No. S201443

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff & Respondent,

vs.

[redacted] GOLDSMITH
Defendant & Appellant.

After Decision by Court of Appeal, Second District, Div. Three
Appeal Transferred from Appellate Division of Los Angeles Superior Court
Appeal No. B231678; App. Div. No. BR048189; Trial Court No. 102693IN
Hon. John Johnson, Commissioner

APPELLANT'S CONSOLIDATED ANSWER TO AMICUS BRIEFS FILED ON RESPONDENT'S BEHALF

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INTRODUCTION

The law in certain areas "is a sea -- vast and vacillating, overlapping and bewildering. One can fish out of it any kind of strange support for anything, if he lives so long." (*Arthur Murray Dance Studios of Cleveland v. Witter* (Ohio Com. Pleas Ct. 1952) 105 N.E.2d 685, 687.) In its amicus brief, the League of California Cities ("LCC") has gone fishing in order to present its legal arguments.

The prosecution's other amicus, Redflex Traffic Systems, Inc. ("Redflex"), applies the same approach with regards to the facts in its amicus brief. Having unilaterally decided to augment, edit, and recreate the testimony presented at Goldsmith's trial by presenting new "facts" regarding how the ATES technology supposedly works, Redflex's approach to business/legal advocacy is more akin to fiction-writing. While we have not found such an ambitious attempt to recreate a record on appeal in any other case (be it criminal, civil, juvenile or otherwise), the creative approach employed by Redflex makes this Court's job very easy -- by simply ignoring Redflex's assertions.

While LCC's brief admittedly has fewer elements of a fiction novel (as compared to that of Redflex), LCC's arguments ironically support Goldsmith's view that ATES programs are being used for ulterior motives. To the extent that LCC seeks to support the prosecution's view by comparing ATES cases with speed radar cases, we address this issue in detail below.

Finally, the safety arguments advanced by these groups should be aired on political talk shows, the editorial pages of newspapers and perhaps TV commercials. Such propaganda has no place in an appellate brief filed with the state's Supreme Court. In sum, there is absolutely no reason to pour gasoline on the fire that is currently raging among the public based on

the abuse of the traffic court system by accepting the false arguments raised by these interest groups. (See, e.g., Judicial Profile, *Geoffrey N. Carter*, L.A. Daily J. (March 15, 2013) [reporting traffic court practitioner's observation that some defendants in red light camera cases are about to "explode" when they appear in traffic court].)

LEGAL DISCUSSION

A. THE ARGUMENTS RAISED BY REDFLEX SHOULD BE REJECTED ON NUMEROUS GROUNDS.

1. There Is Nothing in the Record to Substantiate Redflex's Self-Serving Claims Regarding Its Technology.

After advancing brand new "factual" assertions regarding how its ATES technology supposedly works, Redflex launches into its argument that its photos are accurate and reliable. (Amicus Brief ["AB"] 2-15.) The prosecution, however, did not present any of the "facts" asserted by Redflex at Goldsmith's trial, thus confirming that Redflex's claims merely represent a wish list by Redflex—a list of assertions that Redflex wants this Court to adopt as facts.[1]

The Court should "look askance at this practice of stating what purport to be facts—and not unimportant facts—without support in the record. This is a violation of the rules ... with the consequence that such assertions will, at a minimum, be disregarded." (*Liberty Nat'l Enterprises,*

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1 The prosecution's witness did testify that three digital photos are taken by the camera and that a data bar is imprinted on the photos. (RT 2:9-3:4.) Accordingly, this portion of Redflex's brief is not baseless. (AB 2.)

L.P. v. Chicago Title Ins. Co. (2011) 194 Cal.App.4th 839, 846.) [2] Otherwise, allowing a party to supply new "facts" after an appeal has been filed, whether by relying on an advocate disguised as an amicus or otherwise, violates "at least three immutable rules: first, take great care to prepare a complete record; second, if it is not in the record, it did not happen; and third, when in doubt, refer back to rules one and two." (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364.)

