

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

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

AUG 26 2011

ALAN CARLSON, Clerk of the Court

BY: J. GOMEZ DEPUTY

APPELLANT: Dyrek

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.

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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

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NOTICE OF FILING OF JUDGMENT/ORDER

AUG 26 2011

APPELLATE DIVISION  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

ALAN CARLSON, Clerk of the Court

*[Signature]*  
BY J GOMEZ

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PEOPLE OF THE STATE OF CALIFORNIA,	)	CASE NO. 30-2011-00437683
	)	
Plaintiff and Respondent,	)	JUDGMENT ON APPEAL
	)	from the
vs.	)	SUPERIOR COURT
	)	of
<span style="background-color: gray; color: black;">[REDACTED]</span> DYREK,	)	ORANGE COUNTY
	)	CENTRAL JUSTICE CENTER
Defendant and Appellant.	)	
	)	HON. CARMEN LUEGE
	)	COMMISSIONER

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

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

1 on the basis of independent corroborating evidence, however, and  
2 there is none in this case. (See People v. Beckley (2010) 185  
3 Cal.App.4<sup>th</sup> 509, 514-516.) Section 1553 sets forth a presumption  
4 that a printed representation of a digitally stored image is an  
5 accurate representation of the image it purports to represent, but  
6 that presumption is rebutted in this case as to Exhibit 1 by the  
7 People's own evidence that the photos in that exhibit were  
8 "modified by Redflex employees" from the photos contained in  
9 Exhibit 3. (Corrected statement on appeal at 5:8-10; see Evidence  
10 Code § 1402.) Although the statutory presumption arguably applies  
11 to the Exhibit 3 photos, these photographs do not in themselves  
12 provide sufficient evidence that appellant violated Vehicle Code §  
13 21453(a) - even if it were clear from the photographs and the  
14 information printed in the margins that the depicted vehicle passed  
15 through a red light without stopping, the only evidence tying  
16 appellant to that vehicle is the enhanced image of the driver in  
17 Exhibit 1 and the statements in Exhibit 2. Because neither Exhibit  
18 1 nor Exhibit 2 was admissible, the evidence was insufficient to  
19 support the conviction.

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

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26 ROBERT C. GANNON, JR., Presiding Judge  
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