

Rec'd 8-26-11 via USPS

CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION THREE

No. B231678

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

[REDACTED] GOLDSMITH,
Defendant and Appellant.

2011 JUL -8 PM 3:45
JOSEPH A. LANE CLERK

Appeal from the Appellate Division of the Superior Court of the
State of California for the County of Los Angeles
The Honorable Patti Jo McKay, Anita H. Dymant and Sanjay Kumar
Appellate Division Case No. BR048189
Superior Court Case No. 102693IN

AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT

<p>SHEPPARD, MULLIN, RICHTER & HAMPTON LLP Gregory P. Barbee, Bar No. 185156 Michael D. Stewart, Bar No. 161909 John M. Hynes, Bar No. 265778 333 South Hope St., 43rd Floor Los Angeles, California 90071 Tel: (213) 620-1780</p> <p>Attorneys for <i>Amicus Curiae</i> Redflex Traffic Systems, Inc.</p>	<p>WOODRUFF, SPRADLIN & SMART A.P.C. Jason McEwen, Bar No. 246787 555 Anton Boulevard, Suite 1200 Costa Mesa, California 92626 Tel: (714) 558-7000</p> <p>Attorneys for <i>Amicus Curiae</i> the City of Garden Grove</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. STANDARD OF REVIEW	1
III. STATEMENT OF FACTS AND PROCEDURAL HISTORY	1
A. Statement of Relevant Facts	1
B. Relevant Procedural History	2
1. Trial.....	2
2. Appeal to the Appellate Division	3
3. Appeal to the California Court of Appeal	4
IV. ARGUMENT	5
A. THE TRIAL PROPERLY ADMITTED THE PHOTOGRAPHIC AND VIDEO EVIDENCE OF APPELLANT'S VIOLATION.....	5
1. Inglewood Properly Authenticated the Photographic And Video Evidence	5
a. Appellant Offered No Evidence to Rebut the Presumptions of Authenticity That Apply to the Photographic and Video Evidence	5
b. Notwithstanding the Evidentiary Presumptions, Investigator Young's Testimony Sufficiently Authenticated the Photographic and Video Evidence	8
c. People v. Khaled is Inapposite	9
2. The Photographic And Video Evidence of Appellant's Violation Does Not Constitute Hearsay Under Well-Established California Law	10

3.	The Data Bar on the Photographs is Also Not Hearsay Under Well-Established California Law	11
4.	The Photographic and Video Evidence is Admissible Under The Business Records Exception	12
a.	The Photographic and Video Evidence Was Prepared in the Regular Course of Business	13
b.	The Photographic and Video Evidence Was Created at the Time of Appellant's Violation	13
c.	Investigator Young Was Qualified to Testify to the Identity and Mode of Preparation of the Photographic and Video Evidence.....	14
d.	The Photographic and Video Evidence is Trustworthy	15
e.	The Photographs are Admissible Under the Business Records Exception Even Though They Were Produced for Use in the Prosecution of Appellant's Traffic Violation.....	16
5.	The Photographic and Video Evidence is Admissible Under the Official Records Exception	17
B.	RED LIGHT CAMERA SYSTEMS AND THE PROCEDURES USED IN ADJUDICATING RED LIGHT CAMERA VIOLATIONS PROMOTE PUBLIC SAFETY	18
1.	California Has a Compelling Public Policy Interest in Improving Traffic Safety	18
2.	Red Light Camera Systems Have Been Proven to Improve Public Safety	20

a.	2011 Insurance Institute for Highway Safety Study.....	20
b.	2005 U.S. Federal Highway Administration Study.....	21
c.	2002 California Bureau of State Audits Study.....	22
3.	The Procedures Currently in Place for Adjudicating Red Light Camera Offenses Make Red Light Camera Programs Feasible and Thereby Promote Public Safety	23
C.	APPELLANT'S CONTENTION THAT HER CONVICTION SHOULD BE REVERSED BECAUSE THE PROSECUTION FAILED TO SHOW THAT THE YELLOW LIGHT INTERVAL COMPLIED WITH THE CVC IS MERITLESS	24
1.	The Prosecution was Not Required to Demonstrate That the Yellow Light Interval Complied with the CVC	24
2.	Investigator Young's Testimony Was Sufficient to Establish That the Yellow Light Interval Complied with the CVC	25
V.	CONCLUSION.....	26

TABLE OF AUTHORITIES

<u>Cases</u>	Page(s)
<u>Aguimatang v. Cal. State Lottery (1991)</u> 234 Cal.App.3d 769.....	5, 13
<u>Ashford v. Culver City Unified School Dist. (2005)</u> 130 Cal.App.4th 344.....	5
<u>Ashford v. Culver City Unified School District (2005)</u> 130 Cal.4th 344	9
<u>Burge v. Dept. of Motor Vehicles (1992)</u> 5 Cal.App.4th 384.....	17, 18, 19
<u>County of Sonoma v. Grant W. (1986)</u> 187 Cal. App. 3d 1439.....	1
<u>Denham v. Superior Court (1970)</u> 2 Cal. 3d 557.....	1
<u>Holland v. Kerr (1953)</u> 116 Cal.App.2d 31.....	8
<u>Imachi v. Dept. of Motor Vehicles (1992)</u> 2 Cal.App.4th 809.....	17
<u>Ingersoll v. Palmer (1987)</u> 43 Cal.3d 1321.....	19
<u>Jazayeri v. Mao (2009)</u> 174 Cal.App.4th 301.....	14
<u>Lowry v. Gutierrez (2005)</u> 129 Cal.App.4th 926.....	19
<u>Palmer v. Hoffman (1943)</u> 318 U.S. 109	16, 17
<u>People v. Bowley (1963)</u> 59 Cal.2d 855.....	8, 15

