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.

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

BRIEF OF RESPONDENT

CITY OF INGLEWOOD OFFICE
OF THE CITY ATTORNEY
Cal Saunders, Bar. No. 63497
1 W. Manchester Blvd., #860
Inglewood, California 90301
Tel: (310) 412-5372

BEST BEST & KRIEGER LLP
Dean R. Derleth, Bar. No. 162583
John D. Higginbotham, Bar. No. 204179
3500 Porsche Way, Suite 200
Ontario, California 91764
Tel: (909) 989-8584

Attorneys for Respondent

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Respondent the People of the State of California certifies that the following listed party (or parties) may have a pecuniary outcome in the outcome of this case.

1. [redacted]Goldsmith
2. The State of California

Dated: June 20, 2010

CITY OF INGLEWOOD OFFICE OF THE CITY ATTORNEY AND BEST BEST & KRIEGER LLP

By [redacted]

CAL SAUNDERS
DEAN DERLETH
JOHN HIGGINBOTHAM

Attorneys for Respondent

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Appellant [redacted] Goldsmith ("Appellant") does not dispute that she drove through a red light in violation of California Vehicle Code ("CVC") section 21453(a). Instead, Appellant seeks to avoid the consequences of her unlawful actions by attacking several aspects of the automated red light enforcement system that caught her in the act. The trial court and the Appellate Division were both correct in rejecting Appellant's baseless contentions, and finding her guilty of the underlying offense.

In arguing that the evidence of her violation should have been excluded, Appellant plainly ignores California law establishing that the evidence was properly admitted. As the Appellate Division properly reasoned, the California Evidence Code presumes the authenticity of evidence generated by automated red light camera enforcement systems, and Appellant failed to offer even a scintilla of evidence to suggest that the photographs or video were inaccurate.

Moreover, contrary to Appellant's position, California law did not require the prosecution to produce evidence that the automated enforcement system was in proper working order at the time of the violation. Rather, California law has long provided that the opponent of machine-generated evidence has the burden of showing that the machine used in generating the evidence was unreliable. As the Appellate Division aptly noted, Appellant made no such showing.

Appellant's authentication challenge fails even without the presumptions of authenticity noted above, and even if the prosecution had the burden of showing that the automated enforcement system was working properly. As the Appellate Division correctly found, Investigator Young's testimony was sufficient to authenticate the evidence. Investigator Young

was more than qualified to authenticate the evidence based on his over six years of hands-on automated enforcement experience and training.

The Appellate Division also properly found that the photographs and video depicting Appellant's violation generated by an automated enforcement system did not constitute hearsay because a machine cannot make a "statement" to which the hearsay rule applies. Moreover, the hearsay rule does not apply for an independent reason – such items are "demonstrative evidence" depicting what the camera sees and as such are not hearsay. None of the evidence challenged by Appellant was prepared by a human declarant. As such, there is no human declarant to cross examine, and the dangers underlying the hearsay rule are not present.

Even if the evidence were hearsay, it would be admissible under the business records exception to the hearsay rule or, alternatively, the official records exception. The business records exception applies because the City and Redflex both collected the evidence in the ordinary course of business. The City is in the business of enforcing the CVC to protect the safety of its citizens, and Redflex is in the business of assisting cities in the operation of automated enforcement systems. Moreover, the photographs and evidence were created at the very time of Appellant's violation, and Investigator Young testified in great detail to their identity and mode of preparation. The evidence would also be admissible under the official records exception because the City is a public entity, and the exception applies to Redflex because it assisted in the collection of the evidence pursuant to contractual duty under its contract with the City.

Finally, as the Appellate Division made clear, Appellant's contention that the yellow light interval at the subject intersection violated the CVC is wholly without merit. Investigator Young, who personally tested the yellow light interval, testified at trial that the interval met the standards of the CVC. The trial court, as the trier of fact, assessed

Investigator Young's testimony and determined that the interval met the requirements of the CVC. As the Appellate Division properly held, it is not the province of the Court of Appeal to reweigh evidence or assess the credibility of witnesses.

Because the evidence of Appellant's conviction was properly admitted, the trial court properly found Appellant guilty of violating the CVC section 21453(a) beyond a reasonable doubt. Accordingly, this Court should affirm the decisions of the trial court and the Appellate Division, and uphold Appellant's conviction.

II. STANDARD OF REVIEW

A judgment may not be set aside on the ground of the improper admission or exclusion of evidence unless the error has resulted in a "miscarriage of justice." Cal Const., art. VI, § 13; Cal. Evid. Code, § 352 (emphasis added). The trial judge's determination whether a proper foundation has been laid for the admission of evidence will 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, in its exercise of discretion, "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 enforcement system photographed Appellant driving through a red light at the intersection of Centinela Avenue and Beach Avenue in the City. [Appeal

Transcript ("AT"), p. 1.][1] The "databar" printed on the photographs depicting the violation show that the traffic light was red for 0.27 seconds before Appellant entered the intersection, and that Appellant was in the intersection 0.66 seconds later, indicating that the light had been red for 0.93 seconds by the time Appellant was in the intersection. People v. Goldsmith, No. BR-048189, at 4 (Los Angeles Super. Ct., App. Div. Feb. 14, 2011). The City Police Department issued Appellant a citation for failure to stop at a red light in violation of CVC section 21453(a). [AT, p. 1.]

Prior to Appellant's violation, Investigator Young of the Inglewood Police Department tested the average yellow light interval at the subject intersection twice – once on February 16, 2009 and once on March 16, 2009. Goldsmith, supra, No. BR-048189 at *7. During these tests, the yellow light interval exceeded the minimum requirement under CVC section 21455.7. Id.

B. Relevant Procedural History

1. Trial Court Proceedings

At trial, Investigator Young of the Inglewood Police Department testified for the prosecution. Goldsmith, supra, No. BR-048189 at 3. Investigator Young has been assigned to the Traffic Division, Red Light Camera Photo Enforcement for more than six years, and is well trained in the operation of automated red light camera enforcement systems.

