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FILED
LOS ANGELES SUPERIOR COURT
FEB 22 2006
JOHN A. GIBBS, CLERK
BY F. ALGAMA, DEPUTY

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

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
v.
L [REDACTED] SMITH,
Defendant and Appellant.

BR 043886
Beverly Hills Trial Court
No. WX98334
MEMORANDUM JUDGMENT

This cause having been submitted for decision, and fully considered, judgment is ordered as follows:

The judgment is affirmed.

Following a court trial, defendant and appellant Laurence C. Smith (defendant) was convicted of violating Vehicle Code section 21453, subdivision (a), failing to stop for a red signal. The trial court imposed a fine of \$340 and applied defendant's cash bail to the fine. Defendant timely filed notice of appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant was issued a citation under the provisions of the automated traffic enforcement system. (Veh. Code, §§ 21455.5-21455.7.) The citation alleged that the violation was based upon photographic evidence taken on June 14, 2004, at 7:15 p.m., at the location described as "E[ast]B[ound] Sunset & La Cienega."

1 On August 9, 2004, defendant signed and filed a written "Request for Trial,"
2 indicating his intent to plead not guilty to the charge. His arraignment and trial were
3 scheduled for October 14, 2004. The record on appeal includes a document entitled
4 "Infraction Trials - Notes to Litigants," which includes various questions and answers,
5 including the following: "Will the officer who wrote the citation be in court? [¶] The
6 officer will be subpoenaed to appear in court. In most cases, he or she will appear. In
7 some cases, unavoidable circumstances may prevent or delay his/her appearance. If the
8 witness(es) against you does not appear and you do appear, the violation will generally
9 be dismissed."

10 On October 14, 2004, the cause was called for court trial. Deputy Zenon Porche
11 and defendant were the only witnesses to testify during the trial. Their testimony and
12 the trial proceedings are set forth in a reporter's transcript and a settled statement, both
13 of which are part of the record on appeal.¹

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16 ¹The settled statement indicates that the trial in this matter was bifurcated, since more than
17 one defendant was present for trial on October 14, 2004, for an alleged violation of Vehicle Code
18 section 21453, subdivision (a), which involved the automated system. The reporter's transcript
19 includes Deputy Porche's general testimony which was applicable to all individuals, including
20 defendant, who were present in court for trial on October 14, 2004. Said testimony included
21 certain foundational elements that were common to all cases. After Deputy Porche concluded his
22 general testimony, the reporter's transcript states as follows: "(Unable to Complete Transcription
23 due to Tape Malfunction[.])"

24 The settled statement provides that "[t]he Court ordered production of a transcript and was
25 informed that the audiotape was flawed . . ." and that "[o]nly the first portion of the bifurcated
26 proceedings was retrievable." The court then stated that it had "attempted to reconstruct the
27 balance of the proceedings, but finds that it cannot do so with accuracy and is therefore UNABLE
28 TO SETTLE THIS STATEMENT." (Original capitalization.) We find, however, that the settled
statement sufficiently conveys that portion of the proceedings wherein defendant's case was
individually called so as to allow this court to address those issues raised by defendant on appeal.
As such, defendant has been provided with "a 'record of sufficient completeness' to permit appellate
scrutiny of his claims of error. [Citations.]" (*People v. Jenkins* (1976) 55 Cal.App.3d Supp. 55, 61.)
Furthermore, by order dated October 4, 2005, this court gave the parties to this appeal an
opportunity to brief the issue of whether the trial court's inability to settle the statement "results in
a record that is not adequate to address the issues raised by [defendant]." Both sides submitted
briefs in response to the order, and we found defendant's arguments to be unpersuasive.

1 Deputy Porche testified that since May 1999, he has been the "Photo
2 Enforcement Coordinator" for the City of West Hollywood. He thereafter set forth his
3 training and education for this position. According to the deputy, "[e]ither myself or
4 another officer will approve or disprove every citation, we're the only authority. No one
5 can tell us to approve or disprove these citations." He also testified that the City of West
6 Hollywood contracts with a vendor known as ACS, which actually constructs the
7 system, "configure[s] the intersections," "lay[s] the loops" for the system, and "erect[s]
8 the poles" upon which the cameras sit. ACS retrieves the film from the cameras, and it
9 then applies certain criteria, which Deputy Porche provides to ACS, in order to eliminate
10 certain vehicles that are caught on film. Once ACS completes the "elimination process,"
11 the remaining film is forwarded to Deputy Porche, who reviews it and determines
12 whether a citation is issued.

