

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
APPELLATE DIVISION

DATE/TIME : OCTOBER 20, 2006 DEPT. NO : 12A
JUDGE : MARYANNE G. GILLIARD-PRESIDING CLERK : BARBARA WILSON
: PATRICIA ESGRO BAILIFF : NONE
: MICHAEL SAVAGE
REPORTER : NCR

PRESENT:

THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff/Respondent

VS. Appellate Division No.: 05TR159226
Superior Court No.: 05TR159226

PRO FER

[REDACTED] MOORE, Defendant/Appellant

Nature of Proceedings: APPEAL FROM THE SUPERIOR COURT

The above entitled cause came on for oral argument on OCTOBER 20, 2006. The appellant was present. There was no appearance by the People. The matter was taken under submission. The Court now rules as follows:

Appellant received a citation from an automated enforcement traffic violation system which produced photographs that did not show the condition of the signal light when appellant entered the intersection. Without photographs showing appellant committing the violation, the system must be proven reliable beyond a reasonable doubt in order for the People to meet their burden of proof.

Appellate courts utilize the substantial evidence test to determine whether the prosecution has introduced sufficient evidence to meet its burden of proof beyond a reasonable doubt. (People v. Augborne (2002) 104 Cal. App. 4th 362, 371.) In determining whether substantial evidence supports the conviction, the appellate court reviews the entire record, draws all reasonable inferences in favor of the judgment, and determines whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (People v. Hughes (2002) 27 Cal.4th 287, 357 (citing People v. Raley (1992) 2 Cal. 4th 870, 889.))

At trial, appellant produced a calibration report that she received from the California Highway Patrol. Appellant claimed that this report suggested that the calibration of the camera that captured her photograph had only a 30-day warranty, and that the camera was last calibrated five months before it generated her photograph.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

BY: BARBARA WILSON,
Deputy Clerk

Updated 6/18/99 AEL

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 PROCEEDINGS:

DEPARTMENT: 12A

In response to appellant's questions about the calibration report, the People's witness Officer Joe Marsac testified that the cameras are calibrated every six months and "it was probably due for calibration. And I don't know what that statement means, to be honest with you. It looks like it's something that Microprecision, which is the company, puts on there about their techniques, and I'm not quite sure what it means. I don't know."

Given the evidence adduced at appellant's trial, this Panel finds that a rational trier of fact could not reasonably find, beyond a reasonable doubt, that the camera was properly calibrated when it recorded appellant's alleged violation. Therefore, we find that substantial evidence does not support appellant's conviction.

The conviction is reversed with directions to dismiss the complaint. (People v. Kriss (1979) 96 Cal.App.3d 913, 921.)

I hereby certify that I am not a party to the within action, and that I deposited a copy of this document in sealed envelopes with first class postage prepaid addressed to each party or the attorney of record in the U. S. Mail at 720 - 9th Street, Sacramento, CA on October 25, 2006.

DISTRICT ATTORNEY
 Attn: Writs & Appeals
 901 G Street
 Sacramento, CA 95814
 (via inter-office mail)

Appeals Clerk (hand delivered)

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SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SACRAMENTO

BY: BARBARA WILSON,
 Deputy Clerk

AP1

Sacramento County RLC Program

Field Service & Inspection Log

ORIGINAL

Service Date: 08/27/2005 Camera Serial #: 0191 Location Code: 4025 Location: NB Weir Ave to WB Fair Oaks Blvd

Item	Condition	Remarks	Action Taken
Lane 1	<input checked="" type="checkbox"/> Good <input type="checkbox"/> Dirty Service <input type="checkbox"/> No Applicable <input type="checkbox"/> Needs Service		
Lane 2	<input checked="" type="checkbox"/> Good <input type="checkbox"/> Dirty Service <input type="checkbox"/> No Applicable <input type="checkbox"/> Needs Service		
Lane 3	<input type="checkbox"/> Good <input type="checkbox"/> Dirty Service <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Needs Service		
Pole/Cabinet	<input type="checkbox"/> Out of Service <input checked="" type="checkbox"/> Good <input type="checkbox"/> Needs Service <input type="checkbox"/> Not Applicable		
Traffic Light	<input type="checkbox"/> Out of Service <input checked="" type="checkbox"/> Good <input type="checkbox"/> Needs Service <input type="checkbox"/> Not Applicable		
Camera	<input type="checkbox"/> Out of Service <input checked="" type="checkbox"/> Good <input type="checkbox"/> Needs Service <input type="checkbox"/> Not Applicable		

