B343120

COURT OF APPEAL OF THE STATE OF CALIFORNIA
Second Appellate District, Division Four

THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff and Respondent,

v.

KEVIN PERELMAN
Defendant and Appellant.

Appeal from the Superior Court of the State of California,
for the County of Los Angeles
Hon. Gregory Dohi
Van Nuys West | Dept. E
Case No.: LA099813

APPELLANT'S OPENING BRIEF

Yisrael Gelb
(SBN: 344924)
GELB LAW, APC
369 S. Doheny Dr. #336
Beverly Hills, CA 90212
T: (323) 632-6864
yisrael@gelblawapc.com

Attorneys for Defendant and Appellant Kevin Perelman

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STATEMENT OF APPEALABILITY

This case is appealable under Penal Code section 1237(a).

STATEMENT OF CASE

Defendant Kevin Perelman was charged on August 28, 2023, with three counts of vandalism under Penal Code section 594, subd. (a). (CT 8.) Originally only count one was charged as a felony (CT 8), but later, count two was amended to charge as a felony. (CT 161.) Perelman pled not guilty. (CT 8.) Information was filed on June 5, 2024. (CT 162.) A jury trial began September 20, 2024 (CT 167) and concluded October 1, 2024. (CT 214.) The jury hung 11-1 for guilt as to count one. (CT 213.) The prosecution decided not to retry and moved to dismiss under Penal Code section 1385 in the interest of justice. (CT 1385.) The jury found Perelman guilty of counts two and three. (CT 213.) Perelman was sentenced to two years for count two and 364 days for count three. (CT 218-219.) The two years was stayed (CT 218), and 93 days credit was given towards the 364-day order. (CT 219.) Perelman timely appealed. (CT 223.)

SUMMARY OF ARGUMENT.

Defendant Kevin Perelman was charged with three counts of vandalism: two as a felony and one as a misdemeanor. He was convicted by a jury of one charge of felony vandalism (count two) and the one charge of misdemeanor vandalism (count three). The jury hung on count one and that count was dismissed.

There were no eyewitnesses to support any count. Instead, to support count two (and count one) the prosecutor presented video surveillance of the parking garage where the vandalism occurred. But rather than produce the original video footage and properly authenticating it, the prosecutor presented a recording of a video that was never authenticated. The prosecutor also could not establish a proper chain of custody. Yet the court—over Perelman's objections—entered the videos into evidence. Without these videos there is insufficient evidence to convict Perelman on count two.

And to support count three, the prosecutor showed video surveillance of the vandalized shopping plaza. But here too the videos were not authenticated, nor was a proper chain of custody established. Yet the court—over Perelman's objections—entered the videos into evidence. Without these videos there is insufficient evidence to convict Perelman of count three.

As so, the Court should set aside the jury's guilty verdict as to counts two and three.

STATEMENT OF FACTS

1. The June 11th, 2024, incident.

The third count was misdemeanor vandalism for green dots painted onto the wall of a shopping center called Warner Plaza. Video evidence shot from several angles and different security cameras showed a person driving up, exiting his vehicle, running to the wall for a moment, moving his hand, and then returning to his vehicle. (People's Exhibits 12-15.) The value of the damage was under $400. (RT 1215.) Police officer Dinse identified the person on camera as Kevin Perelman. Dinse also identified the vehicle in the footage as Perelman's car. (RT 1580-1581.)

Randy Christiansen was called as a foundational witness. He is the operations manager for Retail Opportunity Investments, Corp. (ROIC), the company that owned and operated Warner Plaza. (RT 1208-09.) He had witnessed paint dots splattered and business cards scattered on various parts of Warner Plaza. (RT 1210.) Security cameras monitor the plaza. (RT 1209; RT 1549.) These videos are recorded on a server owned by the security monitoring company American Virtual Monitoring. (RT 1209; RT 1549-1550.) As it pertained to the June 11, 2023, incident, Christiansen testified that he was not involved with obtaining the footage but that another employee, April Sheffield, told him that she (1) requested the June 11, 2023, footage from American Virtual Monitoring,

and (2) emailed the video footage to LAPD. (RT 1214; RT 1569.) Christiansen had no independent knowledge of the monitoring program used by American Virtual Monitoring, not whether the video could be edited, nor whether the video was an accurate depiction of the events recorded at the time. (RT 1214.) ROIC depended on American Virtual Monitoring to ensure accuracy of the video footage. (RT 1210.) Christiansen could not verify that Sheffield sent the videos to LAPD or that LAPD received the videos from Sheffield. (RT 1212-1213.) Nor could Christiansen say whether the videos could be modified by any computer program. (RT 1214.)

