

recd 5-9-12

No. _____

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff & Respondent,

vs.

[REDACTED] GOLDSMITH
Defendant & Appellant.

After Decision by Court of Appeal, Second District, Div. Three
Appeal Transferred from Appellate Division of Los Angeles Superior Court
Appeal No. B231678; App. Div. No. BR048189; Trial Court No. 102693IN
Hon. John Johnson, Commissioner

PETITION FOR REVIEW

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ISSUE PRESENTED

Whether red light camera photos are admissible in criminal proceedings in traffic courts despite the absence of any testimony whatsoever by the private contractor paid to generate/create those photos as the sole evidence used to convict drivers?

INTRODUCTION

Having been convicted of violating the red light camera statute based on photos prepared by a private contractor that was hired by the City of Inglewood to photograph motorists at intersections, appellant ██████████ Goldsmith initially appealed her conviction to the appellate division of the superior court. (Typed Opn. 4.) The Court of Appeal (Second District, Division Three) transferred the case to itself and upheld Goldsmith's conviction by rejecting Goldsmith's challenge to the admission of the red light camera photos on evidentiary grounds. (*Id.* at 5-12.) Specifically, Goldsmith argued that the prosecution was required to authenticate the photos by presenting testimony from the private contractor that was hired to create those photos – the sole evidence used at trial to prove the allegations against Goldsmith – instead of relying on the testimony of a surrogate trial witness – a police “investigator” that, by his own admission, had no expertise in operating the red light camera system. (RT 5:22; RT 6:27-7:2.)

Rejecting Goldsmith's arguments despite a recent published case adopting the identical arguments raised by Goldsmith, the Court of Appeal practically invited this Court to grant review by expressly creating a conflict on this critical issue of widespread interest.¹

¹ No petition for rehearing has been filed in this case. (Cal. Rules of Court, rule 8.504(b)(3).)

REASONS WHY REVIEW SHOULD BE GRANTED

Goldsmith's conviction for violating the red light camera statute, an infraction, has arguably broken the *Guinness World of Records* in terms of the amount of attention received by the bar and the bench in any given case arising from traffic courts. In a published opinion, Division Three expressly disagreed with another decision arising from the same district (Division Seven) that was issued only a month earlier on the identical issue: i.e., whether the prosecution must present live testimony by the private contractor that is paid by the prosecuting agency to generate red light camera photos in order for the prosecution to convict drivers for running a red light based on such photos. (See Typed Opn. 11 ["We Disagree With *People v. B* ██████████".])

As a result of this unprecedented dichotomy, trial courts across the entire state are faced with two conflicting, published decisions, one of which is already final. The express disagreement by the appellate courts (notably two divisions within the same district) cries out for review, especially due to the ubiquitous nature of the red light cameras. According to the private contractor that installed the red light camera used in this case (Redflex Traffic Systems Inc.), "Redflex has been operating for over 20 years and has over 1,200 photo enforcement systems in more than 240 communities in 21 states." (Application by Redflex to file Amicus Brief in *Goldsmith*, p. 5). Redflex has also confirmed and advised this Court that its "systems are deployed in 67 California municipalities and/or counties." (Request for Depublication filed by Redflex in *People v. Khaled* (2010) 186 Cal.App.4th Supp. 1 (S183593), p. 1.) In addition to Redflex, various other red light camera contactors have set up red light camera systems for numerous, other prosecuting agencies throughout the state that are currently operational. The fact that multiple prosecuting agencies filed amicus briefs

on behalf of the prosecution in this case further confirms this point. The filing of several amicus briefs on Goldsmith's behalf also illustrates the significance of the issues raised in this case. In fact, based on our research, we have not been able to locate any other infraction case in the history of this state that generated so many amicus briefs on both sides over a \$436 citation!

As reported by a retired judge, prosecuting agencies are issuing "more traffic citations so they can generate more revenue to counteract governmental budget deficits." (Gray, *The Corrupting of Traffic Citations*, L.A. Daily J. (October 27, 2010).) Since "[m]ost red-light tickets range between \$420 and \$480" (DeBenedictis, *Red Light Cameras Run Into Problems*, L.A. Daily J. (June 11, 2010)), the vast majority of defendants do not have the resources or the incentive to spend thousands of dollars in attorneys' fees to challenge a \$480 citation. Unless review is granted, the split in authority, as a practical matter, would evade appellate review, especially due to the fact that the published decision by Division Seven (the one conflicting with the decision challenged in this petition) is now final.