<u>People v. Cooper</u> (2007) 148 Cal.App.4th 731.....	11
<u>People v. Doggett</u> (1948) 83 Cal.App.2d 405.....	8
<u>People v. Goldsmith</u> (2011) 193 Cal.App.4th Supp. 1	3, 4
<u>People v. Goldsmith</u> (Los Angeles Super. Ct., App. Div. Feb. 14, 2011) No. BR-048189.....	4
<u>People v. Hawkins</u> (2002) 98 Cal.App.4th 1428.....	6, 7, 11, 12
<u>People v. Jones</u> (1970) 7 Cal.App.3d 48.....	5
<u>People v. Khaled</u> (2010) 186 Cal.App.4th Supp. 1	3, 9, 10, 14, 15
<u>People v. Martinez</u> (2000) 22 Cal.4th 106	7, 9
<u>People v. Nazary</u> (2010) 191 Cal.App.4th 727.....	7
<u>People v. Upsher</u> (2007) 155 Cal.App.4th 1311.....	25
<u>People v. Wells</u> (2006) 38 Cal.4th 1078	19
<u>State v. Armstead</u> (La. 1983) 432 So.2d 837	11
<u>United States v. Taylor</u> (5th Cir. 1976) 530 F.2d 639	8
<u>Statutes</u>	
Cal. Evid. Code	
§ 195.....	17
§ 352.....	1
§ 1200.....	10

§ 1271	12, 17
§ 1280	17
§ 1400	5
§ 1552	3, 6, 7, 15
§ 1553	3, 6, 15
 Cal. Veh. Code	
§ 21453(a).....	2, 3, 24
§ 21455.7	3, 4, 24, 25
 <u>Other Authorities</u>	
Cal Const., Article VI, § 13	1
Forrest M. Council et al., Federal Highway Administration, <u>Safety</u> <u>Evaluation of Red-Light Cameras (2005)</u>	21, 22
Highway Safety, <u>Effects of Red Light Camera Enforcement on Fatal</u> <u>Crashes in Large U.S. Cities (2011)</u>	20, 21
California Bureau of State Audits, <u>Red Light Camera Programs:</u> <u>Although They Have Contributed to a Reduction in Accidents,</u> <u>Operational Weaknesses Exist at the Local Level (2002)</u>	22, 23

I. INTRODUCTION

Instead of contending that she did not commit the crime in question, Appellant ██████ Goldsmith ("Appellant") asks the Court to disregard California law, as well as the substantial public policy benefits of red light camera systems, and hold that the evidence of her violation generated by such a system is inadmissible. This Court should follow well-established California law and consider California's substantial public policy interest in promoting traffic safety and affirm Appellant's conviction.

II. STANDARD OF REVIEW

A conviction may be reversed on the ground of the improper admission of evidence only if such admission resulted in a "miscarriage of justice." Cal Const., art. VI, § 13; Cal. Evid. Code, § 352. The trial court's admission of evidence cannot not be disturbed on appeal absent a showing of abuse. County of Sonoma v. Grant W. (1986) 187 Cal. App. 3d 1439, 1450. This standard is met only when the trial court exercises its discretion in a manner that "exceeds the bounds of reason, all of the circumstances before it being considered." Denham v. Superior Court (1970) 2 Cal. 3d 557, 566.

III. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Statement of Relevant Facts

On March 13, 2009, an automated red light camera system manufactured and operated by *amicus curiae* Redflex Traffic Systems, Inc. ("Redflex") in conjunction with the City of Inglewood (the "City") photographed Appellant ██████ Goldsmith ("Appellant") driving through a red light at the intersection of Centinela Avenue and Beach Avenue. [Appeal Transcript ("AT"), p. 1.] According to the "databar" automatically generated by the system and printed on the photographs, the traffic light

had been red for 0.27 seconds when Appellant entered the intersection. [Reporter's Transcript ("RT"), pp. 7-8.] The Inglewood Police Department cited Appellant for failure to stop at a red light in violation of CVC section 21453(a). [AT, p. 1.]

B. Relevant Procedural History

1. Trial

Investigator Young of the Inglewood Police Department testified at trial for the prosecution. [RT, pp. 1-11.] Investigator Young has over six years of experience in the Traffic Division, Red Light Camera Photo Enforcement, and is knowledgeable and well-trained in the operation of red light camera systems. [RT, pp. 5-6.]

Investigator Young testified in great detail to the process by which red light camera systems in general, and this camera system in particular, captured, processed and stored photographs, videos and other information related to potential red light statute violations. [RT, pp. 6-7.] He testified that whenever a system is triggered, it produces a 12-second video of the potential violation as well as a photograph showing the vehicle behind the limit line, a photograph showing the vehicle in the intersection and a photograph of the vehicle's license plate. [RT, pp. 2-3.] The red light camera system automatically generates a "databar" showing the date, time, location and red light interval and prints such information on each photograph. [RT, pp. 2-3.] Investigator Young made clear that the system operates without any intervention by a human operator, and that the information stored on the computer at the intersection is accessed by Redflex personnel through a secure internet connection. [RT, p. 6.]

Investigator Young explained that he is the officer charged with inspecting the traffic signal at the subject intersection each month to ensure that its yellow light interval complies with relevant law. [RT, pp. 9-

10.] He testified that he performed two such inspections within a month of Appellant's violation, and that the results were "well above 3.9 [seconds] as established by the Department of Caltrans for [a] forty mile per hour highway." [RT, p. 10.]

Based on Investigator Young's testimony and the photographic and video evidence of Appellant's violation, the trial court found Appellant guilty of violating CVC section 21453(a). [RT, p. 12.]

