

B229748

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA**

**SECOND APPELLATE DISTRICT
DIVISION SEVEN**

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff & Respondent,

vs.

ANNETTE B. [REDACTED]
Defendant & Appellant.

Appeal Transferred from Los Angeles County Superior Court
Appellate Division, Case No. BR048012
Trial Court Case No. BI20734

**AMICUS CURIAE BRIEF OF [REDACTED] MARTIN IN SUPPORT OF
DEFENDANT/APPELLANT**

Robert Cooper (SBN 209641)
**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**
555 South Flower Street, 29th Floor
Los Angeles, California 90071
Tel: (213) 443-5100
Fax: (213) 443-5101
Robert.Cooper@[REDACTED]

Pro Bono Counsel for Amicus Curiae
[REDACTED] MARTIN

TABLE OF CONTENTS

INTRODUCTION.....1

LEGAL ARGUMENT.....1

**I. BECAUSE THE CITY ENTERED INTO ITS
 CONTRACT WITH REDFLEX AS AN UNLICENSED
 CONTRACTOR, THE CITY’S CONTRACT IS VOID.
 AS A RESULT, THE REDFLEX CAMERA PHOTOS
 PREPARED BY REDFLEX FOR THE CITY
 CANNOT BE USED TO CONVICT TRAFFIC-
 COURT DEFENDANTS.1**

**A. Redflex Was Not Properly Licensed When the
 Subject Citation Was Issued.1**

**B. Because Redflex Was Not Properly Licensed, Its
 Contract Is Void.3**

**C. Using the Photos Prepared by a Private Company
 Guilty of Committing a Misdemeanor to Convict
 Traffic Defendants of an Infraction Is Not Only
 Ironic But Also Violates the Most Basic
 Principles of Fair Play.3**

**II. GIVEN THE CITY’S CIVIL LIABILITY FOR
 ENTERING INTO A VOID CONTRACT WITH
 REDFLEX, THIS IS ALL THE MORE REASON TO
 PRECLUDE THE CITY FROM OBTAINING
 CONVICTIONS IN CRIMINAL CASES.5**

CONCLUSION.....7

CERTIFICATE OF COMPLIANCE9

TABLE OF AUTHORITIES

<u>Cases</u>	Page
<i>Addisu v. Fred Meyer, Inc.</i> (9th Cir. 2000) 198 F.3d 1130, 1137	7
<i>Buck v. City of Eureka</i> (1895) 109 Cal. 504, 522.	1, 3
<i>Fewel & Dawes v. Pratt</i> (1941) 17 Cal.2d 85, 92	6
<i>Gelbard v. U. S.</i> (1972) 408 U.S. 41	4, 5
<i>Golden Pisces, Inc. v. Fred Wahl Marine Construction, Inc.</i> (9th Cir. 2007) 495 F.3d 1078, 1081	7
<i>K & K Services Inc. v. City of Irwindale</i> (1996) 47 Cal.App.4th 818	5
<i>People v. B [REDACTED]</i> Case No. BR 048012 (L.A. Super Ct., App. Div.)	2
<i>People v. Carlucci</i> (1979) 23 Cal.3d 249, 258	7
<i>People v. Daugherty</i> Case No. CR 154602 (Napa Super. Ct., App. Div.)	2
<i>People v. Rhodes</i> (1972) 12 Cal.3d 180, 185	7
<i>Swanger v. Mayberry</i> (1881) 59 Cal. 91, 94	6
<i>Tiffany v. Boatman's Sav. Inst.</i> (1873) 85 U.S. (18 Wall.) 375, 385	6
<i>Todd v. City of Auburn</i> (9th Cir., No. 10-35222) [2010 WL 6762206]	2

Young v. City of Inglewood
(1979) 92 Cal.App.3d 437 5-6

Statutes

Bus. & Prof. Code § 70261
Bus. & Prof. Code § 70281, 3, 5
Bus. & Prof. Code § 7028.15(e)1, 3, 5
Bus. & Prof. Code § 7031.5 5
Public Contract Code § 61006