In sum, having demonstrated its "utter disregard for the rules" governing appellate briefs which require Redflex to "support all statements of fact" with citations to the record (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 30), Redflex's "brief makes a mockery of those rules." (*Id.* [$32,000 sanctions imposed based in part on this ground]; see also *Alicia T. v. County of Los Angeles* (1990) 222 CA3d 869, 885-886 [sanctions imposed based on "failure to confine the statement of the case to matters in the record on appeal" and "failure to support statements of matters in the record by appropriate references to the record"].)

* * * *

We acknowledge that courts have entertained amicus briefs that present matters outside the record in other circumstances. (See *Rivera v. Division of Industrial Welfare* (1968) 265 Cal.App.2d 576, 590, fn. 20

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2 "In its discussion of the facts," Redflex's brief is "entirely devoid of references to the record, and particularly to the reporter's transcript of testimony." (*Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 827, fn. 1.) Accordingly, the court "need not consider or may disregard" the so-called "facts" presented by Redflex. (*Id.* [collecting cases]; accord, *Dominguez v. Financial Indem. Co.* (2010) 183 Cal.App.4th 388, 392, fn. 2 [because [respondent's] brief fails to provide a citation to the appellate record for these facts, we do not consider them"]; brackets added.)

[acknowledging the "Brandeis brief" which "brings social statistics into the courtroom"].) But it is one thing to allow an amicus to present objectively-verifiable statistics that can be independently established and it is totally another to uphold one's conviction based on "facts" presented by a commercial enterprise whose fear of survival is the driving point behind its advocacy. Therefore, Redflex's brief should be ignored.

2. Entertaining the New Assertions Advanced by Redflex Is Legally and Practically Improper for Additional Reasons.

Accepting the "facts" presented by Redflex at this late stage – in essence recreating a new record on appeal – also violates Goldsmith's due process rights to a fair initial trial and proper appellate review. (See *Evitts v. Lucey* (1985) 469 U.S. 387, 393 [applying due process to rights on appeal]; see also *Ballard v. Commissioner of Internal Revenue* (2005) 544 U.S. 40, 59-60 [exclusion from appellate record of the preliminary fact-finder's report to the ultimate fact-finder required reversal because such omission "impedes fully informed appellate review" of the lower court's decision; banning such practice on non-constitutional grounds].) Otherwise, under the tag-team approach employed here, the prosecution in any case – be it a traffic case or otherwise – could cure the evidentiary gaps in the record by having a hired gun come up with its own "facts" to present to the appellate court under the guise of an amicus. "Due process of law requires that criminal prosecutions be instituted through the regular processes of law." (*People v. Municipal Court* (1972) 27 Cal.App.3d 193, 206.) These regular processes include the requirement that a defendant's criminal conviction must be based on facts presented to the fact-finder.

Upholding a criminal conviction based on Redflex's unsubstantiated statements would jeopardize another fundamental principle in criminal

cases. "An appellant in a criminal matter is entitled to a 'record of sufficient completeness' to permit appellate scrutiny of his claims of error." (*People v. Jenkins* (1976) 55 Cal.App.3d Supp. 55 [quoting *Coppedge v. United States* (1962) 369 U.S. 438, 446 and applying it in the traffic infraction context].) The opposite side of this coin is the basic principle that a conviction cannot be based on "facts" presented outside the record.

Furthermore, to allow prosecuting agencies in fifty eight counties across the state to use ATES citations based on the self-serving assertions made by Redflex here – an aggressive advocate that has not hesitated to use any means to maximize its bottom line – could further erode the public's confidence in the legal system. Therefore, from a purely legal and practical standpoint, the Court should reject Redflex's assertions.

3. Additional Factors Further Compel Rejection of Redflex's Factual Arguments.

Refusing to acknowledge that "the 'assembly-line justice' dispensed by some trial courts" – particularly traffic courts in ATES cases – is "drawing increasing public criticism" (*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 540), Redflex asks this Court to allow traffic court commissioners to rubber stamp its photos – materials used as the *sole* evidence to convict drivers – by claiming that its ATES equipment functions properly. But the ultimate problem with adopting Redflex's argument – predicated on the notion that its ATES materials are inherently or presumptively accurate – is that it supports "the inference that the court and law enforcement are 'in cahoots' and the result of the trial a foregone conclusion." (*People ex rel. Kottmeier v. Municipal Court* (1990) 220 Cal.App.3d 602, 611-612.)

