

OCT 14 2011

ALAN CARLSON, Clerk of the Court

[Signature]
BY J. GOMEZ

APPELLATE DIVISION

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

1	PEOPLE OF THE STATE OF)	CASE NO. 30-2010-00421979
2	CALIFORNIA,)	
3)	
4	Plaintiff and)	JUDGMENT ON APPEAL
5	Respondent,)	from the
6)	SUPERIOR COURT
7	vs.)	of
8)	ORANGE COUNTY
9	PETER G)	CENTRAL JUSTICE CENTER
10)	
11	Defendant and)	
12	Appellant.)	HON. CARMEN LUEGE
13)	COMMISSIONER

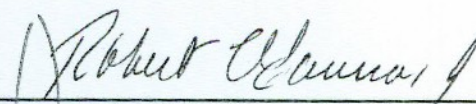
14 The declaration submitted in opposition to the motion to
15 exclude stated that the District Attorney's office had provided
16 "verbal authorization" for the City Attorney's prosecution of red
17 light camera cases on "several" unspecified occasions prior to
18 execution of the declaration on April 13, 2010. Even if verbal
19 authorization were adequate for purposes of Government Code §
20 41803.5(a), the repeated giving of consent for such prosecutions
21 implies that consent has been given on a case-by-case basis, and in
22 the absence of any evidence that consent was given in this
23 particular case it should not have been inferred that proper
24 consent had been given. In the absence of proper authority for
25 prosecution of the case, the trial court lacked jurisdiction to
26 adjudicate the matter. (People v. Municipal Court for Ventura
27 Judicial Dist. (Pellegrino) (1972) 27 Cal.App.3d 193, 206; see also
28 Menveg v. Municipal Court of Los Angeles Judicial Dist. (1964) 226

1 Cal.App.2d 569.)

2 In addition, the trial court erred in denying appellant's
3 motion to dismiss under Penal Code § 1382(a), inasmuch as the
4 pendency of appellant's premature motion to exclude did not justify
5 a 10-day postponement of the trial date beyond the 45-day statutory
6 limit. Because refiling of the charge would have been barred by
7 Penal Code § 1387(a), the error was prejudicial. (Avila v.
8 Municipal Court (1983) 148 Cal.App.3d 807, 812.)

9 The trial court also erred prejudicially in admitting trial
10 exhibits 2A and 3 into evidence over appellant's constitutional and
11 evidentiary objections, inasmuch as Exhibit 3, which provides the
12 only authentication for Exhibit 2A, is inescapably "testimonial"
13 and is inadmissible hearsay under Evidence Code §§ § 1271(b) and §
14 1280(b). Because the only evidence tying appellant to the subject
15 vehicle is the enhanced image of the driver in Exhibit 2A and the
16 statements in Exhibit 3, the error in admitting these trial
17 exhibits was prejudicial.

18 The judgment is reversed, with direction that the charge be
19 dismissed.

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23 _____
24 ROBERT C. GANNON, JR., Presiding Judge

25 _____
26 GREGORY H. LEWIS, Judge

27 
28 _____
GEOFFREY T. GLASS, Judge