INTRODUCTION

Amicus Curiae [REDACTED] Martin presents the court with an alternative basis to reject the arguments raised by the City and Redflex in this case. Martin's argument is based on the following syllogism:

First premise: Redflex was not licensed as a contractor when the citation was issued despite Redflex's written contract for installation of red light cameras;

Second premise: a contractor's license was required based on the broad definition of a "contractor" under B&PC § 7026;

Conclusion: without a valid contractor's license in effect at the time of the execution of its contract, the City's contract with Redflex is void (B&PC § 7028.15(e)), thus barring the prosecution from relying on the red light camera photos prepared by Redflex.

In sum, because the City's contract with Redflex is void by statute, it is not worth the paper it is written on. "A void contract cannot form the basis of a judicial proceeding." *Buck v. City of Eureka* (1895) 109 Cal. 504, 522.

ARGUMENT

I. BECAUSE THE CITY ENTERED INTO ITS CONTRACT WITH REDFLEX AS AN UNLICENSED CONTRACTOR, THE CITY'S CONTRACT IS VOID. AS A RESULT, THE REDFLEX CAMERA PHOTOS PREPARED BY REDFLEX FOR THE CITY CANNOT BE USED TO CONVICT TRAFFIC-COURT DEFENDANTS.

A. Redflex Was Not Properly Licensed When the Subject Citation Was Issued.

B&PC § 7028(a) makes it a misdemeanor to act as a contractor without a valid license. B&PC § 7026, in turn, defines a "contractor" as one

“who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, ... , add to, subtract from, improve, move ... any ... road ... or other structure, project, development or improvement, or to do any part thereof, including the erection of ... other structures or works in connection therewith[.]” Accordingly, the installation of the red light cameras by a private vendor is encompassed within this extremely broad definition. The same is true as to the maintenance and/or operation of the red light cameras by Redflex.¹

As evidenced by Contractors State License Board records (see Amicus Martin’s Motion for Judicial Notice concurrently filed, Exhibit A), Redflex was not licensed as a contractor even though it performed construction services by installing and maintaining the red light cameras pursuant to its contract with the City. The question, then, is what is the practical implication of Redflex’s failure to obtain a contractor’s license.

¹ The City has never disputed that Redflex was the entity that installed the red light cameras. In addition, the City has acknowledged that “Redflex technicians ... were involved with the maintenance of the ARLES...” (RB 34). This is consistent with Redflex’s own statement that Redflex “manufactured and operated” the red light cameras in Inglewood (Redflex’s Amicus Brief, filed in *People v. Goldsmith* [B231678] p. 1) in conjunction with that City. It is also consistent with Redflex’s arguments in another traffic infraction appeal. (*People v. Daugherty*, Case No. CR 154602 (Napa Super. Ct., App. Div.) [letter dated June 15, 2011 by Redflex’s counsel, Sheppard Mullin, to the appellate division indicating that “Redflex installed and maintains the digital cameras, computers and other components of the systems”].) As Redflex argued in another case, “[u]nder the Redflex Contracts (which are identical in all material respects), Redflex contracted to install cameras at intersections or school zones designated by the contracting city, maintain the cameras, and process violations.” *Todd v. City of Auburn* (9th Cir., No. 10-35222) [2010 WL 6762206] at * 6 (parentheses in original). Finally, as the appellate division confirmed in this case, Redflex was in charge of “maintaining and servicing the system.” *People v. B [REDACTED]* Case No. BR 048012 (L.A. Super. Ct., App. Div. opn. at 2: 5-7).

B. Because Redflex Was Not Properly Licensed, Its Contract Is Void.

The legislature has already answered the question as to the practical implications of Redflex's lack of license. Specifically, B&PC § 7028.15(e) voids the City's contract with Redflex as follows:

“[A] a local public agency shall, before awarding a contract or issuing a purchase order, verify that the contractor was properly licensed when the contractor submitted the bid. * * * Any contract awarded to * * * a contractor who is not licensed pursuant to this chapter is void.” (Emphasis added).

