

CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION THREE

AUG 22 2011

CASE NO. B231678

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

[REDACTED] GOLDSMITH,

Defendant and Appellant.

Appeal from the Appellate Division of the Superior Court of the
State of California for the County of Los Angeles
The Honorable Patti Jo McKay, Anita H. Dymant and Sanjay Kumar
Appellate Division Case No. BR048189
Superior Court Case No. 102693IN

BRIEF OF AMICUS CURIAE THE CITY OF SANTA ANA

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

The trial court convicted Appellant ██████████ Goldsmith ("Appellant ") of driving through a red light in violation of California Vehicle Code ("CVC") section 21453(a) and the Appellate Division of the Los Angeles Superior Court affirmed her conviction. Appellant now asks this Court to reverse her conviction on the ground that the trial court erred in admitting the evidence of her violation, which she does not dispute occurred. In so arguing, Appellant misconstrues applicable law and relies on plainly distinguishable and unpersuasive case law.

In seeking to have her conviction overturned, Appellant relies heavily on People v. Khaled (2010) 186 Cal.App.4th Supp. 1 – an appeal of a red light statute conviction based on evidence collected by a red light camera system in the City of Santa Ana. As is customary in CVC infraction cases, the District Attorney did not participate in the case. Santa Ana was not served with the Notice of Appeal or Notice of Hearing on settlement of the Statement on Appeal prepared by the appellant. Because Santa Ana did not have notice of the appeal or the hearing, it did not appear at the hearing, at which the court approved the appellant's Statement on Appeal, effectively accepting the appellant's version of the facts for purposes of the appeal.

Santa Ana later filed a motion to intervene as a real party in interest and for a rehearing on settlement of the Statement on Appeal. However, the trial court denied Santa Ana's petition. About four months later, the Appellate Division of the Orange County Superior Court officially served Santa Ana with notice of the appeal. Santa Ana once again filed a motion to intervene as real party in interest and for a rehearing on settlement of the Statement on Appeal in the Appellate Division, but the court denied the motion. Consequently, the court proceeded to overturn the appellant's conviction based solely on the appellant's arguments and version of the facts.

The Court should ignore Khaled because in addition to being factually distinguishable from this case, it was decided without operation of the adversarial process on which our judicial system is based. The United States legal system is premised on an

adversarial process, which ensures that both sides of a case are presented. Khaled, however, was decided on solely the appellant's arguments and version of the facts and thus is not the result of an adversarial proceeding. Because of this procedural flaw, Khaled is not persuasive. Accordingly, this Court should wholly disregard Khaled in deciding this case.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On March 13, 2009, an automated red light camera system photographed Appellant driving through a red light at an intersection in the City of Inglewood. The trial court found Appellant guilty of violating CVC section 21453(a) based on photographic and video evidence of the offense generated by a red light camera system as well as the testimony of a police officer with extensive training and experience in the operation of red light cameras.

The Appellate Division of the Los Angeles Superior Court affirmed Appellant's conviction. The court expressly disagreed with the holding in Khaled and rejected Appellant's claim that the photographs and videos were inadmissible on authentication and hearsay grounds.

The California Court of Appeal ordered the case transferred to this Court. Appellant once again seeks to overturn her conviction purely on evidentiary grounds, relying heavily on Khaled in claiming that the photographic and video evidence of her violation was not properly authenticated and constituted inadmissible hearsay.

The Court held oral argument in this appeal on July 13, 2011. On that same day, the Court issued an order deferring submission of the case and giving any person or entity until August 19, 2011 to file an *amicus curiae* brief in support of either party. [See July 13, 2011 Order Deferring Submission of Case.] The Court further ordered that the parties shall have until September 2, 2011 to respond to *amicus curiae* briefs. [See July 13, 2011 Order Deferring Submission of Case.]

III. ARGUMENT

A. KHALED WAS DECIDED WITHOUT FOLLOWING THE ADVERSARIAL PROCESS

In Khaled, the Santa Ana Police Department issued the appellant a citation for driving through a red light in violation of CVC section 21453(a). People v. Khaled (2010) 186 Cal.App.4th Supp.1, 4. The trial court convicted the appellant based on photographic and video evidence of the violation generated by red light camera system. Id. The appellant appealed his conviction to the Appellate Division of the Orange County Superior Court, which reversed his conviction. Id. at 9.

