

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO
APPELLATE DIVISION

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and
Respondent,

v.

ABRAM G [REDACTED], an individual,

Defendant and
Appellant.

Trial Court Case No. 455847
Appellate No. 5207

FILED
SAN MATEO COUNTY

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**RESPONDENT PEOPLE OF THE STATE OF CALIFORNIA'S
OPPOSING BRIEF**

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I. INTRODUCTION

On April 9, 2010, defendant Abram G [REDACTED] ran a red light at the intersection of U.S. Highway 101 and Millbrae Avenue, in the City of Millbrae, California. Mr. G [REDACTED] traffic infraction is shown in photographic and video evidence, which depict Mr. G [REDACTED] committing the traffic violation. The City of Millbrae Police Department issued a citation, this Court held a trial on Mr. G [REDACTED] violation on July 21, 2010, and Mr. G [REDACTED] was found guilty and fined. Mr. G [REDACTED] now appeals that finding.

Mr. G [REDACTED] first challenges his conviction on the grounds that the evidence against him should have been excluded based on hearsay, foundation, and the “Confrontation Clause” of the U.S. Constitution’s Sixth Amendment. His arguments are misplaced. The photographic evidence against Mr. G [REDACTED] was properly authenticated as direct, demonstrative evidence by the People’s witness, Officer Matthew Pangalos. Such photographic evidence is not testimonial, is not hearsay, and does not implicate a criminal defendant’s right to confront his accusers. Even if treated as hearsay, however, Officer Pangalos is a “qualified witness” who can authenticate the photographs and video of Mr. G [REDACTED]’s traffic violation under the business records exception to the hearsay rule.

Mr. G [REDACTED] also relies on a recently-published decision from Orange County Superior Court, *People v. Khaled* (2010) 186 Cal.App.4th 1, to support his claim that the photos and video of his violation should be excluded from evidence. Again, Mr. G [REDACTED] is wrong. While photo evidence was excluded in the *Khaled* case, the court’s reasoning in that decision actually supports admission of the evidence in this case. Unlike the testifying officer in the *Khaled* matter, the People’s witness in this case, Officer Pangalos, has extensive training and personal experience which

qualifies him to authenticate the evidence against Mr. G [REDACTED]

Mr. G [REDACTED] has not stated a basis for overturning his conviction, and Commissioner Greenberg's decision below should be upheld.

II. FACTUAL BACKGROUND

The following facts are taken from (1) the July 21, 2010 testimony of San Mateo Police Officer Matthew Pangalos; (2) Officer Pangalos's related affidavit; (3) the photographic and video evidence of the subject red light violation; (4) the declaration of the registered owner of the subject vehicle identifying the driver; and (5) the September 20, 2010 Settled Statement in this action.

A. Abram G [REDACTED] Red Light Citation

On April 9, 2010, defendant Abram G [REDACTED] ran a red light at U.S. Highway 101 and Millbrae Avenue in the City of Millbrae, California. At the time, Mr. G [REDACTED] was driving a vehicle owned by G [REDACTED] Y [REDACTED]. The violation was recorded by the City's photographic enforcement system, which captured still photos and video of the vehicle, Mr. G [REDACTED] behind the wheel, and the violation.

After receiving a citation in the mail, Mr. Y [REDACTED] executed an "Affidavit of Non-Liability," which was introduced in evidence at trial.¹ In that affidavit, Mr. Y [REDACTED] stated that he was not driving his vehicle at the

¹ At page 4:23 of his Opening Brief, Mr. G [REDACTED] claims that this affidavit was not introduced as evidence. This appears to be a typographical error or other mistake. Though not part of the People's case-in-chief, this affidavit was introduced into evidence, and Mr. G [REDACTED] counsel cross-examined Officer Pangalos about its authenticity. On cross-examination, Officer Pangalos compared Mr. Y [REDACTED] signature on the affidavit to his driver's license signature, which match, as Commissioner Greenberg agreed.

time of the violation, and that defendant Abram G [REDACTED] as the driver. Based on this information, Officer Pangalos confirmed Mr. Y [REDACTED] statement by comparing the photographic evidence of the violation with a Department of Motor Vehicles photo of Mr. G [REDACTED]. Thereafter, Mr. G [REDACTED] was cited, tried, and convicted on the basis of the photographic and video evidence which showed him driving the car and running the red light. That photographic and video evidence was authenticated by Officer Pangalos's testimony, and that authenticity was further supported by a camera test log, prepared by ATS, that confirmed the proper function of the equipment at all relevant times.