People's Exhibit 12 was a video dated June 11, 2023, and timestamped 7:45 am. (RT 1551.) In the video, a dark-colored SUV drove in front of the camera along the side of stores Urban Plates and Nick the Greek and made a left-hand turn towards Sprouts, where it stopped. (RT 1551-1552.) People's Exhibit 13, with the same date and timestamp, shows the side of a car which reads www.kevinperelman and appeared to be the same car as in Exhibit 12. (RT 1553.) People's Exhibit 14 had the same date and was timestamped 7:44:14 am. (RT 1553-1554.) In that video, a small black SUV is heading straight towards the doors of Urban Plates and is right by a dumpster enclosure. (RT 1554.) Small pieces of paper can be seen falling from the window. (RT 1555.) These papers say www.perelman something and are often littered on the property. (RT 1555-1556.) The video continues and the SUV

parks at the back side door of Nick the Greek and someone is seen exiting the vehicle, going around the back of the vehicle, and then returning. (RT 1556-1557.) People's Exhibit 15 is also dated June 11, 2023, and timestamped 7:45:53. (RT 1558.) The angle of the camera captures the side of Nick the Greek. (RT 1558.) An SUV pulls up and a person is seen approaching, marking the wall, and then leaving. (RT 1560.) People's Exhibit 16 was a still photograph of the side wall of Nick the Greek and two green spray-painted marks can be seen. (RT 1560.) The markings were discovered by Christiansen within three days of June 11, 2023. (Rt 1561.)

Officer Charles Dinse is a senior lead officer with the LAPD and assigned to Topanga Division as a community liaison. (RT 1570-1571.) He was responsible for the June 11, 2023, investigation. (RT 1571.) Dinse obtained the video footage marked as People's Exhibits 12-15 from April Sheffield. (RT 1572.) He saw a vehicle with the words www.keveinperelmantarget.com on the side panel, both within and outside of his basic car area. (RT 1573.) He observed that the papers being thrown out of the window in Exhibit 14 are Kevin Perelman's business cards and have Perelman's identifying information on them. (RT 1576.) Dinse identified Perelman as the person marking the wall. (RT 1580-1581; RT 1601, 1604.)

Perelman objected to the four videos on foundation and chain of custody grounds. (RT 1215-1216.)

2. The July 31, 2023, incidents.

Perelman lived in the Woodland Oaks Condominium Complex. (RT 1236.) Perelman allegedly "keyed" the cars of two fellow residents. As evidence, the prosecutor sought to introduce four videos, allegedly showing Perelman keying the two cars.

To lay foundation and establish chain of custody, the prosecutor called Shauna Gatlin, the vice-president of organizational advancement of the Woodland Oaks HOA, as a witness. (RT 1235.) Gatlin testified to the following facts. There are two sides to the complex: townhomes and condos. Each side has its own underground parking garage. (RT 1236.) There are surveillance video cameras in the garages that are motion activated. (Rt 1237.) The videos get stored on local DVRs. (RT 1238.) They are stored for thirty to forty-five days and are then are recorded over. (RT 1238.) After residents complained about their cars being keyed, an HOA board member, Steven Bear, downloaded the videos at Gatlin's request. (RT 1238-1239.) No one from the management company or building ownership asked Bear to retrieve the videos; he did so on his own initiative. (RT 1320.) Bear could have asked for the hard copy that is stored to the DVR itself but decided against it. (RT 1329.) The security company employee in charge of retrieving the hard copy video was out of country and the building management would have

to pay to have the security company employee download the videos. (RT 1329-1330.) It was not Bear's practice to download the videos himself; this was the only instance. (RT 1330.) Every other time, Bear would make the request for the hard copy. (RT 1330.)

On August 2, 2023, Gatlin forwarded the videos shown to her by Bear to Officer Dinse via email. (RT 1240; 1243.) These four videos were presented as People's Exhibits 1-4. (RT 1243; 1246; 1249; 1252.)