2. Appeal to the Appellate Division

The Appellate Division of the Los Angeles Superior Court affirmed Appellant's conviction. People v. Goldsmith (2011) 193 Cal.App.4th Supp. 1, 6. The Appellate Division rejected Appellant's arguments that (1) the photographic evidence of her violation should not have been admitted because it was not properly authenticated and constituted inadmissible hearsay; (2) the prosecution failed to show that the yellow light interval of the traffic light at the subject intersection did not meet the requirements of CVC section 21455.7; (3) the admission of the photographic evidence violated her Sixth Amendment right to confront witnesses; and (4) the prosecution failed to prove that Appellant was the driver depicted in the photographs. Id.

The court expressly disagreed with the primary case on which Appellant relied – People v. Khaled (2010) 186 Cal.App.4th Supp. 1 – and held that the photographs were entitled to a presumption of authenticity under California Evidence Code sections 1552 and 1553, and that Appellant failed to rebut those presumptions. Goldsmith, supra, 193 Cal.App.4th Supp. at 6. The court also held that notwithstanding those presumptions, Investigator Young's expert testimony was sufficient to authenticate the evidence. Id. at 5-7.

The court also held that the photographic evidence was not hearsay because it was generated solely by a red light camera with no human input, and thus there were no "statements" covered by the hearsay rule. Id. at 7-8. As an alternative ground for this holding, the court reasoned that the photographs constituted "demonstrative evidence" of Appellant's crime, which does not constitute hearsay. Id.

In an unpublished portion of the decision, the court also rejected Appellant's contention that the prosecution failed to demonstrate that the yellow light interval at the subject intersection did not comply with the CVC. People v. Goldsmith (Los Angeles Super. Ct., App. Div. Feb. 14, 2011), No. BR-048189, at 7-8. Appellant unsuccessfully contended that the results of two tests showing that the interval complied with the CVC (conducted prior to and after her violation) were unreliable merely because the results of the two tests were not identical. Id. at 7. The court swiftly rejected this argument, refusing to disturb the trial judge's finding on this issue because weighing the evidence and the credibility of witnesses is not the task of an appellate court. Id. The court also rejected Appellant's Confrontation Clause challenge and her argument that the prosecution failed to prove that she was the driver depicted in the photographs (Appellant does not raise these two issues in this appeal).

3. Appeal to the California Court of Appeal

The Court of Appeal ordered the case transferred to this Court on March 28, 2011. Here, Appellant seeks to have her conviction overturned on the grounds that the photographic and video evidence, including the databar affixed to the photographs, was inadmissible because it was not properly authenticated and constitutes inadmissible hearsay, and that the prosecution failed to show that the yellow light interval complied with CVC section 21455.7. [See Appellant's Opening Brief, pp. 1-5.]

IV. ARGUMENT

A. THE TRIAL PROPERLY ADMITTED THE PHOTOGRAPHIC AND VIDEO EVIDENCE OF APPELLANT'S VIOLATION

The trial court did not abuse its discretion in finding that Inglewood properly authenticated the photographic and video evidence of Appellant's violation and that such evidence did not constitute inadmissible hearsay. Alternatively, even if the evidence were hearsay, which it is not, it is admissible under the business records and official records exceptions to the hearsay rule.

1. Inglewood Properly Authenticated the Photographic And Video Evidence

Appellant failed to overcome the important presumptions of authenticity that California law affords to the photographic and video evidence of her violation. Moreover, notwithstanding those presumptions, Investigator Young's expert testimony, based on his extensive red light camera training and experience sufficiently authenticated the evidence.

a. Appellant Offered No Evidence to Rebut the Presumptions of Authenticity That Apply to the Photographic and Video Evidence

A writing must be authenticated before it can be admitted into evidence Cal. Evid. Code § 1400. Photographs, videos and computer-generated information describing the content of photographs and videos constitute "writings" under the Evidence Code. See, e.g., People v. Jones (1970) 7 Cal.App.3d 48, 53; Ashford v. Culver City Unified School Dist. (2005) 130 Cal.App.4th 344, 349; Aguimatang v. Cal. State Lottery (1991) 234 Cal.App.3d 769, 798. A writing may be authenticated by "evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is" or, alternatively, "the establishment of such facts by any other means provided by law." Cal. Evid. Code, § 1400.

Here, Evidence Code section 1552(a) provides a presumption that the data on the photographs is accurate. That section provides that "[a] printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent." Cal. Evid. Code § 1552(a). If the opponent "introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable," the burden shifts to the party offering the evidence to show that it is "an accurate representation of the existence and content of the computer information or computer program that it purports to represent." *Id.* As such, absent evidence that such information is inaccurate or otherwise unreliable, this presumption establishes the authenticity of the information. This presumption applies to computer printouts showing the date and time of a computer's internal operations. People v. Hawkins (2002) 98 Cal.App.4th 1428, 1449-50.

Additionally, Evidence Code section 1553(a) provides a presumption that the photographs and video themselves are accurate. That section provides that "a printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent." Cal. Evid. Code § 1553(a). If the opponent "introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable," the burden shifts to the proponent of the evidence to show that it is "an accurate representation of the existence and content of the images that it purports to represent." *Id.* Thus, like the Evidence Code section 1552(a) presumption, absent evidence that such images are inaccurate or otherwise unreliable, this presumption establishes the authenticity of the images.

The Appellate Division correctly held that these presumptions apply to evidence generated by red light cameras. To overcome these

presumptions, the opponent of the evidence must introduce "evidence" that the photographs or videos (and computer-generated information printed thereon) are inaccurate or unreliable. Cal. Evid. Code §§ 1552; 1553 (emphasis added). Appellant failed to provide any such evidence; indeed, Appellant points to no such evidence in her Reply. Thus, the prosecution never had the burden to show that the photographs and video were accurate representations of Appellant's violation, or to prove that the databar was accurate. The trial court therefore did not abuse its discretion in finding that the evidence was properly authenticated.

