

("ARLES");

(b) People's Exhibit 2, a photograph of the driver taken by the ARLES system;

(c) a video clip of the offense taken by the same system, and

(d) data information recorded by the ARLES system including the time of the alleged offense, the defendant's speed at the time of the offense, and how long the light had been red when defendant crossed into the intersection. Defendant has stipulated to the identity of the driver depicted as himself. This evidence, if admitted, firmly establishes defendant's guilt in entering the intersection against a solid red light in violation of VC § 21453(a).

For the reasons set forth below, each of the objections are overruled and defendant is adjudged guilty of a violation of Vehicle Code § 21453(a).

II

EVIDENTIARY OBJECTIONS

A. Lack of Foundation

Defendant objected to the introduction of the evidence listed above as lacking in foundation. The foundational testimony was provided by the one and only witness for the People, Sergeant Omar Corales of the Culver City Police Department who testified as follows:

Sgt. Corales has been a police officer with the City of Culver City for 29 years and is currently the Sergeant in charge of the ARLES program for the City of Culver

entering the intersection against the red light at 6:03:12 pm on November 21, 2008, crossing the same intersection at 6:03:13 pm, a picture of defendant driving the car, and a picture of the rear license plate of defendant's car.

City. He has been personally involved with the Culver City Council's decision to implement an ARLES system in the City of Culver City in 1998 and was working as a police officer for the City during the selection and installation of the ARLES system that same year. Subsequent to installation, Sgt. Corales personally reviewed and issued warning notices pursuant to statute in February 1999, and has continued to review and issue citations from that time until current day. Sgt. Corales is familiar with each of the intersections at which the ARLES system is installed, including the intersection of Washington and Helms which is where the violation at issue in this case occurred.

Sgt. Corales is knowledgeable about how the ARLES system functions and describes it as an automated camera system designed to shoot photographs and record video of suspected vehicles running red lights at each intersection the ARLES system is installed. The system itself is comprised of several "loop" metal detectors buried underneath the roadway that sense the presence of vehicles approaching the lighted intersection, and a series of cameras that are programmed to take still photographs and a video of any suspected violator. The cameras are strategically placed to capture photos of (1) the suspect approaching the red lit intersection with the phasing of the traffic light showing in the background, (2) the same suspect vehicle as it passes the limit line of the intersection again with the traffic light showing in the background, (3) a photograph of the driver of the suspect vehicle, (4) the rear license plate of the suspect vehicle, and (5) a video clip of the suspect vehicle entering into and passing through the intersection with the traffic light phasing in the background. The ARLES system is linked to the traffic light at the intersection and is activated when the light turns red for oncoming traffic. The sensors detect the presence of oncoming cars, calculate their speed of travel, and

send timed signals to the fixed cameras to shoot the photos and videos to capture evidence of the suspected offender. The ARLES system also has a date and time stamp on the photographs and video along with recorded electronic data showing the speed of the suspect as calculated by the loop sensors in the roadway, the amount of time the light had been red when each photograph is taken, and the time each photograph is taken.

All of this information is captured and stored digitally and is transmitted through the internet to a private company called Redflex Traffic Systems in Phoenix, Arizona, which is contracted by Culver City to operate and maintain the ARLES system. The information is reviewed by Redflex employees and transmitted to police officers in Culver City to review for red light violations. Each of the ARLES systems are remotely checked everyday by Redflex operators, and the traffic lights at each intersection that the ARLES is installed are checked daily by Culver City Police Officers including Sgt. Corales.

Sgt. Corales reviewed People's Exhibits 1 and 2, the video of the violation, and the data imprinted on both and testified that he recognized these items as having been produced by the ARLES system at the intersection of Washington and Helms in Culver City. He testified that he was familiar with that intersection and recognized the intersection in each of the photographs and video at issue.

Given the testimony above, defendant's objection to the photographs, video, and data on lack of foundation grounds is overruled.

B. Authentication of the Photographs and Video

Defendant objects to the introduction of the photographs and video on the grounds that the People have failed to establish the authenticity of that evidence in violation of Evidence Code Section 1401(a) (“authentication of a writing is required before it may be received into evidence”). Under Evidence Code Section 1400, “authentication of a writing means the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is.” *Id.* Evidence Code § 250 defines the term “writing” to include “photographing . . . and every other means of recording upon any tangible thing,” including videotape recordings. Ashford v. Culver City Unified School, 130 Cal.App.4th 344, 349 (2005). Thus, before this Court can admit the proposed evidence, there must be sufficient evidence presented by the People to establish that the evidence is what they claim it is; that is, photographs, video, and data depicting defendant running the red light at this intersection on the alleged date and time in question.

As stated by the California Supreme Court in People v. Bowley, 59 Cal.2d 855 (1963), “[i]t is well settled that the testimony of a person who was present at the time a film was made that it accurately depicts what it purports to show is a legally sufficient foundation for its admission into evidence.” *Id.* at 859 (person depicted in sex video identified herself in video and testified that it was an accurate depiction of events captured); see also Jones v. City of Los Angeles, 20 Cal.App.4th 436, 530 (1993) (nurse witness to filming of accident victim “Day in Life” video sufficient to establish authentication).