Exhibit 1 showed a male exiting an elevator vestibule lobby, dated July 31, 2023, and timestamped at 17:54:2 (military time). (RT 1244.) This elevator led into the Woodland Oak parking garage. (RT 1245.) Exhibit 2 was timestamped for the same date at 17:54:29 and showed a man going to the right side of a car. (RT 1247.) The car was parked in a space assigned to victim Pedram Ezadpana. (RT 1249.) Exhibit 3, also dated July 31, 2023, was stamped at 17:55:13, also showed the parking space, but from another angle. (RT 1251.) A person can be seen walking towards the wall. (RT 1250.) Exhibit 4 showed the other parking garage at Woodland Oak. (RT 1252.) This video stamp was "mushy" but was thought by Gatlin to be dated July 31, 2023, timestamped 5:29:45 (p.m.). (RT 1253.) Bear testified that the time on the videos could be off by a few minutes because of power outages. (RT 1323.) Bear added that the video shown in court was the same that he had recorded with his cellphone and that it had

not been altered or modified since recording it on his cellphone. (RT 1325-1326.)

Exhibit 4 showed a person in the garage next to a car that was parked in a space assigned to victim Terrance Scroggin. (RT 1253.) Gatlin could not account for the discrepancies between the videos with a military time stamp and those with a regular time stamp. (RT 1257; 1265.) But she admitted that the video she forwarded to Officer Dinse was a video of a video. (RT 1259.) Bear had used his phone to record the video he downloaded from the DVR. (RT 1259-1260.) It was this recorded video that was sent to Officer Dinse. (RT 1254.) The originals have already been overwritten. (RT 1272.) Perelman objected to these videos based on foundation, authenticity, and chain of custody. (RT 1262 [see discussion continuing onto p. 1263].) Dinse investigated these incidents as well. (RT 1581.) He, Ezadpana, Scroggins, and Bear all identified Perelman as the person in the video. (RT 1282; RT 1322; RT 1582-1586.)

Scroggins was then shown People's Exhibit 4 and described what he saw as Perelman making an asterisk motion near his car. (RT 1516.) He explained that he found a "crisscross thing on the hood, then a cross on … rear and fender to fender on both sides had been keyed." (RT 1517.) People's Exhibit 7 was a color photograph of Scroggin's car with a crisscross mark on it. (RT 1518.) Exhibit 8 was a photograph showing the 'x' mark. (RT 1519.) Scroggins also

testified that he paid nearly five thousand dollars to repair his vehicle. (RT 1520.) This was supported by Exhibit 9, an invoice from Hal's Auto Body Shop in the amount of $5,012.16. (RT 1522.)

But on cross-examination, Scroggins admitted that he was not present when the damage was done (RT 1528) and only saw Perelman on the video shown. (RT 1530.) Scroggins further admitted that he did not see a key in Perelman's hands (RT 1530-1531), did not see Perelman near his trunk where the 'x' mark was found (RT 1531), did not see Perelman go to the driver side of the car where the fender to fender mark was found (RT 1531), and that the invoice was for the totality of fixing the car. (RT 1533.) Scroggins could not say what was the cost to fix just the asterisk-like mark on his car's hood. (RT 1534.)

3. The trial court admits the videos into evidence.

Over Perelman's objections (chain of custody, foundation, and authentication), the trial court admitted the videos into evidence. (RT 1620; CT 174.) The trial court reasoned that the videos pertaining to count three had its chain of custody established by Officer Dinse who testified from where he obtained all the videos and Christiansen as to standard of practice. (RT 1620.) Christiansen recognized the videos and testified that they appear to be the surveillance videos from the shopping plaza. (RT 1620.) And the videos

pertaining to count two were established by Bear who testified that they were the videos he obtained, that he recorded them off screen, and what software he used. (RT 1620.)

4. Perelman's defense.

Perelman did not put on a defense. (RT 1823.)

5. Count 1: Ezadpana's car.

The jury was hung 11-1 on count one and the prosecutor declined to try the count again. (CT 213; RT 2117, 2119, 2122.)

6. Count 2: Scroggin's car.

The jury convicted Perelman for felony vandalism on this count. (RT 2117; CT 206, 213.)

7. Count 3: Warner Plaza.

The jury convicted Perelman on this count. (RT 2117; CT 207, 213.)

8. Sentencing.

The trial court sentenced Perelman on count two to the mid-term of two years and on count three to 364 days in county jail. But the trial court "split" the sentence and required Perelman to serve 270 days in county and put the balance under mandatory supervision. Perelman was also ordered to pay for the damage he caused Scroggins and ROIC. (RT 2413-2414.) Perelman has since served his time and been released.