While we do not seek to glorify Redflex's chest-pounding comments as to the "accuracy" of its photos, we note that Redflex has conveniently failed to notify the Court of its misdemeanor violations of the law in installing the ATES equipment in the first place. (See Bus. & Prof. Code § 7028.15, subd. (a); Bus. & Prof. Code § 7028, subd. (a).) Given the fact that Redflex was not even licensed as a contractor when it executed its contract with the prosecution or when it installed the cameras at issue here (OBOM 35), there is simply no reason to assume that Redflex properly installed any of the numerous components of the ATES camera systems here. "The purpose of the licensing law is to protect the public from incompetence and dishonesty" by those performing construction services. (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995 [citing *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 149-150].) This case presents a perfect example of what can go wrong when the licensing laws are violated: incompetent installation of ATES equipment by a misdemeanant that has the *chutzpah* to have the public prosecuted for infractions!

Attempting to downplay its criminal conduct in another traffic court case (Appellant's Motion for Judicial Notice, Ex. 1), Redflex also argues that the falsification of evidence in that case is irrelevant in evaluating the accuracy or the reliability of the computer systems that generated the photos in Goldsmith's case. (AB 13.) Redflex also tries to minimize the gravity of its conduct by euphemistically characterizing it as a "fail[ure] to comply with the requirements of notary statutes" imposed by Arizona law. (*Id.*)

The Arizona statute at issue, cited as one of the grounds for revoking Redflex's notary's license, authorizes such revocation based on "[e]xecution of any notarial certificate ... containing a statement known ... to be false." (A.R.S. § 41-330(A)(10).) While Redflex apparently does not

believe that such conduct constitutes a crime of moral turpitude, under California law, such character evidence is highly relevant here because the prosecution, in addition to Redflex itself, has put Redflex's credibility at issue in all ATES cases, not just this one.

Claiming that Redflex's materials are trustworthy, reliable and accurate, the prosecution and Redflex have taken the position that Redflex has no opportunity or motive to alter the evidence. (ABOM 2; AB 6.) The evidence presented by Goldsmith in her judicial notice motion directly refutes that claim. (See Wegner, et al., Cal. Practice Guide, Civil Trials & Evidence (Rutter Group 2012) ¶ 8:2943, p. 8E-208.1 ["In criminal proceedings, a witness' credibility may be attacked by any relevant evidence, regardless of whether it is in the form of an opinion, reputation or specific acts of conduct"]; internal citation omitted.) Furthermore, "evidence of past misconduct may tend to show the witness has some motive, bias, or interest that might induce false testimony." (*Id.* at ¶ 8:2952, p. 8E-208.4.) "A witness may be impeached with any prior conduct involving moral turpitude whether or not it resulted in a felony conviction..." (*People v. Clark* (2011) 52 Cal. 4th 856, 931; see also *Stratmore v. State Bar* (1975) 14 Cal.3d 887, 888-891 [falsification of expenses constitutes moral turpitude].)

Applying these authorities here, the prior falsification of evidence by Redflex is highly relevant because it refutes Redflex's argument that it has no opportunity or motive to falsify the evidence presented in traffic courts. Having been impeached with this evidence, Redflex's lack of credibility also renders moot the "factual" assertions in its brief regarding how the system supposedly operates.

* * * *

The absence of a right to a jury trial in traffic cases highlights the need to reject the arguments raised by the prosecution's cohorts here. "Providing an accused with the right to be tried by a jury of his peers" gives the accused "an inestimable safeguard against the ... overzealous prosecutor[.]" (*Duncan v. Louisiana* (1968) 391 U.S. 145, 156). If defendants had such a right in traffic courts, they could argue to the jury the irony of convicting a driver for an infraction based on ATES materials created by a private vendor who engaged in a more serious crime – a misdemeanor – by installing the cameras without a contractor's license. (OBOM 35.) (*Compare* Pen. Code § 19 ["every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars ($1,000), or by both"] *with* Pen. Code § 19.8, subd. (a) ["a violation that is an infraction is punishable by a fine not exceeding two hundred fifty dollars ($250)"].) While Goldsmith does *not* challenge the unavailability of a jury trial in infraction cases, the need to impose a stringent gatekeeper function is paramount in this context, particularly in light of the questions raised regarding the proper installation of the equipment based on Redflex's lack of license.