Begin Camera Service Time*: 8:30 Total Vehicle Count: 5645 Total Exposures Recorded: 18

- Camera Removed (Complete Steps 1-4)
- Verify the system is functioning properly
- Press the test button to end the deployment
- Remove old memory card
- Remove old film
- Camera Installed (Complete Steps 5-9)
- Verify system settings
- Install new film
- Install new memory card
- Press the test button to start a new deployment
- Verify the system is functioning properly

End Camera Service Time*: 8:36

I attest that the above is true and correct to the best of my knowledge.

Technician Name: Edward Stevens
 Signature: Edward Stevens
 Witnessing Officer: WINGSTON
 Signature: WINGSTON

signature

Sacramento County RLC Program
Field Service & Inspection Log

ORIGINAL

Service Date: 01/15/2005 Camera Serial #: 0191 Location Code: 4025 Location: NE West Ave to WB Fair Oaks Blvd

Item	Condition	Remarks	Action Taken
Lane 1	<input checked="" type="checkbox"/> Good <input type="checkbox"/> Out of Service <input type="checkbox"/> No Applcable		
Lane 2	<input checked="" type="checkbox"/> Good <input type="checkbox"/> Out of Service <input type="checkbox"/> No Applcable		
Lane 3	<input type="checkbox"/> Used <input type="checkbox"/> Out of Service <input checked="" type="checkbox"/> Needs Service		
Police/Cabinal	<input checked="" type="checkbox"/> Good <input type="checkbox"/> Out of Service <input type="checkbox"/> No Applcable		
Traffic Lights	<input checked="" type="checkbox"/> Good <input type="checkbox"/> Out of Service <input type="checkbox"/> Not Applicable		
Camera	<input checked="" type="checkbox"/> Good <input type="checkbox"/> Out of Service <input type="checkbox"/> No Applcable		

Camera: Good - in working order. Needs Service - by next 7 days. In case of trouble, contact the RLC field and verify settings.

Begin Camera Service Time: 6:57 Total Vehicle Count: 12,579 Total Exposures Recorded: 62

- Camera Removed (Complete Steps 1-4)
- Verify the system is functioning properly
- Press the test button to end the deployment
- Remove old memory card
- Remove old film
- Camera Installed (Complete Steps 5-9)
- Verify system settings
- Install new film
- Install new memory card
- Press the test button to start a new deployment
- Verify the system is functioning properly

End Camera Service Time: 7:02

I attest that the above is true and correct to the best of my knowledge.

Technician Name: Edward Stevens
Signature: Edward B. Stevens



Calibration Report

Customer: SACRAMENTO COUNTY SHERIFF DE Acct#: 12712
 Sacramento, CA, 95826

21331 Adamson Drive, Grass Valley, CA 95948
 Ph. (530) 268-1860 Fax (530) 268-1203

Instrument: AI3646 RED LIGHT CAMERA

Mfg: GATSO	Model: GTC-70191	Serial #: N/A
Size: N/A	Resultn:	Report Date: 033105
Job Number: G40153	P.O.: ca80543412	Report #: 329373
Cust Ctr: 4067	Dept:	Location:

Work Performed: Inspected and calibrated.