STANDARD OF REVIEW

"In a chain of custody claim the … party offering the evidence [must] show [that] it is reasonably certain that there was no alteration." (*People v. Catlin* (2001) 26 Cal.4th 81, 134, citing *People v. Diaz* (1992) 3 Cal.4th 495, 559 [cleaned up]; *People v. Johnsen* (2021) 10 Cal.5th 1116, 1161.) Every vital link must be accounted for "because then it is as likely as not that the evidence analyzed was not the evidence originally received." (*Diaz*, *supra*.) It is only when there is the "barest of speculation that there was tampering [then] it is proper to admit the evidence and let what doubt remains go its weight." (*Id*.) The trial court's decision is reviewed for abuse of discretion. (*Johnsen*, *supra*.) Authentication is also reviewed for abuse of discretion. (*People v. Wilson* (2021) 11 Cal.5th 259, 305.)

Questions of admissibility are reviewed for abuse of discretion and "will not be disturbed except on a showing that the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10 [internal citations omitted].)

"In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence--that is, evidence that is

reasonable, credible, and of solid value--such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*Ibid.*, at p. 11, citing *People v. Johnson* (1980) 26 Cal. 3d 557, 578.)

LEGAL ANALYSIS

I. The trial court erred in admitting video evidence without proper authentication.

A. Authentication requires foundational testimony.

All writings must be authenticated before being received into evidence. (Evid. Code §§ 250, 1401.) A video is a writing. (*In re K.B.* 238 Cal.App.4th 989.) A video is authenticated by showing that it is a fair and accurate representation of the scene depicted. (*Ibid*; Evid. Code section 1400.) This is known as laying the foundation, and can be supplied by the videographer, a witness to the event, or other witness testimony, circumstantial evidence, content, and location, or statutory presumption. (*People v. Goldsmith* (2014) 59 Cal.4th 258, 267.) It is the proponent's burden to produce sufficient evidence authenticating the video. (Evid. Code § 403, subd. (a)(3).)

The first step is to determine relevance and for what purpose the evidence is being offered, so that what is being shown is a "genuine" account of the "purpose offered." (*Goldsmith*, *supra*, 59 Cal.4th at pp. 266-267.)

All the videos here (Exhibits 1-4, 12-15) were offered for the truth of the matter to show that Perelman vandalized the cars and property of the victims. Thus, the videos are being offered for their substance as a "silent witness" that Perelman vandalized the cars and plaza wall. (*Id.* at p. 267.)

B. Foundation for video authentication requires expert testimony.

In *People v. Beckley* (2010) 185 Cal.App.4th 509, 515-516, a panel of this Court held that photo images must either be authenticated by the taker of the photo, a witness to the scene, or an expert testifying that the video and image is what it purports to be and that it was not tampered with. The Court had grave concerns with manipulated images, compounded with the "advent of computer software programs such as Adobe Photoshop 'it does not always take skill, experience, or even cognizance to alter a digital photo.'" (*Beckley*, *supra*, at p. 515 [citation omitted].)

Despite some pushback from other districts (*see In re K.B., supra*, 238 Cal.App.4th at p. 997 [first district]; *People v. Cruz* (2020) 46 Cal.App.5th 715, 730-731, f. 8 [fourth district distinguishing *Beckley* on its facts but noting *In re K.B.'s* criticism]), this Court's holding has been vindicated in today's AI era. Most recently, a panel of this Court sanctioned an attorney for filing a frivolous appeal based on AI generated hallucinations. (*Noland v. Land of the Free, L.P.* (Sep. 12, 2025, No. B331918) ___Cal.App.5th___ [2025 Cal. App. LEXIS 584].)

Indeed, *In re K.B.'s* criticisms are unfounded. (*In re K.B.*, *supra*, at p. 997.) That court read *Goldsmith* as holding that even the barest of circumstantial evidence can make a sufficient foundational showing, and everything else goes to

credibility. (*Id.*, citing *Goldsmith, supra*, 59 Cal.4th at p. 267.) But that reading is wrong.