The Appellate Division's decision reversing the appellant's conviction was based solely on the appellant's arguments and version of the facts. The appellant filed his Notice of Appeal and Proposed Statement on Appeal on April 29, 2009. [See Khaled Clerk's Transcript on Appeal ("Khaled CT"), attached as Exh. A to concurrently filed Request for Judicial Notice ("RJN"), p. 8.] However, the appellant served the District Attorney, but not Santa Ana, with the Notice of Appeal and Proposed Statement on Appeal. [See Khaled Notice of Appeal and Proposed Statement on Appeal, attached as Exh. B to concurrently filed RJN, p. 15.] On May 19, 2009, the court issued a Notice of Hearing on Settlement of Statement on Appeal, but Santa Ana was not given notice of the hearing. [See Khaled CT, attached as Exh. A to concurrently filed RJN, p. 14.] The hearing was held on May 29, 2009, but Santa Ana did not appear because it never received notice of the hearing. [See id.] On the day of the hearing, the court approved the appellant's Proposed Statement on Appeal without any changes, thereby accepting the appellant's version of the facts for purposes of the appeal. [See id.; Khaled Certification of Statement on Appeal, attached as Exh. C to concurrently filed RJN, pp. 41-42.]

On May 29, 2009, after first becoming aware of the appeal, Santa Ana filed a motion to intervene as real party in interest and for a rehearing on settlement of the Statement on Appeal. [See Khaled CT, attached as Exh. A to concurrently filed RJN, pp. 17-22.] On September 23, 2009, the court officially served Santa Ana with notice of the

appeal. [See Notice of Filing Record on Appeal and Notice of Briefing Schedule, attached as Exh. D to concurrently filed RJN, p. 48.] The appellant subsequently filed his opening brief on October 23, 2009. [See Khaled Docket Report (Appellate Division), attached as Exh. E to concurrently filed RJN, p. 51.] On December 9, 2009, the court issued a minute order denying Santa Ana's motion to intervene without prejudice. [See Khaled Minute Order on First Motion to Intervene, attached as Exh. F to concurrently filed RJN, p.52.]

On December 29, 2009, Santa Ana once again filed a motion to intervene as real party in interest and for a rehearing on settlement of the Statement on Appeal. [See Khaled Second Motion to Intervene as Real Party in Interest, attached as Exh. G to concurrently filed RJN, pp. 53-66.] The court issued a minute order on February 3, 2010 denying the motion. [See Khaled Minute Order on Second Motion to Intervene, attached as Exh. H to concurrently filed RJN, pp. 67-68.] On May 21, 2010, the court issued an order reversing the appellant's conviction. [See Khaled Docket Report (Appellate Division), attached as Exh. E to concurrently filed RJN, p. 50.]

Accordingly, the court decided the case based on the appellant's Statement on Appeal (i.e., the appellant's own account of the events that transpired at trial) and without any briefing or argument on behalf of the respondent, the People of the State of California. As is customary in traffic citation cases, the District Attorney did not participate in Khaled. Thus, by denying Santa Ana's motion to intervene as real party and for a rehearing on settlement of the Statement on Appeal, the court decided the case based on only the appellant's arguments and version of the facts – a procedure directly at odds with the adversarial process on which our judicial system is based.

B. KHALED IS UNPERSUASIVE BECAUSE THE CASE WAS DECIDED WITHOUT THE PRESENTATION OF ADVERSARIAL ARGUMENTS

The presentation of adversarial views is an essential hallmark of our legal system. The Supreme Court of the United States has made clear that "the system assumes that adversarial testing will ultimately advance the public interest in truth and

fairness." Polk County v. Dodson (1981) 454 U.S. 312, 318. Specifically, "the very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." Herring v. New York (1975) 422 U.S. 853, 862 (emphasis added); see also Penson v. Ohio (1988) 488 U.S. 75, 76 (explaining that the presence of contrasting views is of paramount importance in the adversarial system of justice) Adversarial points of view ensure that substantial legal and factual arguments are not passed over. Penson, 488 U.S. at 76.

This Court should wholly disregard Khaled in reaching its holding in this case because in addition to being factually distinguishable from this case, Khaled was decided without adherence to the adversarial process on which our judicial system is based. Instead of allowing Santa Ana to challenge the appellant's account of the events that transpired at trial and advocate its position on the merits through briefing and oral argument, the Khaled court issued a decision based wholly on the appellant's arguments and version of the facts. In deciding the case in this manner, the court severely undermined the adversarial process and failed to "ensure that substantial legal and factual arguments [were] not passed over." Penson, 488 U.S. at 76.

Accordingly, in addition to being factually distinguishable, Khaled is unpersuasive for an independent and equally compelling reason – the court failed to adhere to the adversarial process by deciding the case on one party's arguments and version of the facts. The holding therefore does not represent a well-reasoned decision based on a consideration of arguments on both sides of the issues. As such, the Khaled decision is the result of a flawed and prejudicial procedural process. This court should therefore wholly disregard Khaled in reaching its decision in this case.

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IV. CONCLUSION

For the foregoing reasons, *Amicus Curiae* the City of Santa Ana respectfully request that this court ignore Khaled and affirm Appellant's conviction.

CITY OF SANTA ANA
OFFICE OF THE CITY ATTORNEY

Dated: August 18, 2011

By: 
MELISSA CROSTHWAITE
Deputy City Attorney