Page 1 of 1

Parts Replaced: None

Received Condition: In tolerance

Returned Condition: In tolerance

Function Tested	Readings Before	Readings After	Tolerance
Line Voltage:	90.04 Volts		
Frequency #1: 20 MHz	19,999,592 Hz		+/- 1000Hz
Frequency #2: 1.8431995 MHz	1,843,197.3 Hz		+/- 9.5Hz
CAL #1: 400 Hz	400.00 Hz		+/- .04Hz
CAL #2: 2,500,000 Hz	2,499,950 Hz		+/- 250Hz
Line Voltage:	129.92 Volts		
Frequency #1: 20 MHz	19,999,587 Hz		+/- 1000Hz
Frequency #2: 1.8431995 MHz	1,843,196.7 Hz		+/- 9.5Hz
CAL #1: 400 Hz	400.00 Hz		+/- .04Hz
CAL #2: 2,500,000 Hz	2,499,949 Hz		+/- 250Hz

Std Ctr #	Standards Used	Due Date	Traceability Ref	Model
H1739	COURTIER	020506	1-91256408-1	5345A
J2685	MULTIMETER	071505	1-91256408-1	3458A
G0830	OSCILLOSCOPE	011506	1-91256408-1	7934

Environmental: 70 DEGP/40% HUM

Test Date: 033105

Uncertainty: 1.5 X 10E-8

Cycle: 6

Cal Procedure: MPG

Due Date: 093005

Technician: ROBERT MEANS

Quality Approval: _____

Uncertainties have been estimated at a 95 percent confidence level (k=2). All calibration performed conform to ANSI/NCSL Z540, ISO 17025:1999, ISO 9001:2000, MPC Quality Manual Rev3, Calibration System Rev1, and customer requirements. 00000003
 All standards used are either traceable to the National Institute of Standards and Technology or have intrinsic accuracy. All services performed have used proper manufacturer and industrial service techniques and are warranted for no less than (30) days. This report may not be reproduced in part without written permission of Micro Precision's Quality Assurance Manager.

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II. The Red Light Camera Daily Maintenance Logs Do Not Explain How the Technician "Verified the System was Functioning Properly" Nor do the Logs Offer Evidence that they Were Made At or Near the Time of the Act, Condition, or Event, Therefore The Maintenance Logs Were Inadmissible as They Do Not Meet the Foundational Requirements of Ca. Evidence Code § 1280	
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STATUTES

- Vehicle Code § 21453 (c)
- Evidence Code § 352
- Evidence Code § 353 (b)
- Evidence Code § 520
- Evidence Code § 607
- Evidence Code: § 1280
- Evidence Code: § 1553
- Code of Civil Procedure § 1021.5

STATEMENT OF THE CASE

STATEMENT OF THE CASE

This is a Red Light Camera Case. [REDACTED] Moore, the Defendant/Appellant (hereafter, Appellant), respectfully seeks Appellate review and reversal of the Judgment holding her in violation of California.

Vehicle Code § 21453(c). The Trial Court allowed evidence that was inadmissible under the California Evidence Codes § 1553;

("If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.")

and Officer Marsac on behalf of the People (hereafter Officer Marsac and/or the People), failed to meet their burden of proof "beyond reasonable doubt" as required under California Evidence Code § 607;

When a presumption affecting the burden of proof operates in a criminal action to establish presumptively any fact that is essential to the defendant's guilt, the presumption operates only if the facts that give rise to the presumption have been found or otherwise established beyond a reasonable doubt and, in such case, the defendant need only raise a reasonable doubt as to the existence of the presumed fact.

Appellant incorporates by reference Appellant's Proposed Statement and the Engrossed Settled Statement on Appeal, which was required prior to submission of this appeal. (Attached hereto as Exhibit A)

STATEMENT OF FACTS

On the evening of August 14th, 2005, at approximately 6:27 p.m., in Sacramento County, California, Appellant made a left turn from northbound Watt Avenue onto westbound Fair Oaks Boulevard. A red light camera, location code 4025, located at the intersection automatically photographed Appellant for allegedly violating § 21453(c) of the California Vehicle Code; *"A driver facing a steady red arrow signal shall not enter the Intersection."*

After reviewing the red light camera photographs, Officer D. Wagner of the California Highway Patrol Automated Enforcement Division issued a citation via First Class U.S. Mail on August 24th, 2005, to the Appellant, citing violation of § 21453(c) of the California Vehicle Code. The citation issued, number 0038070CA, contained reprints of four small black & white photographs. Attached as hereto Exhibit B. At trial in this matter, color photographs were admitted on behalf of the people.