B. City of Millbrae's Photographic Traffic Light Enforcement System

The City of Millbrae contracts with a private vendor, American Traffic Systems ("ATS"), for its photographic red light enforcement system. Pursuant to that contract, ATS installed and maintains the City's system.

When operating, the system is activated and enforcement begins when the signal light facing the driver turns red. When the signal light turns green enforcement ends. The system is designed so that it can only take a photograph during a red light phase and cannot take a photograph during a yellow light or green light phase. Once a vehicle passes over detection sensors at the intersection, the system takes three photographs and one video clip, two photographs from the rear and one photograph from the front. The first rear photograph shows the vehicle prior to entering the intersection with the traffic signal red phase visible. From this photograph, a close-up of the license plate is cropped. The second rear photograph shows the vehicle proceeding through the intersection with the traffic signal red phase visible. The third photograph shows the image of the driver of

the vehicle during the violation. A 12 second video clip of the violation is captured from the rear view of the vehicle crossing into the intersection after the red phase has commenced.

The evidence is then processed by ATS, which employs technicians to review the system, ensure proper operation, and produce a record of violations captured by the system. During the process, ATS technicians can only crop, zoom in, and/or lighten or darken the images; they cannot otherwise alter or manipulate the images in any way. ATS compiles the information and provides it to the City of Millbrae, which then issues the citation on the basis of the information received. In this case, Officer Pangalos personally issued Mr. G [REDACTED] citation.

C. Officer Pangalos's Training

Officer Matthew Pangalos is the Photo Enforcement coordinator for the City of Millbrae. As described in great detail in his Affidavit, Officer Pangalos has had extensive experience and training in photo enforcement of red light violations. That training includes visits to ATS's facilities, meetings with its employees and technicians, instruction in and personal observation of all aspects of ATS's systems and the work of its technicians, and direct and repeated observation of the photographic enforcement system installed in the City of Millbrae. Officer Pangalos has personally worked with each aspect of the photo enforcement system, personally producing images and records of violations. Officer Pangalos has also repeatedly visited the intersection of Highway 101 and Millbrae Avenue to watch the photo enforcement system work. Finally, as a long-time resident of San Mateo County, a San Mateo police officer, and photo enforcement coordinator for the City of Millbrae, Officer Pangalos is intimately familiar with the intersection of Highway 101 and Millbrae Avenue.

III. ARGUMENT

On appeal, Mr. G [REDACTED] presents two questions:

1. “Whether the Court was in error to deny defendant’s foundation and hearsay objections regarding the Redflex² packet and DVD.”
2. “What is the impact of Orange County Appellate Decision, *People v. Khaled*, on admissibility of the red light camera packet?”

Neither question raises a basis to overturn the decision in this matter. The Trial Court did not err when it overruled Mr. G [REDACTED] foundation and hearsay objections, nor are his Confrontation Clause rights implicated by the evidence in this case. The photographic and video evidence of Mr. G [REDACTED] traffic infraction are admissible, both as photographic evidence authenticated by Officer Pangalos, and under the business records exception to the hearsay rule. (Evid. Code, §§ 1400, 1271.) Moreover, the reasoning applied in *People v. Khaled* supports Mr. G [REDACTED] conviction in this case.

A. The Trial Court Correctly Overruled Mr. G [REDACTED] Foundation and Hearsay Objections.

1. Officer Pangalos is qualified to authenticate the photographic and video evidence of Mr. G [REDACTED] infraction.

The rules regarding admission of photographs and video as direct, demonstrative evidence of the subjects depicted are well settled. The

² The City presumes that Mr. G [REDACTED] is referring here to the “ATS” packet. Redflex Traffic Systems provides photographic enforcement systems to other cities similar to the system and service ATS provides to the City of Millbrae.

