

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

PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff and  
Respondent,

v.

TATYANA T. [REDACTED] an individual,

Defendant and  
Appellant.

Trial Court Case No: 451458  
Appellate No. 5235

**FILED**  
SAN MATEO COUNTY

MAR 21 2011

Clerk of the Superior Court  
By [Signature] DEPUTY CLERK

---

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

---

HANSON BRIDGETT LLP  
JOAN L. CASSMAN - 76024  
[REDACTED]@hansonbridgett.com  
ADAM W. HOFMANN - 238476  
[REDACTED]@hansonbridgett.com  
425 Market Street, 26th Floor  
San Francisco, CA 94105  
Telephone: (415) 777-3200  
Facsimile: (415) 541-9366

Attorneys for  
CITY OF MILLBRAE *ex rel.* PEOPLE OF THE STATE OF  
CALIFORNIA

## TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	1
II. FACTUAL BACKGROUND.....	2
A. Tatyana T [REDACTED] s Red Light Citation .....	2
B. City of Millbrae’s Photographic Traffic Light Enforcement System.....	3
C. Officer Pangalos’s Training .....	4
III. ARGUMENT.....	4
A. The Trial Court Correctly Overruled Ms. T [REDACTED] Foundation and Hearsay Objections.....	5
1. Officer Pangalos is qualified to authenticate the photographic and video evidence of Ms. T [REDACTED] s infraction as direct, demonstrative evidence.....	5
2. The photographs and video of Ms. T [REDACTED] infraction and the camera test log are admissible business records, and Officer Pangalos is qualified to authenticate the records for that purpose .....	6
B. The Evidence of Ms. T [REDACTED] s Violation was Properly Admitted and Does not Implicate her Sixth Amendment “Confrontation Clause” Rights .....	9
C. Ms. T [REDACTED] ’s Conviction Was Consistent with the Vehicle Code .....	11
1. The People Proved the Elements of the Charge Against Ms. T [REDACTED] They Were Not Required to Prove Cost Neutrality .....	11
2. The Vehicle Code Did Not Prohibit the People’s Investigation in This Matter .....	12
IV. CONCLUSION .....	13

## TABLE OF AUTHORITIES

### Cases

<i>Crawford v. Washington</i> (2009) 541 U.S. 36.....	9
<i>Davis v. Washington</i> (2006) 547 U.S. 813.....	9, 10
<i>Jones v. City of Los Angeles</i> (1993) 20 Cal.App.4th 436 .....	5, 11
<i>Melendez-Diaz v. Massachusetts</i> (2009) 557 U.S. ___ [129 S.Ct. 2527].....	9
<i>People v. Bowley</i> (1963) 59 Cal.2d 855 .....	6, 11
<i>People v. Carpenter</i> (1997) 15 Cal.4th 312 .....	6
<i>People v. Carter</i> (1957) 48 Cal.2d 737 .....	6, 11
<i>People v. Cooper</i> (2007) 148 Cal.App.4th 731 .....	6, 7, 9, 10, 11
<i>People v. Doggett</i> (194) 83 Cal.App.2d 405 .....	6
<i>People v. Khaled</i> (2010) 186 Cal.App.4th Supp. 1 .....	1, 11, 12
<i>People v. Jimenez</i> (1995) 33 Cal.App.4th 54 .....	11
<i>People v. Lugashi</i> (1988) 205 Cal.App.3d 632 .....	8
<i>People v. Martinez</i> (2000) 22 Cal.4th 106 .....	8
<i>People v. Remiro</i> (1979) 89 Cal.App.3d 809 .....	8
<i>People v. Utter</i> (1972) 24 Cal.App.3d 535 .....	8
<i>People v. Williams</i>	

**TABLE OF AUTHORITIES**  
**(continued)**

(1972) 36 Cal.App.3d 262 .....8

**Statutes**

Evid. Code, § 702 .....11

Evid. Code, § 1271 .....5, 7, 8, 9

Evid. Code, § 1400 .....5, 6, 11

Veh. Code, § 21453 .....12

Veh. Code, § 21455.5 .....11, 12

## I. INTRODUCTION

On March 29, 2010, defendant and appellant Tatyana T [REDACTED] ran a red light at the intersection of El Camino Real and Millbrae Avenue, in the City of Millbrae, California. Ms. T [REDACTED] traffic infraction is shown in photographic and video evidence, which depict her committing the traffic violation. The City of Millbrae Police Department issued a citation, this Court held a trial on September 10, 2010, and Ms. T [REDACTED] was found guilty and fined. Ms. T [REDACTED] now appeals that verdict.