In sum, the Court should disregard the factual assertions in Redflex's brief, including its public safety pitch—another misleading argument refuted in more detail below.

B. THE ARGUMENTS RAISED BY LCC SHOULD BE COMPLETELY REJECTED AS WELL.

1. The Budgetary Considerations Advanced by LCC Should Be Summarily Rejected.

The brief submitted by LCC is equally flawed—though not completely useless. In this me-too brief, LCC ironically make Goldsmith's case by finally confirming – for the first time in this long litigation – that ATES programs are simply used to generate revenues. Based on an economic cost-versus-benefit analytical approach tied to prosecuting agencies' cash flow, LCC argues that enforcing the strict evidentiary standards for admission of evidence, as articulated by Goldsmith, "would substantially increase costs for cash-strapped municipalities." (AB 8.) The brief incredibly goes so far as to argue that the Court should reject Goldsmith's arguments because authenticating the evidence used in criminal cases would impose "substantial costs." (AB 11.)

It is precisely the utilitarian nature of this economics-driven argument -- typically taught at business schools -- that has outraged the public. The advancement of this argument in such a matter-of-fact manner, in derogation of defendants' constitutional rights, further illustrates the need for this Court to intervene by finally sending a message that a traffic court clerk is *not* a tax collector. While Goldsmith certainly acknowledges the impact of the budgetary problems facing the public sector and its "cash strapped" status (AB 8), that hardly justifies the use of traffic courts – where defendants are the most vulnerable to abuse based on their lack of representation – as a means to solve such monetary problems. In essence, LCC is asking "the judicial department, the source and fountain of justice itself" to "inflict the very wrongs they were created to prevent" in the name

of compelling "obedience to law and to enforce justice." (*Hovey v. Elliott* (1897) 167 U.S. 409, 417-418.) *Hovey*'s condemnation of this approach applies with equal force here to ensure that ATES equipment will no longer be used as ATM's – i.e., cash machines.

In any event, setting aside the impertinence of LCC's argument, the enforcement of every constitutional right – be it the right to a jury trial, the right to due process or any other right – necessarily entails some costs. That provides absolutely no basis to compromise or eliminate such rights. Given the rejection of LCC's argument in the felony context, this is all the more reason to reject its argument in the infraction context. (See, e.g., *Miranda v. Arizona* (1966) 384 U.S. 436, 517 (Harlan, J., dissenting); *id.*, at 542 (White, J., dissenting) (objecting that the *Miranda* rule "[i]n some unknown number of cases . . . will return a killer, a rapist or other criminal to the streets . . . to repeat his crime"); *Hudson v. Michigan* (2006) 547 U.S. 586, 591 ["The exclusionary rule generates 'substantial social costs'"].) Therefore, the underlying premise of the amicus brief – that cost-savings dictate the resolution of the evidentiary issues presented here – is completely flawed.

2. ATES Cases Are Totally Different than Speeding Cases Based on Radar Guns.

LCC repeatedly compares the use of ATES equipment to radar guns used to establish a speeding violation. Radar guns, however, do not present the same level of risks – in terms of equipment-malfunction, evidence-alteration, etc. – that are inherently associated with ATES cases.

Unlike the interaction of various components of ATES equipment that require prefect synergy in order to produce accurate results, a radar gun is a single-component device whose functionality does not depend on the

proper functioning of numerous other parts and remote computer networks. Furthermore, radar gun vendors, unlike ATES vendors, have no involvement in the preparation or presentation of the evidence presented at traffic courts, thus eliminating the risks of evidence alteration in that context. By contrast, given that ATES vendors are directly involved and unilaterally control the preparation of the evidence used in ATES trials, the risks of evidence alteration are magnified exponentially in the ATES context.