Based on Redflex's violation of the Contractors License Law, there was simply no legal basis for Redflex to prepare the red light camera photos in the first place. In essence, the red light camera photos admitted at trial are fruits of a poisonous tree because the photos were prepared pursuant to the terms of a void contract. “A void contract cannot form the basis of a judicial proceeding.” *Buck, supra*, 109 Cal. at 522. Therefore, the photos cannot be used to convict traffic-court defendants.

C. Using the Photos Prepared by a Private Company Guilty of Committing a Misdemeanor to Convict Traffic Defendants of an Infraction Is Not Only Ironic But Also Violates the Most Basic Principles of Fair Play.

Under B&PC § 7028(a), a party is guilty of a misdemeanor by acting as a contractor without a valid license. Given Redflex's lack of contractor's license in 2009 when the subject citation was issued, preserving the

integrity of the criminal justice system militates against affirming red light camera convictions based on photos generated by Redflex.

The Supreme Court's decision in *Gelbard v. U. S.* (1972) 408 U.S. 41 illustrates this point. In that case, the court evaluated the validity of adjudications of civil contempt of witnesses before federal grand juries who refused to comply with court orders to testify. "The refusals were defended upon the ground that interrogation was to be based upon information obtained from the witnesses' communications, allegedly intercepted by federal agents by means of illegal wiretapping and electronic surveillance." (*Id.* at 43.)

The Court held that the federal wiretap law "serves not only to protect the privacy of communications, but also to ensure that the courts do not become partners to illegal conduct: the evidentiary prohibition was enacted also 'to protect the integrity of court and administrative proceedings.'" (*Id.* at 51; emphasis added.) Any other result would "entangle the courts in the illegal acts of Government agents." (*Id.*)

Applying the same reasoning here, in order "to protect the integrity of court and administrative [DMV] proceedings," this Court should preclude the City from relying on Redflex's photos to obtain convictions in traffic cases. (*Id.*; brackets added.) Otherwise, the Court would be rewarding the City for aiding and abetting Redflex to commit a misdemeanor by entering into the illegal contract that supposedly authorized Redflex to prepare such evidence against motorists.

Furthermore, as the Court explained in *Gelbard*, recognition of the illegality of the contract "as a defense 'relieves judges of the anomalous duty of finding a person' guilty of an infraction based on 'a course of conduct which, if pursued unchecked, could subject the prosecutor himself to heavy civil and criminal penalties.'" (*Id.* at 52.) To do so is "to stand our whole system of criminal justice on its head." (*Id.*) After all, "aiding or

abetting an unlicensed person” by entering into a contract with such a contractor is illegal. See B&PC § 7114 (authorizing disciplinary action by the licensing board for such conduct). In addition, as discussed below, California law imposes civil liability against the City for *its* conduct (i.e., executing the illegal contract).

Accordingly, applying *Gelbard*'s rationale to this case, the red light camera photos prepared by Redflex pursuant to its void/illegal contract cannot form the basis for a traffic conviction.

II. GIVEN THE CITY'S CIVIL LIABILITY FOR ENTERING INTO A VOID CONTRACT WITH REDFLEX, THIS IS ALL THE MORE REASON TO PRECLUDE THE CITY FROM OBTAINING CONVICTIONS IN CRIMINAL CASES.

