No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff & Respondent,

vs.

CARMEN GOLDSMITH
Defendant & Appellant.

After Decision by Court of Appeal, Second District, Div. Three
Appeal Transferred from Appellate Division of Los Angeles Superior Court
Appeal No. B231678; App. Div. No. BR048189; Trial Court No. 102693IN
Hon. John Johnson, Commissioner

PETITION FOR REVIEW

Robert Cooper (SBN 209641)
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
555 South Flower Street, 29th Floor
Los Angeles, California 90071
Tel: (213) 443-5100
Fax: (213) 443-5101
Robert.Cooper@wilsonelser.com

Pro Bono Counsel for Petitioner
CARMEN GOLDSMITH

John J. Jackman (SBN 230169)
LAW OFFICES OF JOHN J. JACKMAN
11949 Jefferson Boulevard, Suite 104
Culver City, California 90230
Tel: (818) 268-8243
Fax: (661) 288-1729
johnjay@jackmanlawgroup.com

Co-Counsel for Petitioner
CARMEN GOLDSMITH

No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff & Respondent,

vs.

CARMEN GOLDSMITH
Defendant & Appellant.

After Decision by Court of Appeal, Second District, Div. Three
Appeal Transferred from Appellate Division of Los Angeles Superior Court
Appeal No. B231678; App. Div. No. BR048189; Trial Court No. 102693IN
Hon. John Johnson, Commissioner

PETITION FOR REVIEW

Robert Cooper (SBN 209641)
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
555 South Flower Street, 29th Floor
Los Angeles, California 90071
Tel: (213) 443-5100
Fax: (213) 443-5101
Robert.Cooper@wilsonelser.com

Pro Bono Counsel for Petitioner
CARMEN GOLDSMITH

John J. Jackman (SBN 230169)
LAW OFFICES OF JOHN J. JACKMAN
11949 Jefferson Boulevard, Suite 104
Culver City, California 90230
Tel: (818) 268-8243
Fax: (661) 288-1729
johnjay@jackmanlawgroup.com

Co-Counsel for Petitioner
CARMEN GOLDSMITH

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Rules

Other Authorities

ISSUE PRESENTED

Whether red light camera photos are admissible in criminal proceedings in traffic courts despite the absence of any testimony whatsoever by the private contractor paid to generate/create those photos as the sole evidence used to convict drivers?

INTRODUCTION

Having been convicted of violating the red light camera statute based on photos prepared by a private contractor that was hired by the City of Inglewood to photograph motorists at intersections, appellant Carmen Goldsmith initially appealed her conviction to the appellate division of the superior court. (Typed Opn. 4.) The Court of Appeal (Second District, Division Three) transferred the case to itself and upheld Goldsmith's conviction by rejecting Goldsmith's challenge to the admission of the red light camera photos on evidentiary grounds. (*Id.* at 5-12.) Specifically, Goldsmith argued that the prosecution was required to authenticate the photos by presenting testimony from the private contractor that was hired to create those photos – the sole evidence used at trial to prove the allegations against Goldsmith – instead of relying on the testimony of a surrogate trial witness – a police "investigator" that, by his own admission, had no expertise in operating the red light camera system. (RT 5:22; RT 6:27-7:2.)

Rejecting Goldsmith's arguments despite a recent published case adopting the identical arguments raised by Goldsmith, the Court of Appeal practically invited this Court to grant review by expressly creating a conflict on this critical issue of widespread interest. [1]

---

1 No petition for rehearing has been filed in this case. (Cal. Rules of Court, rule 8.504(b)(3).)

REASONS WHY REVIEW SHOULD BE GRANTED

Goldsmith's conviction for violating the red light camera statute, an infraction, has arguably broken the *Guinness World of Records* in terms of the amount of attention received by the bar and the bench in any given case arising from traffic courts. In a published opinion, Division Three expressly disagreed with another decision arising from the same district (Division Seven) that was issued only a month earlier on the identical issue: i.e., whether the prosecution must present live testimony by the private contractor that is paid by the prosecuting agency to generate red light camera photos in order for the prosecution to convict drivers for running a red light based on such photos. (See Typed Opn. 11 ["We Disagree With *People v. Borzakian*"].)

As a result of this unprecedented dichotomy, trial courts across the entire state are faced with two conflicting, published decisions, one of which is already final. The express disagreement by the appellate courts (notably two divisions within the same district) cries out for review, especially due to the ubiquitous nature of the red light cameras. According to the private contractor that installed the red light camera used in this case (Redflex Traffic Systems Inc.), "Redflex has been operating for over 20 years and has over 1,200 photo enforcement systems in more than 240 communities in 21 states." (Application by Redflex to file Amicus Brief in *Goldsmith*, p. 5). Redflex has also confirmed and advised this Court that its "systems are deployed in 67 California municipalities and/or counties." (Request for Depublication filed by Redflex in *People v. Khaled* (2010) 186 Cal.App.4th Supp. 1 (S183593), p. 1.) In addition to Redflex, various other red light camera contactors have set up red light camera systems for numerous, other prosecuting agencies throughout the state that are currently operational. The fact that multiple prosecuting agencies filed amicus briefs

on behalf of the prosecution in this case further confirms this point. The filing of several amicus briefs on Goldsmith's behalf also illustrates the significance of the issues raised in this case. In fact, based on our research, we have not been able to locate any other infraction case in the history of this state that generated so many amicus briefs on both sides over a $436 citation!