Appellant erroneously relies on Hawkins in support of her argument that the databar was not sufficiently authenticated. [See Reply, pp. 2-3.] Contrary to Appellant's characterization, Respondent has not argued that Evidence Code section 1552(a) presumes that the red light camera was working properly. Rather, Respondent has correctly contended that Evidence Code section 1552(a) presumes that the databar was an accurate representation of the data stored on the photographs themselves. [See Respondent's Brief, pp. 20-21.] Indeed, California courts do not even require a proponent of machine-generated evidence to show that the machine was in proper working order for admission of the evidence because the reliability of the machine goes only to the weight, and not the admissibility, of the evidence. People v. Martinez (2000) 22 Cal.4th 106, 132; see also People v. Nazary (2010) 191 Cal.App.4th 727, 754 (holding in a post-Hawkins case that admissibility of machine-generated evidence does not require the proponent to demonstrate the reliability and accuracy of the machine). "Such matters may be developed on cross-examination and should not affect the admissibility of the [evidence] itself." Martinez, supra, 22 Cal.4th at 132.

//

b. Notwithstanding the Evidentiary Presumptions, Investigator Young's Testimony Sufficiently Authenticated the Photographic and Video Evidence

Though the presumptions of authenticity discussed above were enough to authenticate the photographic and video evidence of Appellant's violation, such presumptions were not necessary because Investigator Young's testimony sufficiently authenticated the evidence. In California, authentication does not require the person who takes a photograph to testify in order to lay a proper foundation for admission of the photograph into evidence. Holland v. Kerr (1953) 116 Cal.App.2d 31, 37. Rather, authentication of a photograph may be established through "expert testimony" even if there is "no one qualified to authenticate it from personal observation." People v. Bowley (1963) 59 Cal.2d 855, 862).

The rationale behind this well-established principle is that when photographs or videos are offered into evidence as probative evidence of what they depict, they act as "silent witnesses" and are admissible without eyewitness testimony that they accurately depict what they purport to show. Bowley, supra, 59 Cal. 2d at 860; see also People v. Doggett (1948) 83 Cal.App.2d 405, 410. Such evidence can be authenticated by testimony from anyone who can testify to process by which the camera captured the photographs, and those witnesses may be assisted by other matters, even those that are an inherent part of the photograph itself. Doggett, supra, 83 Cal.App.2d at 410; accord United States v. Taylor (5th Cir. 1976) 530 F.2d 639, 641-642 (holding that surveillance photographs of a bank robbery were admissible upon testimony from non-eyewitnesses who knew how the cameras operated).

Here, Appellant's argument on Reply that Investigator Young's testimony was insufficient because he neither witnessed the offense nor created the photographs himself is misguided. [See Reply,

p. 4.] As established above, eyewitness testimony was not required to authenticate the photographic and video evidence because the evidence was offered as probative evidence of Appellant's driving through the red light. Rather, Investigator Young's testimony was sufficient because he had vast knowledge as to how red light cameras, and this red light camera in particular, produce and maintain the evidence. He explained everything from how the system is triggered to how the evidence is provided to the police. Such testimony is plainly enough to meet the low standard of authenticity under California law (i.e., sufficient to sustain a finding that the photographs and video show Appellant's driving through a red light). Indeed, Appellant offered no evidence to suggest that the evidence does not meet this standard.¹

Moreover, Appellant's novel contention in her Reply that Investigator Young was not qualified to authenticate the evidence merely because he was not involved in the maintenance of the red light camera at issue ignores well-established California law. [See Reply, p. 4.] As explained in Section IV.A.1.a, supra, California evidence law did not require the prosecution to demonstrate the reliability of the red light camera as a prerequisite for admission of the evidence. See, supra, Martinez, supra, 22 Cal.4th at 132.

c. **People v. Khaled is Inapposite**

Appellant erroneously relies on People v. Khaled (2010) 186 Cal.App.4th Supp. 1 in contending that the photographic and video evidence of her violation was not properly authenticated. Khaled is

¹ For this very reason, Appellant's reliance on Ashford v. Culver City Unified School District (2005) 130 Cal.4th 344 is misplaced. There, Appellant offered evidence that the videos skipped around and had time lapses. Id. at 347. No such evidence exists here.

confined to the specific facts of that case and concerned the insufficient testimony of one specific police officer, who was found to "not have the necessary knowledge of the underlying workings, maintenance or recordkeeping of Redflex Traffic System [sic]." Id. at 8. The officer in Khaled testified merely that "sometime in the distant past, he attended a training session where he was instructed on the overall workings of the system," but "was unable to testify about the specific procedure for the programming and storage of the system information." Id. at 5. Here, on the other hand, Investigator Young testified in great detail based on his over six years of red light camera experience to how red light camera systems collect, process and maintain photographs and videos depicting violations. Khaled therefore has no applicability in this case.

2. **The Photographic And Video Evidence of Appellant's Violation Does Not Constitute Hearsay Under Well-Established California Law**

Photographs and videos generated by red light camera systems are not hearsay under California law. Hearsay evidence is evidence of "a statement that was made other than by a witness testifying at the hearing and that is offered to prove the truth of the matter stated." Cal. Evid. Code § 1200. The hearsay rule defines a "statement" as "(a) a person's oral or written verbal expression or (b) a person's non-verbal conduct intended by the person as a substitute for oral or written verbal expression." Id. § 225. A "person" includes "a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity." Id. § 175.

The hearsay rule's definition of person does not include a camera or any other machine for that matter. As such, California courts have made clear that machine-generated evidence does not constitute hearsay because a machine is not capable of making a "statement" as

defined by the hearsay rule. Hawkins, 98 Cal.App.4th at 1449. This rule comports with the policy behind the hearsay rule because with evidence generated solely by a machine, there is no concern of conscious misrepresentation and a machine cannot be cross-examined. Id.