When there are conflicting court of appeal decisions on point, the trial court can choose to follow either one of them; it can even adopt the position taken by another district, notwithstanding a conflicting decision emanating from the trial court's own district. (See, e.g., *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456 ["In such a situation, the court exercising inferior jurisdiction can and must make a choice between the conflicting decisions"].) "As a practical matter, a superior court ordinarily will follow an appellate opinion emanating from its own district even though it is not bound to do so." (*McCallum v. McCallum* (1987) 190 Cal.App.3d 308, 315, fn. 4.) In this case, however, trial courts do not have this "luxury" because the two conflicting decisions were published by the same appellate district. This additional factor further illustrates the urgent

need for review, especially given that the issues raised here affect literally millions of drivers across the entire state.

Under the current system, a defendant that contests his ticket by simply challenging the admission of the red light camera photos will prevail if the trial judge follows Division Seven's decision. (See *People v. Bo ██████* (2012) 203 Cal.App.4th 525 [finding Redflex's photos to be inadmissible hearsay without live testimony by Redflex employees].) On the other hand, a motorist who was driving in a lane adjacent to the defendant in the preceding scenario who is accused of running the same red light at the same time will be found guilty if he is assigned to a different judge—one that elects to follow Division Three's decision in this case. As a result, review is absolutely critical here in order to have a functional traffic court system in this state.

Finally, the unprecedented amount of press coverage received in this traffic case further underscores the need for review. (See, e.g., Adlin, *State Appeals Courts Torn on Traffic Cameras*, L.A. Daily J. (March 5, 2012) [discussing split of authority between *Goldsmith* and *Bo ██████*]; *Court of Appeal Upholds Conviction in Red Light Camera Case*, Metropolitan News-Enterprise (March 2, 2012) [same]; *C.A. Publishes Ruling in Red Light Camera Case*, Metropolitan News-Enterprise (February 13, 2012) [discussing *Bo ██████* and *Goldsmith* before the latter was decided].)

In sum, if this case does not qualify for review, no case does.

LEGAL DISCUSSION

I. BY GRANTING REVIEW TO RESOLVE THE EXPRESS CONFLICT CREATED BY THE *GOLDSMITH* DECISION, THIS COURT SHOULD SETTLE IMPORTANT QUESTIONS OF LAW THAT AFFECT LITERALLY MILLIONS OF MOTORISTS.

A. By Expressly Rejecting the *Bo* [REDACTED] Decision Based on An Obsolete Analysis, the Lower Court Created a Conflict, Thus Causing Significant Confusion in the Administration of Traffic Cases Across the Entire State.

“We Disagree with *People v. Bo* [REDACTED]” (Typed Opn., 11.) With those five words, Division Three created an express conflict with *Bo* [REDACTED] – a published decision that is now final – on the most fundamental issue in such red light camera cases: the admissibility of the photos (i.e., the entire source of evidence used to convict motorists in traffic courts).

Seeking to justify the creation of this conflict, Division Three explained that the *Bo* [REDACTED] decision “did not cite the rule ... that testimony of the accuracy, maintenance, and reliability of computer records is not required as a prerequisite to their admission[.]” (Typed Opn., 11.) Specifically, the *Goldsmith* court referred to this Court’s prior decision in *People v. Martinez* (2000) 22 Cal.4th 106, in order to support its holding that the photos and the data created by Redflex’s computer system are admissible. (Typed Opn. 7-8, 11.) In *Martinez*, this Court quoted with approval an intermediate appellate court’s statement that “testimony on the acceptability, accuracy, maintenance, and reliability of ... computer hardware and software” is not required before admitting computer print-outs into evidence. (*Martinez, supra*, 22 Cal.4th at 132 [quoting *People v. Lugashi* (1988) 205 Cal.App. 3d 632, 642].)

But since *Lugashi* was decided nearly a quarter of a century ago, there has been a significant transformation in Sixth Amendment

jurisprudence. As discussed below, the Supreme Court's decision in *Crawford v. Washington* (2004) 541 U.S. 36 effected a sea change in the meaning of a criminal defendant's Sixth Amendment right to "confront[] ... the witnesses against him." (*Id.* at 43.) Under *Crawford* and its progeny, an out-of-court testimonial statement is inadmissible – *irrespective of its reliability* – if the declarant is not subject to cross-examination. By applying this new test for evaluating Sixth Amendment challenges, *Crawford* discarded decades-old precedent that had pegged admissibility of out-of-court statements to their reliability. (See *Ohio v. Roberts* (1980) 448 U.S. 56, 65-66.) As a result, Division Three's basis for rejecting the ~~Bo~~ decision is completely flawed because the *Lugashi* "rule" – though applied by this Court in *Martinez* during the pre-*Crawford* era – was based on the outdated analysis under the old *Roberts* regime for evaluating admission of evidence.