First, *Goldsmith* declined to overrule *Beckley*. (*Goldsmith*, *supra*, at p. 272, f. 8.) To the contrary, *Goldsmith* was careful to distinguish *Beckley* on its facts and then point out that "[t]hese cases serve to demonstrate the need to carefully assess the specific nature of the photographic image … and the purpose for which it is being offered in determining whether the necessary foundation for admission has been met." (*Id.* [and cases cited].)

Second, *Goldsmith* itself is best understood to support *Buckley*. *Goldsmith* considered a red-light traffic camera (ATES) computer system. A police officer testified to his experience and knowledge acquired from city engineers as to how the cameras worked. (*Goldsmith*, *supra*, at p. 265.) The computer based digital camera system operated independently and recorded events occurring within an intersection after the light turned red. The information was stored on a hard disc on a computer located at the intersection and technicians retrieved data through an internet connection. Then a police officer reviewed the photos and videos taken. The officer witness described the photos and videos taken and had personally inspected and tested the traffic signal at this particular intersection. (*Id.* at pp. 264-265.) Yet defendant there challenged the accuracy of the ATES computer system. (*Id.* at p. 271.)

"From his explanation regarding the independent operation of the ATES camera system, it can be reasonably inferred that the ATES system automatically and contemporaneously recorded the images of the intersection and the data imprinted on the photographs when it was triggered." (*Id.* at p. 271.) It was even conceded that the photographs accurately portrayed the defendant. (*Id.* at pp. 271-272.) Thus, there was ample circumstantial evidence that the system was working properly. (*Id.* at p. 272, f. 7.)

Our Supreme Court explained that an expert was not required because there was no evidence that the ATES evidence was "materially altered, enhanced, edited or otherwise changed; rather it consisted of entirely automatically produced photos and video and contemporaneously recorded data [and n]o elaborate showing of accuracy is required." (*Goldsmith*, *supra*, at p. 272.) The Court declined to apply a higher standard to computer systems than photos and videos and "refus[ed] to impose a higher burden of proof … merely because digital images are easier to manipulate." (*Id.*) There must be some challenge and indication of manipulation. (*Id.*)

It was on this point that the Court expressly distinguished *Buckley* and other cases. (*Id.*, f. 8.) *People v. McWhorter* (2009) 47 Cal.App.4th 318, 364-367 dealt with computer *enhanced* photographic images (emphasis original). *People v. Duenas* (2012) 55 Cal.4th 1, 20-21 dealt with

computer animations and simulations with are types of digital imaging technology different than ATES. And *Buckley, supra*, 185 Cal.App.4th 509, 514-516 dealt with social media website that presents questions pf accuracy and reliability different than ATES.

Cruz also distinguished itself on similar grounds. (*Cruz, supra*, 46 Cal.App.5th at p. 731.) That case dealt with threatening messages sent on Facebook. (*Ibid.* at pp. 722-726.) Defendant allegedly used fictitious names to send the messages. (*Id.*) The trial court found (and appellate court agreed) that based on the content and witness testimony a "jury reasonably could have concluded that the messages were from defendant." (*Id.* at p. 730.) The question was not if the messages were faked, but if defendant sent them. (*Id.* at p. 731 [authenticity of a "*photograph of person doing something*" is distinguished from origination of messages (emphasis original)].) And there was enough circumstantial evidence about the nature of the messages, including facts about the victim that defendant had known or had access to, so that coupled with the messages themselves constituted sufficient circumstantial evidence to avoid warranting expert testimony. (*Id.* at p. 731.)

And *In re K.B.* is inapposite. In that case, Officer Woods seized photos from the defendant's cellphone and testified to the process used to extract the photos, including the name of the program used. (*In re K.B.*, *supra*, at pp. 997-998.)

Similarly, in *People v. Valdez* (2011) 201 Cal.App.4th 1429, 1436 a photograph of defendant holding a gang signal was authenticated because it was posted on defendant's personal website that required a password to upload or delete photographs. (*Id.*) And Valdez admitted to being the person in the photograph. (*Id.*)

i. The Woodland Oak videos.

To lay foundation, the prosecution called Steven Bear, Shauna Gatlin, and Officer Dinse. But none of these witnesses had the proper requisite knowledge that the videos were genuine to show that Perelman was the person who was vandalizing the cars and properties. The videos were downloaded from the DVR by Bear. Bear then recorded the video with his cellphone and sent that recording to Gatlin who sent it to Dinse. Bear is not an employee of Woodland Oak and was not in the practice of downloading videos from the DVR. The proper way to authenticate would be to have the security company employee come down to the property and obtain a hard copy of the video to provide to LAPD. Indeed, that was the normal practice of Woodland Oaks.