Photographic and video evidence generated by red light cameras is not hearsay for another independent reason – such images are "demonstrative evidence" of a crime and thus fall outside the definition of hearsay and the purpose of the rule altogether. People v. Cooper (2007) 148 Cal.App.4th 731, 746. In Cooper, the California Court of Appeal held that a video depicting a crime scene was not hearsay because such evidence does not contain a statement of a witness and one cannot cross-examine a camera. Id. at 746.

Here, the photographic and video evidence was generated solely by a camera system, not a "person" capable of making a "statement" within the meaning of the hearsay rule. There is simply no possibility of conscious misrepresentation by a red light camera; therefore, the rationale for the hearsay rule is wholly inapplicable here. Alternatively, the evidence constitutes demonstrative evidence of Appellant's crime, not a statement by a person as defined by the hearsay rule. Thus, as the Appellate Division properly held, the photographic and video evidence of Appellant's crime generated automatically by a Redflex red light camera system is plainly non-hearsay under California law. Accordingly, the trial court did not abuse its discretion in admitting the evidence.

3. **The Data Bar on the Photographs is Also Not Hearsay Under Well-Established California Law**

Contrary to Appellant's contention, the databar printed on the photographs is likewise not hearsay because the "printout of the results of a computer's internal operations is not hearsay evidence." Hawkins, *supra*, 98 Cal.App.4th at 1449 (quoting State v. Armstead (La. 1983) 432 So.2d

837, 840). In Hawkins, the California Court of Appeal made clear that computer printouts showing the date and time of a computer's internal operations are not hearsay for the same reasons that computer-generated photographs and videos are not hearsay – namely, because they are not produced by human declarants and thus cannot constitute "statements" under the hearsay rule. Id. at 1449.

Contrary to Appellant's position in her Reply, the databar here is analogous to the information in Hawkins. Like the computer-generated date and time stamp in Hawkins, the databar, which includes the date and time of the photographs, the location of the intersection, the length of time the light had been yellow and red and the vehicle speed, represents the results of the internal operations of the red light camera system. No human declarant inputted the data. Thus, the information does not constitute hearsay. Simply put, this information is not a "statement" from a "person" to which the hearsay rule applies.

4. **The Photographic and Video Evidence is Admissible Under The Business Records Exception**

The photographic and video evidence of Appellant's violation, which was captured in the ordinary course of business by the City and Redflex, is plainly admissible under the business records exception to the hearsay rule. Evidence Code section 1271 provides that "[e]vidence of a writing made as a record of an act, condition, or event [is admissible] to prove the act, condition, or event if: (a) the writing was made in the regular course of business; (b) the writing was made at or near the time of the act, condition, or event; (c) the custodian or other qualified witness testifies to its identity and mode of preparation; and (d) the sources of information and method and time of preparation were such as to indicate its trustworthiness." Cal. Evid. Code § 1271

a. **The Photographic and Video Evidence Was Prepared in the Regular Course of Business**

The Police Department is in the business of collecting evidence from red light camera systems to enforce the CVC and protect the health, safety and welfare of the people. The Police Department regularly collects and processes red light camera data in the course of carrying out those duties. Thus, the Police Department collected the evidence of Appellant's violation in the regular course of its business. Redflex also satisfies this element of the exception because Redflex is in the business of manufacturing red light camera systems and assisting cities in collecting and processing evidence of violations. Redflex collects such evidence for each and every vehicle that triggers one of its systems. Thus, because collecting such evidence is Redflex's business and Redflex collects the evidence for every vehicle that triggers its system, Redflex plainly collected the evidence of Appellant's violation in the ordinary course of business.

b. **The Photographic and Video Evidence Was Created at the Time of Appellant's Violation**

A writing stored on a computer is deemed made at the time the data is entered into the computer, not the time the data is retrieved. Aguimatang, supra, 234 Cal.App.3d at 798. In Aguimatang, the California Court of Appeal held that computer-generated records showing information related to lottery ticket transactions were admissible under the business records exception even though they were printed almost two years after the transactions because they were recorded daily but only printed as needed. Id. at 798. Here, the databar shows that the photographic and video evidence of Appellant's violation was created at the very time of Appellant's violation. As such, this element of the business records exception is satisfied.

c. **Investigator Young Was Qualified to Testify to the Identity and Mode of Preparation of the Photographic and Video Evidence**

"Any 'qualified witness'" knowledgeable about the documents sought to be introduced into evidence may lay the foundation for introduction of business records. Jazayeri v. Mao (2009) 174 Cal.App.4th 301, 324. The witness is not required to be the custodian of records or the person who created the record. Id. Here, Investigator Young was more than qualified to testify to the identity and mode of preparation of the evidence because he had detailed knowledge of the procedure by which the evidence was collected and processed by the system. He has over six years of experience working with such systems and testified in great detail as to how the systems work, covering everything from how the system is triggered and how the databar is generated to his own personal review of the evidence of Appellant's particular violation. Such detailed testimony is plainly sufficient for introduction of the business records here.

Contrary to Appellant's contention, Investigator Young need not be an employee of Redflex to constitute a qualified witness. Not surprisingly, Appellant cites to no authority establishing such a requirement because California law has made clear that to constitute a qualified witness, one "need not be the custodian or the person who created the record." Jazayeri, supra, 174 Cal.App.4th at 324. The only requirement is that the witness "be familiar with the procedures followed." Based on his over six years of red light camera experience, as well as his detailed account of the procedures employed in the collection and processing of evidence generated by such systems, Investigator Young was no doubt familiar with the red light camera process.