Post-*Crawford* decisions by the Supreme Court illustrate this point. (See *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305, 328 [reversing conviction based on crime lab analysts' failure to testify at trial where prosecution had relied on their affidavits; noting that while documents kept in the regular course of business may be admitted at trial despite their hearsay status, "that is not the case if the regularly conducted business activity is the production of evidence for use at trial"]; see also *Bullcoming v. New Mexico* (2011) 180 L. Ed.2d 610, 623 [holding that a "document created solely for an evidentiary purpose ... made in aid of a police investigation ranks as testimonial"; reversing conviction because the prosecution had relied on a lab report without presenting the witness that had prepared the report to establish the defendant's blood alcohol

content].)² In sum, contrary to the *Goldsmith* opinion (which completely ignores these key decisions), *Crawford*, *Melendez-Diaz* and *Bullcoming* require the prosecution to present trial testimony by the employees of the private contractor paid to generate red light camera photos.³

Requiring live testimony of Redflex officials is particularly important because Redflex was previously caught falsifying court documents that are used to obtain speeding convictions based on Redflex's speed cameras in other cases. (See *Arizona Official Confirms Redflex Falsified Speed Camera Documents*, July 9, 2008 <<http://www.thenewspaper.com/news/24/2464.asp>> [as of April 4, 2012].) Under the *Goldsmith* approach, however, it is virtually impossible for criminal defendants to question the photos generated by such a questionable company at trial because Redflex officials are not required to testify; the prosecution can simply use a surrogate witness – a bureaucrat employed by the prosecuting agency to provide a general discussion of the photos – in order to obtain convictions one after another, essentially using the traffic court in an assembly-line-form as illustrated in this case. (RT 1: 20-23; RT 5: 5-6.)

² *Bullcoming* is also significant because it precludes the practice upheld by this Court in *People v. Geier* (2007) 41 Cal.4th 555, 596-607 in terms of using the live testimony of surrogate witnesses to introduce lab reports at trial.

³ In *Bullcoming*, the forensic report in question was entered into evidence during the defendant's trial. By contrast, in *Williams v. Illinois* (Ill. 2010) 939 N.E.2d 268, cert. granted June 28, 2011, __ U.S. __ [2011 U.S. LEXIS 5008]), the U.S. Supreme Court will decide whether the Sixth Amendment is violated where a lab report is not entered into evidence but the prosecution's expert witness testifies about the results of the tests performed by the non-testifying analyst.

In sum, the *Goldsmith* court's reason for rejecting the *Borzakian* decision is simply flawed. By expressly creating a conflict on this critical issue, the *Goldsmith* opinion urgently requires review by this Court.

B. By Admitting the Red Light Camera Photos Without Requiring Live Testimony by Redflex's Employees, the *Goldsmith* Decision Completely Ignores Defendants' Constitutional Rights.

Because “the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense’” (*Holmes v. South Carolina* (2006) 547 U.S. 319, 324), the *Goldsmith* decision also raises serious due process concerns. The right “to confront and cross-examine witnesses” has “long been recognized as essential to due process.” (*Chambers v. Mississippi* (1973) 410 U.S. 284, 294.) “The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State’s accusations.” (*Id.*; see also *Crane v. Kentucky* (1986) 476 U.S. 683, 690 [“the Constitution guarantees criminal defendants a *meaningful* opportunity to present a complete defense”]) (emphasis added, internal citation and quotation marks omitted.)

As Justice Douglas emphasized, “[c]onfrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life.” (*Peters v. Hobby* (1955) 349 U.S. 331, 351 [Douglas, J., concurring]; see also *Kirby v. United States* (1899) 174 U.S. 47, 56 [describing the right to confrontation of one’s accuser as “essential for the due protection of life and liberty”].)

Ignoring these constitutional issues, the lower court’s decision is based in part on the application of general statutory presumptions in terms of authentication and admission of the red light camera photos. (Typed Opn. 6-7.) But even if the California legislature were deemed to have

properly authorized the admission of red light camera photos in traffic trials (whether based on Evid. Code §§ 1552-1553 or otherwise) as suggested by the court (Typed Opn. 6-7), California law cannot preempt a defendant's constitutional right to confront her accuser under the Sixth Amendment. As a result, even if the legislature enacted a statute tomorrow specifically adopting the *Goldsmith* approach and rejecting the contrary *B* [REDACTED] opinion, the due process clause of the federal constitution would still require the exclusion of such photos in the absence of live testimony by Redflex officials; "due process requires an opportunity to confront and cross-examine adverse witnesses." (*Goldberg v. Kelly* (1970) 397 U.S. 254, 269; accord, *McCarthy v. Mobile Cranes, Inc.* (1962) 199 Cal.App.2d 500, 506 ["An improper denial of the right of cross-examination constitutes a denial of due process"].)