Ms. T [REDACTED] first challenges her conviction on the grounds that the evidence against her should have been excluded based on her hearsay and foundation objections. Second, Ms. T [REDACTED] claims the evidence against her violated her rights under the “Confrontation Clause” of the U.S. Constitution’s Sixth Amendment and should have been accordingly excluded. Finally, Ms. T [REDACTED] claims that she should not have been convicted because the People’s witness did not introduce evidence that the City of Millbrae’s photographic enforcement system complies with the cost neutrality requirements of Vehicle Code section 21455, subdivision (g)(1) (“Section 21455”).

Her arguments are misplaced. The photographic evidence against Ms. T [REDACTED] was properly authenticated as direct, demonstrative evidence by the People’s witness, Officer Matthew Pangalos. Such photographic evidence is not testimonial, it is not hearsay, and it does not implicate a criminal defendant’s right to confront her accusers. Even if treated as hearsay, however, Officer Pangalos is a “qualified witness” who can authenticate the photographs and video of Ms. T [REDACTED]’s traffic violation under the business records exception to the hearsay rule. Moreover, although the City’s photographic enforcement contract *is* cost neutral—a fact that is a matter of public record—cost neutrality is not an element of

the crime charged, and the People were not required to introduce related evidence.

Ms. T [REDACTED] has not stated a valid basis for overturning her conviction, and Commissioner Greenberg's decision below should be upheld.

## II. FACTUAL BACKGROUND

The following facts are taken from (1) the September 10, 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; and (4) the January 3, 2011 Settled Statement in this action.

### A. Tatyana T [REDACTED]'s Red Light Citation

On March 29, 2010, defendant Tatyana T [REDACTED] ran a red light at El Camino Real and Millbrae Avenue in the City of Millbrae, California. The violation was recorded by the City's photographic enforcement system, which captured still photos and video of the vehicle, Ms. T [REDACTED] behind the wheel, and the violation.

After noting that the driver depicted in the photo was a woman, Millbrae police determined from public records that Ms. T [REDACTED] lived with the registered owner of the vehicle, A [REDACTED] T [REDACTED]. Millbrae police then compared the photographic evidence of the violation with a Department of Motor Vehicles photo of Ms. T [REDACTED], confirming that she was the driver who committed the subject infraction. Thereafter, Ms. T [REDACTED] was cited, tried, and convicted on the basis of the photographic and video evidence which showed her 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

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.

### **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,<sup>1</sup> 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, including personally producing images and records of violations. Officer Pangalos has also repeatedly visited the intersection of El Camino Real 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 El Camino Real and Millbrae Avenue.

### **III. ARGUMENT**

On appeal, Ms. T [REDACTED] presents three questions:

1. "Whether the Court was in error to deny defendant's foundation and hearsay objections regarding the Redflex<sup>2</sup>

---

<sup>1</sup> Ms. T [REDACTED], by and through her counsel of record in this matter stipulated to the contents of Officer Pangalos's testimony.

<sup>2</sup> The City presumes that Ms. T [REDACTED] is referring here to the "ATS" packet. Redflex Traffic Systems ("Redflex") provides photographic enforcement systems to other cities similar to the system and service ATS provides to



packet and DVD.”

