

Case No. B231678
IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA

People of the State of California, Plaintiff and Respondent

v.

Goldsmith, Defendant and Appellant

EX PARTE MOTION TO INTERVENE;
MEMORANDUM OF POINTS AND AUTHORITIES

[Arising from Petitioner's Case No. 2011560494
in Ventura County Superior Court Appellate Division,
wherein that Court stayed action pending outcome of this case.]

Petitioner [] hereby moves this Court pursuant to Rule of Court 8.54, for an order granting leave to intervene in this action.

The motion for leave to intervene is based on Code of Civil Procedure § 387, on the grounds that Petitioner has direct and immediate interests in the success of Carmen Goldsmith, and is so situated that the disposition of this action may as a practical matter impair or impede the ability to protect that interest unless Petitioner is permitted to intervene in this action, and that interest is not adequately represented by any existing party. This motion is based on this notice, the supporting Memorandum of Points and Authorities, and on any oral and documentary evidence considered at any hearing of this motion.

Ex parte application for intervention by a nonparty is authorized under *Adoption of Lenn E.* (1986) 182 CA3d 210, 217, 227 CR 63, 67.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Petitioner is a party in a similar case, *People v.* [] [] Ventura County Superior Court Case No. 2011560494. In both Petitioner's case and the one at bar, the Defendant is accused of failing to stop at a red light signal, and in both cases the sole evidence

submitted by the People was video, photographs and data imprinted on the photographs by an automated traffic enforcement system.

Petitioner's case and this case share two identical issues:

- 1) Whether the video, photographs, and data imprinted on the photographs are sufficiently reliable and accurate to allow admission of this evidence.
- 2) Whether this evidence is hearsay, and if so, what if any exceptions apply.

Petitioner appealed these issues to the Ventura County Superior Court Appellate Division. Because Petitioner's case and this case share the two identical issues above, on July 16, 2012 that court vacated submission of the matter and held and stayed the matter until these two issues are decided in this case. (*Submission of Matter Vacated; Action Deferred* in Petitioner's case attached)

LEGAL ARGUMENTS

Code of Civil Procedure § 387(a) provides in pertinent part:

At any time before trial, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint ... or by demanding anything adversely to both the plaintiff and defendant, ... See *People v. Superior Court (Good)* (1976) 17 Cal.3d 732, 736 [132 Cal.Rptr.800]

The statute is designed to protect the interests of others and obviate multiplicity and delay. *Id.* Section 387 should be liberally construed in favor of intervention. *Lindelli v. Town of San Anselmo*, (2006) 139 Cal.App.4th 1499, 1505. A third party may intervene (1) where the proposed intervenor has a direct interest, (2) intervention will not enlarge the issues in the litigation, and (3) the reasons for the intervention outweigh any opposition by the present parties. *Id.* at 1504; *People ex rel. Rominger v. County of Trinity*, (1983) 147 Cal.App.3d 655, 660-61.

Code of Civil Procedure § 387(b) provides that when a party has an interest related to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede that party's ability to protect that interest, then the court shall permit intervention unless the party's interest is adequately represented by existing parties. See also, *Hausmann v. Farmers Ins. Exch.*, (1963) 213 Cal.App.2d 611, 616-17. The Petitioner amply satisfies all of these criteria.

**PETITIONER HAS DIRECT AND IMMEDIATE
INTERESTS AT STAKE**

The Ventura County Superior Court Appellate Division issued an order deferring disposition on Petitioner's case, *People v.*]
[], Case No. 2011560494, pending determination by this

court in the two issues (supra) shared by both cases. Because the outcome of Petitioner's case will depend on the findings of the court in this matter, Petitioner has direct and immediate interests at stake in the outcome of this case.

**PETITIONER'S PARTICIPATION WILL NOT
ENLARGE THE ISSUES**

Petitioner's interest in this case is strictly limited to the two issues identified by the Petitioner's Appellate Court order (supra, and attached) as being identical to those raised in this case. As such, Petitioner's participation will not enlarge the issues in this case.

**PETITIONER'S INTEREST ARE NOT ADEQUATELY
REPRESENTED BY EXISTING PARTIES**

While sharing the same issues, Petitioner made arguments in his case which differ materially from those made by the Defendant/Appellant in this case. In order to allow this court to fully evaluate the issues, and to prevent a rehearing of these issues on the different arguments in Petitioner's case in a subsequent proceeding, Petitioner requests that he be allowed to intervene here.

TIMELINESS OF MOTION

The Appellate Court order in Petitioner's case was filed on July 16, 2012. This application will be sent by priority or express mail, and will be postmarked on July 24, 2012. California Rules of Court Rules 8.500(e)(1) and 8.25(b)(3) respectively require a motion to be filed within 10 days of an Appellate Court decision, and base filing date on the postmark or postal receipt of such a filing. Because the requirements of both rules will have been met, this motion should be considered as filed in a timely manner.

SERVICE

Both Plaintiff/Respondent and Defendant/Appellant were notified by facsimile that this ex parte application was being made, as evidenced in the attached Declaration of Mailing.

CONCLUSION

For the foregoing reasons, the court should grant the Petitioner's motion for leave to intervene. If the court determines that leave to intervene should not be given without a hearing of this application on notice, Petitioner requests that the court order the existing parties to this action to show cause, at a time and place specified by the court, why this application to intervene should not be granted, and that the court further order that until this application has

been determined: (1) all proceedings in this action are stayed and (2) this action may not be dismissed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated 7/24/2012

Attached:

- 1) Declaration of Mailing
- 2) *People v. [Submission of Matter Vacated; Action Deferred, Ventura County Superior Court Case No. 2011560494*