S201443

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In the

Supreme Court of California

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff and Respondent,

vs.

GOLDSMITH,

Defendant and Appellant.

After a Decision by the Court of Appeal.
Second Appellate District, Division Three, Case No. B231678

Los Angeles County Superior Court, Appellate Division, Case No. BR048189
Honorable Patti Jo McKay, Anita H. Dymant and Sanjay Kumar
Superior Court Case No. 102693IN

RESPONDENT'S OPPOSITION TO GOLDSMITH'S REQUEST FOR JUDICIAL NOTICE

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I.

INTRODUCTION

Respondent, the City of Inglewood, opposes Goldsmith's request that this Court take judicial notice of documents that Goldsmith obtained from the Arizona Secretary of State, which pertain to revocation of an Arizona notary's license. Because the particular notary in question was employed by Redflex, an ATES vendor, Goldsmith apparently seeks to introduce these documents as evidence that ATES-generated data is unreliable. {RB 6, 13, 20.} Goldsmith offers this evidence ostensibly to impeach Respondent's arguments concerning the reliability of Redflex's materials. Goldsmith's request is improper, and Respondent opposes the request on the following grounds:

(a) In requesting judicial notice of these documents, Goldsmith seeks to introduce impeachment evidence that she admits was not presented to the trial court and, moreover, is not material to any issue raised in the trial court. The evidence presented at Goldsmith's trial consisted of ATES-generated evidence and the testimony of an investigator with the Inglewood Police Department. The documents Goldsmith now seeks to introduce involve a notary's improper notarization of a "Deployment Form"; it does not pertain to photographs, digital images, or computer-generated evidence.

(b) The information Goldsmith seeks to introduce is not relevant to the limited issues on appeal, as it does not pertain to ATES-generated evidence or data. Rather, the documents concern the revocation of a particular notary's license following an investigation into whether the notary followed Arizona rules governing the practice of notaries when she notarized a "Deployment Form"; the investigation had nothing to do with ATES, ATES-generated evidence, or the validity or reliability of such evidence. Goldsmith fails to articulate how the documents are material to

the issues before the Court. Goldsmith also does not explain how a specific instance of supposed misconduct on the part of an Arizona notary demonstrates ATES-evidence is falsified or that the ATES-vendor in this case "falsified evidence." Even if the Court were to take judicial notice of the documents, neither the existence, nor the contents, of the documents suggest that ATES-evidence is unreliable, that Goldsmith did not commit the crime with which she was charged, or that Redflex has engaged in a practice of falsifying or distorting ATES-images.

II.

LEGAL ARGUMENT

A. Goldsmith's request should be denied because it seeks to introduce evidence that was neither presented to the trial court nor material to any issue in the trial court

Appellate courts "generally do not take judicial notice of evidence not presented to the trial court." (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) "An appellate court may properly decline to take judicial notice under Evidence Code sections 452 and 459 of a matter which should have been presented to the trial court for its consideration in the first instance." (*Brosterhous v. State Bar of Cal.* (1995) 12 Cal.4th 315, 325-326.) Indeed, in *Brosterhous*, this Court declined to grant the State Bar's request for judicial notice where the State Bar did not explain its reason for failing to request the trial court and the court of appeal to take judicial notice of the documents. (*Id.*, at p. 325.)

No exceptional circumstances exist here which merit this Court noticing the documents Goldsmith submitted with her request for judicial notice. Goldsmith did not ask the trial court to take notice of the documents she now seeks to put before this Court. Moreover, the documents would not have been relevant to the issues before the trial court. The evidence presented at Goldsmith's trial consisted of digital red light

camera images and the testimony of an investigator with the Inglewood Police Department. The documents Goldsmith wishes the Court to notice do not directly involve digital red light camera images, digital evidence, computer-stored information, or computer-generated evidence. Goldsmith does not explain how the Form, or the notarization of the Form, relates to the evidence presented on her behalf at trial. As the documents at issue were not considered by the trial court, and were, as an additional matter, immaterial to the issues before the trial court, they should not be considered at this stage.

B. Goldsmith's request should be denied because the documents are not relevant to the issues before this Court

"Although a court may judicially notice a variety of matters, only *relevant* material may be noticed." (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, overruled in part on other grounds as stated in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1262, 1275-1276 [internal citation omitted] [italics in original].) Indeed, this Court has repeatedly declined to take judicial notice of documents that were not relevant to the issues before it and where the proponents of the request have failed to articulate their relevance. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4 [request for judicial notice of court file and portions of legislative history denied where plaintiffs failed to demonstrate the relevance of the material]; *People v. Rowland* (1992) 4 Cal.4th 238, 268, fn. 6 [while Court may take judicial notice of court records, it refused to do so where it failed to see – and defendant failed to show – the relevance of the subject record]; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1089, fn. 4 [request for judicial notice of bill and governor's veto denied where Court "[did] not find the materials particularly supportive of respondent's cause or relevant to the action[,]"]; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1 [request for judicial notice of proposed

legislation denied "because such materials have little relevance to a material issue" in the matter]; *People v. Stoll* (1989) 49 Cal.3d 1136, 1144, fn. 5 [Court declined to notice a report that did not refer in any way to the parties, witnesses, or charges, and thus added nothing to the factual record and had "no bearing on the limited legal question at hand."].)