More problematic is the situation, as in the case at bar, where there is no

percipient witness to the recording to testify as to the accuracy of the reproduction.

Defendant relies on Ashford v. Culver City Unified School District, 130 Cal.App.4th at 349, in which the Culver City School District tried to introduce a videotape of their city worker doing private work on a workday in which he claimed to have been ill. Id. at 348.

The Court of Appeals held that such evidence, although relevant, was inadmissible because of the City's failure to authenticate the video:

The sole witness at the administrative hearing was the District's assistant superintendant of human resources. She admitted that she herself had not made the videotapes, was not present when they were made, and did not know the person who made them. Further, she did not know if the person who made the videotapes was at any particular site on any particular date, nor could she say that the dates on the videos were accurate. Petitioner's attorney noted that the dates on the videotapes skipped around and that the videotapes had time lapses. The District's witness admitted she had no knowledge as to whether the videotapes had been edited, spliced, or pieced together.

Id. Defendant urges this Court to similarly suppress the photographs and videotape in this matter because the People's sole witness in this matter, Sgt. Corales, also had no personal knowledge of the events depicted in them and was not present during their production. See also People v. Beckley, 185 Cal.App.4th 509, 2010 WL 2293410 (June 9, 2010) (internet MySpace photo of defendant flashing gang signs inadmissible as no percipient witness to that action and no indicia of reliability as to circumstances of the downloaded photo). As such, defendant argues that Sgt. Corales has failed to authenticate such evidence.

However, the California Supreme Court in Bowley, supra, approved another method of authentication which can be accomplished by expert testimony as to the

reliability of the circumstances under which the recording was made rather than first hand percipient witness testimony as to the accuracy of the recording. Bowley, 59 Cal.2d at 860-863. The California Supreme Court cited with approval the case of People v. Doggett, 83 Cal.App.2d 405 (1945), in which the prosecution attempted to introduce photographs of defendants engaging in prohibited sexual acts. The photographs were found in the apartment of the defendants and the prosecution was unable to produce any percipient witness to the events depicted. The prosecution did present testimony from defendants' landlord that the persons depicted in the photos were the defendants, as well as testimony from officers at defendant's apartment that the furniture and surroundings depicted in the photos matched that found in the apartment and that photographic equipment used to take the photographs were also found in the same apartment. In addition, there was expert testimony that the photographs were genuine and not faked. Doggett, 83 Cal.App.2d at 407-09. Given this non-percipient testimony, the Court of Appeals found that:

[i]t would seem that the verification or authentication was as satisfactory and reliable, to say the least, as that in the ordinary case where it depends upon the memory and integrity of a third party who may be directly interested in the result. In such a case, it can neither be said that other evidence is entirely lacking nor that proof of the requisite element is not sufficient to support a trial court's action in receiving such pictures in evidence.

Id. at 410-411.

The Supreme Court in Bowley adopted the reasoning in Doggett in an analysis which seems particularly applicable in the instant ARLES context:

Since no eyewitness laid the foundation for the picture's admission in the Doggett case, the picture necessarily was

allowed to be a silent witness; to 'speak for itself.' It was not illustrating the testimony of a witness. This seems to be a sound rule. Similarly, X-ray photographs are admitted into evidence although there is no one who can testify from direct observation inside the body that they accurately represent what they purport to show.

There is no reason why a photograph or film, like an X-ray, may not in a proper case, be probative in itself. To hold otherwise would illogically limit the use of a device whose memory is without question more accurate and reliable than that of a human witness. It would exclude from evidence the chance picture of a crowd which on close examination shows the commission of a crime that was not seen by the photographer at the time. It would exclude from evidence pictures taken with a telescopic lens. It would exclude from evidence pictures taken by a camera set to go off when a building's door is opened at night.

Id. at 860-62. Several other courts have also accepted this alternate theory of authentication, sometimes referred to as the "silent witness" theory, particularly in the realm of unmanned surveillance systems. See United States v. Taylor, 530 F.2d 639, 641-42 (5th Cir. 1976) (in absence of percipient witnesses, bank vault surveillance photos of armed robbery admissible when installer of camera testifies as to prior installation of system and subsequent removal of film); United States v. Rembert, 863 F.2d 1023, 1026-29 (D.C. Cir. 1988) (photos of ATM robberies taken by automatic camera system admissible via testimony of bank employee who described the workings of the surveillance system and corroboration of robberies by actual victims).