Therefore, this Court should grant review to set aside the lower court's decision for this additional reason.

II. REVIEW IS ALSO NECESSARY AS A MATTER OF CONSTITUTIONAL LAW TO ENSURE EQUAL APPLICATION OF THE LAW AMONG SIMILARLY SITUATED DEFENDANTS.

The dichotomy discussed above raises additional constitutional issues based on the public's perception of partiality. "The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship." (*Mistretta v. United States* (1989) 488 U.S. 361, 407.) The Supreme Court has consistently "held that due process is denied by circumstances that create the likelihood or the *appearance* of bias." (*Peters v. Kiff* (1972) 407 U.S. 493, 502 [emphasis added].) The Court has emphasized that impartiality — "the lack of bias for or against either party to the proceeding" — is the essential attribute of the judicial process.

(*Republican Party of Minn. v. White* (2002) 536 U.S. 765, 775 [emphasis omitted].)

Impartiality “assures equal application of the law. That is, it guarantees a party that the judge who hears his case will apply the law to him in the same way he applies it to any other party.” (*Id.* at 775-776; see also *id.* at 804 (Ginsburg, J., dissenting) [a “judiciary *** owing fidelity to no person or party, is a ‘longstanding Anglo-American tradition,’ an essential bulwark of constitutional government, a constant guardian of the rule of law. *** Without this, all the reservations of particular rights or privileges would amount to nothing”]; citation omitted.) By granting review, this Court can establish uniformity in terms of the application of the law in traffic courts in order to ensure equal application of the law in red light camera cases.

Reiterating this point in another traffic appeal, this Court has emphasized that “[i]t is essential that the public have absolute confidence in the integrity and impartiality of our system of criminal justice. This requires that public officials not only in fact properly discharge their responsibilities but also that such officials avoid, as much as possible, the *appearance* of impropriety.” (*People v. Carlucci* (1979) 23 Cal.3d 249, 258 [quoting *People v. Rhodes* (1974) 12 Cal.3d 180, 185].) Traffic courts are “often the only contact citizens have with the court system. It is important that the proceedings appear to be fair and just.” (*People v. Kriss* (1979) 96 Cal.App.3d 913, 921.) Similarly, the U.S. Supreme Court explained in *Mayer v. City of Chicago* (1971) 404 U.S. 189 that “[f]ew citizens ever have contact with the higher courts. In the main, it is the police and the lower court Bench and Bar that convey the essence of our democracy to the people. ‘Justice, if it can be measured, must be measured by the experience the average citizen has with the police and the lower courts.’” (*Id.* at 197; internal citation omitted.)

Impartiality is critical not only for even-handed decision-making, but also to preserve respect for the judiciary. “The power and the prerogative of a court to [resolve disputes] rest, in the end, upon the respect accorded to its judgments. The citizen’s respect for judgments depends in turn upon the issuing court’s absolute probity. Judicial integrity is, in consequence, a state interest of the highest order.” (*Republican Party, supra*, 536 U.S. at 793 [Kennedy, J., concurring].)

Empirical research confirms this conclusion. The perception of unfair or unequal treatment “is the single most important source of popular dissatisfaction with the American legal system.” (Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 *LAW & SOC’Y REV.* 513, 517 (2003).) “What matters to people is neutrality, absence of bias, honesty, evidence of efforts to be fair, politeness, and respect for the rights of individuals.” (David B. Rottman, *Public Perceptions of the State Courts: A Primer* (Nat’l Ctr. for State Courts, Aug. 2000).) Given the public’s distrust of the prosecuting agencies’ use of traffic citations to fill their coffers in this economy, the need to restore the public’s trust in the traffic court system is particularly important at this time. (See Ortiz, *Jump in Traffic Tickets Raises Questions*, L.A. Daily J. (October 15, 2010) [discussing statistical data provided by Judicial Council that validates the public’s view that prosecuting agencies have engaged in such misconduct as evidenced by an artificial 46% recent increase in the number of citations issued].)

In sum, in order to ensure equal application of the law – i.e., the essence of impartiality – this Court should grant review in this case to resolve the express conflict between the two divisions of the same appellate court.

CONCLUSION

The petition should be granted.

Respectfully submitted,

DATED: April 5, 2012

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EXHIBIT A

Exhibit A, the 2/28/12 decision by the Second District of the Court of Appeal (ordered published on 3/1/12) is available at <http://www.highwayrobbery.net/TrcDocsAppIngleGoldsmDecisByDCA.pdf>