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[1] In describing the facts of this case, Appellant relies on a Reporter's Transcript of the trial court proceedings ("RT") that she appears to have designated in the Appellate Division proceedings, but the Court of Appeal record does not include such a transcript. Respondent therefore relies on the AT and Appellate Division decision throughout this brief. The Court should disregard the RT, since it is not included in the record on appeal.

Id. Investigator Young has also acquired vast knowledge regarding the operation of such systems from city engineers and from Redflex Traffic Systems, Inc. ("Redflex") – the company that manufactured and assists in the operation of the automated enforcement system that captured Appellant's violation. Id.

Based on his over six years of automated enforcement experience and training, Investigator Young testified in great detail to the process by which automated enforcement systems capture, process and store photographs, videos and other information related to potential violations. Id. at 4. He testified that the system is programmed to obtain three digital photographs and a 12-second video whenever its sensors detect a vehicle in the intersection while the light is red. Id. Such photographs include (1) a pre-violation photograph showing the vehicle behind the limit line, (2) a post-violation photograph showing the vehicle in the intersection and (3) a photograph of the vehicle's license plate. Id. A "databar" showing the date, time, location and red light interval is automatically generated by the system and printed on each photograph. Id. The system operates independently at the scene without any intervention by a human operator, and the information stored on the computer at the intersection is accessed by Redflex technicians through a secure internet connection. Id.

Investigator Young further testified that he is responsible for checking the traffic signal at the subject intersection on a monthly basis to ensure that its yellow light interval complies with the minimum guidelines of the California Department of Transportation as required by CVC section 21455.7. Id. at 3. Based on his two tests prior to Appellant's violation (one on February 16, 2009 and the other on Mach 16, 2009), Investigator Young testified that the results were "well above 3.9 as established by the [California] Department of [Transportation] for [a 40 miles-per-hour] highway." Id.

The trial court admitted all of Investigator Young's testimony, as well as the photographic and video evidence of Appellant's violation generated by the automated enforcement system and authenticated by the testimony of Investigator Young. Id. at 2-4. On the basis of such evidence, the trial court found Appellant guilty of violating CVC section 21453(a). Id.

2. Appellate Division Proceedings

Appellant appealed her conviction to the Appellate Division of the Los Angeles Superior Court. [AT, p. 6.] In that appeal, Appellant urged the Appellate Division to reverse her conviction on the grounds that (1) the photographs depicting her violation should not have been admitted because they were not properly authenticated and constituted inadmissible hearsay; (2) 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 Appellant's Sixth Amendment right to confront witnesses; and (4) the prosecution failed to prove that Appellant was the driver depicted in the photographs. Goldsmith, supra, No. BR-048189 at 2.

The Appellate Division rejected all of Appellant's contentions, and upheld her conviction. Id. at 2. The court acknowledged that the Appellate Division of the Orange County Superior Court in People v. Khaled (2010) 186 Cal.App.4th Supp. 1 had previously found photographs generated by an automated red light camera enforcement system inadmissible, but expressly disagreed with that decision. Goldsmith, supra, No. BR-048189 at 2-3. The court 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. Id. at 4-5. Moreover, the court held that

notwithstanding those presumptions, Investigator Young's expert testimony, based on years of automated enforcement experience and training, was sufficient to authenticate the photographs. Id. at 5-6.

The Appellate Division further held that the photographic evidence did not constitute hearsay because it was generated solely by the automated enforcement system with no input by a human operator, and thus did not contain a "statement" to which the hearsay rule applies. Id. at 6-7. The court further reasoned that the photographs constituted "demonstrative evidence" of Appellant's crime, which does not constitute hearsay under California law. Id.

The Appellate Division also rejected Appellant's contention that the yellow light interval at the subject intersection did not meet CVC standards. Id. at 7-8. Appellant argued that the results of two tests conducted prior to her violation showing that the interval satisfied the requirements of the CVC were unreliable because the results of the two tests differed by 0.08 seconds. Id. at 7. The court rejected Appellant's invitation to reweigh the evidence and the credibility of Investigator Young, who testified to the test results, because that task is the province of the trial court, not an appellate court. Id. As such, the court refused to disturb the trial court's factual determination that the yellow light interval complied with the CVC. Id.[2]

3. Present Appeal

On March 28, 2011, the Court of Appeal ordered that the case be transferred to this Court pursuant to California Code of Civil Procedure

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[2] The court also rejected Appellant's Confrontation Clause challenge and her contention that the prosecution failed to prove that she was the driver depicted in the photographs. Appellant does not raise these issues in this appeal.

section 911 and Rule 8.1002 of the California Rules of Court. In this appeal, Appellant argues that her conviction should be reversed because (1) the photographic and video evidence, as well as the databar affixed to the photographs, were inadmissible because they were not properly authenticated and constitute inadmissible hearsay and (2) the yellow light interval did not comply with the requirements of CVC section 21455.7. [See Appellant's Opening Brief, pp. 1-5.]

IV. ARGUMENT

A. THE PROCEDURE USED IN ADJUDICATING AUTOMATED ENFORCEMENT VIOLATIONS IS CONSISTENT WITH CALIFORNIA PUBLIC POLICY

The procedure for adjudicating CVC violations based on evidence collected by automated red light camera enforcement systems is consistent with important California public policy considerations. The California Supreme Court has made clear that "[f]or sometime it has been recognized that it is in the interests of the defendant, law enforcement, the courts, and the public to provide simplified and expeditious procedures for the adjudication of less serious traffic offenses." People v. Carlucci (1979) 23 Cal.3d 249, 257; see also In re Dennis B. (1976) 18 Cal.3d 687, 695 (recognizing "the state's substantial interest in maintaining the summary nature of minor motor vehicle violation proceedings"); People v. Battle (1975) 50 Cal.App.3d Supp. 1, 7 (Holmes, P.J., concurring) ("In the overwhelming majority of infraction cases the primary interest of the accused will be served by expedition in disposal."). Indeed, "[t]he chief reason for classifying some prohibited acts as infractions is to facilitate their swift disposition." Dennis B., supra, 18 Cal.3d at 695.