As reported by a retired judge, prosecuting agencies are issuing "more traffic citations so they can generate more revenue to counteract governmental budget deficits." (Gray, *The Corrupting of Traffic Citations*, L.A. Daily J. (October 27, 2010).) Since "[m]ost red-light tickets range between $420 and $480" (DeBenedictis, *Red Light Cameras Run Into Problems*, L.A. Daily J. (June 11, 2010)), the vast majority of defendants do not have the resources or the incentive to spend thousands of dollars in attorneys' fees to challenge a $480 citation. Unless review is granted, the split in authority, as a practical matter, would evade appellate review, especially due to the fact that the published decision by Division Seven (the one conflicting with the decision challenged in this petition) is now final.

When there are conflicting court of appeal decisions on point, the trial court can choose to follow either one of them; it can even adopt the position taken by another district, notwithstanding a conflicting decision emanating from the trial court's own district. (See, e.g., *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456 ["In such a situation, the court exercising inferior jurisdiction can and must make a choice between the conflicting decisions"].) "As a practical matter, a superior court ordinarily will follow an appellate opinion emanating from its own district even though it is not bound to do so." (*McCallum v. McCallum* (1987) 190 Cal.App.3d 308, 315, fn. 4.) In this case, however, trial courts do not have this "luxury" because the two conflicting decisions were published by the same appellate district. This additional factor further illustrates the urgent

need for review, especially given that the issues raised here affect literally millions of drivers across the entire state.

Under the current system, a defendant that contests his ticket by simply challenging the admission of the red light camera photos will prevail if the trial judge follows Division Seven's decision. (See *People v. Borzakian* (2012) 203 Cal.App.4th 525 [finding Redflex's photos to be inadmissible hearsay without live testimony by Redflex employees].) On the other hand, a motorist who was driving in a lane adjacent to the defendant in the preceding scenario who is accused of running the same red light at the same time will be found guilty if he is assigned to a different judge—one that elects to follow Division Three's decision in this case. As a result, review is absolutely critical here in order to have a functional traffic court system in this state.

Finally, the unprecedented amount of press coverage received in this traffic case further underscores the need for review. (See, e.g., Adlin, *State Appeals Courts Torn on Traffic Cameras*, L.A. Daily J. (March 5, 2012) [discussing split of authority between *Goldsmith* and *Borzakian*]; *Court of Appeal Upholds Conviction in Red Light Camera Case*, Metropolitan News-Enterprise (March 2, 2012) [same]; *C.A. Publishes Ruling in Red Light Camera Case*, Metropolitan News-Enterprise (February 13, 2012) [discussing *Borzakian* and *Goldsmith* before the latter was decided].)

In sum, if this case does not qualify for review, no case does.

LEGAL DISCUSSION

I. BY GRANTING REVIEW TO RESOLVE THE EXPRESS CONFLICT CREATED BY THE *GOLDSMITH* DECISION, THIS COURT SHOULD SETTLE IMPORTANT QUESTIONS OF LAW THAT AFFECT LITERALLY MILLIONS OF MOTORISTS.

A. By Expressly Rejecting the *Borzakian* Decision Based on An Obsolete Analysis, the Lower Court Created a Conflict, Thus Causing Significant Confusion in the Administration of Traffic Cases Across the Entire State.

"We Disagree with *People v. Borzakian.*" (Typed Opn., 11.) With those five words, Division Three created an express conflict with *Borzakian* – a published decision that is now final – on the most fundamental issue in such red light camera cases: the admissibility of the photos (i.e., the entire source of evidence used to convict motorists in traffic courts).

Seeking to justify the creation of this conflict, Division Three explained that the *Borzakian* decision "did not cite the rule ... that testimony of the accuracy, maintenance, and reliability of computer records is not required as a prerequisite to their admission[.]" (Typed Opn., 11.) Specifically, the *Goldsmith* court referred to this Court's prior decision in *People v. Martinez* (2000) 22 Cal.4th 106, in order to support its holding that the photos and the data created by Redflex's computer system are admissible. (Typed Opn. 7-8, 11.) In *Martinez*, this Court quoted with approval an intermediate appellate court's statement that "testimony on the acceptability, accuracy, maintenance, and reliability of ... computer hardware and software" is not required before admitting computer print-outs into evidence. (*Martinez, supra,* 22 Cal.4th at 132 [quoting *People v. Lugashi* (1988) 205 Cal.App. 3d 632, 642].)

But since *Lugashi* was decided nearly a quarter of a century ago, there has been a significant transformation in Sixth Amendment

jurisprudence. As discussed below, the Supreme Court's decision in *Crawford v. Washington* (2004) 541 U.S. 36 effected a sea change in the meaning of a criminal defendant's Sixth Amendment right to "confront[] ... the witnesses against him." (*Id.* at 43.) Under *Crawford* and its progeny, an out-of-court testimonial statement is inadmissible – *irrespective of its reliability* – if the declarant is not subject to cross-examination. By applying this new test for evaluating Sixth Amendment challenges, *Crawford* discarded decades-old precedent that had pegged admissibility of out-of-court statements to their reliability. (See *Ohio v. Roberts* (1980) 448 U.S. 56, 65-66.) As a result, Division Three's basis for rejecting the *Borzakian* decision is completely flawed because the *Lugashi* "rule" – though applied by this Court in *Martinez* during the pre-*Crawford* era – was based on the outdated analysis under the old *Roberts* regime for evaluating admission of evidence.