On August 31st, 2005, the Carol Miller Justice Center issued a letter to Appellant via First Class U.S. mail indicating the assigned court date for this citation. As ordered, Appellant timely appeared at court, on September 13th, 2005, and was granted an extension to conduct discovery. Appellant timely appeared for court on October 11th, 2005 and entered a plea of, "Not Guilty."

Trial commenced on November 18th, 2005, at 10:00am, in Department 83 of the Carol Miller Justice Center, Superior Court of California, County of Sacramento.

Appellant appeared in pro per. Officer D. Wagner, the issuing officer and who executed the citation, did not appear. Officer Marsac of the

California Highway Patrol Automated Enforcement Division appeared on behalf of The People. Temporary Judge Debra Shulte presided.

Judge Shulte stated; "*It's \$361. I don't have any discretion, and - of when the violation occurred.*" (Trial Transcript (hereafter, TT) at 15:1-3). The court ruled that Appellant was guilty and imposed a fine of \$361.00 plus an additional \$36 fee, total of \$396.00.

SUMMARY OF ARGUMENT

Appellant Raises The Following Issue on Appeal:

I.

Appellant objected to the photographic evidence as hearsay. As the photographs generated by the system do not show the red signal light, the system must be proven reliable in order for the People to meet their burden of proof. The photographic evidence does not meet the foundational requirements of California Evidence Code § 1553;

A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

The system appears to involve technology that has not been established as reliable in any published cases. *See, Cf. People v. MacLaird* (1968 264 Cal.App.2d 97Z (establishing radar as accurate)). The trial court ruled that

the photo evidence was admissible based on the court asking Officer Marsac if it was necessary to show the red light signal in the photograph and Officer Marsac stated, "*It is not necessary to have the red light present in the photograph*". See (TT 5:26-27)

II.

Appellant questioned the court as to the accuracy of the maintenance logs as they do not explain how the technician "verified the system was functioning properly" and how they were certain that the camera is timed precisely to the red light signal. When Appellant asked what exact steps are taken, Officer Marsac stated, "*Basically it's just a visual they are just looking at it to see it is functioning properly*". See (TT 11:10-11). Furthermore, there was not any evidence that the logs were made at or near the time of the act, condition, or event and the logs do not meet the foundational requirements of Evidence Code § 1280:

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies:

- (a) The writing was made by and within the scope of duty of a public employee.
- (b) The writing was made at or near the time of the act, condition, or event.
- (c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

III.

Appellant again, raised question as to the accuracy of the camera at the time of the alleged violation, based on the calibration report, the camera had not been calibrated for over five months and according to Officer

Marsac, they calibrate the camera every 6 months. When Appellant questioned officer Marsac about the camera's calibration report and the statement shown at the bottom; *"It doesn't show the readings after the camera was calibrated, and at the bottom, you notice it says that it is warranted for no less than 30 days, and I would like that to be explained"*, See (TT 8:16-19). Officer Marsac stated *"I don't know what that statement means to be honest with you"*. See (TT 9:3-4). Officer Marsac also stated; *"We calibrate them once every six months, so it was probably due for calibration"*. See (TT 9:1-3). The Court stated; *"Well here is the problem with your argument: Number 1: you're not competent to tell me what that document means - nor do you have anybody here whose competent to tell me what that document means."* See (TT 9:16-22). Although the officer stated it was probably due for calibration, the Court did not take it into consideration even though it raises reasonable doubt to the accuracy of the red light camera.

IV.

The Court allowed, and accepted, inadmissible testimony (or himself testified as to matters of which he had not personal knowledge) and allowed, if not promoted, misconduct on the part of the testifying officer, to the detriment of the defendant. See *People v. Marcroft* (1992) 6 Cal.App.4th Supp. 1, 8 Cal.Rptr.2d 544 - (*"Whether or not the People provide a prosecuting attorney, the citing officer who testifies as to the circumstances of the citation is a witness, no more, no less"*)).

V.