Appellant again erroneously relies on Khaled in arguing that the business records exception does not apply. The Khaled court held only that one specific officer lacked the necessary knowledge to be a qualified

witness, not that every police officer lacked such knowledge. See Khaled, 186 Cal.App.4th Supp. 1 at 8. As explained above, Investigator Young has extensive red light camera experience and knowledge and testified in great detail to the operation of red light cameras. Khaled is therefore wholly inapplicable.

d. **The Photographic and Video Evidence is Trustworthy**

California law deems machine-generated photographs and videos particularly trustworthy. The Evidence Code sections 1552 and 1553 authenticity presumptions applying to photographs, videos and computer-generated information (discussed above) demonstrate this fact. Cal. Evid. Code §§ 1552; 1553. Indeed, the California Supreme Court has held that photographs are more reliable than human testimony because they present no memory concerns. Bowley, supra, 59 Cal.2d at 861; see also, Lugashi, supra, 205 Cal.App.3d at 642 (holding that a lesser showing is required for admission of computer-generated data because it consists of retrieval of automatic inputs, as opposed to manual inputs).

Here, Appellant offered no evidence to even suggest that the photographs and video depicting her violation are untrustworthy. Her bare assertions that such evidence is untrustworthy is plainly insufficient to cast doubt on the reliability of the evidence under California law. Moreover, the various provisions of California law demonstrating the reliability of automatically-generated photographs and videos, together with Investigator Young's expert testimony establishing how the evidence was created, demonstrate that the evidence here is trustworthy.

//

//

//

e. **The Photographs are Admissible Under the Business Records Exception Even Though They Were Produced for Use in the Prosecution of Appellant's Traffic Violation**

Appellant relies on Palmer v. Hoffman (1943) 318 U.S. 109 in contending that the photographs and videos cannot be admissible as business records merely because they were produced for use in the prosecution of her infraction. [See Opening Brief, p. 22.] Appellant is mistaken.

In Palmer, the plaintiff (a railroad employee) signed an accident report describing his recollection of an accident in which he was involved. Id. at 110-11. The Court correctly held that the business records exception did not apply to the report because accident reports are not created in the regular course of a railroad company's business. Id. at 111, 113. As a matter of policy, the Court was concerned that if the exception were to apply to such accident reports, any business could prepare self-serving accident reports and have them admitted into evidence in cases in which the business faces potential liability. Id.

Palmer is inapposite. In Palmer, the Court engaged in a straightforward application of the business records exception and found only that (not surprisingly) a report describing an employee's recollection of an accident was not created in the regular course of a railroad company's business. The Court did not hold that any record that could potentially be used in litigation cannot qualify as a business record. Here, the Police Department collects photographic and video evidence for each and every potential red light statute violation captured by a red light camera. Redflex likewise collects such evidence for each and every vehicle that triggers one of its systems. Indeed, collecting such evidence is Redflex's business. These circumstances are plainly distinguishable from the anomalous accident report prepared by the railroad company in Palmer, which

certainly was not a report created in the regular course of the railroad company's business. Railroad companies are clearly not in the business of preparing accident reports.

In her Reply, Appellant attempts to analogize this case to Palmer by asserting that Redflex is a private for-profit company like the railroad company in Palmer. [See Reply, p. 9.] Appellant does not (and cannot) explain the legal significance of this analogy. Indeed, the railroad company's status as a private entity was not even one factor in the Palmer Court's holding. Appellant's reliance on Palmer therefore fails.

5. **The Photographic and Video Evidence is Admissible Under the Official Records Exception**

Though not hearsay altogether, the photographic and video evidence of Appellant's violation is also admissible under the official records exception to the hearsay rule. Evidence Code section 1271 provides that a writing is admissible to prove an "act, condition, or event" if: "(a) the writing was made by and within the scope of duty of a public employee; (b) the writing was made at or near the time of the act, condition, or event; and (c) the sources of information and method and time of preparation were such as to indicate trustworthiness." Cal. Evid. Code § 1280.

The Evidence Code defines a "public employee" as "an officer, agent, or employee of a public entity." Cal. Evid. Code § 195. Thus, the exception applies both to acts of public entities themselves and the acts of private entities under a contractual duty to perform tasks for a public entity. Burge v. Dept. of Motor Vehicles (1992) 5 Cal.App.4th 384, 388-89 (holding that the official records exception applied to a blood test report prepared by a private laboratory and provided to law enforcement); Imachi v. Dept. of Motor Vehicles (1992) 2 Cal.App.4th 809, 816-17 (same).

Here, the exception applies to Redflex (as well as the City) because it collected and processed the evidence pursuant to a contractual duty under its contract with the City, a public entity. Additionally, the red light camera captured the photographic and video evidence at the very moment of Appellant's violation, and the evidence is trustworthy because it was generated solely by a machine with no possibility of human error.

In her Reply, Appellant ignores established California law and contends that the official records exception does not apply to a private entity with a contractual obligation to perform duties for a public entity. [See Reply, p. 11.] Appellant is mistaken because (as set forth above) California courts have long applied to exception in such circumstances, such as where private laboratories perform blood testing on defendants for law enforcement agencies. See e.g., Burge, supra, 5 Cal.App.4th at 388-89. The official records exception therefore applies to the photographic and video evidence of Appellant's violation.

