, or of the improper admission or
21 rejection of evidence, or for any error as to any matter of pleading, or
22 for any error as to any matter of procedure, unless, after an
examination of the entire cause, including the evidence, the court shall
be of the opinion that the error complained of has resulted in a
miscarriage of justice.

23 The burden is on the appellant, not alone to show error, but to show injury from the
24 error. The current test for prejudicial error may be stated as follows: That a “miscarriage of
25 justice” should be declared only when the court, “after an examination of the entire cause,
26 including the evidence,” is of the “opinion” that it is reasonably probable that a result more
27 favorable to the appealing party would have been reached in the absence of the error.
28 *People v. Watson* (1956) 46 Cal. App. 2d, 818; Witkin, *California Procedure*, 5th Edition,

1 Chapter 9 §445.

2 **A. The Court Properly Denied Defendant's Motion to Dismiss Made Pursuant**
3 **to California Vehicle Code Section 210**

4 Defendant argues that the Court committed an error when, he alleges, it denied his
5 request for dismissal based on the grounds that the photograph of his face is "not clear" and
6 therefore not in compliance with Vehicle Code Section 210.

7 Here, the Court determined that the photograph of the defendant was clear, and was
8 able to reasonably identify the driver as the defendant despite the obscuring factors, such
9 as the rear view mirror and sunglasses, alleged by Defendant. Furthermore, the Defendant
10 never alleged that he was not the driver of the vehicle. If the Defendant wished to allege that
11 he was not the driver, he had the opportunity during the trial to testify that he was not the
12 driver. In addition, the Defendant had the opportunity, before the trial, to request from the
13 City of Menlo Park an affidavit, where he could have identified the driver of the vehicle.

14 **B. The Court Properly Denied Defendant's Foundation and Hearsay Objections**
15 **Regarding the Redflex Packet and DVD**

16 Defendant argues that the Court committed reversible error when it denied his
17 foundation hearsay objections which were premised on the Orange County Superior Court
18 Appellate Division's ruling in *People v. Khaled*, 30-2009-00304893 (Orange Super. Ct., Ap.
19 Div., filed May 25, 2010). Like all rulings from the Appellate Division of a Superior Court,
20 *People v Khaled* is only binding in the Superior Court where it was issued (Orange County).
21 See *People v. Conzelman* (1994) 33 Cal.App.4th Supp. 6, ("An opinion from the Appellate
22 Department of the Ventura Superior Court is not binding in Orange County"); *People v.*
23 *Corners* (1985) 176 Cal.App.3d 139, 146 ("Of course, a decision of the Appellate Department
24 of the San Francisco Superior Court is not binding upon the Butte County Superior Court nor
25 upon this court"). Furthermore, the California Supreme Court has questioned the effect
26 of rulings from a Superior Court's Appellate Division, suggesting that they are debatable
27 as legal precedent. See *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 779
28 ("although decisions of the appellate department have persuasive value, they are of

1 debatable strength as precedents"). Therefore, the Court acted within its discretion when it
2 denied Defendant's foundation and hearsay objections.

3 Defendant fails to inform the Court that the facts of *People v. Khaled* are very different
4 from this case, and that the Commissioner found that *People v. Khaled* was not applicable.
5 *People v. Khaled* only applies to the facts, testimony and violation at issue in that specific
6 trial. As the Court of Appeal held in *Huscher v. Wells Fargo Bank* (2004) 121 Cal.App.4th
7 956, 962, "the language of an opinion must be construed with reference to the facts of the
8 case, and the positive authority of a decision goes no farther than those facts." See also
9 *Cochran v. Cochran* (1997) 56 Cal.App.4th 1115, 1121 ("the language of an opinion must be
10 construed in light of the facts of the particular case, an opinion's authority is no broader than
11 its factual setting and the parties cannot rely on a rule of law announced in a factually
12 dissimilar case"); *Trope v. Katz* (1995) 11 Cal.4th 274, 285.