Post-*Crawford* decisions by the Supreme Court illustrate this point. (See *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305, 328 [reversing conviction based on crime lab analysts' failure to testify at trial where prosecution had relied on their affidavits; noting that while documents kept in the regular course of business may be admitted at trial despite their hearsay status, "that is not the case if the regularly conducted business activity is the production of evidence for use at trial"]; see also *Bullcoming v. New Mexico* (2011) 180 L. Ed.2d 610, 623 [holding that a "document created solely for an evidentiary purpose ... made in aid of a police investigation ranks as testimonial"; reversing conviction because the prosecution had relied on a lab report without presenting the witness that had prepared the report to establish the defendant's blood alcohol

content].)[2] In sum, contrary to the *Goldsmith* opinion (which completely ignores these key decisions), *Crawford, Melendez-Diaz* and *Bullcoming* require the prosecution to present trial testimony by the employees of the private contractor paid to generate red light camera photos. [3]

Requiring live testimony of Redflex officials is particularly important because Redflex was previously caught falsifying court documents that are used to obtain speeding convictions based on Redflex's speed cameras in other cases. (See *Arizona Official Confirms Redflex Falsified Speed Camera Documents*, July 9, 2008 <http://www.thenewspaper.com/news/24/2464.asp> [as of April 4, 2012].) Under the *Goldsmith* approach, however, it is virtually impossible for criminal defendants to question the photos generated by such a questionable company at trial because Redflex officials are not required to testify; the prosecution can simply use a surrogate witness – a bureaucrat employed by the prosecuting agency to provide a general discussion of the photos – in order to obtain convictions one after another, essentially using the traffic court in an assembly-line-form as illustrated in this case. (RT 1: 20-23; RT 5: 5-6.)

---

2 *Bullcoming* is also significant because it precludes the practice upheld by this Court in *People v. Geier* (2007) 41 Cal.4th 555, 596-607 in terms of using the live testimony of surrogate witnesses to introduce lab reports at trial.

3 In *Bullcoming*, the forensic report in question was entered into evidence during the defendant's trial. By contrast, in *Williams v. Illinois* (Ill. 2010) 939 N.E.2d 268, cert. granted June 28, 2011, __U.S.__ [2011 U.S. LEXIS 5008]), the U.S. Supreme Court will decide whether the Sixth Amendment is violated where a lab report is not entered into evidence but the prosecution's expert witness testifies about the results of the tests performed by the non-testifying analyst.

In sum, the *Goldsmith* court's reason for rejecting the *Borzakian* decision is simply flawed. By expressly creating a conflict on this critical issue, the *Goldsmith* opinion urgently requires review by this Court.

B. By Admitting the Red Light Camera Photos Without Requiring Live Testimony by Redflex's Employees, the *Goldsmith* Decision Completely Ignores Defendants' Constitutional Rights.

Because "the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense'" (*Holmes v. South Carolina* (2006) 547 U.S. 319, 324), the *Goldsmith* decision also raises serious due process concerns. The right "to confront and cross-examine witnesses" has "long been recognized as essential to due process." (*Chambers v. Mississippi* (1973) 410 U.S. 284, 294.) "The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." (*Id.*; see also *Crane v. Kentucky* (1986) 476 U.S. 683, 690 ["the Constitution guarantees criminal defendants a *meaningful* opportunity to present a complete defense") (emphasis added, internal citation and quotation marks omitted].)

As Justice Douglas emphasized, "[c]onfrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life." (*Peters v. Hobby* (1955) 349 U.S. 331, 351 [Douglas, J., concurring]; see also *Kirby v. United States* (1899) 174 U.S. 47, 56 [describing the right to confrontation of one's accuser as "essential for the due protection of life and liberty"].)

Ignoring these constitutional issues, the lower court's decision is based in part on the application of general statutory presumptions in terms of authentication and admission of the red light camera photos. (Typed Opn. 6-7.) But even if the California legislature were deemed to have

properly authorized the admission of red light camera photos in traffic trials (whether based on Evid. Code §§ 1552-1553 or otherwise) as suggested by the court (Typed Opn. 6-7), California law cannot preempt a defendant's constitutional right to confront her accuser under the Sixth Amendment. As a result, even if the legislature enacted a statute tomorrow specifically adopting the *Goldsmith* approach and rejecting the contrary *Borzakian* opinion, the due process clause of the federal constitution would still require the exclusion of such photos in the absence of live testimony by Redflex officials; "due process requires an opportunity to confront and cross-examine adverse witnesses." (*Goldberg v. Kelly* (1970) 397 U.S. 254, 269; accord, *McCarthy v. Mobile Cranes, Inc.* (1962) 199 Cal.App.2d 500, 506 ["An improper denial of the right of cross-examination constitutes a denial of due process"].)

Therefore, this Court should grant review to set aside the lower court's decision for this additional reason.

II. REVIEW IS ALSO NECESSARY AS A MATTER OF CONSTITUTIONAL LAW TO ENSURE EQUAL APPLICATION OF THE LAW AMONG SIMILARLY SITUATED DEFENDANTS.

The dichotomy discussed above raises additional constitutional issues based on the public's perception of partiality. "The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship." (*Mistretta v. United States* (1989) 488 U.S. 361, 407.) The Supreme Court has consistently "held that due process is denied by circumstances that create the likelihood or the *appearance* of bias." (*Peters v. Kiff* (1972) 407 U.S. 493, 502 [emphasis added].) The Court has emphasized that impartiality — "the lack of bias for or against either party to the proceeding" — is the essential attribute of the judicial process.

(*Republican Party of Minn. v. White* (2002) 536 U.S. 765, 775 [emphasis omitted].)

