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FILED  
LOS ANGELES SUPERIOR COURT

SEP 05 2012

JUDITH A. CLARKE, CLERK  
B. Garcia  
BY B. GARCIA, DEPUTY

APPELLATE DIVISION OF THE SUPERIOR COURT  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, ) BR 049718  
Plaintiff and Respondent, ) East Los Angeles Trial Court  
v. ) No. 111278GL  
SALSEDA, )  
Defendant and Appellant. ) **OPINION**

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This is an appeal from the judgment entered following a court trial for an infraction where the evidence was obtained via an automated traffic enforcement system in the City of Los Angeles. Defendant raises four issues on appeal.<sup>1</sup> We find meritorious defendant's contention that the court erred by applying a preponderance of the evidence standard of proof. Accordingly, we reverse on this ground without the necessity of reaching defendant's remaining contentions.

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<sup>1</sup>The issues raised by defendant are as follows: (1) the court used the wrong standard of proof; (2) the judgment is not supported by sufficient evidence; (3) the court erroneously allowed two declarations into evidence in violation of the hearsay rule and in violation of defendant's right to confront and cross-examine the declarants; and (4) the court erred in failing to dismiss the citation on the ground that the officer was engaging in the unauthorized practice of law in violation of the Business and Professions Code.

1 BACKGROUND

2 Defendant and appellant Salseda was charged in a notice to appear with  
3 violating Vehicle Code section 21453, subdivision (c), failing to stop for a red signal  
4 located at the intersection of 1st and Mission in Los Angeles County. The cause  
5 eventually proceeded to a court trial where the only witness to testify was Officer James D.  
6 Weeden, a civilian officer of the Los Angeles County Sheriff's Department who was  
7 assigned to the Traffic Services Bureau, Code Enforcement, Photo Enforcement Unit.  
8 The evidence of the violation consisted of photographs obtained via cameras posted at  
9 the intersection in question. According to Weeden's testimony, the photographs did not  
10 depict the condition of the light at the time of the violation. The red light depicted in the  
11 photographs was the light directing cross traffic. The officer relied upon a "data bar" to  
12 determine that defendant proceeded in violation of the statute.

13 At the conclusion of the officer's testimony and the arguments of the officer and  
14 defendant,<sup>2</sup> the court rendered its decision, stating as follows: "The court's going to make  
15 a finding that [defendant] ran a red light. The only basis for the court being able to make  
16 that finding is the data printout. There's been testimony about the data printout, and  
17 there has been information provided.<sup>3</sup> The court finds that the burden of proof is -- not  
18 beyond a reasonable doubt, but the preponderance of the evidence, and based on the  
19 preponderance of the evidence, the court finds that [defendant] has run this red light, and  
20 that he'll be convicted on this infraction."

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22 <sup>2</sup>Remarkably, the court treated the officer as though he were an attorney, allowing him to  
23 object and to make closing and rebuttal arguments. This occurred despite the fact that defendant  
24 correctly brought to the court's attention, prior to the commencement of the testimony, that the  
25 officer was a witness and not an attorney, and objected to the court allowing the officer to  
practice law without a license.

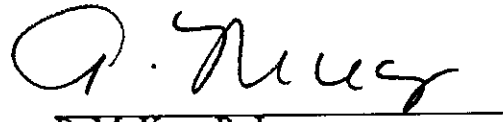
26 <sup>3</sup>Over defendant's hearsay objection, the court, on the ground of "saving time" and the ground  
27 that the officer stated he had personal knowledge of the contents of the declaration, permitted the  
28 officer, in lieu of testifying, to submit a declaration of his own testimony. Said declaration laid a  
foundation for the officer to testify regarding the data printout information contained on the  
photographs.

1 DISCUSSION


2 The law in this regard is well established. Infractions are crimes (Pen. Code, § 16,  
3 subd. (3)) and, as such, are subject to the same burden of proof as misdemeanors. (Pen.  
4 Code, § 19.7.) This means, of course, that in order to be convicted of an infraction, the  
5 People are required to prove, and the trier of fact must find, guilt beyond a reasonable  
6 doubt. (Pen. Code, § 1096.) Here, the court found defendant guilty by using a lesser  
7 standard of proof. Accordingly, the conviction cannot stand.


8 DISPOSITION

9 The judgment is reversed.<sup>4</sup>

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12 P. McKay, P. J.

13 We concur.

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16 Kumar, J.

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19 Keosian, J.

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28 <sup>4</sup>Retrial is prohibited by the double jeopardy clause. (*Burks v. United States* (1978) 437 U.S.  
1, 18.)