

SEP - 9 2011

ORIGINAL

2nd Civ. No. B229748

**IN THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

ANNETTE B. [REDACTED]

Defendant and Appellant,

JOSEPH A. LANE CLERK

2011 SEP - 9 PM 3:22

CLERK'S OFFICE
COURT OF APPEAL SECOND DISTRICT
RECEIVED

RESPONDENT'S RESPONSE TO AMICUS BRIEF OF [REDACTED] MARTIN

William Litvak, Esq. (SBN 90533)
Caroline K. Castillo, Esq. (SBN 236987)
DAPEER, ROSENBLIT & LITVAK, LLP
11500 W. Olympic Blvd., Suite 550
Los Angeles, CA 90064
Telephone: (310) 477-5575
Facsimile: (310) 477-7090

Attorneys for Respondent,
THE PEOPLE OF THE STATE OF CALIFORNIA

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
LEGAL ANALYSIS.....	1
I. THE COURT SHOULD DISREGARD THE AMICUS BRIEF BECAUSE IT IMPROPERLY ADVANCES A LEGAL THEORY NOT RAISED BY EITHER PARTY IN THIS APPEAL.....	1
A. Appellant Waived Any Argument As To Licensure Status Of The City's Vendor By Failing To Assert That Defense At Trial.....	1
CONCLUSION.....	2

TABLE OF AUTHORITIES

CALIFORNIA CASES

<i>Brown v. Boren</i> (1999)	
74 Cal.App.4th 1303, 1316.....	2
<i>Bruno v. Superior Court</i> (1990)	
219 Cal.App. 3d 1359.....	1
<i>Mattco Forge, Inc. v. Arthur Young & Co.</i> (1997)	
52 Cal.App.4th 820, 847.....	2
<i>People v. Montgomery</i> (1940)	
41 Cal.App.2d 574, 577.....	2
<i>People v. Rudd</i> (1998)	
63 Cal.App.4th 620, 629.....	2
<i>Professional Engineering in California Government v. Kempton</i> (2007)	
40 Cal. 4 th 1016.....	2
<i>Rieger v. Arnold</i> (2002)	
104 Cal. App. 4 th 451.....	2
<i>Younger v. State of California</i> (1982)	
137 Cal.App. 3d 806.....	1

Respondent, the People of the State of California, submit their Response to Amicus Curiae Brief filed by ██████ Martin, as follows:

PRELIMINARY STATEMENT

As established in the Respondent's brief, the trial court did not err in admitting the Automated Red Light Enforcement System (hereinafter "ARLES") evidence. As developed in detail below, the Amicus' attempt to raise issues not raised by the parties in support of overturning the conviction is unavailing and improper. Specifically, in his brief, Amicus argues that Appellant's conviction should be reversed because the City's vendor (Redflex) purportedly was not licensed as a contractor when Appellant's citation was issued, thus the prosecution was barred from relying on the photographic and video evidence generated by the ARLES. The record establishes that Appellant failed to raise any such claim at trial. Thus, Appellant has waived that claim and this Court should therefore reject Amicus' argument.

LEGAL ANALYSIS

I.

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

The Amicus Brief should be disregarded in its entirety as it advances an argument that the parties have not raised in this appeal. Appellant did not include the argument advanced by Amicus as one of her issues presented for appeal. (Appellant's Opening Brief, p. 1 - Issues Presented). In view of the rule that an appellate court will consider only those questions that are properly raised by the appealing parties, *Younger v. State of California* (1982) 137 Cal.App. 3d 806, an amicus curiae must accept the issues made and propositions urged by the appealing parties. Any additional questions presented in a brief filed by an amicus curiae will not be considered. *Id.*, see also, *Bruno v. Superior Court* (1990) 219 Cal.App. 3d 1359. Thus, it is the general rule, that an amicus curiae must accept

the case as it finds it and may not launch out on a “juridical expedition” of its own unrelated to the actual appellate record, *Professional Engineering in California Government v. Kempton* (2007) 40 Cal. 4th 1016, and that an appellate court may disregard an amicus curiae’s attempts to expand the issues on appeal. *Rieger v. Arnold* (2002) 104 Cal. App. 4th 451.

II.

APPELLANT WAIVED ANY ARGUMENT AS TO LICENSURE STATUS OF THE CITY’S VENDOR BY FAILING TO ASSERT THAT DEFENSE AT TRIAL

Appellant failed to raise the argument advanced by the Amicus at trial. Accordingly, Appellant has waived that claim because a defense that has not been urged by a criminal defendant in trial court cannot be raised for the first time on appeal. *People v. Montgomery* (1940) 41 Cal.App.2d 574, 577. Indeed, a right may be forfeited in criminal cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it. *People v. Rudd* (1998) 63 Cal.App.4th 620, 629. This rule is based on fairness – it would be unfair, both to the trial court and the opposing litigants, to permit a change of theory on appeal; it also reflects principles of estoppel and waiver. (See, *Brown v. Boren* (1999) 74 Cal.App.4th 1303, 1316; *Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 847).¹

Having not raised this issue as a ground for appeal nor argued it at the trial level, Appellant is foreclosed from raising that claim before this Court. Accordingly, this Court should reject Amicus’ argument.

///

///

¹ Further, as argued above, Appellant did not include the argument advanced by Amicus as one of her issues presented for appeal. (Appellant’s Opening Brief, p. 1 - Issues Presented).

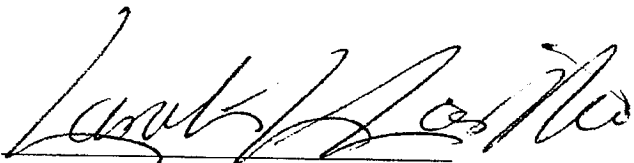
CONCLUSION

Amicus' attempts to insert an argument not raised by Appellant at trial or on appeal must be rejected as it is in stark contravention of the rules on appeal. For the foregoing reasons, Respondent respectfully requests that this Court reject the argument advanced by Amicus and renews its request that this Court affirm the judgment of conviction.

Dated: September 9, 2011

Respectfully submitted,

DAPEER, ROSENBLIT & LITVAK, LLP

By: 
William Litvak, Esq.
Caroline K. Castillo, Esq.
Attorney for Respondent
People of the State of California