The documents that Goldsmith wishes the Court to notice are not relevant to the issues before the Court. The issues before the Court are as follows: (1) what testimony, if any, regarding the accuracy and reliability of ATES is required as a prerequisite to admission of the ATES-generated evidence?; and (2) is the ATES evidence hearsay and, if so, do any exceptions apply? {AOB 1.}

The documents offered by Goldsmith do not pertain to ATES-generated evidence or data, and do not further Goldsmith's arguments regarding the testimony necessary to properly authenticate ATES-generated evidence. The documents are about the license revocation of a particular notary employed by Redflex in Arizona, who apparently failed to follow the rules governing notarization practices. The notary's license was revoked following an investigation into whether the notary properly notarized a "Deployment Form," which required notarization if the Redflex operator did not appear in court. The investigation stemmed from a complaint that the person who signed the Form was not in the notary's presence when she notarized the Form. Accordingly, the documents are unrelated to ATES-generated evidence, the reliability of such evidence, or any testimony that may be necessary to properly authenticate such evidence. (See *Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 327 [while a witness's credibility may be challenged by evidence pertaining to the existence or nonexistence of any fact that he testified about, that rule does not allow *irrelevant* evidence to be introduced under the guise of

impeachment] [italics in original].) The notarization of the Form has no bearing on the issues in this appeal.

While Goldsmith asks the Court to take notice of the documents to support her argument that Redflex has "falsified evidence" in the past {RB 6, 13, 20}, the documents do not show "falsification of evidence" by Redflex. A letter from the Arizona Secretary of State dated July 2, 2008, which is among the documents Goldsmith asks the Court to notice, explains that the only issue the Secretary of State's Office was authorized to assess was whether the Notary properly notarized the Form, and it specifically states that it "does not have the authority to determine whether any signature on the Form was forged or to settle any legal disputes regarding the Form." Goldsmith does not strive to explain how the documents pertaining to the notary's license revocation purport to show that Redflex "falsified evidence," nor does Goldsmith articulate what evidence Redflex has allegedly fabricated, or how that evidence relates to ATES or ATES-generated evidence.

The documents do not establish, nor does Goldsmith contend, that the substantive information within the Form was fabricated. The documents are neither relevant to the issues before the Court, nor do they lead to the conclusion that Redflex is engaged in the falsification of evidence. (See *Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134 ["judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom, since in many instances what is being noticed, and thereby established, is no more than the existence of such acts and not, without supporting evidence, what might factually be associated with or flow therefrom."].) The documents proffered by Goldsmith do not establish Redflex is prone to falsifying ATES-generated evidence, they do not even related to ATES-generated evidence.

III.

CONCLUSION

Goldsmith's request for judicial notice should be denied. First, the documents that Goldsmith asks the Court to notice were not presented to the trial court and were immaterial to the issues before the trial court. The evidence presented at Goldsmith's trial consisted of digital images and the testimony of an investigator with the Inglewood Police Department. The documents at issue here pertain to a particular notary's license revocation for failing to properly notarize a "Deployment Form" in accordance with rules governing notary practices; they are not pertinent to digital images, digital evidence, computer-stored information, computer-generated evidence, or the reliability of such evidence or information. Second, the information that Goldsmith seeks to introduce is immaterial to the issues on appeal as it is not pertinent to ATES or ATES-generated evidence, and it further does not demonstrate "falsification of evidence" by Redflex, or any inherent unreliability of machine-generated evidence.

Respectfully submitted,

Dated: April 1, 2013

Best Best & Krieger LLP

By: _____

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PROOF OF SERVICE

The People of the State of California v. *Goldsmith*
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At the time of service I was over 18 years of age and not a party to this action. My business address is 500 Capitol Mall, Suite 1700, Sacramento, California, 95814. On April 1, 2013, I served the following document(s):

RESPONDENT'S OPPOSITION TO GOLDSMITH'S REQUEST FOR JUDICIAL NOTICE

☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

☐ Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☒ Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Indian Wells, California.

☒ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

PLEASE SEE ATTACHED MAILING LIST

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 1, 2013 at Sacramento, California.

_____

Claudia Peach

MAILING LIST

The People of the State of California v. Goldsmith
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