But assuming that the analogy to speeding cases is a valid one, other courts have adopted Goldsmith's arguments in speeding cases involving photo-radar equipment. Describing such vendors' witnesses as "individuals who have a great deal at stake financially and who will testify to whatever it takes to convince the court in a given case" (*Municipality of Anchorage v. Baxley* (Alas. App. Ct. 1997) 946 P.2d 894, 897), other courts have upheld the dismissal of speeding tickets on this ground. Affirming the lower court's reasoning, the rationale articulated in *Baxley* applies with even greater force in Goldsmith's case:

> "Obviously a favorable decision by this court could be cited elsewhere and would be of great value to [the ATES vendor] in fostering the growth of a market for its product. Thus, the pecuniary interest of Mr. Davis and Mr. Davies goes far beyond the Anchorage program and would appear to be so great as to call into question their objectivity when discussing their product. This is not the sort of testimony that persuades this court to find the PR100 evidence of speeding admissible. Moreover, were we to find this evidence admissible, the questionable reliability of the testimony renders it insufficient to sustain a conviction beyond a reasonable doubt in each of these cases. Accordingly, the court orders the cases against the above defendants dismissed." (*Id.* at 898 [brackets added].)

Applying LCC's analogy, the same rationale requires the reversal of Goldsmith's conviction.

Continuing with its radar gun analogy, LCC claims that "the arresting officer must have minimal training in radar gun usage" in order to present testimony at trial. (AB 4.) The law, however, requires the officer to have "completed a radar operator course of not less than 24 hours on the use of police traffic radar" which must have been "approved and certified by the Commission on Peace Officer Standards and Training." (Vehicle Code, § 40802, subd. (c)(1)(A).) An additional course is required for using laser guns. (Vehicle Code, § 40802, subd. (c)(1)(B).) This is not "minimal."

By contrast, because the red light camera statute fails to impose such a safeguard, the risks of erroneous testimony/conviction are significantly higher in ATES cases. In addition to these mandatory training requirements designed to minimize false convictions, the law requires the prosecution -- in speeding cases based on radar guns -- to present an engineering and traffic survey conducted by an independent registered engineer during the specific time frame allowed by this statute. (Vehicle Code, § 40802, subd. (a)(2).) Given this additional safeguard – based on the mandatory requirement of presenting this documentary evidence prepared by a neutral third party professional who has no stakes in the case – the risks of fabricating evidence or yielding a false conviction are substantially reduced in speeding cases. By contrast, in ATES cases, given the mutually symbiotic relationship between the vendor and the prosecuting agency – as evidenced by their mutual desire to maximize convictions and revenues – the risks of false convictions are substantially increased. [3]

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3 It is also important to note that the officer's testimony regarding the results of the engineering survey is not enough to establish a speeding violation; either the original or a certified copy of the actual survey must be presented at trial, contrary to LCC's implicit suggestion to the contrary.

Refusing to acknowledge this point, LCC insists that ATES materials should be admitted without complying with the necessary authentication standards because courts allow officers to authenticate radar gun evidence that is "much more difficult to rebut." (AB 7.) LCC is absolutely wrong again.

In speeding cases, a defendant is not at the mercy of a private vendor or the prosecuting agency in order to obtain the necessary documents required to contest the ticket. The defendant can easily obtain the engineering and traffic survey from the local municipality in which the citation was issued. Because the police agency that issues the ticket is not the only one with a copy of the survey (e.g., municipal transportation departments should have this information), the defendant is rarely stonewalled in obtaining such documents. In contrast, in ATES cases, defendants face "heavy opposition by both prosecutors and computer vendors' attorneys, who fight to keep their technology a secret." (Tait, *Man vs. Machine: Red Light Cameras Deny Defendants the Right of Confrontation,* L.A. Daily J. (October 1, 2001).) [4]

Because pro per defendants cannot be expected to conduct such discovery, particularly against the army of lawyers hired by ATES vendors, LCC's argument that radar gun evidence is "much more difficult to rebut" is factually flawed. (AB 7.) Fighting ATES cases is especially difficult for defendants that are in pro per. In San Diego, for example, after 300 drivers banded together *and* hired counsel, the judge "granted a discovery motion in their case" which revealed the vendor "had moved some of the San

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(See *People v. Earnest* (1995) 33 Cal.App.4th Supp. 18 [conviction reversed on this ground].)