Traffic courts are therefore "[u]nrestrained by the more stringent procedural requirements of a major criminal trial" and "are free to develop innovative procedures to expedite traffic cases." Id. Examples of

such procedures include the right of a defendant to have an immediate trial at his or her arraignment on a traffic violation and permitting the use of highway patrol officers to perform tasks typically performed by a District Attorney or City Attorney. Id. Another example is permitting the trial judge to call and question witnesses – a task typically performed by a District Attorney. Carlucci, supra, 23 Cal.3d at 258-59.

These same public policy considerations are no doubt present in the adjudication of red light statute violations based on evidence generated by automated enforcement systems. In addition to their public safety benefits, such systems advance the State's interest in "simplified and expeditious procedures for the adjudication of less serious traffic offenses." Id. at 257. The use of a police officer with extensive automated enforcement training and experience to authenticate the photographic evidence generated by such systems also furthers that interest. Requiring anything more than the procedure already used in adjudicating these offenses (which, as explained in detail below, satisfies the requirements of California law) would be directly at odds with the State's substantial interest in the summary nature of red light statute violation proceedings.

B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING THE PHOTOGRAPHIC AND VIDEO EVIDENCE OF APPELLANT'S VIOLATION

Appellant has failed to show that the trial court abused its discretion in admitting the photographic and video evidence of her violation, which she does not dispute occurred. As a threshold matter, the admission of evidence is within the discretion of the trial judge, and can be disturbed on appeal only upon a showing that the judge abused his or her discretion. Grant W., supra, 187 Cal. App. 3d at 1450. Appellant has utterly failed to show that the trial judge's admission of the evidence of her violation was an abuse of discretion under this exacting standard.

1. The Photographic And Video Evidence, Including the Data Bar, Was Properly Authenticated

The trial court did not abuse its discretion in finding that the photographic and video evidence of Appellant's violation was properly authenticated. As a threshold matter, the prosecution does not bear the burden of showing that the automated enforcement system was in working order as a prerequisite to admission of evidence generated by the system. In any event, Appellant failed to overcome the presumptions of authenticity that apply to such evidence under Evidence Code sections 1552 and 1553. Moreover, notwithstanding Appellant's failure to overcome those presumptions, Investigator Young's expert testimony, based on over six years of automated enforcement training and experience, was plainly sufficient to authenticate the evidence.

a. Appellant failed to rebut the presumption of authenticity afforded to the photographic and video evidence of her violation

Appellant failed to overcome the statutory presumptions of authenticity that apply to the photographic and video evidence of her violation. "Authenticity of a writing is required before it may be received in evidence." Cal. Evid. Code § 1400. Photographs, videos and digitally generated data describing the content of photographs and videos constitute "writings" under the California Evidence Code. People v. Jones (1970) 7 Cal. App. 3d 48, 53 (photographs); Ashford v. Culver City Unified School Dist. (2005) 130 Cal. App. 4th 344, 349 (videos); Aguimatang v. Cal. State Lottery (1991) 234 Cal. App. 3d 769, 798 (digitally generated date and time stamp describing contents of photograph). A writing may be authenticated by "(a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law." Cal. Evid. Code, § 1400.

The Evidence Code's policy in favor of the admission of photographs and videos is embodied in two important presumptions of authenticity. Evidence Code section 1552(a) provides a presumption that the databar on the photographs is accurate. That section provides:

> 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. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent.

Cal. Evid. Code § 1552(a) (emphasis added).

Additionally, Evidence Code section 1553(a) provides a presumption that the photographs and video themselves are accurate. That section provides:

> 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. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

Cal. Evid. Code § 1553(a).[3]

Here, the Appellate Division correctly held that "Evidence Code sections 1552 and 1553 establish a presumption that the data from the [automated enforcement system] and the digital images it captured were 'an accurate representation' of the information or images contained therein." Goldsmith, supra, No. BR-048189 at 2-3. The Evidence Code section 1552 presumption applying to a "printed representation of computer information" plainly covers the databar affixed to the photographs, while the Evidence Code section 1553 presumption applying to "a printed representation of images stored on a video or digital medium" covers the images depicted in the photographs and videos themselves. As aptly noted by the Appellate Division, Appellant failed to provide any evidence that the photographic and video evidence, including the databar, was inaccurate or unreliable. As such, the burden never shifted to the prosecution to prove that the machine-generated photographs and video were accurate representations of Appellant's driving through the red light at the subject intersection, or to prove that the information on the databar was accurate.

Because Appellant failed to overcome the presumptions of authenticity applying to the photographic and video evidence of her violation, the trial court did not abuse its discretion in finding such evidence properly authenticated.

b. The prosecution does not have the burden of establishing that the automated enforcement system was in proper working order

Contrary to Appellant's position, the prosecution was not required to show that the automated enforcement system was in working

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[3] Also significant, under CVC section 41101(b), traffic devices placed pursuant to the CVC are presumed comply with the requirements of law unless the contrary is established by competent evidence.

order for the evidence of her violation to be admissible. As the California Supreme Court has made clear, "courts have refused to require, as a prerequisite to admission of computer records, testimony on the 'acceptability, accuracy, maintenance, and reliability of . . . computer hardware and software.'" People v. Martinez (2000) 22 Cal.4th 106, 132 (quoting People v. Lugashi (1988) 205 Cal.App.3d 632, 642). Questions as to the accuracy of computer printouts affect only the weight, but not the admissibility, of the evidence. Martinez, supra, 22 Cal.4th at 132; see also People v. Nazary (2010) 191 Cal.App.4th 727, 754 (holding that the opponent of the evidence has the burden of establishing the unreliability of the device that produces machine-generated evidence).