Impartiality "assures equal application of the law. That is, it guarantees a party that the judge who hears his case will apply the law to him in the same way he applies it to any other party." (*Id.* at 775-776; see also *id.* at 804 (Ginsburg, J., dissenting) [a "judiciary *** owing fidelity to no person or party, is a 'longstanding Anglo-American tradition,' an essential bulwark of constitutional government, a constant guardian of the rule of law. *** Without this, all the reservations of particular rights or privileges would amount to nothing"]; citation omitted.) By granting review, this Court can establish uniformity in terms of the application of the law in traffic courts in order to ensure equal application of the law in red light camera cases.

Reiterating this point in another traffic appeal, this Court has emphasized that "[i]t is essential that the public have absolute confidence in the integrity and impartiality of our system of criminal justice. This requires that public officials not only in fact properly discharge their responsibilities but also that such officials avoid, as much as possible, the *appearance* of impropriety." (*People v. Carlucci* (1979) 23 Cal.3d 249, 258 [quoting *People v. Rhodes* (1974) 12 Cal.3d 180, 185].) Traffic courts are "often the only contact citizens have with the court system. It is important that the proceedings appear to be fair and just." (*People v. Kriss* (1979) 96 Cal.App.3d 913, 921.) Similarly, the U.S. Supreme Court explained in *Mayer v. City of Chicago* (1971) 404 U.S. 189 that "[f]ew citizens ever have contact with the higher courts. In the main, it is the police and the lower court Bench and Bar that convey the essence of our democracy to the people. 'Justice, if it can be measured, must be measured by the experience the average citizen has with the police and the lower courts." (*Id.* at 197; internal citation omitted.)

Impartiality is critical not only for even-handed decision-making, but also to preserve respect for the judiciary. "The power and the prerogative of a court to [resolve disputes] rest, in the end, upon the respect accorded to its judgments. The citizen's respect for judgments depends in turn upon the issuing court's absolute probity. Judicial integrity is, in consequence, a state interest of the highest order." (*Republican Party, supra*, 536 U.S. at 793 [Kennedy, J., concurring].)

Empirical research confirms this conclusion. The perception of unfair or unequal treatment "is the single most important source of popular dissatisfaction with the American legal system." (Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC'Y REV. 513, 517 (2003).) "What matters to people is neutrality, absence of bias, honesty, evidence of efforts to be fair, politeness, and respect for the rights of individuals." (David B. Rottman, *Public Perceptions of the State Courts: A Primer* (Nat'l Ctr. for State Courts, Aug. 2000).) Given the public's distrust of the prosecuting agencies' use of traffic citations to fill their coffers in this economy, the need to restore the public's trust in the traffic court system is particularly important at this time. (See Ortiz, *Jump in Traffic Tickets Raises Questions*, L.A. Daily J. (October 15, 2010) [discussing statistical data provided by Judicial Council that validates the public's view that prosecuting agencies have engaged in such misconduct as evidenced by an artificial 46% recent increase in the number of citations issued].)

In sum, in order to ensure equal application of the law – i.e., the essence of impartiality – this Court should grant review in this case to resolve the express conflict between the two divisions of the same appellate court.

CONCLUSION

The petition should be granted.

Respectfully submitted,

DATED: April 5, 2012

LAW OFFICES OF JOHN J. JACKMAN

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

By _____
Robert Cooper
Attorneys for Defendant and Appellant
CARMEN GOLDSMITH

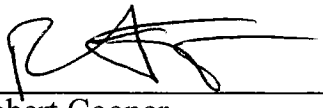
CERTIFICATE OF WORD COUNT

This document was generated by Microsoft Office, Word 2003. According to the word-counting feature in this program, the text of this document contains 3,282 words.

DATED: April 5, 2012

LAW OFFICES OF JOHN J. JACKMAN

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By 

Robert Cooper
Attorneys for Defendant and Appellant
CARMEN GOLDSMITH

EXHIBIT A

Filed 2/28/12; pub. order 3/1/12 (see end of opn.)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. CARMEN GOLDSMITH, Defendant and Appellant.	B231678 (Los Angeles County Super. Ct. No. 102693IN) (Appellate Div. No. BR048189)

APPEAL from a judgment of the Superior Court of Los Angeles County, John R. Johnson, Commissioner. Affirmed.

John J. Jackman for Defendant and Appellant.

Cal Saunders, City Attorney; Best Best & Krieger, Dean R. Derleth and John D. Higginbotham, for Plaintiff and Respondent.

INTRODUCTION

Carmen Goldsmith appeals from a judgment, entered following a court trial, finding Goldsmith guilty of violating Vehicle Code 21453, subdivision (a), by failing to stop at a red light at an intersection in the City of Inglewood.

Goldsmith challenges the admission into evidence of computer-generated photographs and a video of her traffic violation as unsupported by evidence that the computer operated properly. Testimony on the accuracy and reliability of computer hardware and software, however, is not required as a prerequisite to admission of computer records. There was no abuse of discretion in the trial court's admission of this evidence.

Goldsmith claims that the photographs and video are hearsay and prosecution did not establish that this evidence was admissible under the business records or public records exceptions to the hearsay rule. We find, however, that the photographs and video were not hearsay, the hearsay rule did not require their exclusion from evidence, and therefore no hearsay exception was necessary to admit this evidence.

Goldsmith also claims that the traffic signal's yellow light interval did not conform to the requirements of Vehicle Code section 21455.7. We conclude that substantial evidence supported the trial court's factual finding that the yellow light interval of the signal conformed to the statutory requirement. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

On March 13, 2009, a traffic notice to appear was issued to Carmen Goldsmith alleging that she violated Vehicle Code section 21453, subdivision (a)[1] by failing to stop

---

[1] Vehicle Code section 21453, subdivision states, in pertinent part: "(a) A driver facing a steady circular red signal alone shall stop at a marked limit line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection, and shall remain stopped until an indication to proceed is shown, except as provided in subdivision (b).