As discussed above, Redflex's failure to obtain a contractor's license during the time in question renders Redflex guilty of a misdemeanor. (B&PC § 7028, subd. (a).) But Redflex is not the only one guilty here; the City is also culpable for violating its own mandatory duty under § 7028.15 to ensure that Redflex was properly licensed. See, e.g., *Young v. City of Inglewood* (1979) 92 Cal.App.3d 437 [Second Appellate District, Division Three] (imposing civil liability against the City based on its failure to discharge its statutory duty to ensure that building permits are issued only to licensed contractors where companion statute, § 7031.5, required cities to verify whether applicants for building permits are properly licensed); see also *K & K Services Inc. v. City of Irwindale* (1996) 47 Cal.App.4th 818 (rejecting as ludicrous the unlicensed contractor's arguments that essentially amounted to a no-harm, no-foul approach where the City was a party to a contract with an unlicensed contractor).²

² In addition to B&PC § 7028.15, other statutes reinforce the duties of government agencies to verify a proposed contractor's license. See, e.g.,

Given the City's civil liability, it makes absolutely no sense to allow the City to obtain criminal convictions against accused drivers based on the City's conduct that the legislature has deemed to be unlawful. Otherwise, it would be anomalous for the legislature to make it a misdemeanor for a party to engage in unlicensed activity and, at the same time, to allow the use of evidence obtained from that illegal activity. It is equally anomalous to impose civil liability against municipalities under the *City of Inglewood* decision while allowing the same municipality to obtain criminal convictions based on the same conduct that subjected the municipality to civil liability in the first place. Therefore, the red light camera photos prepared by Redflex cannot be used to convict defendants in traffic trials for this additional reason.

Cases addressing the voidness of a contract in the civil context further illustrate this point. For example, as the U.S. Supreme Court held a long time ago, it was "accepted as the doctrine of this court, that a contract to do an act forbidden by law is void, and cannot be enforced in a court of justice." *Tiffany v. Boatman's Sav. Inst.* (1873) 85 U.S. (18 Wall.) 375, 385. Likewise, the California Supreme Court held 130 years ago that a "contract ... which is made for the purpose of furthering any matter or thing prohibited by statute, or to aid or assist any party therein, is void. This rule applies to every contract which is founded on a transaction *malum in se*, or which is prohibited by statute, on the ground of public policy." *Swanger v. Mayberry* (1881) 59 Cal. 91, 94; see also *Fewel & Dawes v. Pratt* (1941) 17 Cal.2d 85, 92 ("If the contract is illegal as a matter of law, this court may refuse to enforce it regardless of the pleadings of the parties"). If this rationale governs civil cases where parties do not have the constitutional

Public Contract Code § 6100 (imposing affirmative duties on state agencies to verify the license of the contractor before entering into a contract with them).

rights given to criminal defendants, this is all the more reason to apply the same rationale here.

To summarize, because “a void contract is a legal nullity” (*Addisu v. Fred Meyer, Inc.* (9th Cir. 2000) 198 F.3d 1130, 1137), Redflex did not have the legal authority to prepare the evidence that was presented at trial in this case. After all, its “void contract is not a contract at all.” *Golden Pisces, Inc. v. Fred Wahl Marine Construction, Inc.* (9th Cir. 2007) 495 F.3d 1078, 1081 (internal quotation marks omitted). Therefore, the lower court’s ruling should be reversed.

CONCLUSION

It is simply impossible for “the public [to] have absolute confidence in the integrity and impartiality of our system of criminal justice” if municipalities are allowed to use photos prepared by a private contractor that is guilty of a misdemeanor in order for the municipality to obtain an infraction conviction. *People v. Rhodes* (1972) 12 Cal.3d 180, 185. The California Supreme Court has repeatedly emphasized this point in connection with traffic trials. *See id.*; see also *People v. Carlucci* (1979) 23 Cal.3d 249, 258 (holding that *Rhodes* “requires that public officials not only in fact properly discharge their responsibilities but also that such officials avoid, as much as possible, the *appearance* of impropriety”) (*italics in original*).

Consistent with *Rhodes*’ holding, the court should reverse appellant’s conviction based on the authorities discussed above.

DATED: August 24, 2011

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

By



Robert Cooper

Attorneys for Amicus Curiae
██████████ MARTIN