4 In our prior briefs, we referred to this article without including the phrase "Man vs. Machine" in the title. (OBOM 3, 37; RBOM 9.) In addition, the reply brief erroneously cited *Marvin v. Adams* (1990) 224 Cal.App.3d 956 as being decided in 1967. (RBOM 5.) That case was decided in 1990.

Diego cameras' underground sensors, possibly throwing off the system's accuracy." (Walbert, *Red Light Camera Citations Don't Stand Up, Judge Says,* L.A. Daily J. (September 1, 2001) [noting that those citations were finally dismissed on this ground].) While ignoring the fact that it is virtually impossible for a pro per defendant to engage in such discovery battles in traffic courts, LCC is completely oblivious to the *David vs. Goliath* reality facing traffic court defendants.

Finally, LCC's reliance on *People v. Flaxman* (1977) 74 Cal.App.3d Supp. 16, a decision by the trial court's appellate division from almost four decades ago, is misleading. Unlike Goldsmith's case, the officer in that case "testified that he had 'calibrated,' i.e., adjusted, and tested the radar machine by turning the selector switch as directed and then determining whether the machine gave the appropriate readings. If it had not so performed he would have turned the machine in to his watch commander." (*Id.* at 23.) The appellate division found this to be "sufficient to establish a prima facie showing that the machine was suitably functioning." (*Id.* at 24.)

In this case, by contrast, the prosecution's only witness testified at trial that the ATES equipment was not "calibrated." (RT 6:5-6 ["there is no calibration of this system"].) The red light camera statute, however, requires the prosecuting agency to "certify[] that the equipment is properly installed and calibrated, and is operating properly." (Vehicle Code, § 21455.5, subd. (c)(2)(C).) Even if we ignore this fatal admission by the prosecution's witness, he never claimed that any form of independent testing was performed at any time to show that the camera at this location takes photos accurately. [5]

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5 Although the prosecution's witness claimed that he performs a visual inspection of the light to ensure that the yellow light interval is not set too short (RT 9: 6-11), that does not address the numerous other sources of potential error (e.g., faulty sensors, improper installation of the equipment,

In sum, the statute governing the use of radar guns has various safeguards that the red light camera statute does not, thus requiring stringent evidentiary standards to be imposed in ATES cases. [6]

3. The Safety Propaganda Advanced by Respondent's Cohorts Belong to Political Talk Shows, Not in an Appellate Brief, Especially Given the Inaccuracy of Such Discussions Presented Here.

Apparently realizing that a prosecuting agency's "cash-strapped" status is not a legitimate reason to justify the use of ATES citations to squeeze revenues out of motorists (AB 8), LCC switches gears, resorting to safety arguments based on dubious studies. Rather than relying on LCC's self-serving arguments based on highly debatable assertions in the studies referenced by LCC, the Court should summarily dismiss LCC's claims for various reasons.

First, the validity of the conclusions cited by LCC cannot be evaluated without full disclosure of the extent of private vendors' influence – direct or indirect – in the studies cited by LCC. For example, judging by the scandals involving such vendors' attempts to influence government

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etc.). In any event, Goldsmith is no longer challenging her conviction by arguing that the yellow light interval was too short. We note, however, that even this testimony lacked any credibility. Although the prosecution's witness initially testified under oath that his information regarding the yellow light interval was based on what others had told him (RT 8: 19-21), he subsequently changed his testimony by claiming that he had personal knowledge based on his own timing. (RT 9: 7-12.)

6 As for LCC's discussion of *State v. Hanson* (Wis. 1978) 270 N.W.2d 212 (AB 6), the Court should disregard it in light of Goldsmith's acknowledgment that "a *Kelly* hearing is not required in ATES cases based on the notion that ATES is a 'novel technology.'" (RBOM 24, fn. 6.)

officials, it would not be a stretch of the imagination to expect similar attempts to buy safety experts. (See Kidwell, *Bribery Likely, Redflex Admits*, Chicago Tribune (March 3, 2013) p. 1.)