In Martinez, the Court affirmed admission of computer printouts reporting criminal history without requiring the prosecution to produce evidence that the computer system that generated the records was in proper working order. Id. at 111, 132. After noting the lack of such a requirement under California law, the court explained that any issues as to the machine's reliability affect only the weight of the evidence, and can be addressed on cross examination. Id. In Lugashi, the court similarly held that the prosecution was not required to produce evidence of the accuracy of a bank's computer hardware and software, "especially where . . . the data consists of retrieval of automatic inputs rather than computations based on manual entries." Lugashi, supra, 205 Cal.App.3d at 642; see also Nazary, supra, 191 Cal.App.4th at 754 (holding that computer generated information on gas station receipts was admissible notwithstanding the lack of evidence that the machine was working properly at the time the printouts were made).

Here, as in Martinez, Lugashi and Nazary, California law did not require the prosecution to produce evidence that the automated enforcement system that captured Appellant driving through the red light in

violation of the CVC was in proper working order. As such, Appellant's contention that the prosecution failed to provide sufficient evidence that the system was working properly is unfounded and in fact irrelevant. [See e.g., Opening Brief, p. 14.] If Appellant had an issue with the reliability of the system, it was her burden to produce evidence that it was not in working order at the time of her violation. As the Appellate Division properly found, Appellant did not even try to offer any such evidence. Goldsmith, supra, No. BR-048189 at 5.

c. Investigator Young's testimony was sufficient to authenticate the evidence

As discussed above, Appellant flat out failed to overcome the presumptions of authenticity afforded to the photographic and video evidence of her violation. Additionally, and also discussed above, the prosecution did not have the burden of producing evidence that the automated enforcement system was in proper working order at the time of Appellant's violation. Notwithstanding those two conclusions, which are both independently fatal to Appellant's argument, the prosecution properly authenticated the evidence of her violation through the testimony of Investigator Young.

The Appellate Division properly applied the longstanding rule in California that "[a]uthentication 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." Goldsmith, supra, No. BR-048189 at 5 (citing Holland v. Kerr (1953) 116 Cal.App.2d 31, 37). Rather, as the court pointed out, "authentication of a photograph 'may be provided by the aid of expert testimony . . . although there is no one qualified to authenticate it from personal observation.'" Goldsmith, supra, No. BR-048189 at 5 (quoting People v. Bowley (1963) 59 Cal.2d 855, 862).

The photographic and video evidence of Appellant's violation was offered as probative evidence of the scene depicted therein; as such, eyewitness testimony was not required to authenticate the evidence. 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. Rather, such evidence can be authenticated by testimony from non-eyewitnesses who can testify to the manner in which the camera captured and maintained the photographs. United States v. Taylor (5th Cir. 1976) 530 F.2d 639, 641-642. Such witnesses may establish the authenticity of a photograph with assistance from other matters, including those that are an inherent part of the picture itself. Doggett, supra, 83 Cal.App.2d at 410.

In Taylor, the defendants were convicted of bank robbery based on surveillance photographs taken during the commission of the crime. Id. at 640-641. The defendants argued that the photographs were inadmissible because "none of the eyewitnesses to the robbery testified that the photographs accurately represented the bank interior and the events that transpired." Id. at 641. The court rejected this argument and held that testimony from government witnesses who were not present during the actual robbery was sufficient to lay the foundation for admissibility of the photographs. Id. Such testimony was sufficient because the witnesses "testified as to the manner in which the film was installed in the camera, how the camera was activated, the fact that the film was removed immediately after the robbery, the chain of its possession, and the fact that it was properly developed and contact prints made from it." Id. at 641-42.

Here, the photographic and video evidence was offered at trial as probative evidence of the scene depicted therein – namely,

Appellant driving through a red light in violation of the CVC. As such, no eyewitness testimony was required for admission and, as the Appellate Division properly found, Investigator Young's testimony was sufficient. As the Appellate Division reasoned, Investigator Young provided "expert testimony regarding the operation of the [automated enforcement system] and the photographs it produces based on information he had from city traffic engineers and Redflex as well as his experience with images obtained from the cameras." Goldsmith, supra, No. BR-048189 at 6 (emphasis added). Investigator Young explained how the automated system's sensors are triggered, how the data is recorded, and how the photographs and information are collected and sent to the police department. Id. Given Investigator Young's expertise on this subject matter, such testimony plainly established that the photographs were a reliable portrayal of the data and images contained therein.

Notably, Appellant offered no evidence to even suggest that the photographs and video were not accurate depictions of her violation. Rather, her entire argument is based on her erroneous contention that the prosecution had the burden of showing that the automated enforcement system was in proper working order at the time of the offense and that it failed that burden. Such bare and incorrect assertions come nowhere close to meeting the exacting standard of showing that the trial court abused its discretion in finding that the evidence was properly authenticated.

Moreover, Appellant's reliance on Ashford v. Culver City Unified School District (2005) 130 Cal.4th 344 in contending that the evidence was not properly authenticated is misguided. [See Opening Brief, p. 16.] In Ashford, the court held that videotapes were not properly authenticated because the plaintiff offered no testimony whatsoever as to how the videos were made, who made the videos, whether the videos had been edited or spliced or the accuracy of the videos in general. Id. at p.

347. Also, the videos themselves skipped around and had time lapses, thereby raising the suspicion that the videos were not accurate representations of the scenes depicted therein. Id. Here, in contrast, Appellant has not offered even a hint of evidence suggesting that the photographs or video are unreliable. Additionally, Investigator Young testified based on his vast automated enforcement experience to the process by which the automated enforcement system collected, stored and processed the photographic and video evidence of Appellant's violation. Goldsmith, supra, No, BR-231678 at 3-4, 6. As such, Ashford is entirely distinguishable from the instant case, and should be wholly disregarded.