"(b) Except when a sign is in place prohibiting a turn, a driver, after stopping as required by subdivision (a), facing a steady circular red signal, may turn right, or turn left from a one-way street onto a one-way street. A driver making that turn shall yield the

at a red light at the intersection of Centinela Avenue and Beach Avenue in the City of Inglewood. In a court trial, the trial court admitted evidence from a computerized automated traffic enforcement system (ATES) and convicted Goldsmith of failing to stop at a red light.

The ATES at the intersection was implemented in September 2003. The police department operates the ATES, but Redflex Traffic Systems (Redflex) maintains the ATES.

Dean Young, an investigator with the Inglewood Police Department, testified at trial. Young was assigned to the Traffic Division, Red Light Camera Photo Enforcement, and had more than six years experience in that assignment. Young testified that he visually inspected the traffic signal on a monthly basis to ensure that the duration of its yellow light interval complied with minimum guidelines set by the Department of Transportation. Young conducted timing checks of the traffic signal's yellow light interval on February 16 and March 16, 2009. His timing checks showed averages of 4.11 seconds on February 16, 2009, and 4.03 seconds on March 16, 2009. These test results were above the 3.9 second minimum interval established by the California Department of Transportation for a 40miles-per-hour highway.

Young further testified as follows. The ATES is a computer-based digital imaging system which photographs drivers who enter the intersection after the traffic signal has turned red or who fail to stop for a red light before turning right. When its sensors detect a vehicle in the intersection in the red light phase, the ATES is programmed to obtain three digital photographs and a 12-second video. The three photographs are a pre-violation photograph showing the vehicle behind the limit line, a post-violation photograph showing the vehicle in the intersection, and a photograph of the vehicle's license plate. A data bar, which contains the date, time, location, and how long the light

---

right-of-way to pedestrians lawfully within an adjacent crosswalk and to any vehicle that has approached or is approaching so closely as to constitute an immediate hazard to the driver, and shall continue to yield the right-of-way to that vehicle until the driver can proceed with reasonable safety."

had been red when each photograph was taken, is printed on each photograph. The 12-second video shows the approach and progression of the vehicle through the intersection. Once triggered, the ATES operates independently and stores information on the hard disc of a computer at the scene. Redflex technicians retrieve that computerized information through an internet connection. A police officer reviews all photographs before a citation is printed or mailed.

The data bar printed on the photographs of Goldsmith's violation indicated that the signal light was in the red light phase for 0.27 seconds when the pre-violation photograph was taken. The post-violation photograph taken 0.66 seconds later showed Goldsmith in the intersection while the signal light was still in the red light phase.

The trial court found Goldsmith guilty of the violation and imposed a $436.00 fine. Goldsmith appealed to the Appellate Division of the Los Angeles County Superior Court. Its opinion, *People v. Goldsmith* (20011) 193 Cal.App.4th Supp. 1 (*Goldsmith*), disagreed with *People v. Khaled* (2010) 186 Cal.App.4th Supp. 1, and held that there was a presumption that the data and digital photographs captured by the ATES were accurate representations of the information and images, that Goldsmith failed to meet her burden of producing evidence casting doubt on the accuracy or reliability of the photographs, and therefore the photographs were presumed to be accurate and authenticated. The *Goldsmith* opinion also found that Investigator Young's testimony provided the foundation necessary to demonstrate that the photographs reliably portrayed data and images therein. *Goldsmith* further held that the hearsay rule did not render the ATES photographs inadmissible, and affirmed the trial court's finding that evidence of tests of the yellow light change interval at the intersection showed average yellow light intervals that exceeded the 3.9-second yellow light interval established by the California Department of Transportation for this intersection. *Goldsmith* also affirmed the trial court's factual finding that the photograph of the driver was Goldsmith.

On March 29, 2011, pursuant to California Rules of Court, rule 8.1002, this court ordered the case transferred to this court and subsequently set the matter for hearing.

ISSUES

Goldsmith claims on appeal that:

1. The trial court should have excluded the video, photographs, and data imprinted on the photographs because there was no evidence that the computer was operating properly;

2. The video, photographs, and data imprinted on photographs of Goldsmith's violation were hearsay, the prosecution did not establish the elements of the business records or public records exceptions to the hearsay rule in Evidence Code sections 1271 and 1280, and that neither exception applies to the video, photographs, and imprinted data; and

3. The traffic signal's yellow interval did not conform to the requirements of Vehicle Code section 21455.7.

DISCUSSION

1. *The Abuse of Discretion Standard of Review Applies to a Trial Court's Rulings on the Admissibility of Evidence*

An appellate court reviews a trial court's ruling on the admissibility of evidence for abuse of discretion. (*People v. Waidla* (2000) 22 Cal.4th 690, 717.) This standard applies to rulings on hearsay objections (*id.* at p. 725) and to rulings on objections to the authentication of and foundation for evidence (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 319; *People v. Smith* (2009) 179 Cal.App.4th 986, 1001). The test for whether an abuse of discretion has occurred is whether the trial court exceeded the bounds of reason, all of the circumstances before it being considered. An appellate court is not authorized to substitute its judgment for that of the trial judge. Absent a clear showing that its decision was arbitrary or irrational, a trial court should be presumed to have acted to achieve legitimate objectives, and its discretionary determinations ought not to be set aside on review. (*Ajaxo Inc. v. E*Trade Group, Inc.* (2005) 135 Cal.App.4th 21, 44-45.)