propounding party must introduce evidence to satisfy the trial court that the photo or video is an accurate reproduction of the scene it purports to represent. (Evid. Code, §§ 1400, *et seq.*; *Jones v. City of Los Angeles* (1993) 20 Cal.App.4th 436, 440.) This does not require the testimony of the photographer, only a person with sufficient personal knowledge of the scene to establish authenticity. (*Jones*, at p. 440.) Such authentication may also be rendered by expert testimony, even though the expert is not qualified to authenticate the depiction from personal observation. (*People v. Bowley* (1963) 59 Cal.2d 855, 862, citing *People v. Doggett* (194) 83 Cal.App.2d 405, 410.) Moreover, it is not necessary to bring photographic and/or video evidence within an exception to the hearsay rule. Photographs and video “are demonstrative evidence, depicting what the camera sees . . . [t]hey are not testimonial and they are not hearsay” (*People v. Cooper* (2007) 148 Cal.App.4th 731, 746, citing *People v. Carpenter* (1997) 15 Cal.4th 312, 385–386; *People v. Carter* (1957) 48 Cal.2d 737, 751.)

Officer Pangalos did not take the photographs or video of Mr. G [REDACTED] running the light at Highway 101 and Millbrae Ave. His testimony, however, established that he is familiar with the intersection, with the operation and maintenance of the photo and video equipment (both from his training at ATS and his personal, repeated observation of the equipment’s operation on site), and with the methods by which evidence is prepared, stored, and transmitted. Officer Pangalos’s testimony is accordingly sufficient to authenticate the photos and video of Mr. G [REDACTED]’s infraction, and that evidence was properly admitted as direct, demonstrative evidence. (*People v. Bowley, supra*, 59 Cal.2d at p. 862.)

2. The photographs and video of Mr. G [REDACTED] infraction and the camera test log are admissible business records, and Officer Pangalos is qualified to authenticate the records for that purpose.

There are two pieces of evidence implicated by Mr. G [REDACTED] hearsay objection. First, there is the photographic and video evidence of Mr. G [REDACTED]'s violation. Second is the camera test log upon which Officer Pangalos relied to determine that the photographic system was working properly at the time of Mr. G [REDACTED]'s violation. As to both, the hearsay objections were properly overruled. Record evidence prepared out of court, may be admitted despite the hearsay rule when the writing is (1) recorded in the ordinary course of business; (2) made at or near the time of the recorded action or event; (3) authenticated by a "custodian or other qualified witness;" and (4) the method and time of preparation indicate its trustworthiness. (Evid. Code, § 1271.) That hearsay exception applies to both pieces of evidence.

Without dispute, ATS took the photographs and video of Mr. G [REDACTED] infraction in the ordinary course of its business; capturing evidence of traffic violations and transmitting that evidence to prosecuting authorities *is* its business. Obviously, the photos and video are captured at the exact moment of the events they depict; that is the very nature of photographic evidence. (*People v. Cooper, supra*, 148 Cal.App.4th at p. 746.) Officer Pangalos's training and experience with ATS's operations and systems qualifies him to authenticate the business records in court. Finally, because the photographs are taken contemporaneously and automatically by a neutral system that only captures evidence during the red light phase of a traffic light, there appears to be no dispute that the method and time of preparation indicate trustworthiness.

The business records exception also applies to the camera test log Officer Pangalos used to verify the proper function of the photographic system at the time of Mr. G [REDACTED] violation. ATS prepared the camera test log as part of the regular maintenance of its equipment. The camera test log is a contemporaneous recording of camera function at the time of

the system check. As discussed above, Officer Pangalos's training qualifies him to authenticate the records. Finally, just as with the photos and video themselves, the camera test log is a contemporaneous record prepared by a neutral, computerized system, indicating its trustworthiness.

Mr. G [REDACTED] appears to concede all these points, except one. He complains that Officer Pangalos was not qualified to authenticate the evidence against him. Instead, he argues, the People were bound by Evidence Code section 1271, subdivision (c) to introduce the testimony of ATS employees involved in the preparation and storage of the evidence against Mr. G [REDACTED]. That argument is unsupported.