Accordingly, Investigator Young's testimony was sufficient to authenticate the photographs and video depicting Appellant's violation. The trial court therefore did not abuse its discretion in finding that the evidence was properly authenticated.

d. Appellant's reliance on Khaled is misguided

Contrary to Appellant's position, People v. Khaled (2010) 186 Cal.App.4th Supp. 1 does not compel the conclusion that the evidence of her violation was not properly authenticated. The Khaled holding was confined to the facts before the court, and based entirely on the inadequate evidentiary showing of one testifying officer. The Khaled court found that the specific law enforcement officer who testified for the prosecution lacked the requisite knowledge of the procedure by which the automated enforcement system collected and stored violation data. Id. at 5-6. More specifically, unlike Investigator Young here, the officer in Khaled could not explain how the computer collected and stored the evidence gathered by the red light camera equipment. Id. at 7. That is simply not the case here.

Here, unlike the officer in Khaled, Investigator Young has over six years of automated enforcement experience and expert knowledge as to how automated red light camera enforcement systems capture and

maintain evidence of red light statute violations. Goldsmith, supra, No. BR-048189 at 3-4, 6. Based on his knowledge and experience, the Appellate Division properly designated him as an expert witness and found that his testimony was sufficient (though not necessary because Appellant failed to overcome the presumptions of authenticity) to establish that the photographs and video were "what the prosecution claimed they portrayed, namely, a digital depiction of appellant entering the intersection against a red signal light." Id. at 6. These critical factual differences between Khaled and the instant case are fatal to Appellant's Khaled-based arguments.

Accordingly, this Court should affirm the rulings of the trial court and the Appellate Division that the photographic and video evidence of Appellant's violation was properly authenticated.

2. The Photographic And Video Evidence Of Appellant's Violation is Not Hearsay

The trial court did not abuse its discretion in admitting the photographic and video evidence of Appellant's violation over her hearsay objection. Such machine-generated evidence does not constitute hearsay under California law. Tellingly, Appellant cites to no authority suggesting otherwise.

Hearsay is defined as "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 (emphasis added). A "statement" in this context is defined 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 (emphasis added). A "person" for purposes of the hearsay rule includes "a natural person, firm, association, organization, partnership, business trust,

corporation, limited liability company, or public entity." Id. § 175. Notably absent from that definition is a camera or any other machine.

Photographic and video evidence generated by automated red light cameras cannot constitute hearsay under California law. Machine-generated printouts do not constitute hearsay because "[t]he Evidence Code does not contemplate that a machine can make a statement." People v. Hawkins (2002) 98 Cal. App. 4th 1428, 1449; see also Nazary, supra, 191 Cal.App.4th at 754-55 (holding that computer printouts generated solely by a machine do not constitute hearsay). Indeed, the rationale for the hearsay rule does not apply to machine-generated evidence because there is no possibility of conscious misrepresentation and thus its truth cannot be tested on cross-examination. Hawkins, supra, 98 Cal. App. 4th at 1449. The Nazary court reasoned:

> The essence of the hearsay rule is a requirement that testimonial assertions shall be subjected to the test of cross-examination. The basic theory is that the many possible deficiencies, suppressions, sources of error and untrustworthiness, which lie underneath the bare untested assertion of a witness, may be best brought to light and exposed by the test of cross-examination. Under no possible scenario could [a machine] have been cross-examined.

Nazary, supra, 191 Cal.App.4th at 754-55 (emphasis added) (citations omitted).

Building on these principles, California courts have made clear that machine-generated photographs and videos are not hearsay. "Photographs and videotapes are demonstrative evidence, depicting what the camera sees" and as such "they are not hearsay." 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 it

contained no statement of a witness and the opponent of the evidence could not cross-examine photographic evidence. Id.

Here, the Appellate Division properly held that the photographs and videos depicting Appellant's violation do not constitute hearsay. Goldsmith, supra, No, BR-231678 at p. 3-4, 6. As in Cooper, this evidence was generated solely by a machine (the automated red light camera system), with no input from a "person" capable of making a "statement" within the meaning of the hearsay rule. Also like in Cooper, the photographs and video constitute demonstrative evidence of Appellant's crime, depicting only what the camera saw, and as such contain no statements. Indeed, because the evidence was created solely by a machine, there is no possibility of conscientious misrepresentation, and there is no "person" (as defined in the Evidence Code) to cross-examine. As such, the hearsay rule is wholly inapplicable.

It should also not go unnoticed that Appellant does not direct the Court to any authority suggesting that machine-generated evidence can constitute hearsay. The trial court therefore did not abuse its discretion in admitting the photographic and video evidence over Appellant's hearsay objection.

3. The Data Bar On The Photographic Evidence Is Not Hearsay

For similar reasons, the databar printed on the photographs depicting Appellant's violation is likewise not hearsay. "'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 held that computer printouts showing the date and time when computer files were last accessed were not hearsay because they were not produced by human declarants and thus could not constitute "statements" under the

hearsay rule. Hawkins, supra, 98 Cal. App. 4th at 1449. The court relied in large part on Armstead, in which the court reasoned:

> The printout of the results of the computer's internal operations is not hearsay evidence. It does not represent the output of statements placed into the computer by out of court declarants. Nor can we say that this printout itself is a 'statement' constituting hearsay evidence. The underlying rationale of the hearsay rule is that such statements are made without an oath and their truth cannot be tested by cross-examination. Of concern is the possibility that a witness may consciously or unconsciously misrepresent what the declarant told him or that the declarant may consciously or unconsciously misrepresent a fact or occurrence. With a machine, however, there is no possibility of a conscious misrepresentation, and the possibility of inaccurate or misleading data only materializes if the machine is not functioning properly.