2. *Testimony On the Accuracy and Reliability of Computer Hardware and Software Is Not Required as a Prerequisite to Admission of Computer Records*

Goldsmith claims that the trial court should have excluded the video, photographs, and data imprinted on the photographs because there was no evidence presented to support a finding that the computer was operating properly. The data imprinted on the photographs includes the date, time, and location of the violation and how long the light had been red at the time each photograph was taken.

"Authentication of a writing is required before it may be received in evidence." (Evid. Code, § 1401, subd. (a).) A "writing" includes photographs, videos, and printouts of digitally generated computer records. (Evid. Code, § 250; *People v. Beckley* (2010) 185 Cal.App.4th 509, 514 [photographs]; *Ashford v. Culver City Unified Schools Dist.* (2005) 130 Cal.App.4th 344, 349, fn. 5 [videos], disapproved on unrelated ground, *Voices of Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 535; *Aguimatang v. California State Lottery* (1991) 234 Cal.App.3d 769, 797 [printouts of digitally generated computer records]). "Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law." (Evid. Code, § 1400.)

Evidence Code sections 1552, subdivision(a)[2] and 1553[3] establish a presumption that printed representations of computer information and of images stored on a video or

---

[2] Evidence Code section 1552, subdivision (a) states: "A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that 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 computer information or computer program 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 computer information or computer program that it purports to represent."

digital medium are accurate representations of the computer information and images they purport to represent. Thus the images and information (including the date, time, and location of the violation and how long the light had been red when each photograph was taken) imprinted on the photographs are presumed to accurately represent the digital data in the computer. Goldsmith produced no evidence that would support a finding of the nonexistence of this presumed fact. Therefore the trier of fact was required to assume the existence of the presumed fact. (Evid. Code, § 604.)

These presumptions, however, operate only to establish that a printed representation accurately reflects data in the computer. (*People v. Hawkins* (2002) 98 Cal.App.4th 1428, 1450(*Hawkins*).) With regard to the accuracy and reliability of that digital data in the computer itself (as distinct from printed representations of that digital data), the California Supreme Court has determined that the admission of computer records does not require foundational testimony showing their accuracy and reliability. The issue in *People v. Martinez* (2000) 22 Cal.4th 106 (*Martinez*) was whether a computerized record of criminal history information was admissible under the official records exception to the hearsay rule (Evid. Code, § 1280), and specifically whether the sources of information and method and time of preparation of such a computer record were such as to indicate its trustworthiness. (*Martinez,* at pp. 111-112, 119-120.) The California Supreme Court stated that "our courts have refused to require, as a prerequisite to admission of computer records, testimony on the 'acceptability, accuracy, maintenance, and reliability of . . . computer hardware and software.' " (*Id.* at p. 132.)

---

[3] Evidence Code section 1553 states: "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."

Moreover, where errors and mistakes occur, they could be developed on cross-examination and should not affect the admissibility of the computer record itself. (*Ibid.*)

Martinez relied on *People v. Lugashi* (1988) 205 Cal.App.3d 632 (*Lugashi*), which rejected a test proposed by a criminal defendant that would require the proponent of computer evidence to introduce testimony on the reliability and acceptability of hardware, software, and internal maintenance and accuracy checks as a prerequisite to admission of that computer data. *Lugashi* stated that other California courts, *People v. Cohen* (1976) 59 Cal.App.3d 241, 249 and *People v. Dorsey* (1974) 43 Cal.App.3d 953, 960-961, had previously rejected similar claims, as had a majority of other state courts[4] and some federal courts. (*Lugashi,* at pp. 638, 643-644.) *Lugashi* stated that the defendant's proposed test incorrectly presumed computer data to be unreliable and would require its proponent to disprove the possibility of error in order to meet the minimal showing required for admission of the evidence. (*Id.* at p. 640.) *Lugashi* particularly found this proposed presumption to be inapplicable where the records consisted of retrieval of computer-generated data rather than data stemming from manually input, human-generated data. (*Id.* at p. 642.) Following *Martinez* and *Lugashi*, we do not presume computer data to be unreliable, and do not require the proponent of such evidence to disprove the possibility of error to meet the minimal showing required for admission. (*Lugashi,* at p. 640.) Neither is the proponent of the computer records

---

[4] *Lugashi* cited numerous federal and state court decisions rejecting the defendant's proposed test. For example, *Hutchinson v. State* (Tex.App. 1982) 642 S.W.2d 537 held that a computer printout record verifying that missing gasoline was dispensed by use of a key card issued to the defendant was properly admitted into evidence with no showing that the computer was functioning properly on the date of the printout and that it had been tested and was working properly before that date. (*Id.* at p. 538.) *State v. Kane* (Wash.App. 1979) 594 P.2d 1357 held that admission of computerized bank records was proper even though the proponent did not supply technical information of the type of computer or program used. *State v. Veres* (Ariz.App. 1968) 436 P.2d 629 found no abuse of discretion in the admission of bank records of checks and deposits encoded by "automatic machine" where bank official in charge of operations and bank procedures testified that he did not know the mechanical operation aspects of the machine and his only knowledge was his access to the records. (*Id.* at p. 637.)

evidence required to produce testimony on the acceptability, accuracy, maintenance, and reliability of the computer hardware and software, especially where, as here, the computer data consists of retrieval of automatic inputs rather than computations based on data entered into the computer by human beings. (*Id.* at p. 642.)