But Bear circumvented that method and practice to save money and time. Bear testified that the cellphone recording he made was the same what was shown in the courtroom but never testified that the video he downloaded was an accurate portrayal of the events depicted nor that he did not tamper

with the downloaded video. He only stated that he did not tamper with the cellphone recording.

Applying the *Goldsmith* and *Buckley* rule, because the videos here were questionably altered when (1) Bear circumvented the normal process and downloaded the videos onto his own computer rather than getting a hardcopy from the DVR and (2) re-recorded the videos with his phone, an expert would be necessary to authenticate the videos. No expert was provided. No witness to the events captured by the original video exists. And there was no videographer.

And unlike *In re K.B.* and *Valdez*, here there is evidence of tampering. Some of the videos were mushy, some have different time protocols, and all the videos were a recording of a recording. And Perelman never admitted to being the person in the video. Thus, the only way under *Buckley* to authenticate the videos would be expert testimony.

Thus, like *Buckley*, our case stands squarely within the *Goldsmith* rule.

ii. The Warner Plaza videos.

To lay foundation the prosecution called Randy Christiansen and Officer Dinse. But Christiansen lacked the necessary knowledge to authenticate a video received from American Virtual Monitoring. He did not know whether American Virtual Monitoring could edit the video or whether the video shown was an accurate and genuine depiction of the

events recorded. Christiansen only knew that Sheffield had received the video due to the hearsay statement made by Sheffield. And for the same reasons, Dinse had no knowledge about the videos' authenticity. The videos were allegedly received by Sheffield from American Virtual Monitoring, but the only way to establish that is through hearsay comments made by Sheffield to Christiansen. And even if there were some exception to the hearsay rule, neither Christiansen not Sheffield had knowledge about American Virtual Monitoring's practices and conduct to properly authenticate the videos. Thus unlike *In re K.B.* and *Valdez*, here, there is a serious question of tampering, and unlike those case, Perelman never admitted to being the person on camera.

Thus, a serious question of alteration and modification was raised. And because there were no eyewitnesses to the June 11 event, an expert witness was required, but none provide. Thus, the videos were not properly authenticated under the *Buckley* rule.

C. Without the videos there is insufficient evidence.

There were no independent witnesses to testify that Perelman made any green markings on the wall of Warner Plaza or that he keyed Scroggin's car. Without the video footage of both events, the prosecution lacks any sufficient

evidence to determine that Perelman committed either of these acts of vandalism.

D. The secondary evidence rule is inapplicable here.

Duplicates are admissible to the same extent as are originals unless there is a serious question raised as to the accuracy of the duplicate or the authenticity of the original. (Evid. Code § 1521, subd. (c); *Goldsmith*, *supra*, at p. 271.) Secondary evidence must also be authenticated. (*Id.* [citation omitted]; Evid. Code § 1401, subd. (b).)

"To the extent that an item of videotape evidence is a duplicate, including a 'dub' from another format, this information should be brought out in the authentication process by the offering party. The number of generations from the actual, original videotape recording to the present duplicate should also be announced. Inaccuracies or slight alterations between generations may eventually build on each other and amount to a material alteration." (2 California Trial Handbook § 26A.01 (2025).)

As explained, none of the videos have been properly authenticated. Out of abundance of caution, even if the Court were to find that the videos were properly authenticated, they must still be excluded .

i. No presumption under Evidence Code section 1552.

As to count two, there was no authentication provided from American Virtual Monitoring that the video footage was what they said it was. Or to be precise—what they told Sheffield who told Christiansen what it was. Thus, evidence was introduced to question the reliability and authenticity of the videos, effectively negating the presumption under Evidence Code section 1552, subd. (a).

As to count three, the videos were recordings of a recording, the timestamps were questionable and mushy, so the original was tampered with enough to require proper authentication and negate the presumption under Evidence Code section 1552 and proper authentication is necessary.

ii. The loss of the Woodland Oak evidence requires its exclusion under the secondary evidence rule.