Armstead, supra, 432 So.2d at 840 (citations omitted)

Here, the Appellate Division properly held that the databar affixed to the bottom of the photographs was not hearsay because "it was not inputted by a person but, rather, was generated by the [automated traffic enforcement system] once the system's sensors were triggered by appellant." Goldsmith, supra, No, BR-231678 at 6. The court relied on Hawkins in properly reasoning that "[t]he purpose of the hearsay rule is to subject the declarant to cross-examination in order to bring to light any falsities, contradictions, or inaccuracies that may not be discernible in the declarant's out-of-court statement." Id. (citing Hawkins, supra, 98 Cal. App. 4th at 1449). As the court aptly explained, "[u]nder no scenario could appellant have cross-examined the [automatic enforcement system] to ask what time it recorded appellant's traffic violation." Id.

Here, like the evidence 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 automated enforcement system. No human declarant inputted the data. Indeed, Appellant concedes that "the data imprinted on the photographs is a function of the computer and camera system's own internal operations." [Opening Brief, p. 13 (emphasis added).] Therefore, the databar does not constitute hearsay because it is not a "statement" from a "person" to which the hearsay rule applies.

Khaled does not compel a different result because the holding in that case was based on a misunderstanding of the nature of the databar. In finding that the databar constituted hearsay, the Khaled court explained that "the person who entered that relevant information into the computer-camera system did not testify [and] was not subject to being cross-examined on the underlying source of that information." Khaled, supra, 186 Cal.App.4th Supp. at 4 (emphasis added). As such, the court mistakenly believed that the databar information was inputted by a person, when it in fact is generated and affixed to the photographs solely by the automated enforcement system. Goldsmith, supra, No, BR-231678 at 6. Appellant even admits as much. [See Opening Brief, p. 13.] The reasoning in Khaled was therefore flawed, and does not apply here.

Accordingly, the databar does not constitute hearsay, and thus the trial court did not abuse its discretion in admitting it over Appellant's hearsay objection.

4. Even If The Photographic And Video Evidence Were Hearsay, The Evidence Would Be Admissible Under The Business Records Exception

Even if the photographic and video evidence of Appellant's violation was hearsay, which it is not, it would be admissible under the business records exception to the hearsay rule. This exception is based on the assumption that records kept in the usual course of business are accurate and reliable. Doyle v. Chief Oil Co. (1944) 64 Cal.App.2d 284, 292. The evidence of Appellant's violation here fits squarely into the requirements of the exception.

Evidence Code section 1271 provides that evidence of a writing is admissible to prove an 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 photographs and video depicting Appellant's violation were prepared in the regular course of business

As noted above, the business records exception requires that the record be created in the regular course of business. Cal. Evid. Code, § 1271(a). Notably, Appellant does not contend that this element of the exception is not met here.

In this context, the City Police Department's business in operating automated enforcement systems can be defined as protecting the health, safety and welfare of the people. Enforcing the CVC and collecting evidence of potential violations is no doubt a function of the regular business of the Police Department. The Police Department collected and processed the photographic and video evidence of Appellant's violation in the normal course of carrying out those duties. The evidence was therefore created in the regular course of the Police Department's business.

This element is also satisfied as to Redflex. Redflex is in the business of manufacturing automated enforcement systems, and assisting cities in collecting and processing evidence of violations. Redflex collects photographic and video evidence in the ordinary course of its business for each and every vehicle that triggers one of its automated enforcement systems. As such, the evidence of Appellant's violation was created in the regular course of Redflex's business.

b. The photographs and video depicting Appellant's violation were created at the time of her violation

Next, the business record must have been created at or near the time of the event depicted therein. Cal. Evid. Code, § 1271(b). 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 records showing four winning lottery ticket transactions were admissible under the business records exception even though they were printed 21 months after the transactions because they were recorded daily, but printed only on an as-needed basis. Id. at 798. The photographs and videos depicting Appellant's violation were created at the very time of Appellant's violation, as indicated by the machine-generated databar. As

such, they were made at the time of the event depicted therein, satisfying the second requirement of the business records exception.

c. Investigator Young was qualified to testify to the identity and mode of preparation of the photographs and video depicting Appellant's violation

Hearsay evidence is admissible under the business records exception only if "the custodian or other qualified witness testifies to its identity and mode of preparation." Cal. Evid. Code, § 1271(c). "Any 'qualified witness' who is knowledgeable about the documents may lay the foundation for introduction of business records – the witness need not be the custodian or the person who created the record." Jazayeri v. Mao (2009) 174 Cal.App.4th 301, 324. "The witness need not have been present at every transaction to establish the business records exception; he or she need only be familiar with the procedures followed." Id. at 322.

Here, Investigator Young was more than qualified to authenticate the photographic and video evidence of Appellant's violation for purposes of the business records exception. As the Appellate Division found, Investigator Young is an expert in the operation of automated enforcement systems with detailed knowledge of the procedure by which violation data is collected and processed by the system. Goldsmith, supra, No, BR-231678 at 3-4, 6. He has over six years of experience working with automated enforcement systems, and testified at trial in painstaking detail to the workings of automated enforcement systems – he covered everything from the number of photographs generated to the contents of the databar affixed on each photograph showing the relevant date, time, location and red light interval. Id. at 4. His detailed summary of how the photographs and video depicting Appellant's violation were collected and processed plainly established the identity and mode of preparation of such records.

Appellant's contention that Investigator Young was not a qualified witness merely because he is an employee of the Police Department, and not Redflex, is wholly without merit. As explained above, California law has made clear that "the witness need not be the custodian or the person who created the record;" all that is required is that the witness "be familiar with the procedures followed." Jazayeri, supra, 174 Cal.App.4th at 324. There can be no dispute that based on his over six years of automated enforcement experience, as well as his detailed account of the procedures employed in the collection and processing of evidence generated by automated enforcement systems, Investigator Young was familiar with the procedures involved in the automated enforcement process.