13 *People v. Khaled* holds that a specific officer's testimony did not, at that time, support
14 admission of the video and photos depicting the August 2, 2008 violation. *People v. Khaled*
15 does not hold that all evidence generated by a red light photo enforcement system is
16 inadmissible, or that red light camera evidence could not be admissible in another case. In
17 fact, *People v. Khaled* only found that there was a "lack of evidence to support the vehicle
18 code violation in question." *People v. Khaled*, at p. 10, lines 1-2. In *People v. Khaled*, the
19 Court found that the testifying officer did not lay a proper foundation for the admissibility of
20 the automatic traffic enforcement photos or video. The *People v. Khaled* Court noted that the
21 officer lacked training regarding the system, lacked first-hand knowledge of the system, and
22 that "the underlying working of the Redflex Traffic System was outside the personal
23 knowledge of Officer Berg." The Court also noted that Officer Berg did not testify about the
24 relationship between Redflex and the City, sufficient to find an agency relationship sufficient
25 to satisfy the public records exception to the hearsay rule.

26 In contrast, Sergeant Prickett, is qualified to testify, and testified to, as Defendant
27 argues in his brief, as to the occurrence of the violation, what the vehicle plate was, who the
28 vehicle was registered to, to the operation and maintenance of the camera system, the date

1 of mailing of the notice of violation, and to other matters contained in the documents and DVD
2 that were part of the Menlo Park Police Department Court Packet.

3 Sergeant Prickett testified, as set forth in his Statement of Appeal filed with the Court,
4 that:

5 (1) He was a qualified witness and that the court packet met the requirements of
6 California Evidence Code Section 1271, and 1271(c);

7 (2) That he sufficiently explained to Court the operation of the red light camera
8 system, how the information is processed, the security measures taken to ensure
9 the packet cannot be manipulated, and how the packet is stored and maintained;

10 (3) His familiarity with the intersection where Defendant received the citation, and
11 that he had reviewed the evidence and determined that Defendant was in violation
12 of running the red light;

13 (4) The Court Packet meets the requirements of California Civil Code Section 23
14 and Section 40518, and that the camera was functioning properly at the time of
15 the violation; and

16 (5) Sergeant Prickett was a qualified witness, who has 29 years of experience as
17 a Menlo Park Police Officer, 10 years of experience as a traffic officer, observed
18 and understood the installation and functioning of the red light traffic system,
19 attended over 34 hours of training of how the red light system works, how to
20 properly identify a defendant, and how to properly issue a citation.

21 Unlike the officer in *People v. Khaled*, Sergeant Prickett has had extensive training as
22 to the operation of the red light camera system, has witnessed the operation of the red light
23 traffic camera system over the course of the last several years, has reviewed hundreds (if not
24 thousands) of citations, photos and videos depicting red light violations, has independently
25 verified the accuracy of the system, is familiar with the intersection where the violation
26 occurred, and how the Menlo Park Police Department monitors and supervises the process
27 while working in conjunction with Redflex Traffic Systems, Inc. Sergeant Prickett's testimony
28 was more detailed and substantive than the testimony given by the officer in the *People v.*

1 *Khaled* case. In addition, the parties in *People v. Khaled* never raised, nor did the Court
2 address, certain legal issues governing the admissibility of photos and video or the case
3 recently issued by the District Court of Appeal, *People v. Chikosi* (2010) 185 Cal.App.4th 238,
4 discussed in detail below.

5 1. Computer Generated Photographs and Videos are Presumed Authentic
6 Under Evidence Code Section 1552 and 1553.

7 *People v. Khaled* focuses on the lackluster officer testimony and did not address the
8 statutory presumption of authenticity afforded computer generated video and photographic
9 images such as those generated by the red light traffic camera computer operated digital
10 system. See *Evidence Code* §§ 1552 and 1553. The testifying officer in *People v. Khaled*
11 appears to have not sufficiently explained that the red light camera system generates and
12 stores video and photos in a digital medium. Perhaps for that reason, the *People v. Khaled*
13 Court never addressed the presumptions affecting such evidence.

14 Certain evidence is presumed authentic. *Jacobson v. Gourley* (2000) 83 Cal.App.4th
15 1331, 1334. A presumption acts as an evidentiary short-cut designed to facilitate trials by
16 dispensing with unnecessary evidence. *People v. Southern Pac. Co.* (1983) 139 Cal.App.3d
17 627, 632–633.