As is clear from the statute, the witness authenticating business records need not be the person who actually prepared the record. (*People v. Remiro* (1979) 89 Cal.App.3d 809, 846; *People v. Williams* (1972) 36 Cal.App.3d 262, 275; *People v. Utter* (1972) 24 Cal.App.3d 535, 553 [overruled on unrelated grounds as stated in *People v. Morante* (1999) 20 Cal.4th 403, 421, fn. 10].) That is the very purpose the qualified custodian serves: to obviate the need to call every organizational employee involved in the preparation of a business record. (*People v. Williams*, at p. 275.) Nor is it necessary that the authenticating witness be an employee of the recording business. (*People v. Martinez* (2000) 22 Cal.4th 106, 132 [finding that county district attorney's paralegal was qualified, based on prior training and experience, to authenticate uncertified records prepared and maintained by the State Department of Justice].) Further, evidence prepared by electronic means may be authenticated by a trained and knowledgeable user, even though the witness was not a computer expert and even though some of the operational steps necessary to produce the final records were taken by others. (*People v. Lugashi* (1988) 205 Cal.App.3d 632, 640-641.)

In this case, Officer Pangalos has established his extensive training

and understanding of the operations of the City's photographic enforcement system. He has also shown his knowledge of the means by which ATS operates and maintains the City's system and produces, stores, and transmits the resulting violation evidence. That training more than qualifies Officer Pangalos to authenticate the resulting records under Evidence Code section 1271, subdivision (c). Nothing more is required, and Mr. G [REDACTED] has not identified any legal deficiency in Officer Pangalos's training or testimony.

3. The evidence does not implicate Mr. G [REDACTED]'s rights under the "confrontation clause" of the Sixth Amendment.

Mr. G [REDACTED] also argues that his evidentiary objections should have been sustained, and the evidence against him excluded, on the basis of the Confrontation Clause of the Sixth Amendment under *Crawford v. Washington* (2009) 541 U.S. 36, and *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. ___ [129 S.Ct. 2527]. Here again, however, Mr. G [REDACTED]'s arguments are not supported.

Only "testimonial" hearsay is barred by the Sixth Amendment's Confrontation Clause. (*E.g. Melendez-Diaz v. Massachusetts, supra*, 557 U.S. ___ [129 S.Ct. at pp. 2531-2532].) Non-testimonial hearsay does not implicate the Sixth Amendment, and is subject only to the limitations imposed by the traditional hearsay rule. (*Davis v. Washington*(2006) 547 U.S. 813, 821.) As noted above, photographs and video "are demonstrative evidence, depicting what the camera sees . . . [t]hey are *not testimonial*. . . ." (*People v. Cooper, supra*, 148 Cal.App.4th at p. 746 [emphasis added].) As a result, photographs and video do not implicate the Confrontation Clause of the Sixth Amendment. (*Ibid.* [admitting video depicting defendant's physical and mental condition over defendant's Sixth Amendment/*Crawford* objection].) Similarly, out of court statements that

merely record contemporaneous events are not testimonial and are not barred by the Sixth Amendment. (*Davis v. Washington*, at p. 826.)

The photos and video of Mr. G [REDACTED] running the light at Highway 101 and Millbrae Ave. simply recorded Mr. G [REDACTED]'s actions as they occurred. They are non-testimonial and do not implicate Mr. G [REDACTED]'s Sixth Amendment rights. (*People v. Cooper*, *supra*, 148 Cal.App.4th at p. 746.) Likewise, ATS's camera test log is nothing more than a contemporaneous recording of a camera test, and that log is similarly non-testimonial. (*Davis v. Washington*, *supra*, 547 U.S. at p. 826.) Both the demonstrative evidence and the test log were properly authenticated as discussed above, and Officer Pangalos was qualified to testify about the proper functioning of the equipment and the carefully circumscribed ability of technicians to enhance the evidence. The Constitution does not require more, and the evidence was properly admitted.

In turn, that evidence alone was sufficient to find Mr. G [REDACTED] guilty. Mr. G [REDACTED]'s identity was demonstrated by comparing the photo and video evidence of the traffic violation to his driver's license photo (because Mr. G [REDACTED] chose not to attend his trial). Mr. Y [REDACTED]'s affidavit identifying Mr. G [REDACTED] as the driver was merely an incident to the People's investigation, not evidence of his guilt. In fact, as shown in his Proposed Statement on Appeal, it was Mr. G [REDACTED] who raised Mr. Y [REDACTED]'s affidavit in cross-examination. As a result, Mr. Y [REDACTED] is not a witness against Mr. G [REDACTED] relied on by the People in its case-in-chief or mentioned in the Court's September 20th "Settled Statement," and the People were not bound to call him at trial in order to ensure Mr. G [REDACTED]'s Sixth Amendment rights.