2. “Was Defendant denied his [sic] right to cross-examine witness [sic] pursuant to the Sixth Amendment”
3. “Did the People violate the procedures outlined in the Vehicle Code related to cost neutrality and issuance of citations to non-owners”

The answer to each question is no. The Trial Court did not err when it overruled Ms. T [REDACTED]'s foundation and hearsay objections. The photographic and video evidence of Ms. T [REDACTED]'s traffic infraction are admissible, both as direct, photographic evidence authenticated by Officer Pangalos, and under the business records exception to the hearsay rule. (Evid. Code, §§ 1400 & 1271.) Further Ms. T [REDACTED]'s Confrontation Clause rights are not implicated by the evidence in this case. (*People v. Cooper* (2007) 148 Cal.App.4th 731, 746.) Finally, cost neutrality is not an element of the red light charge, and the People were not required to introduce evidence of the City's cost neutral contract with ATS. (*See Veh. Code* § 21453, subd. (a); *People v. Jimenez* (1995) 33 Cal.App.4th 54, 61.) Nor were the People's investigative efforts barred or limited by the Vehicle Code.

**A. The Trial Court Correctly Overruled Ms. T [REDACTED] Foundation and Hearsay Objections.**

1. Officer Pangalos is qualified to authenticate the photographic and video evidence of Ms. T [REDACTED] infraction as direct, demonstrative evidence.

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

the City of Millbrae. Redflex is not involved in this case.

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 could not 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, supra*, 148 Cal.App.4th at p. 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 Ms. T [REDACTED] running the light at El Camino Real and Millbrae Avenue. 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 by ATS. Officer Pangalos’s testimony is accordingly sufficient to authenticate the photos and video of Ms. T [REDACTED] 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 Ms. T [REDACTED]’s 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, distinct sets of evidence implicated by Ms. T [REDACTED]'s hearsay objection. First, there is the photographic and video evidence of Ms. T [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 Ms. T [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 sets of evidence.

Without dispute, ATS took the photographs and video of Ms. T [REDACTED]'s 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 can be no doubt 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 Ms. T [REDACTED]'s violation. The camera test runs at midnight at the beginning of every day, and again a second before midnight at the end of every day. The test log merely generates a record of the day's

tests, bookending any subject violation. 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 an automated record prepared daily by a neutral, computerized system, indicating its trustworthiness.

Ms. T [REDACTED] appears to concede all these points, except one. She complains that Officer Pangalos was not qualified to authenticate the evidence against her. Instead, she 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 her. That argument is unsupportable.

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. (*Williams*, at p. 275.) Nor is it necessary that the authenticating witness be an employee of the recording business, as Ms. T [REDACTED] claims. (*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 Ms. T [REDACTED] has not identified any legal deficiency in Officer Pangalos's training or testimony.

**B. The Evidence of Ms. T [REDACTED] Violation was Properly Admitted and Does not Implicate her Sixth Amendment "Confrontation Clause" Rights.**

Ms. T [REDACTED] also argues that her evidentiary objections should have been sustained, and the evidence against her excluded, on the basis of the Confrontation Clause of the U.S. Constitution's 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, Ms. T [REDACTED] is wrong.

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*, at p. 826.)

The photos and video of Ms. T [REDACTED] running the light at El Camino Real and Millbrae Avenue simply recorded Ms. T [REDACTED]'s actions as they occurred. They are non-testimonial and do not implicate Ms. T [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 recording of an automated camera system test which simply records the system's function at the time of the 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 business records 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 Ms. T [REDACTED] guilty. Ms. T [REDACTED]'s identity was demonstrated by comparing the photo and video evidence of the traffic violation to her driver's license photo. Her citation was issued on the basis of that comparison, and her guilt was determined on that same basis at trial. Ms. T [REDACTED]'s argument that the City was required to call the registered owner, A [REDACTED] T [REDACTED] is misplaced. Mr. T [REDACTED] was not a witness against Ms. T [REDACTED] and offered no evidence, testimonial or otherwise, against her. As Officer Pangalos testified, he determined that the vehicle's registered owner was not the driver, because the registered owner is a man, and the driver depicted in the photographic evidence was a

woman.<sup>3</sup> Accordingly, Officer Pangalos investigated further and learned from public records that Ms. T [REDACTED] was the driver depicted in the photographs and video. Mr. T [REDACTED] was not involved in this process in any way. He was, accordingly, not a witness in this action, his testimony was not required by the Sixth Amendment, and Ms. T [REDACTED] has not shown otherwise.