Appellant was charged with an infraction. In this case, the Trial Court interposed objections and made statements from the Bench inconsistent with due process. The California Penal Code states; *"All*

provisions of law relating to misdemeanors shall apply to infractions, except for jury trials and appointment of defense counsel, which are not available for infraction defendants. Further, the Penal Code provides that a defendant in a criminal action is presumed to be innocent until the contrary is proved beyond a reasonable doubt"

ARGUMENT

I. The Red Light Camera Photographs Should have been Ruled "Inadmissible" as Hearsay Evidence. The Photographs Generated by the System do not Show the Red Light Signal and therefore Must be Proven Reliable in Order for the People to have Meet Their Burden of Proof Beyond A Reasonable Doubt:

Officer Joe Marsac, testifying on behalf of the People presented three enlarged colored photographs, admitted as People's exhibit 1, 2, and 3 (a copy of the black and white photographs Appellant received with the citation is attached hereto as Exhibit B) Appellant objected to the admission of the photographs as "Hearsay" evidence based on the fact that the red light signal was not depicted in any of the photographs, nor was there a witness present at the time of the violation.

Evidence Code § 1553 requires;

"A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence.

If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is

an accurate representation of the existence and content of the images that it purports to represent".

The Trial Court stated that the second reason to Appellant's objection to the photograph evidence regarding a witness not being present at the time of the alleged violation was overruled, without explanation.

As to the first reason with regard to the red light signal not being shown in the pictures, the Trial Court questioned Officer Marsac "If it was necessary?"

Officer Marsac: "It's not necessary to have the red light present in the photograph. It's proven"

The Appellate: Why would it not be necessary?

Officer Marsac: Well, based on the technology and the fact that the courts have deemed the technology valid, and I have maintenance that show the system was working properly.

The Court: Can I see the photographs and the - - is the reason that the red light's not showing because of the box that's dropped down in front of those photographs?

Officer Marsac: Yeah. There's - -

The Court: Okay

Officer Marsac; - - there's the data box indicating the amount of time that the light was red, although you can't see -- physically see it, but there is - -

The Court: Um-hmm.

Officer Marsac: - - there is something on there indicating the light is red.

The Court: Oh. So your objection is that because there's not a rear photograph showing the light red, that this is no good.

Okay. That objection is overruled.

See (RT 5:14 - 6:21), Attached hereto as Exhibit C.

The Trial Court overruled, See (TT 6:21), Appellant's objection and admitted People's exhibits 1, 2, 3.

Appellant respectfully requests the Appellate Court to consider the following: Officer Marsac did not provide any evidence to support the accuracy of the purported image(s) prior to the Court's overruling Appellant's objection. The Court based the admissibility of the photographic evidence based on Officer Marsac's statement, "*it is not necessary to have the red light present in the photograph. See (TT 5:26-27), and; "there's the data box indicating the amount of time the light was red, although you can't see - - physically see it, but there is something there indicating the light was red."* See (TT 6:12-17). The system appears to involve technology that has not been established as reliable in any published cases. See *Cf. People v. MacLaird* (1968 264 Cl.App.2d 972 (establishing radar as accurate)). Appellate alleges the People did not meet the foundational requirements of California Evidence Code § 1553;

"If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent, and therefore the red light camera photographs should have been ruled inadmissible."

Emphasts added.

II. The Red Light Camera Daily Maintenance Logs Do Not Explain How the Technician "Verified the System was Functioning Properly" Nor do the Logs Offer Evidence that they Were Made At or Near the Time of the Act, Condition, or Event, Therefore The Maintenance Logs Were Inadmissible as They Do Not Meet the Foundational Requirements of Ca. Evidence Code § 1280

Officer Marsac presented two red light camera daily maintenance logs as People's exhibit 4 - daily maintenance log dated, Friday, August 12, 2005 and People's exhibit 5 - daily maintenance log dated, Monday, August 15, 2005. Attached hereto as Exhibit D. Appellant questioned the Court with regard to the accuracy of the Daily Maintenance Logs. If the logs were properly admitted, they only show that a technician spent six minutes on August 12, 2005 and five minutes on August 15th, 2005, "checking" the system. During the five-six minutes, the technician recorded the "Condition" of lanes, pole/cabinet and camera, changed the film, changed the memory card, and verified the settings. Although the technician checked the box for "verify the system is functioning properly," there is no explanation as to what the technician did to verify that the system functioned properly or how he knew the camera would not take a picture of a driver unless the light was red. Again, Appellant refers to the Ruling of the California Appellate Courts. Opinion; the system appears to involve technology that has not been established as reliable in any published cases. See, *Cf. People v. MacLaird* (1968 264 Cal.App.2d 972 (establishing radar as accurate.))