B. RED LIGHT CAMERA SYSTEMS AND THE PROCEDURES USED IN ADJUDICATING RED LIGHT CAMERA VIOLATIONS PROMOTE PUBLIC SAFETY

1. California Has a Compelling Public Policy Interest in Improving Traffic Safety

The California Legislature authorized the implementation of red light camera programs "to improve enforcement and safety at high crash or other high-risk locations where on-site traffic enforcement personnel cannot be utilized." See Assem. Com. on Transportation, Analysis of Assem. Bill No. 1022 (2003-2004 Reg. Sess.) April 21, 2003, p. 3, available at http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_1001-

1050/ab_1022_cfa_20030418_132257_asm_comm.html.² Moreover, the Legislature has recognized that various studies have found that red light camera programs improve public safety. Id. at 3-4. For instance, the Legislature cited a 2001 Insurance Institute for Highway Safety ("IIHS") study finding significant crash reductions after the City of Oxnard, California implemented red light cameras. Id. at 3. That study found that red light cameras in Oxnard resulted in a 29% reduction in crashes at intersections equipped with red light cameras, with front-into-side crashes decreased by 32% overall and front-into-side crashes resulting in injuries decreased by 68%. Id.

California courts have firmly established that the State of California has a substantial public policy interest in maximizing safety on California roadways. Due to this important public policy consideration, California courts have validated the use of streamlined regulatory and judicial procedures in various settings in order to improve traffic safety. See, e.g., Ingersoll v. Palmer (1987) 43 Cal.3d 1321, 1335 (holding that sobriety checkpoints are constitutional even though they are not based on reasonable suspicion because the primary purpose of the checkpoints is to "promote public safety"); People v. Wells (2006) 38 Cal.4th 1078, 1083-84 (finding that an anonymous and uncorroborated tip may itself create reasonable suspicion that a driver is operating a vehicle under the influence of alcohol in part because of the grave public safety threats caused by drunk drivers); Lowry v. Gutierrez (2005) 129 Cal.App.4th 926, 942-43 (same). For the reasons detailed below, red light camera systems and the procedures used in adjudicating traffic offenses based on evidence generated by such

² A copy of this Analysis is attached as Exhibit A to the Request for Judicial Notice filed concurrently herewith.

systems constitute a vital component in the State of California's effort to improve traffic safety.

2. **Red Light Camera Systems Have Been Proven to Improve Public Safety**

Various studies have proven that red light camera systems improve safety on the road and thereby reduce the social costs associated with automobile collisions.

a. **2011 Insurance Institute for Highway Safety Study**

Most recently, in February 2011, the Insurance Institute for Highway Safety ("IIHS") published its findings from an intensive study ultimately finding that red light camera systems have reduced fatalities from red light running crashes. See Wen Hu et al., Insurance Institute for Highway Safety, Effects of Red Light Camera Enforcement on Fatal Crashes in Large U.S. Cities (2011), available at <http://www.iihs.org/research/topics/pdf/r1151.pdf>.³ The IIHS identified 14 cities with red light camera programs during 2004-2008 but not during 1992-1996, and 48 cities without such programs during either period, and compared the per capita rate of fatal red light running crashes during the two periods. Id. at 1.

Not surprisingly, the study found that red light cameras save lives. All but two of the 14 cities with red light camera programs during 2004-2008 experienced reductions in the rate of fatal red light running crashes, and all but three experienced reductions in the rate of all fatal crashes at signalized intersections. Id. at 6. Across the 14 cities, the average annual rate of all red light running crashes declined by about 35%,

³ A copy of this study is attached as Exhibit B to the Request for Judicial Notice filed concurrently herewith.

and the average annual rate of all fatal crashes at signalized intersections decreased by about 14%. Id. at 6, 13. Of those cities that experienced reductions in both fatal crash rates, all but one had percentage reductions for fatal red light running crashes that were larger than those for all fatal crashes at signalized intersections. Id. at 6.

The study found that the implementation of red light camera programs improved roadway safety even in those cities without such programs. About half of the 48 cities without red light camera programs during either period experienced reductions in fatal red light running crashes during the period of 2004-2008, and about one-third of such cities experienced reductions in the rate of all fatal crashes at signalized intersections. Id. at 6. The average annual rate of all red light running crashes declined by about 14% across the 48 cities. Id. at 6, 13.

The IIHS study also utilized a Poisson regression model taking into account the effects of other predictors on the per capita rate of fatal crashes. Id. at 7, 13. The Poisson model concluded that the rate of fatal red light running crashes during 2004-2008 in cities with cameras was 24% lower than would have been expected without cameras. Id. The Poisson model also concluded that the annual per capita rate of all fatal crashes at signalized intersections in 2004-2008 was 17% lower than what would have been expected without the cameras. Id.

b. 2005 U.S. Federal Highway Administration Study

In April 2005, the U.S. Federal Highway Administration published the results of a study assessing the safety benefits of red light cameras. See Forrest M. Council et al., Federal Highway Administration, Safety Evaluation of Red-Light Cameras (2005), available at [http://blog.chron.com/cityhall/files/legacy/archives/Federal%20Highway%](http://blog.chron.com/cityhall/files/legacy/archives/Federal%20Highway%20Safety%20Evaluation%20of%20Red-Light%20Cameras%20(2005).pdf)

20Administration%20study.pdf.⁴ The objective of this study was to identify the effect of red light cameras on the frequency of right-angle side impact crashes, left-turn crashes, rear end crashes and other types of crashes. Id. at 29. The study analyzed many intersections with an average pre-camera period of six years and average post-camera period of 2.76 years. Id. at 41.

The study found that right-angle crashes decreased by an average of about 25% (but rear-end crashes increased by about 15%) in the post-camera period at intersections equipped with red light cameras. Id. at 63. At nearby intersections not equipped with cameras, the study found that right-angle crashes decreased by an average of about 9% in the post-camera period, and rear-end crashes increased nominally by about 1.8%. Id. Because right-angle crashes are generally more severe and costly than rear-end collisions, the study concluded that each red light camera system results in an economic benefit of between \$39,000 and \$50,000 per year. Id. at 67, 76.

c. **2002 California Bureau of State Audits Study**

In July 2002, the California Bureau of State Audits ("BSA") issued the results of its study on red light camera programs. See California Bureau of State Audits, Red Light Camera Programs: Although They Have Contributed to a Reduction in Accidents, Operational Weaknesses Exist at the Local Level (2002), available at <http://www.bsa.ca.gov/pdfs/reports/2001-125.pdf>.⁵ The BSA analyzed

⁴ A copy of this Analysis is attached as Exhibit C to the Request for Judicial Notice filed concurrently herewith.