**C. Ms. T [REDACTED] Conviction Was Consistent with the Vehicle Code.**

**1. The People Proved the Elements of the Charge Against Ms. T [REDACTED] They Were Not Required to Prove Cost Neutrality.**

Finally, Ms. T [REDACTED] challenges her conviction on the grounds that Officer Pangalos did not have a copy of the City's ATS contract at trial. As she argues, Vehicle Code section 21455.5, subdivision (g)(1) prohibits photographic enforcement system contracts which provide for compensation to the system manufacturer based on the number of citations issued. As Officer Pangalos testified, the City of Millbrae's contract with ATS complies with this statute; it requires the City to pay a flat, monthly fee, irrespective of the number of citations issued. This is a matter of public record, and Ms. T [REDACTED] could have requested a copy of the City's contract at any time prior to trial. Moreover, Officer Pangalos's testimony was based on his personal knowledge as the red light enforcement coordinator for the City and was offered to prove the contents of a writing, not the truth of an out-of-court statement of fact. (Evid. Code, §§ 702 & 1200.) Ms. T [REDACTED] foundation and hearsay objections were misplaced.

---

<sup>3</sup> Ms. T [REDACTED] argues that Officer Pangalos did not know the gender of the registered owner. That is false.

Regardless, and even though they did so, the People were not required to prove the legality of the City's contract at trial. As noted throughout, the People brought one charge against Ms. T [REDACTED] failing to properly stop at a red light in violation of Vehicle Code section 21453. The people need only prove two facts in support of this charge: (1) the defendant faced a steady, red, circular signal; and (2) the defendant failed to stop before the limit line. (Veh. Code, § 21453, subd. (a).) The people proved both elements through the demonstrative, photographic and video evidence of Ms. T [REDACTED]'s infraction. The cost neutrality of an enforcement device is not a legal requirement of the charge. As a result, the People were not bound to prove it as an element of their case. (*People v. Jimenez* (1995) 33 Cal.App.4th 54, 61.)

Further, even if Ms. T [REDACTED] had shown that the City's contract was not cost-neutral, she cites no authority for the proposition implicit in her papers that Vehicle Code section 21455.5, subdivision (g)(1) establishes a defense to a red light citation. It may be that, under some circumstances, a citizen could bring a civil action to challenge an illegal contract under Vehicle Code section 21455.5, subdivision (g)(1), but no case appears to establish a related criminal defense. There is no merit to Ms. T [REDACTED]'s arguments under that statute.

**2. The Vehicle Code Did Not Prohibit the People's Investigation in This Matter.**

Ms. T [REDACTED] further argues that the Vehicle Code only authorizes law enforcement to mail notices of citation to registered owners, not to conduct independent investigation of a red light violator's identity. (*See Veh. Code, § 40518.*) This argument puts the cart before the horse. The cited Vehicle Code section *permits* law enforcement to issue notices to registered owners and to include form affidavits of non-liability. It does not *require* law



enforcement to proceed in this manner. Nor does that statute or any other law appear to prohibit law enforcement officers from conducting independent investigations to determine the identity of people who break the law. Ms. T [REDACTED] has not cited any basis for limiting investigative tools in this case, and her argument does not support reversing the verdict below.

#### IV. CONCLUSION

For the foregoing reasons, the evidence of Ms. T [REDACTED]'s red light violation was properly admitted as authenticated by Officer Pangalos, and Ms. T [REDACTED]'s conviction should stand.

DATED: March 18, 2011

HANSON BRIDGETT LLP

By: 

ADAM W. HOFMANN  
Attorneys for Plaintiff  
CITY OF MILLBRAE ex rel. PEOPLE  
OF THE STATE OF CALIFORNIA