Appellant questioned Officer Marsac with regard to what steps are taken when the technician "verifies the system is function properly"? Officer Marsac stated, "*It's basically a visual. When - - once they open up the box that the camera's in, that the camera is actually on and it's detecting vehicles traveling across the loops, which they are able to determine that by the illumination of the lights that are on the camera.*"

See (TT 10:28 - 12:4). Attached hereto as Exhibit E.

Appellant further questioned Officer Marsac how the technician is positive that it is timed precisely with the red light signal, Officer Marsac stated; *"So basically it is just a visual - - they're just looking at it to see that it's functioning properly still."*

See (TT 12:5 - 14:15). Attached hereto as Exhibit E.

III. The Red Light Camera's Calibration Record and the Testimony by Officer Marsac When Questioned, Raised Reasonable Doubt as to the Accuracy of the Red Light Camera

Appellant questioned the accuracy of the camera at the time of the alleged violation based on the calibration report that obtained during discovery from Officer Marsac, at the Sacramento Red Light Camera Bureau Department. Upon reviewing the calibration report, dated March 31, 2005, for the camera in question, Appellant noticed that the camera had not been calibrated for 5 ¼ months. Considering, Appellant was charged with allegedly running a red light by a mere 6/10th of a second, Appellate was concerned with the accuracy of the camera.

When Appellant questioned officer Marsac about the camera's calibration report only listing the camera's readings "before" the camera was calibrated but failing to indicate the readings "after" the camera was calibrated as well as what the statement meant at the bottom of the calibration report; *"Calibration techniques are warranted for no less than 30 days."* Officer Marsac stated; *"I don't know what that statement means to be honest with you. It looks like it's something that Micro Precision, which is the company, puts on there about their techniques, and I'm not quite sure what it means. I don't know"* See (TT 8:16 - 9:15), Attached hereto as Exhibit F.

When Appellant raised the issue of the camera having not been calibrated for over five months when the violation allegedly occurred, Officer Marsac stated; "*We calibrate them once every six months so it was probably due for calibration*". See (TT 8:20 - 9:3), Attached hereto as Exhibit F.

Although, Officer Marsac admitted the camera was probably due for calibration, which clearly raises reasonable doubt, the Trial Court downplayed Officer Marsac's statement and in turn the Court stated; "*Well here's the problem with your argument, Number 1, you're not competent to tell me what that document means nor do you have anyone here who is competent to tell me what that document means*". See (TT 9:16-19). Attached hereto as Exhibit F.

See Evidence Code: § 520:

The party claiming that a person is guilty of crime or wrongdoing has the burden of proof on that issue.

IV. The Court Allowed Inadmissible Testimony. Her Honor Offered Personal Testimony About Matters Where She Had No Personal Knowledge, Or Her Honor Testified As To Matters Of Which She Had Not Personal Knowledge.

Appellant timely objected to the admissibility of the photographic evidence offered by the People on the grounds that the traffic signal was not depicted in any of the photographs. In overruling Appellant's objection the Court asked Officer Marsac if it [red light signal] needed to be shown? Officer Marsac stated; "*It is not necessary to have the red light present in the photograph.*" See (TT 5:26-27), Attached hereto as Exhibit C. Officer Marsac was not an appropriate source of information regarding whether the law requires photographic evidence of the traffic signal. The opinion of the testifying officer should have been excluded. See *People v. Marcroft* (1992) 6 Cal.App.4th Supp. 1, 8 Cal.Rptr.2d 544 - "*Whether or not the People provide a prosecuting attorney, the citing officer who*

testifies as to the circumstances of the citation is a witness, no more, no less").