13 With respect to maintenance and servicing of the automated system, the deputy
14 said that ACS is required to check each and every camera three times per week, replace
15 the memory card and film, and record certain information in a "technician log,"
16 including whether the unit is functioning properly and whether it is synchronized with
17 the traffic signal.² Deputy Porche testified that, in addition to the maintenance
18 performed by ACS, either he or another officer tests "each and every camera two to three
19 times a month." Thereafter, the deputy gave a detailed description of how the system is
20 triggered to take a picture. During his generalized testimony, Deputy Porche reviewed
21 certain information on the photographs that are taken of the alleged violators, explaining
22 the meaning of each of the numbers on the photos, how the numbers are calculated, and
23 why the photos evidence a particular defendant's violation of the law on the date and at

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27 ²The record on appeal includes two "Field Technician Service and Inspection Log[s]" for the
28 subject location, dated June 11, 2004, and June 15, 2004. The logs reflect that the cameras and
related equipment were in proper working order on the dates inspected.

1 the location alleged on the citation.³ Based upon the deputy's testimony, the first
2 photograph showed that the light was red for two-tenths of a second before defendant's
3 vehicle traversed the limit line. The second photograph showed that, when this photo
4 was taken, the light had already been red for 2.0 seconds. The photos also indicate that,
5 at the time the first photo was taken, defendant was traveling at a speed of 28 miles per
6 hour.

7 The settled statement provides that "[t]he Court does agree with [defendant's]
8 contention that he objected to Deputy Porche's testimony, stating that the citation was
9 signed by a Deputy Gossett. [Defendant] stated that he was entitled to hear Deputy
10 Gossett's testimony and have an opportunity to cross-examine him as the citing officer.
11 Deputy Porche responded that neither he nor Deputy Gossett were present at the location
12 where the violation occurred and that their function was simply to review the evidence,
13 determine whether it was sufficient for prosecution and then testify as to its significance.
14 The Court overruled the objection and the trial proceeded."

15 At the conclusion of the trial, the court found defendant guilty and ordered him to
16 pay a fine. This timely appeal follows.

17 CONTENTIONS ON APPEAL

18 Defendant raises the following contentions on appeal:

19 (1) that admission of the photographs showing defendant's violation constituted
20 improper hearsay, and did not fall within the business records exception to the hearsay
21 rule;

22 (2) that defendant's due process rights were violated; and

23 (3) that defendant was denied due process by "the misleading court instruction
24 that the citation officer would be present at the hearing."

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27 ³The record on appeal includes three photographs of defendant's vehicle: (1) as it approached
28 the intersection; (2) in the intersection; and (3) a blow-up of the second photo showing a close-up
of the driver.

DISCUSSION

Photographic Evidence

Defendant complains that the photographic evidence constituted improper hearsay and was admitted without proper foundation or authentication. According to defendant, "[t]he custodian of the photographic record" with respect to his alleged violation was Officer Gossett, and he was not present at trial. Defendant argues that because Deputy Porche was not "the declarant who controlled all the information as to the camera involved in [defendant's] citation," the evidence was not properly admitted under the business records exception to the hearsay rule.

The business records exception is found at Evidence Code section 1271, and provides as follows: "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if: [¶] (a) The writing was made in the regular course of a business; [¶] (b) The writing was made at or near the time of the act, condition, or event; [¶] (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and [¶] (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness." The exception is based upon the assumption that records kept in the general course of business are usually accurate, and may be used as evidence of the matter recorded. (*Loper v. Morrison* (1944) 23 Cal.2d 600, 608; *Doyle v. Chief Oil Co.* (1944) 64 Cal.App.2d 284, 292-293.)