B. Officer Pangalos's Experience and Training Satisfies the Standard for Admitting Photographic Evidence of Red Light Violations Discussed in *People v. Khaled*.

Mr. G [REDACTED] also argues that the photographs and video depicting his red light violation should be excluded under *People v. Khaled* (2010) 186 Cal.App.4th Supp. 1 (*Khaled*). The court's analysis in *Khaled*, however, supports the admission of the evidence against Mr. G [REDACTED]. In *Khaled*, the City of Santa Ana cited the defendant for a red light violation after that violation was recorded by a photographic enforcement system owned and maintained by Redflex Traffic Systems. (*Id.* at pp. 4-5.) The court found that the evidence recorded by the photographic system should have been excluded because the People failed to introduce adequate authentication testimony. (*Id.* at pp. 5-7.)

First, the Court found that the People had not adequately authenticated the photographs under Evidence Code section 1400, because the People's only witness "could not establish the time in question, the method of retrieval of the photographs, or that any of the photographs or the videotape were a reasonable representation of that which it is alleged to portray." (*Id.* at p. 5.) In this case, Officer Pangalos testified from his personal knowledge and training as to all of these facts. He has personally retrieved traffic violation evidence from ATS's system, and his knowledge of the equipment and the subject intersection allowed him to testify that the photos and video were reasonable representations of the matter depicted. (Evid. Code, §§ 1400, *et seq.*; *People v. Cooper, supra*, 148 Cal.App.4th at p. 746; *Jones v. City of Los Angeles, supra*, 20 Cal.App.4th at p. 440; *People v. Carter, supra*, 48 Cal.2d 737, 751 *People v. Bowley, supra*, 59 Cal.2d at p. 862.)

As discussed above, Officer Pangalos was also qualified to authenticate the photos and video as ATS's business records under the

standard articulated by the *Khaled* court. As noted above and in the *Khaled* decision, the proponent of business record evidence is not required to introduce authenticating testimony of an employee of the business.

“Generally, the witness who attempts to lay the foundation is a custodian, but *any witness with the requisite firsthand knowledge of the business's recordkeeping procedures may qualify.*” (*Khaled, supra*, 186 Cal.App.4th Supp. at p. 8 [emphasis added].) In *Khaled*, the court held that the City of Santa Ana had not met its burden to authenticate the evidence as business records because the testifying officer “did not have the necessary knowledge of underlying workings, maintenance, or recordkeeping of Redflex Traffic System.” (*Ibid.*) The present case is exactly opposite. Officer Pangalos has had extensive training in ATS’s operations, maintenance, and recordkeeping. Unlike the testifying officer in *Khaled*, Officer Pangalos is eminently qualified to authenticate ATS’s business records, and was properly allowed to do so in this case.

C. Mr. G [REDACTED] Failed to Serve a Complete Copy of his Opening Brief.

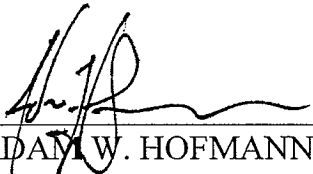
The People object to Mr. G [REDACTED]’s appeal on the grounds that that Mr. G [REDACTED], by and through counsel, served a copy of his opening brief on the City of Millbrae that was missing page 3 of 12. Counsel for the people requested a complete copy of Mr. G [REDACTED]’s opening brief, and Mr. G [REDACTED]’s counsel agreed to provide one, but never did. The People have not been able to review the contents of Mr. G [REDACTED]’s page 3, and ask that any argument or discussion contained therein be stricken by the Court to the extent not addressed in the People’s brief.

IV. CONCLUSION

For the foregoing reasons, the evidence of Mr. G [REDACTED] red light violation were properly admitted as authenticated by Officer Pangalos, and Mr. G [REDACTED] conviction should stand.

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