V. Appellant Was Charged With An Infraction. In This Case, The Trial Court Made Statements From The Bench Inconsistent With Due Process.

The California Penal Code states;

"All provisions of law relating to misdemeanors shall apply to infractions, except for jury trials and appointment of defense counsel, which are not available for infraction defendants. Further, the Penal Code provides that a defendant in a criminal action is presumed to be innocent until the contrary is proved beyond a reasonable doubt"

Judge Debra Schulte on behalf of the Court, continually aided Officer Marsac in his testimony and in presenting the foundation of the People's case against the Appellant. Judge Schulte's behavior was biased and wrongly shifted the burden of proof to Appellant.

Specifically, Appellant objected to the admission of the red light photographic evidence. The Courts inappropriately suggested reasons as to why the red light signal was not shown in the photographs, which Officer Marsac had not even previously mentioned as being a possibility;

THE COURT:

Can I see the photographs and the -- is the reason the red light's not showing because of the box that's dropped down in front of those photographs?

OFFICER MARSAC:

Yeah. There's --

See (TT 6:7-11), Attached hereto as Exhibit C.

When Appellant was questioned Officer Marsac with regards to the warranty states at the bottom of Micro Precision's calibration report, the Court made a statement as to the red light camera not needing to be calibrated every 30 days, even though the Court is not an expert in that field and therefore is not qualified to make that assumption.

THE COURT: Just because they didn't calibrate it every 30 days, doesn't mean that it needed calibration every 30 days.

See (TT 10:5-8), Attached hereto as Exhibit E.

During Officer Marsac's testimony as to the steps taken by the technician during the daily maintenance and how he verified the system was functioning properly, the Court again, suggested how the system is *infallible*, thus, aiding in Officer Marsac's explanation to the Appellant;

THE COURT: Is it really an electronic system? If the wires aren't connected, there wouldn't be any recordation of -- of the -- of -- that the system is operating the way it's supposed to be?

OFFICER MARSAC: I'm sorry. I didn't really understand the question.

THE COURT: If it's an electronic and wires are moving back and forth between the cameras and the system, then if there's a disconnect between the message on the wires, it wouldn't register.

OFFICER MARSAC: Exactly.

THE COURT: Correct. So if it's registering, it's reasonable --

OFFICER MARSAC: It's working.

THE COURT: For the technicians to assume that it's working properly.

OFFICER MARSAC: Right.

THE COURT: Okay. And you have your red - - you you're your numbers up here, that also indicate - - that establish that not only it's working, it's working properly.

OFFICER MARSAC: Exactly. Those are the numbers I see on those boxes all the time.

THE COURT: It's recording the time that the light was red. It's recording the yellow light, the length of the yellow light. It's recording - - it's - - it's determining and calculating a speed of the vehicle based on the difference between the first camera light - - photograph and the second camera photograph?

OFFICER MARSAC: You know - - and - - and - -

THE COURT: So it's doing all of these things that it's supposed to do

See (RT 12:27-14:2). Attached hereto as Exhibit E.

The Court's conduct in this trial was improper.

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CONCLUSION

Appellant does support the use of red light cameras so long as they are used in an unbiased manner and provided that proof of a violation has occurred by including the traffic signal in the photographs.

The issue here regarding the admission of hearsay evidence is not trivial. After reviewing the testimony from the officer and the lack of evidence and foundational requirements the People presented, Appellant provided a substantial amount of reasonable doubt for the alleged violation of § 21453(c) of the California Vehicle Code. Without having the traffic signal shown in any of the photos, it is impossible for the People to prove the traffic light was in fact red and not yellow at the time Appellant entered into the intersection. Furthermore, the People were not able to prove that the accuracy of the camera system, which consists of several components, is infallible, which raises reasonable doubt. Nor did the People present the foundational requirements for the admission of the photographic evidence against Appellant and hearsay evidence.

Based on all of the foregoing, Appellant respectfully asks this Court to reverse the Judgment of the Trial Court and order that fee in the amount of \$391.00 be refunded to the Appellant.

Dated this 27th day of July, 2006.

Respectfully submitted,



Pro Per / Appellant