Appellant's reliance on Khaled in contending that Investigator Young was not a qualified witness is unfounded. Whether one is a qualified witness is a case-specific determination based on the knowledge and experience of the particular witness. The holding in Khaled therefore is confined to its facts and has no applicability here. The officer in Khaled was found to "not have the necessary knowledge of the underlying workings, maintenance or recordkeeping of Redflex Traffic System [sic]." Khaled, 186 Cal.App.4th Supp. 1 at 8. The officer testified 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. As explained above, Investigator Young, on the other hand, testified in great detail to how automated enforcement systems collect, process and maintain photographs and videos depicting violations, a far cry from the clearly inadequate testimony of the officer in Khaled. Khaled therefore has no bearing on this analysis.

d. The photographs and video depicting Appellant's violation are trustworthy

Finally, for the business records exception to apply, the sources of information and method and time of preparation of the record must indicate its trustworthiness. Cal. Evid. Code § 1271(d). Tellingly, Appellant does not address this requirement in her Opening Brief.

The reliability of evidence generated by automated enforcement systems is reflected in various principles of California law. As already described, Evidence Code sections 1552 and 1553 create a presumption that printed representations of computer information and images stored on a video or digital medium are accurate representations of the information or images that they purport to represent. Cal. Evid. Code § § 1552; 1553. The opponent of such evidence has the burden of showing that such evidence is unreliable. Cal. Evid. Code § § 1552; 1553. These presumptions make clear that California law deems computer generated information (such as photographs and videos generated by automated enforcement systems) particularly trustworthy.

Additionally, the California Supreme Court has opined that a camera is a "device whose memory is without question more accurate and reliable than that of a human witness." Bowley, supra, 59 Cal. 2d at 861. Moreover, California law requires a lesser evidentiary showing for admission of computer-generated information than for human testimony because "the data consists of retrieval of automatic inputs rather than computations based on manual entries." Lugashi, supra, 205 Cal.App.3d at 642. Such principles of California law show that the law deems records that are generated solely by a computer or other machine particularly trustworthy.

Here, as the Appellate Division noted, Appellant has not offered any evidence to suggest that the photographs and video depicting

her violation are untrustworthy. To the contrary, the Evidence Code presumptions and general principles of California law, coupled with Investigator Young's expert testimony describing the process by which the records were created and maintained, establish that the records are indeed trustworthy.

e. The photographs and video were admissible as business records even though they were produced for use in the prosecution of traffic violations

Contrary to Appellant's assertion, it is irrelevant whether the photographs and videos depicting Appellant's violation were produced for use by law enforcement agencies in prosecuting alleged traffic violators. [See Opening Brief, p. 22.] Appellant mistakenly relies on Palmer v. Hoffman (1943) 318 U.S. 109 to support her unfounded assertion that the photographs and video are inadmissible as business records merely because they were produced for use by law enforcement.

In Palmer, the plaintiff railroad employee signed a statement that described his version of a grade crossing accident involving the locomotive he operated. Id. at 110-11. The plaintiff signed the statement two days after the accident occurred during an interview with an official from the defendant railroad company. Id. The defendant offered the statement into evidence, but the Court held that it was not admissible as a business record because it was not made in the regular course of business. Id. at 111. The court reasoned that the defendant was in the railroad business, and the "accident report" was "not made for the systematic conduct of the business as a business." Id. at 113. The Court further reasoned that if the exception were to apply to the accident report at issue, "any business by installing a regular system of recording and preserving its version of accidents for which it was potentially liable would qualify those reports" under the exception and thus circumvent the hearsay rule. Id.

According to the Court, the report was "calculated for use essentially in the court, not in the business." Id. at 114.

Palmer has no application here. As a threshold matter, the Palmer holding is limited to "accident reports," which are not at issue here. Moreover, the business at issue in Palmer was a railroad company whose ordinary business plainly did not involve preparing accident reports. Here, on the other hand, the Police Department is in the business of collecting evidence of red light statute violations in connection with its duty to protect the health, safety and welfare of the people, and producing such evidence at trial. Redflex is likewise in the business of collecting, processing and making available to law enforcement agencies photographic and video evidence of violations – indeed, that is Redflex's business in its entirety. Redflex collects such data for each and every vehicle that triggers its system, without regard to whether the Police Department ultimately decides to issue the alleged violator a citation. As such, unlike the railroad company in Palmer, the City and Redflex here are no doubt in the business of collecting the records at issue – photographic and video evidence of a red light statute violation. Collecting such records is precisely the "systematic conduct of the business" of both the City and Redflex. Id. at 113.

As such, Appellant plainly misinterprets the Palmer holding. Contrary to Appellant's construction, the crux of the Palmer holding was that preparing accident reports was not in the ordinary course of the defendant railroad company's business, not that the report was prepared in anticipation of litigation. See id. (reasoning that the accident report at issue was "not made for the systematic conduct of the business as a business"). Indeed, here, photographs and videos depicting potential red light statute violations are precisely the records generated in the ordinary course of the City's business of enforcing the CVC, and Redflex's business of assisting the City in operating its automated red light traffic enforcement systems.

Moreover, the photographic and video evidence here simply does not raise the suspicion of bias with which the Palmer Court was concerned. In Palmer, the Court was concerned that if the business records exception applied to accident reports, businesses would always prepare self-serving accident reports in circumvention of the hearsay rule and use them at trial. See id. That concern is simply absent here because the automated enforcement system generates photographic and video evidence for each and every vehicle that triggers the system. The system simply captures the violation as it occurs, and is not capable of inserting bias into the process.

Accordingly, even if the photographs and videos depicting Appellant's violation were hearsay, they would be admissible under the business records exception to the hearsay rule. The trial court therefore did not abuse its discretion in admitting the evidence.

5. The Photographic and Video Evidence Would Also be Admissible Under The Official Records Exception To The Hearsay Rule

Moreover, even if it were hearsay, the photographic and video evidence of Appellant's violation would also be admissible under the official records exception to the hearsay rule. Evidence Code section 1271 provides that evidence of 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.