In the case at bar, the inspection logs and photographs at issue satisfy each of the above requirements, such that they fall within the business records exception to the hearsay rule. First, they were made in the regular course of business. Second, each log entry was made at or near the time of inspection, and each photograph was taken at the time of the alleged violation. Third, Deputy Porche, who was a witness with personal knowledge of the workings of the automated system, was qualified to testify as to the authenticity of the evidence and the mode of its preparation. Evidence Code section 1271 does not require that Deputy Gossett be called as a witness. Rather, "[i]t is the

1 object of the business records statutes to eliminate the necessity of calling each witness,
2 and to substitute the record of the transaction or event. It is not necessary that the person
3 making the entry have personal knowledge of the transaction. [Citations.]” (*Loper*,
4 *supra*, 23 Cal.2d at pp. 608-609; accord, *County of Sonoma v. Grant W.* (1986) 187
5 Cal.App.3d 1439, 1451.) Here, although Deputy Porche did not make the log entries
6 himself or personally monitor the particular camera at issue, he did describe from
7 personal knowledge the mode of preparation of these records and their sources.⁴ His
8 testimony was therefore sufficient to authenticate the evidence and meet the foundational
9 requirements for its admission. (*People v. Matthews* (1991) 229 Cal.App.3d 930, 940.)

10 As such, the reliability and trustworthiness of the documents was established (cf.
11 *People v. Lugashi* (1988) 205 Cal.App.3d 632, 640; *County of Sonoma v. Grant W.*,
12 *supra*, 187 Cal.App.3d at p. 1451), and they were properly admitted.

13 We also note that the California Supreme Court has stated that the trial court
14 possesses “wide discretion in determining whether sufficient foundation is laid to
15 qualify evidence as a business record. On appeal, exercise of that discretion can be
16 overturned only upon a clear showing of abuse.” [Citation.]” (*People v. Beeler* (1995) 9
17 Cal.4th 953, 978.) We find no abuse.

18 *Due Process and Nonappearance of the Citing Officer*

19 Defendant next claims that his due process rights were violated because the citing
20 officer, Deputy Gossett, was not present at trial, and defendant was therefore unable to
21 confront and/or cross-examine him. Defendant also cites to Evidence Code section
22 1203, subdivision (a), which provides that “[t]he declarant of a statement that is admitted
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25 ⁴It is apparent from Deputy Porche’s testimony that ACS performs certain technical functions
26 under his direction, such as testing and inspecting the camera equipment, removing and replacing
27 the film and memory cards from the cameras, and processing the photographs. The inspection logs
28 are given to Deputy Porche, who reviews and signs them. In addition, after the film is processed,
either Deputy Porche or Deputy Gossett personally reviews each photograph of the alleged
violation. It is apparent from his testimony that Deputy Porche has personal knowledge of how all
of the various functions are performed.

1 as hearsay evidence may be called and examined by any adverse party as if under cross-
2 examination concerning the statement." Defendant makes much of the fact that the
3 court's instructions indicated that Officer Gossett, the citing officer, would be
4 subpoenaed to appear at trial, but that he did not appear, and defendant was therefore
5 unable to cross-examine him.

6 We find no due process violation. However, even assuming arguendo that it was
7 error for the court to overrule defendant's objection, any such error was harmless.

8 Neither Deputy Porche nor Deputy Gossett was a percipient witness to defendant's
9 violation. The fact that Deputy Gossett issued defendant's citation indicates that he was
10 the deputy who reviewed the photographs of defendant and found that they met the
11 criteria for issuance of a citation. It also indicates that Deputy Gossett was the officer
12 assigned to the cameras located at the subject intersection, and that he tended to them
13 two to three times per month. However, this did not mean that Deputy Gossett's
14 testimony was necessary. The accuracy and validity of the system at the subject
15 intersection was attested to by the logs which, as discussed *ante*, were properly admitted
16 as business records. The logs were filled out and signed by an ACS "Field Service
17 Technician." The logs also contain a "Police Department Signature," which appears to
18 be that of Deputy Porche, not Deputy Gossett. For all the foregoing reasons, Deputy
19 Gossett was not a critical witness.

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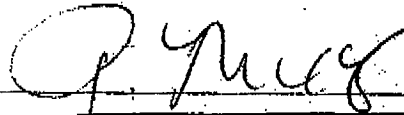
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1 Accordingly, it is not reasonably probable the result in this case would have been
2 different had Deputy Gossett been called as a witness and/or had defendant been able to
3 cross-examine him. (*People v. Watson* (1956) 46 Cal.2d 818, 836; see also *People v.*
4 *Hillhouse* (2002) 27 Cal.4th 469, 494.) We find that the error, if any, was harmless
5 beyond a reasonable doubt.

6 The judgment is affirmed.

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P. McKay, P.J.

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11 We concur.

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Wasserman, J.

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Lager, J.

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