People v. Nazary (2010) 191 Cal.App.4th 727 (*Nazary*) involved a similar issue to the one in this appeal. The defendant in *Nazary* was convicted of grand theft and embezzlement after it was discovered that cash recovered from gas station Pay Island Cashiers (PIC) was less than the computerized total, found on the PIC receipt, of cash which customers placed into the PIC machine. The issue in *Nazary* was the accuracy and reliability of the printed information on the PIC receipts. Relying on *Martinez, ante*, *Nazary* held that testimony on the acceptability, accuracy, maintenance, and reliability of computer hardware and software was not required for admission of computer records. (*Nazary,* at p. 755.) *Nazary* reiterated the statement in *Martinez* that where errors and mistakes occurred, they could be developed on cross-examination and should not affect the admissibility of the computer record itself. (*Nazary,* at p. 755.) In this case, Goldsmith did not develop those issues on cross-examination, and at no time "offered any relevant evidence regarding the reliability" of the Redflex ATES system. (*People v. Martinez, supra*, 22 Cal.4th at p. 133.) We conclude that there was no abuse of discretion in the trial court's admission of the computer-generated photographs, video, and data.

3. *The Photographs, Video, and Data Imprinted on Them Were Not Hearsay and Their Admission into Evidence Was Not an Abuse of Discretion*

Goldsmith further claims that the photographs, video, and data imprinted on them were hearsay, that the prosecution did not establish the elements of the business records exception in Evidence Code section 1271 or the public records exception in Evidence Code section 1280, and that neither exception applies. We disagree. Pursuant to *Hawkins* and *Nazary*, the photographs and video were not hearsay, and the hearsay rule did not require their exclusion from evidence. Consequently neither hearsay exception was necessary to admit the evidence.

a. *Because the Photographs and Video Were Not Hearsay, the Hearsay Rule Did Not Require Their Exclusion from Evidence*

" 'Hearsay evidence' is 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 stated." (Evid. Code, § 1200, subd. (a).) "The hearsay rule" states: "Except as provided by law, hearsay evidence is inadmissible." (*Id.*, subds. (b), (c).)

" 'Statement' means (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." (Evid. Code, § 225.) The video and photographs in the instant case are not "verbal" expression because they do not contain words.[5] Moreover, a "statement" is made by a "person," which Evidence Code section 175 defines as including "a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity[,]" but not including a computer. The Evidence Code does not contemplate that a machine can make a statement, and a printout of results of a computer's internal operations is not a "statement" constituting hearsay evidence. (*Hawkins, supra,* 98 Cal.App.4th at p. 1449.) The hearsay rule stems from the requirement that testimony shall be tested by cross-examination, which can best expose possible deficiencies, suppressions, sources of error, and untrustworthiness that may lie beneath a witness's bare, untested assertions; the hearsay rule should exclude testimony which cannot be tested by such cross-examination. It is not possible, however, to cross-examine computer-generated photographs or videos. (*Nazary, supra,* 191 Cal.App.4th at pp. 754-755.) As "demonstrative evidence," photographs and videos are not testimony subject to cross-examination, and are not hearsay. (*People v. Cooper* (2007) 148 Cal.App.4th 731, 746.) Thus the hearsay rule did not require their exclusion from evidence.

---

5 "Verbal" means: "of, relating to, or consisting of words;" "of, relating to, or involving words rather than meaning or substance;" "consisting of or using words only and not involving action;" "of or relating to facility in the use and comprehension of words." (Webster's 10th Collegiate Dictionary (1995), p. 1311.)

b. *Data Printed on Photographs by the Computer Was Not Hearsay, and the Hearsay Rule Did Not Require Exclusion of That Data*

The computer printed data on photographs depicting Goldsmith's violation which gave the date, time, and location of the photographs, and how long the light was red at the time the photographed image was taken. This information was generated by a machine, not a person. The printed data on the photographs was not subject to cross-examination. It was therefore not a statement constituting hearsay. (*Hawkins, supra*, 98 Cal.App.4th at p. 1449; *Nazary, supra*, 191 Cal.App.4th at pp. 754-755.) The trial court did not abuse its discretion in admitting this evidence.

4. *We Disagree With People v. Borzakian, and Disapprove People v. Khaled*

People v. Borzakian (2012) ___ Cal.App.4th ___ [2012 Cal.App. Lexis 127] held that because the prosecution provided no evidence of the mode of preparation of ATES maintenance logs or that the sources of information and method and time of preparation of maintenance logs and ATES photographs were such as to indicate trustworthiness, the trial court improperly admitted ATES photographs into evidence. However, the *Borzakian* opinion did not cite the rule in *Martinez, supra*, 22 Cal.4th at p. 132 and *Nazary, supra*, 191 Cal.App.4th at p. 755 that testimony of the accuracy, maintenance, and reliability of compute records is not required as a prerequisite to their admission, and did not agree that computer-generated photographs are not hearsay evidence (*Hawkins, supra,* 98 Cal.App.4th at p. 1449). We therefore disagree with *People v. Borzakian.*

In *People v. Khaled, supra*, 186 Cal.App.4th Supp. 1, the Appellate Division of Orange County Superior Court held that ATES computer photographs and a video of a traffic violation were inadmissible because the prosecution could not establish the time or method of retrieval, or that the photographs and video tape were reasonable representations of what they alleged to portray. (*Id.* at pp. 5-6.) This was erroneous because testimony of the accuracy, maintenance, and reliability of computer records is not required as a prerequisite to their admission. (*Martinez, supra*, 22 Cal.4th at p. 132; *Nazary, supra*, 191 Cal.App.4th at p. 755.) *Khaled* also found that computer photographs and a video of a traffic violation were hearsay, and that the business records and official

records exceptions to the hearsay rule did not apply (*People v. Khaled,* at pp. 7-8.) As we have stated, however, the photographs and video were not hearsay and their admission did not require a hearsay exception. (*Hawkins, supra*, 98 Cal.App.4th at p. 1449; *Nazary,* at pp. 754-755.) For these reasons we disapprove *People v. Khaled.*

5. *The Yellow Light Interval of the Traffic Signal at Centinela and Beach Avenues Conformed to the Requirements of Vehicle Code Section 21455.7*

Goldsmith claims that the traffic signal's yellow light interval did not conform to the requirements of Vehicle Code section 21455.7.

