

DEC 27 2010

ALAN CARLSON, Clerk of the Court

BY J GOMEZ

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3 APPELLATE DIVISION
4 SUPERIOR COURT OF CALIFORNIA
5 COUNTY OF ORANGE
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8 PEOPLE OF THE STATE OF) CASE NO. 30-2010-00385069
9 CALIFORNIA,)
10 Plaintiff and) JUDGMENT ON APPEAL
11 Respondent,) from the
12 vs.) SUPERIOR COURT
13) of
14 [REDACTED] SORIANO,) ORANGE COUNTY
15) CENTRAL JUSTICE CENTER
16)
17 Defendant and)
18 Appellant.) HON. CARMEN LUEGE
19) COMMISSIONER
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17 While Officer Bell's expert testimony may have overcome
18 many of the shortcomings addressed in People v. Khaled (2010)
19 186 Cal.App.4th Supp. 1, he did not properly authenticate the
20 particular exhibits forming the basis of the charge against
21 appellant in this case. (Evidence Code §§ 702, 1400). Exhibit 2,
22 which purports to authenticate Exhibits 1 and 3, is inadmissible
23 hearsay, as it was not created "at or near the time of . . . the
24 event" as required under Evidence Code § 1271(b) or § 1280(b).
25 Inasmuch as it was prepared, more than three months after the
26 photographs were generated, for the purpose of enabling the
27 prosecution of appellant, Exhibit 2 is also "testimonial" and
28

1 thus inadmissible under the confrontation clause of the Sixth
2 Amendment. (Melendez-Diaz v. Massachusetts (2009) 557 U.S. ___,
3 129 S.Ct. 2527.)


4 In the absence of proper authentication either via Officer
5 Bell or Exhibit 2, Exhibits 1 and 3 could be admissible only on
6 the basis of either "self-authentication" or the presumption set
7 forth in Evidence Code § 1553. Self-authentication has been
8 upheld only on the basis of independent corroborating evidence,
9 however, and there is none in this case. (See People v. Beckley
10 (2010) 185 Cal.App.4th 509, 514-516.) Section 1553 sets forth a
11 presumption that a printed representation of a digitally stored
12 image is an accurate representation of the image it purports to
13 represent, but that presumption is rebutted in this case as to
14 Exhibit 1 by the People's own evidence that the photos in that
15 exhibit were "derived from" (i.e., were
16 enhanced/alterd/modified from) the photos contained in Exhibit
17 3. (May 25 order at 5:13-15; see Evidence Code § 1402.)

18 Although the statutory presumption arguably applies to the
19 Exhibit 3 photos, which "are the photos taken by the camera at
20 the intersection with no modifications" (May 25 order at 5:19-
21 22), the photographs comprising Exhibit 3 do not in themselves
22 provide sufficient evidence that appellant violated Vehicle Code
23 § 21453(a) - even if it were clear from the photographs and the
24 information printed in the photo margins that the depicted
25 vehicle passed through a red light without stopping, the only
26 evidence tying appellant to that vehicle is the enhanced image
27 of the driver in Exhibit 1 and the statement in Exhibit 2
28 (seventh paragraph) that "The defendant information was obtained

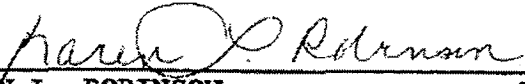
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when the license plate of the vehicle was searched"
Because neither Exhibit 1 nor Exhibit 2 was admissible, the
evidence was insufficient to support the conviction.

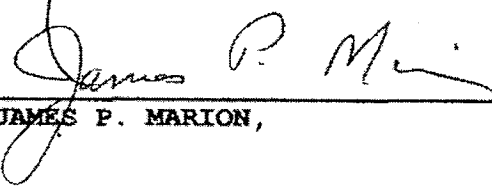
The judgment is reversed, with direction that the charge be
dismissed.



GREGORY H. LEWIS, Presiding Judge



KAREN L. ROBINSON, Judge



JAMES P. MARION, Judge