## SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE JUSTICE CENTER: Central Justice Center Civil Operations - Appellate Division 700 Civic Center Dr. West Santa Ana, CA 92701



AUG 26 2011

ALAN CARLSON, Clerk of the Court

APPELLANT: Dyrek

BY: J. GOMEZ DEPUTY

RESPONDENT: People Of The State Of California

NOTICE OF FILING OF JUDGMENT/ORDER

Appellate Division

APPEAL CASE NUMBER: 30-2011-00437683
TRIAL COURT CASE NUMBER: SA159437PE

To the above named parties and their attorneys of record:

You are notified that a Judgment in the above entitled matter was filed on: August 26, 2011

A Copy of the Judgment is attached for reference.

## CLERK'S CERTIFICATE OF MAILING

Central Justice Center - Traffic

R. Allen Baylis 9042 Garfield Avenue, Suite 306 Huntington Beach, CA 92646 Hon. Carmen R. Luege, Commissioner - Dept. C46

Hon. Erick L. Larsh - Supervising Judge - Dept. C55

By Interoffice Delivery:

Anthony Rackaukas O.C. District Attorney P.O. Box 808 Santa Ana, CA 92702

I certify that I am not a party to this action and that this certificate was mailed in accordance with Section 1013a of the Code of Civil Procedure. A copy of this Notice of Filing of Judgment/Order was deposited in the United States mail, in a sealed envelope with postage fully prepaid addressed as shown above. The mailing and this certification occurred at Santa Ana, California, on August 26, 2011.

ALAN CARLSON, Clerk of the Court

By \_\_\_\_JORGE GOMEZ

Jorge Gomez, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER

AUG 26 2011

## APPELLATE DIVISION

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ALAN CARLSON, Clerk of the Court

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

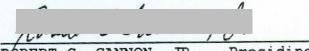
PEOPLE OF THE STATE OF CASE NO. 30-2011-00437683 CALIFORNIA, JUDGMENT ON APPEAL Plaintiff and from the Respondent, SUPERIOR COURT of vs. ORANGE COUNTY DYREK. CENTRAL JUSTICE CENTER Defendant and Appellant. HON. CARMEN LUEGE COMMISSIONER

Officer Berg's testimony did not properly authenticate the particular exhibits forming the basis of the charge against appellant in this case. (Evidence Code §§ 702, 1400). Exhibit 2, which purports to authenticate Exhibits 1 and 3, is inadmissible hearsay, as it was not created "at or near the time of . . . the event" as required under Evidence Code § 1271(b) or § 1280(b). Inasmuch as it was prepared a year after the photographs were generated, for the evident purpose of enabling the prosecution of appellant, Exhibit 2 is also "testimonial" and thus inadmissible under the confrontation clause of the Sixth Amendment. (Melendez-Diaz v. Massachusetts (2009) 557 U.S. , 129 S.Ct. 2527.)

In the absence of proper authentication either via Officer Berg or Exhibit 2, Exhibits 1 and 3 could be admissible only on the basis of either "self-authentication" or the presumption set forth in Evidence Code § 1553. Self-authentication has been upheld only

on the basis of independent corroborating evidence, however, and there is none in this case. (See People v. Beckley (2010) 185 Cal.App.4th 509, 514-516.) Section 1553 sets forth a presumption that a printed representation of a digitally stored image is an accurate representation of the image it purports to represent, but that presumption is rebutted in this case as to Exhibit 1 by the People's own evidence that the photos in that exhibit were "modified by Redflex employees" from the photos contained in Exhibit 3. (Corrected statement on appeal at 5:8-10; see Evidence Code § 1402.) Although the statutory presumption arguably applies to the Exhibit 3 photos, these photographs do not in themselves provide sufficient evidence that appellant violated Vehicle Code § 21453(a) - even if it were clear from the photographs and the information printed in the margins that the depicted vehicle passed through a red light without stopping, the only evidence tying appellant to that vehicle is the enhanced image of the driver in Exhibit 1 and the statements in Exhibit 2. Because neither Exhibit 1 nor Exhibit 2 was admissible, the evidence was insufficient to support the conviction.

The judgment is reversed, with direction that the charge be dismissed.



RÓBERT C. GANNON, JR., Presiding Judge

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