Vehicle Code section 21455.7 states:

"(a) At an intersection at which there is an automated enforcement system in operation, the minimum yellow light change interval shall be established in accordance with the Traffic Manual of the Department of Transportation.

"(b) For purposes of subdivision (a), the minimum yellow light change intervals relating to designated approach speeds provided in the Traffic Manual of the Department of Transportation are mandatory minimum yellow light intervals.

"(c) A yellow light change interval may exceed the minimum interval established pursuant to subdivision (a)."

The California Manual on Uniform Traffic Control Devices for Streets and Highways requires a minimum yellow interval of 3.9 seconds where the posted speed is 40 miles per hour. (Cal. Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 ed., Part 4, pp. 4D-11, 4D-50). Investigator Young testified that his tests indicated that the yellow interval at the intersection of Centinela and Beach Avenues averaged 4.11 seconds on February 16, 2009, and 4.03 seconds on March 16, 2009. This constituted substantial evidence supporting the trial court's factual finding that the yellow light interval of the traffic signal at Centinela and Beach conformed to the requirements of Vehicle Code section 21455.7.

DISPOSITION

The judgment is affirmed.

KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.

Filed 3/1/12

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. CARMEN GOLDSMITH, Defendant and Appellant.	B231678 (Los Angeles County Super. Ct. No. 102693IN) (Appellate Div. No. BR048189) ORDER CERTIFYING OPINION FOR PUBLICATION [NO CHANGE IN JUDGMENT]

THE COURT:

The opinion in the above-entitled matter filed on February 28, 2012, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports.

[There is no change in the judgment.]

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 555 South Flower Street, 29th Floor, Los Angeles, California 90071.

On **April 5 2012**, I caused the foregoing document described as **PETITION FOR REVIEW** to be served on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

[X] **(BY MAIL)** I caused such envelope(s) fully prepaid to be placed in the United States Mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collection and processing correspondence or mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] **(BY OVERNIGHT-FEDERAL EXPRESS)** I caused said document(s) to be picked up by U.S. Federal Express Services for overnight delivery to the offices of the addressees listed on the Service List.

Executed on **April 5, 2012** at Los Angeles, California.

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

Cheryl A. White

SERVICE LIST

Cal Saunders
City of Inglewood
OFFICE OF THE CITY ATTORNEY
One W. Manchester Blvd., #860
Inglewood, California 90301
Tel: (310) 412-5372
Attorneys for Respondent
By First Class Mail

John D. Higginbotham
BEST BEST & KRIEGER LLP,
3500 Porsche Way, Suite 200
Ontario, California 91764
Tel: (909) 989-8584
Fax: (909) 944-1441
Attorneys for Respondent
By First Class Mail

OFFICE OF THE ATTORNEY GENERAL
300 South Spring Street
Los Angeles, CA 90013
By First Class Mail

Hon. Sanjay Kumar
LOS ANGELES SUPERIOR COURT APPELLATE DIVISION
111 N. Hill St., Dept. 70
Los Angeles, CA 90012
By First Class Mail

COURT OF APPEAL
Second District, Division Three
Ronald Reagan State Building
300 S. Spring St., Second Floor
Los Angeles, California 90013
By First Class Mail

Commissioner John Johnson
LOS ANGELES SUPERIOR COURT
Inglewood Courthouse
One Regent St.,
Inglewood, CA 90301
By First Class Mail

Jose Sandoval
City of Santa Ana
20 Civic Center Plaza #M29
Santa Ana, CA 92701-4010
Attorneys for Amicus Curiae
By First Class Mail

Joseph W. Singleton
Law Offices of Joseph W. Singleton
5950 Canoga Avenue, Suite 130
Woodland Hills, CA 91367
Attorneys for Amicus Curiae
By First Class Mail

Richard Allen Baylis
9042 Garfield Ave. Suite 306
Huntington Beach, CA 92646
Attorneys for Amicus Curiae
By First Class Mail

Jason M. McEwen
Woodruff, Spradlin & Smart A.P.C.
555 Anton Boulevard, Suite 1200
Suite 1200
Costa Mesa, CA 92626
Attorneys for Amicus Curiae
By First Class Mail

Gregory P. Barbee
Sheppard Mullin
333 S. Hope St. 43rd Floor
Los Angeles, CA 90071
Attorneys for Amicus Curiae
By First Class Mail

William Litvak
Dapeer, Rosenblit & Litvak, LLP
11500 W. Olympic Blvd.
Suite 550
Los Angeles, CA 90064
Attorneys for Amicus Curiae
By First Class Mail

John J. Jackman
LAW OFFICES OF JOHN J. JACKMAN
11949 Jefferson Boulevard, Suite 104
Culver City, California 90230
Co-counsel for Petitioner
By First Class Mail

Office of the Clerk
CALIFORNIA SUPREME COURT
350 McAllister Street
San Francisco, CA 94102-4797
Telephone: 415-865-7000
By Fed Ex
Original and 13 copies