But even absent such misconduct, the results claimed in the studies are unreliable for various other reasons. For example, the so-called independent study funded by the Federal Highway Administration indicates that the study "would not have been possible without the enthusiastic cooperation by officials in the study jurisdictions in assembling the database" used in the study. (See Report FHWA-HRT-05-048 (2005) p. 83.) Given that such officials have always supported ATES citations – some more enthusiastically than others as illustrated by the *Chicago Tribune* article cited above – this calls into question the objectivity of the study and, consequently, the validity of its results. (See *Exxon Shipping Co. v. Baker* (2008) 554 U.S. 471, 501, fn. 17 [refusing to rely on research study partially funded by appellant].)

Second, assuming for the sake of the argument that the particular studies selectively cited by LCC are perfectly legitimate and sound, the empirical evidence is far from clear as to the safety benefits touted by LCC. (See, e.g., *Red Light Camera Studies Roundup*, <http://www.thenewspaper.com/news/04/430.asp> [as of May 7, 2013] [compiling numerous studies that debunk the safety claims advertised by LCC].)

Third, while we have not bothered to glorify LCC's safety pitch by researching the exact number of fatalities, major injuries, lawsuits or the sheer size of the economic damages caused by the increased number of rear-end crashes associated with red light cameras, it is sufficient to note that LCC's attempt to downplay those types of crashes as mere "fender-benders" is unsupported with any evidence whatsoever. (AB 13.) As with its remaining assertions, this sort of briefing is not exactly helpful or "needed" to assist the Court here. (Application 3.)

Finally, while it appears to be impossible for the other side to comprehend, there is absolutely no quantifiable or monetary value associated with the loss of the public's trust in the integrity of the traffic court system. Given the ubiquitous abuse of the system through ATES citations (OBOM 37-39), no value can be attached to *this* cost – or the loss of defendants' constitutional rights to due process – in this entire equation. (RBOM 5-10.) Therefore, the safety propaganda advanced by LCC should be summarily dismissed.

4. The Remaining Excuses Offered by LCC for Reducing the Evidentiary Standards Governing ATES Cases Are Equally Flawed.

Claiming that a blanket presumption of admissibility should govern ATES cases, LCC also seeks to justify the burden-shifting advocated by the prosecution. (AB 7.) But ATES cases represent the ultimate context in which "where the burden of proof lies may be decisive of the outcome." (*Armstrong v. Manzo* (1965) 380 U.S. 545, 551 [reversal ordered based on improper allocation of burden of proof that resulted from lack of notice of proceedings].) LCC's arguments on this point should be disregarded on this basis alone.

Seeking to perpetuate the current system of loosey-goosey evidentiary standards that are applied in traffic courts, LCC also claims that a conviction is "not very likely" where the ATES materials do not clearly show the driver accused of running a red light. (AB 7.) This assertion, in and of itself, demonstrates LCC's naïveté that seriously calls into question its claimed familiarity with the issues raised in this case. (Application, p. 3.) While LCC's academic view may be correct in theory, real life practice is totally different. As confirmed by practitioners recently, "some traffic

commissioners side with prosecutors regardless of evidence" presented in red light camera trials. (Judicial Profile, *supra*, L.A. Daily J. (March 15, 2013) [confirming that, where "a red light camera photo did not clearly identify the defendant," any other commissioner would have found the defendant guilty].)

To summarize, the arguments raised by LCC completely lack merit.

CONCLUSION

If there were any doubt as to the commercialization of the red light camera cases adjudicated in traffic courts, Redflex's brief has dispelled such a doubt. The irresponsible approach employed here by the prosecution's alter ego to recreate the record on appeal is a red flag – in and of itself – that highlights the urgent need to send a message that the administration of justice in traffic courts is not a commercial venture.

Amicus briefs are designed to "assist the court by broadening its perspective on the issues raised by the parties." (*Connerly v. State Personnel Bd.* (2005) 37 Cal.4th 1169, 1177.) The briefs filed in this case, however, appear to be motivated for totally different reasons: to mislead the court by advancing brand new assertions regarding how the ATES machines supposedly operate and to advance pure propaganda in order to maintain the status quo for using these cash machines. Such rhetoric should be completely disregarded.

Respectfully submitted,

DATED: May 17, 2013

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