18 Evidence Code section 553 states "A printed representation of images stored on a
19 video or digital medium is presumed to be an accurate representation of the images it
20 purports to represent." Similarly, section 1552 states "A printed representation of computer
21 information or a computer program is presumed to be an accurate representation of the
22 computer information or computer program that it purports to represent."

23 With respect to the burden of production for digital images or videos, section 1153
24 explains: "This presumption is a presumption affecting the burden of producing evidence. If
25 a party to an action introduces evidence that a printed representation of images stored on a
26 video or digital medium is inaccurate or unreliable, the party introducing the printed
27 representation into evidence has the burden of proving, by a preponderance of evidence, that
28 the printed representation is an accurate representation of the existence and content of the

1 images that it purports to represent." Section 1552 sets forth the same presumption shifting
2 mechanism for a "printed representation of computer information or computer program."

3 Here, Defendant has presented no evidence so as to rebut the presumption that the
4 pictures and video presented at the trial were inaccurate or unreliable. However, even if
5 Defendant had presented some evidence, the MPPD would still be able to provide that the
6 pictures and the video are accurate representations of Defendant running the red light. As
7 detailed above, Sergeant Prickett testified as to the operation of the red light camera system,
8 how the information is processed, the security measures taken to ensure the packet cannot
9 be manipulated, and how the packet is stored and maintained. As such, the photos and
10 video are presumed authentic under Sections 1552 and 1553, and the Court therefore
11 properly denied Defendant's foundation objections.

12 2. The Photographs and Videos are Not Hearsay.

13 Videos and photographs are "demonstrative evidence depicting what the camera sees.
14 *They are not testimonial and they are not hearsay.*" *People v. Cooper* (2007) 148
15 Cal.App.4th 731, 746, emphasis added; *People v. Bowley* (1963) 59 Cal.2d 855, 860 (photos
16 "may also be used as probative evidence of what they depict. Used in this manner they take
17 on the status of independent 'silent' witnesses.")

18 C. The Court Properly Denied Defendant's Sixth Amendment Right to 19 Confrontation Objection

20 Defendant also argues that the Court committed reversible error when it overruled his
21 objection based on confrontation clause of the Sixth Amendment of the United States
22 Constitution. Defendant argued that he should have had the opportunity to cross-examine
23 an employee of Redflex Traffic Systems, Inc. so that he could ask questions about the
24 camera used, how the pictures are taken, whether the system was functioning properly, or
25 how the system is maintained. The Court overruled Defendant's objection, finding that
26 Sergeant Prickett had offered sufficient testimony and finding that the prosecution of the red
27 light infraction did not require a Redflex employee to be present.

28 Defendant argues that a Redflex employee must have testified at his trial in order for

1 the Court to have found him guilty, citing to case *Melendez-Diaz v. Massachusetts* (2009)
2 129 S.Ct. 2527. However, *Melendez-Diaz* is inapplicable to red-light traffic camera video,
3 photographs, and the prosecution of the red light camera ticket. The California Court of
4 Appeal recently addressed a similar issue which had to do with the application of *Melendez-*
5 *Diaz* to the accuracy records relating to a breathalyzer testing machine. *People v. Chikosi*
6 (2010) 185 Cal.App.4th 238. In *Chikosi*, the defendant argued that the officer who supplied
7 the breathalyzer accuracy records did not testify, thus depriving the defendant of his rights
8 under the Confrontation Clause. In rejecting the defendant's argument, the Court held that
9 the "accuracy records were nontestimonial in nature," and therefore the evidence derived
10 from those records was properly admissible. In so holding, the *Chikosi* Court quoted with
11 approval the following excerpt from *United States v. Bacas* (E.D. Va. 2009) 662 F.Supp.2d
12 481, "Collateral facts that do not speak to a defendant's guilt or innocence have been
13 excepted from Sixth Amendment protection. [Citation.] Neutral statements that relate only
14 to the operation of a machine constitute such collateral facts. [Citations.] ¶¶ Unlike the
15 certificates at issue in *Melendez-Diaz*, in the instant case [the calibration test results]
16 propound neutral information relating only to the proper operation of the radar equipment."
17 Id. at 484.