A "public employee" for purposes of the official records exception is defined as "an officer, agent, or employee of a public entity." Cal. Evid. Code, § 195. Thus, contrary to Appellant's unsupported assertion, in addition to public employees themselves, the official records exception applies to acts of private entities under a contractual duty to perform tasks for a public entity, such as a local law enforcement agency. Burge v. Dept. of Motor Vehicles (1992) 5 Cal.App.4th 384, 388-389 (finding a private laboratory's blood test report to law enforcement agencies admissible under the official records exception); Imachi v. Dept. of Motor Vehicles (1992) 2 Cal.App.4th 809, 816-817 (admitting a private laboratory technician's blood test report under the official records exception because the technician acted as an agent of the public entity and thus met the definition of public employee).

Additionally, a writing is trustworthy under the official records exception if it is made by an employee who has a duty to observe facts and report them accurately. See People v. Parker (1992) 8 Cal.App.4th 110, 116. The presumption that an official duty is regularly performed, see Cal. Evid. Code § 664, shifts the burden to the opponent of the evidence to show that the record was not properly prepared. Santos v. Dept. of Motor Vehicles (1992) 5 Cal.App.4th 537, 547-48.

Unlike the business records exception, the official records exception does not require "the custodian or other qualified witness" to testify to establish admissibility as an official record. Jazayeri, supra, 174 Cal. App. 4th at p. 319; see also Martinez, supra, 22 Cal. 4th at 128-129 (citing the Law Revision Commission's comment to Evidence Code section 1280 as persuasive evidence of Legislative intent to permit the court to admit an official record without requiring a witness to testify as to its

identity and mode of preparation if sufficient independent evidence trustworthiness exists).

Here, the photographic and video evidence of Appellant's violation collected by the City and Redflex is admissible under the official records exception. The City is clearly a public entity to which the exception applies. Moreover, contrary to Appellant's position, the exception applies equally to Redflex because, like the private laboratories in Burge and Imachi, it collected and processed the photographic and video evidence of Appellant's violation pursuant to a contractual duty under its contract with the City, a public entity. California law has made clear that the official records exception applies to acts of private companies who provide evidence to law enforcement agencies under a contract. See, e.g., Burge, supra, 5 Cal.App.4th at 388-389; Imachi, supra, 2 Cal.App.4th at 816-817.

Additionally, the photographic and video evidence was captured by the automated enforcement system at the very moment of the act recorded (i.e., Appellant driving through the red light). Moreover, for the same reasons discussed in Section IV.B.4.D, supra with respect to the business records exception, the photographs and video are trustworthy because they were generated solely by a machine and thus did not depend on human memory or performance, and Investigator Young offered his expert testimony as to the identify and mode of preparation of the records. Lastly, Appellant has completely failed to rebut the presumption that the official duties of the City and Redflex in collecting evidence of her violation were properly performed, and the photographs and video properly prepared. See Cal. Evid. Code § 663.

Accordingly, even if the photographic and video evidence of Appellant's violation were hearsay, it would be admissible under the

official records exception. The trial court therefore did not abuse its discretion in admitting the evidence.

C. THE PROSECUTION ESTABLISHED THAT THE YELLOW LIGHT INTERVAL WAS IN COMPLIANCE WITH CVC SECTION 21455.7

The Appellate Division properly rejected Appellant's contention that her conviction should be reversed on the ground that the prosecution failed to prove that the yellow light interval at the intersection in question complied with 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). The traffic manual in use at the time of Appellant's traffic violation mandated a minimum yellow light change interval of 3.9 seconds based on a prima facie speed limit of 40 miles per hour for approaching vehicles. Cal. Dept. of Transportation, Cal. Manual on Uniform Traffic Control Devices (2006) pp. 4D-11, 4D-50.

Investigator Young testified that he visually inspects the traffic signal at issue on a monthly basis to ensure the duration of the yellow light interval complies with the minimum guidelines established by the California Department of Transportation. Goldsmith, supra, No. BR-048189 at 3. He further testified that he personally tested the interval on February 16, 2009 and March 16, 2009, and that the tests showed averages of 4.11 and 4.03 seconds respectively. Id. These results were well above the required interval of 3.9 seconds. Id. As the Appellate Division properly held, Appellant's contention that the 0.8 second discrepancy in the tests conducted by Investigator Young indicated that the tests were unreliable is pure speculation, without support and wholly without merit.

The Appellate Division also properly refused to disturb the trial court's finding that the yellow light interval complied with the CVC on

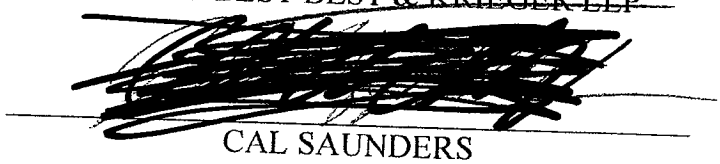
the ground that it is not an appellate court's task to reweigh evidence. The Court of Appeal does "not reweigh the evidence; the credibility of witnesses and the weight to be accorded to the evidence are matters exclusively within the province of the trier of fact." People v. Upsher (2007) 155 Cal.App.4th 1311, 1322. Here, the trial court in its capacity as the trier of fact assessed the credibility of Investigator Young's testimony and determined that it was sufficient to establish that the yellow light interval complied with the CVC. As the Appellate Division held, this Court should not reweigh the credibility of Investigator Young, whose expert testimony established compliance with the minimum yellow light interval requirement in the CVC.

V. CONCLUSION

For the foregoing reasons, Respondent the People of the State of California respectfully request that this court affirm Appellant's conviction.

Dated: June 20, 2011

CITY OF INGLEWOOD OFFICE OF THE CITY ATTORNEY AND BEST BEST & KRIEGER LLP

By 

CAL SAUNDERS
DEAN DERLETH
JOHN HIGGINBOTHAM

Attorneys for Respondent