In light of the Supreme Court's reasoning in Bowley, and comparing the facts and circumstances in the case at bar with those of Ashford and Doggett, this Court finds that the reasoning and applicability of Doggett to be governing. First, unlike Ashford, this case is not one in which the origin of the videotape at issue is a wholesale enigma which appeared to have simply dropped from the sky without explanation; the witness in

Ashford had no idea whatsoever as to the circumstances of the creation of the video in that matter or the matters depicted therein. In contrast, Sgt. Corales testified here that the photographs and videotape at issue were the direct result of a camera system that he has had personal experience with and which he has utilized to bring hundreds of prosecutions before. Second, as in Doggett, Sgt. Corales also testified as to his personal knowledge of the surroundings at the intersection in which the photos and video of the defendant were shot and his recognition thereof in the photos and video. Furthermore, unlike the witnesses in both Ashford and Doggett, Sgt. Corales was able to not only definitively identify the cameras responsible for the photos/video, he also testified at great length as to his personal knowledge of how the camera system works, giving detailed testimony regarding the use of the underground loop sensors, the location of each of the cameras and their respective duties, and the timing of the system and its specific programmed purpose. In short, the evidence presented here supporting authentication was much stronger than that of Ashford and Doggett in that Sgt. Corales knew exactly where, when, and a very detailed how the evidence depicting the violation had been produced. Lastly, he testified as to the chain of custody of the photo/video evidence and how it was electronically transmitted to the Redflex vendor and then to the Culver City Police Department only. Moreover, he testified that the data captured by the system and indicated on the videotape depicting time, speed, and relative distances of the violation were corroborated by the images themselves.

Given the above, this Court finds that the circumstantial evidence provided was sufficient to establish authentication under Evidence § 1401 and overrules defendant's objection as to lack of authentication.

C. Hearsay

Defendant objects to the admission of the photos, video, and data information contained thereon on hearsay grounds. The general rule is that hearsay evidence is inadmissible unless there is a specific exception that allows it. Evid § 1200(b).

The threshold question is whether this evidence is hearsay at all. Evid § 1200 defines "hearsay evidence" as "evidence of a *statement* that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter asserted." Id. (*emphasis added*). The term "statement" is in turn defined under Evid § 225 as "(a) oral or written verbal expression or (b) nonverbal conduct of a person intended by *him* as a substitute for oral or written verbal expression." Id. (*emphasis added*).

Given these straightforward definitions, it is obvious that the photos, videotape, and the data contained thereon do not originate from any person at all, but rather from a machine made up of cameras, sensors, and programming. As such, it cannot qualify as a "statement," which therefore disqualifies such evidence as hearsay. The evidence at issue here is no more hearsay than the time of day derived from a clock face, the speed of travel derived from a speedometer, or the temperature reading from a thermometer.² All of these are examples of data derived from instruments designed by man to be interpreted by man, just as the images and data from the ARLES system were captured by

² Nor is the evidence at issue any more improper than the examples given by the Supreme Court in Bowley of a properly authenticated X-Ray, telescopic image, chance photograph of a crowd, or photos taken by an automatic door camera. Bowley, 59 Cal.2d at 862.

a machine and interpreted by a live witness, Sgt. Corales. The images and data are clearly not the statements of a person or "oral or written verbal *expression*" and therefore not barred by the hearsay rule.

D. Confrontation Clause

Finally, defendant objects to the introduction of the photographs, video, and data contained thereon as violating his 6th Amendment Constitutional right to confront witnesses against him. Defendant cites the recent Supreme Court decision of Melendez-Diaz v. Massachusetts, 129 S. Ct 2527 (2009), in which the Court found that the introduction of sworn chemist affidavits introduced to establish defendant's possession of cocaine violated defendant's right of confrontation.

However, in contrast to Melendez-Diaz, in this instance there was no third party hearsay testimony admitted or relied upon to establish an element of the offense; the sole witness accusing defendant is Sgt. Corales, who read and interpreted the data and images captured by the ARLES system. For the same reasons that the ARLES images and data cannot constitute "statements" in violation of the hearsay prohibition, that same evidence cannot constitute "testimonial" evidence by a witness that defendant is entitled to confront and cross-examine. In other words, notwithstanding the previously mentioned label of "silent witness," the ARLES system is simply not a witness encompassed within the meaning of the Sixth Amendment Confrontation Clause. See People v. Chikosi, 185 Cal.App.4th 238 (May 6, 2010) (no Confrontation Clause violation when officer who used breathalyzer testified at trial and was subject to cross examination).

Because Sgt. Corales was the sole accuser who collected and interpreted the data and images captured by the ARLES system, and was available for cross-examination at the trial, defendant's Confrontation Clause objection is overruled.


III

VERDICT AND ORDER

Given this Court's overruling of defendant's objections to the photographs, video, and data information contained thereon, an examination of such evidence leads this Court to conclude that the People have proven the infraction of failure to stop for a red light beyond a reasonable doubt. Even without considering any of the data information contained on the video, the photos and video show beyond a reasonable doubt that defendant drove through the intersection of Washington Blvd. and Helms in Culver City against a solid red light. As such, defendant is hereby adjudged guilty and is ordered to appear for sentencing before this Court on July 22, 2010 at 3:30pm.

IT IS SO ORDERED,

July 7, 2010


HON. LAWRENCE H CHO
Los Angeles County Superior Court
Dept. S, Santa Monica Court