⁵ A copy of this study is attached as Exhibit D to the Request for Judicial Notice filed concurrently herewith.

accident data from January 1995 through September 2001, and found that the average number of accidents caused by red light running declined by 10% statewide in cities with red light cameras compared to no change in the number of such accidents in cities without cameras. Id. at 47. The number of red light accidents decreased between 3% and 21% after installation of red light cameras in five of the jurisdictions sampled, and increased by 5% in one. Id. Accident rates at individual intersections actually equipped with red light cameras decreased by as much as 55%. Id. Moreover, the study found that after San Diego suspended its red light camera program in June 2001, accidents caused by red light violations increased city-wide by 14% and by 30% at intersections where red light cameras had previously been in place. Id.

The California Legislature has relied on the results of the BSA study in amending the CVC section authorizing the use of red light cameras. See Analysis of Assem. Bill No. 1022, supra, at p. 3.⁶ The Legislature noted that the BSA study found that the number of accidents reduced by as much as 21% after implementation of red light cameras. Id.

3. **The Procedures Currently in Place for Adjudicating Red Light Camera Offenses Make Red Light Camera Programs Feasible and Thereby Promote Public Safety**

The statistics set forth above demonstrate the success that red light cameras have had in furthering California's public policy interest in enhancing public safety on California roads. Indeed, the studies show that red light cameras have dramatically decreased the number of fatal crashes caused by red light running. The presence of red light cameras thus

⁶ A copy of this Analysis is attached as Exhibit A to the Request for Judicial Notice filed concurrently herewith.

function as a successful deterrent to drivers who would ordinarily run red lights.

In addition to being contrary to the rules of evidence, if accepted, Appellant's position that testimony of a Redflex employee is required to authenticate and lay the foundation for admission of red light camera evidence would severely jeopardize red light camera programs in California. Ignoring the Evidence Code and seeking compliance would place too great a burden on red light camera providers. The Court should not deprive the citizens of California of this invaluable public safety benefit by requiring such a strict procedure, particularly since the present procedure comports with California law.

C. **APPELLANT'S CONTENTION THAT HER CONVICTION SHOULD BE REVERSED BECAUSE THE PROSECUTION FAILED TO SHOW THAT THE YELLOW LIGHT INTERVAL COMPLIED WITH THE CVC IS MERITLESS**

1. **The Prosecution was Not Required to Demonstrate That the Yellow Light Interval Complied with the CVC**

CVC section 21455.7(a) provides that "[a]t an intersection at which there is an automated enforcement system in operation, the minimum yellow light change interval shall be established in accordance with the Traffic Manual of the Department of Transportation." Cal. Veh. Code § 21455.7(a). The CVC does not, however, make compliance with that requirement a condition precedent to the issuance of a citation or a conviction for violating CVC section 21453(a). Indeed, Appellant points to no such requirement. Rather, the prosecution was only required to prove the elements of a violation of CVC section 21453(a) – namely, that Appellant drove through a red light. See Cal. Evid. Code § 21453(a). That section contains no reference to the yellow light interval requirement.

Thus, the prosecution's proof of compliance with the minimum yellow phase requirement does not affect Appellant's conviction here.

2. **Investigator Young's Testimony Was Sufficient to Establish That the Yellow Light Interval Complied with the CVC**

In any event, the trial court properly found that Investigator Young's testimony established that the yellow light interval at the intersection in question met the requirements of the CVC. CVC section 21455.7 provides that minimum yellow light intervals "shall be established in accordance with the Traffic Manual of the Department of Transportation." Cal. Veh. Code, § 21455.7(a).

In support of her assertion that the prosecution failed to demonstrate that the yellow light interval complied with the CVC, Appellant erroneously contends that Investigator Young's knowledge of such compliance was based on information obtained from someone in the Traffic Engineering Department. [See Reply, p. 5.] The record plainly shows that Investigator Young testified that he personally tested the yellow light interval and confirmed that it complied with the CVC. [See RT, pp. 9-10.] More specifically, Investigator Young testified that he personally checked the signal on February 16 (before Appellant's violation) and again on March 16 (after the violation) and that the duration of the yellow light interval met the CVC standard in both instances. [See RT, p. 10.]

As the Appellate Division properly held, this Court should not reweigh Investigator Young's testimony because that is the task of the trial court, not the Court of Appeal. See *People v. Upsher* (2007) 155 Cal.App.4th 1311, 1322. As the trier of fact, the trial judge here weighed Investigator Young's testimony and found that it established that the yellow light interval complied with the CVC. In any event, Investigator Young's testimony plainly established that the yellow light interval complied with

the CVC because he personally checked the interval, confirmed that it was compliant and recorded his finding. [See RT, p. 10.] This Court should not disturb that finding, especially since Appellant submitted no evidence whatsoever that the interval violated the CVC.


V. CONCLUSION

For the foregoing reasons, *Amici Curiae* Redflex Traffic Systems, Inc. and the City of Garden Grove respectfully request that this Court affirm Appellant's conviction.

Dated: July 8, 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP

By



GREGORY P. BARBEE
MICHAEL D. STEWART
JOHN M. HYNES

Attorneys for *Amicus Curiae* REDFLEX
TRAFFIC SYSTEMS, INC.

Dated: July 8, 2011

WOODRUFF, SPRADLIN & SMART P.C.

By



JASON MCEWEN

Attorneys for *Amicus Curiae* THE CITY OF
GARDEN GROVE