Secondary evidence must be excluded if either "[a] genuine dispute exists concerning material terms of the writing and justice requires the exclusion [or] [a]dmission of the secondary evidence would be unfair." (Evid. Code § 1521, subd. (a)(1)-(2).) Spoliation of evidence occurs "when the party in possession and/or control of the electronically stored information was objectively aware the evidence was relevant to reasonably foreseeable future litigation" and fails to preserve it for another party's use. (*Cf Victor Valley Union High School Dist. V. Superior Court* (2023) 91 Cal.App.5th 1121, 1138-1139.)

Woodland Oak failed to save or produce a hard copy of the DVR videos. Yet they had objective awareness that the evidence would be relevant in future litigation. After all, that is why they installed the cameras—to catch the person vandalizing the cars. Bear was contacted by Scroggins about the keyed car and felt it too urgent to use proper protocols and downloaded the footage himself, immediately sending it to Gatlin who then sent it to Officer Dinse. They had reason to believe that the videos would be used in litigation, yet they failed to save it.

II. The trial court erred in admitting video evidence with a broken chain of custody.

A. Chain of custody requires an accounting of every vital link.

A party that produces evidence must show that "taking all the circumstances into account including the ease or difficulty with which the particular evidence could have been altered, it is reasonably certain that there was no alteration." (*Johnsen, supra*, 10 Cal.5th at p. 1161 [citation omitted].) "The requirement of reasonable certainty is not met when a vital link in the chain of custody is not accounted for because then it is as likely as not that the evidence analyzed was not the evidence originally received." (*Ibid.* [citation omitted].)

i. The Woodland Oak videos.

No evidence shows that the original footage was provided to Bear. Bear stated that he downloaded the footage but then recorded it with his cellphone. It was the recorded version that was shown to the jury. Although Bear testified that he did not alter the recorded version, there was no such testimony about the original version. Thus, the link between the DVR and Bear is missing.

Given the ease of altering videos as recognized in *Buckley*, it cannot be said that Bear did not alter the original downloaded videos. After all, he bypassed the usual methods of waiting for the hardcopy and even went as so far to create another recording. The timestamps differed in format between the various videos and were "mushy."

ii. The Warner Plaza videos.

There was no testimony to establish that American Virtual Monitoring downloaded a video from the servers. The chain of custody only begins with Officer Dinse who stated he got the videos from April Sheffield. But Sheffield herself did not testify. Instead, Christiansen testified that Sheffield told him that she got the videos from American Monitoring. That conversation is hearsay, because it is an out-of-court statement relied for the truth of the matter to establish chain of custody. Thus, there is a broken link between American Monitoring and Officer Dinse.

B. Without the videos there is insufficient evidence.

Because the only evidence linking Perelman to either count are the videos, and the videos have vital breaks in the chain of custody, there is insufficient evidence to support a conviction of Perelman on either count two or three.

III. The trial court unlawfully imposed mandatory supervision for count three, a misdemeanor.

The Realignment Act provided trial courts with the discretion to impose hybrid or split sentences where imprisonment in county jail would be followed by mandatory supervision. (*People v. Catalan* (2014) 228 Cal.App.4th 173, 178; *People v. Camp* (2015) 233 Cal.App.4th 461, 467; Penal Code § 1170, subd. (h); *See People v. Hamilton* (2025) 108 Cal.App.5th 423, 434-435 [explaining difference between felony and misdemeanor classifications].)

But this authority is limited to felony convictions. (Penal Code § 1170, subd. (h).) There is no statutory authority to impose mandatory supervision for a misdemeanor.

Here, Perelman was convicted of two counts of vandalism, one as a felony and the other as a misdemeanor (damage was less than $400). The trial court sentenced Perelman on count two (the felony) to the mid-term of two years and on count three (the misdemeanor) to 364 days in county jail. But the trial court "split" the sentence and

required Perelman to serve 270 days in county and put the balance under mandatory supervision. (RT 2413-2414.) That decision was in error. While the trial court would be well within its rights to impose mandatory supervision for the balance of the two years (minus the 270 days in county), the additional 364 days of mandatory supervision must be stricken and reversed.

CONCLUSION

The Court should reverse Perelman's convictions on counts two and three. The Court should also reverse the imposition of the mandatory supervision for count three (misdemeanor).

CERTIFICATE OF COMPLIANCE

Pursuant to Cal. Rules of Court, Rule 8.360, subd. (b)(1) the word count of Appellant's Opening Brief is approximately 5781words.

Dated: October 12, 2025

Gelb Law, APC
/s/ Yisrael Gelb
Yisrael Gelb,
Attorney for Appellant,