18 Similarly, numerous cases hold that information generated by machines, similar to the
19 photographs and video generated by the Redflex system, are non-testimonial statements
20 outside the ambit of the Confrontation Clause of the Sixth Amendment. See *United States*
21 *v. Washington* (4th Cir. 2007) 498 F.3d 225, 230-31; *United States v. Moon* (7th Cir. 2008)
22 512 F.3d 359, 361-62 (machines do not constitute "witnesses against" defendants); *United*
23 *States v. Lamons* (11th Cir. July 3, 2008) No.03-00046-CR-01-RLV-4, 21-22; *United States*
24 *v. Crockett* (E.D. Mich. 2008) 586 F.Supp.2d 877, 885.

25 Here, the video and photographs constitute machine or computer-generated data and
26 thus are outside the reach of the Confrontation Clause. The video and photographs are
27 produced solely by red light computer-generated cameras without the assistance of a human
28 operator. As such, they are not testimonial statements, but rather statements of machines

1 that are not subject to the Confrontation Clause.

2 Defendant also argues that he was deprived of the right to confront Menlo Park Police
3 Employee Maria Sandoval, who was the officer that signed the citation. However, Defendant
4 does not cite to any case, statute or rule that would require the employee that signed the
5 citation of the red light citation to appear at the trial. Furthermore, Sergeant Prickett
6 independently investigated the red light violation, made his own determination of Defendant's
7 guilt, and was qualified and able to act as a witness on behalf of the MPPD. Defendant had
8 the ability to cross-examine Sergeant Prickett as part of his case. The Court did not agree
9 with the Defendant that Maria Sandoval was a required witness in the traffic infraction trial,
10 and properly denied Defendant's objection.

11 **D. The Court Properly Denied Defendant's Request for Dismissal on the**
12 **Ground that the Contract Between the City of Menlo Park and Redflex Traffic**
13 **Systems, Inc. is not cost neutral as required by California Vehicle Code**
14 **Section 21455.5(g)**

15 Lastly, Defendant argues in his introductory paragraph of his opening brief that the
16 Court committed error when it wrongfully denied his motion to dismiss the citation based on
17 the ground that the agreement between the City of Menlo Park and Redflex Traffic Systems,
18 Inc. violates the cost neutrality language of Vehicle Code Section 21455(g). Defendant's
19 argument, however, is without merit and is contrary to the finding of this Court.

20 In fact, as recently as August 31, 2010, the San Mateo County Superior Court
21 confirmed that the cost neutrality language in the City's agreement did not violate the law.
22 In the matter of *People v. Berdell*, San Mateo County Superior Court, Case No.: 042040, the
23 defendant appealed the guilty verdict on his red light citation and challenged the cost
24 neutrality language of the City's agreement. Judge Mark Forcum affirmed the
25 Commissioner's holding that the citation was valid, and, in doing so, necessarily found that
26 the City's agreement was in compliance with Vehicle Code Section 21455.5(g)(1).

27 The City's agreement requires the City to pay a flat fee to Redflex. The City does not
28 now and has never paid Redflex based on the number of citations issued. Furthermore, there


1 is no provision in the City's contract with Redflex for the payment or compensation "based on
2 the number of citations generated, or as a percentage of the revenue generated." The
3 contract provides for a flat fee, invoiced monthly by Redflex. The City's agreement is in
4 compliance with the Vehicle Code. The City's agreement satisfies the intent and purpose of
5 the California Vehicle Code in safeguarding the public, and has been upheld by the San
6 Mateo County Superior Court.

7 **III. CONCLUSION**

8 Absent from the record and Defendant's appeal brief is any statement that he denies
9 running the red light for the citation at issue. This is because he cannot deny that he ran the
10 red light. Instead, Defendant makes a number of groundless arguments with hopes that this
11 Appeal Division might latch onto one. However, Defendant's arguments failed once, and fail
12 again. People hereby pray that Court affirm the decision of the lower court.

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Dated: November 5, 2010

By: 

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PEOPLE OF THE STATE OF CALIFORNIA