

MAY 25 2010


ALAN CARLBON, Clerk of the Court

BY J. Knapp DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

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7 People of the State of California,
8 Plaintiff

9 vs.

10  Soriano
11 Defendant

CASE NO. SA151252PE

ORDER RE: Hon. Carmen Luege

Dept. C-54

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13 This matter came on regularly for trial on May 12, 2010. Defendant, represented by
14 counsel, did not appear at trial. The People were not represented by counsel. Defendant
15 was charged with violating Vehicle Code § 21453(a), failing to stop for a steady circular red
16 signal prior to entering the intersection at Harbor and Warner within the City of Santa Ana.
17 Evidence of the violation was based on photos and a video captured by the City of Santa
18 Ana's automated traffic enforcement system (ATE). There was no law enforcement officer
19 present at the scene of the alleged offense.

20 Santa Ana Police Department (SAPD) Officer Mark Bell testified for the People in a
21 narrative format. Defendant's counsel interposed objections to the testimony on the ground
22 of hearsay and lack of personal knowledge. Counsel also objected to the admissions of
23 Exhibits 1 through 4, and 10 through 16. The court accepted the proffered testimony and
24 exhibits subject to counsel's objections. At the end of the first day of trial, Officer Bell had
25 completed his case-in-chief testimony and defense counsel commenced cross-examination.
26 The court continued the trial to May 20, 2010. Since defense counsel declined to stipulate
27 to defendant's identity, i.e., that defendant is the person depicted in the photos, the court
28 ordered defendant to appear on May 20, 2010. On May 20, 2010, defense counsel stated

1 that he had no further cross-examination and excused Officer Bell. No other witnesses
2 testified in the government's case. Defendant was present at the proceedings as ordered
3 by the court. Defense counsel did not call defendant to testify and did not present evidence.
4 Defense counsel delivered his closing argument emphasizing issues related to the
5 admissibility of the evidence.

6 Factual Summary

7 Officer Bell testified that that he has been an officer with SAPD for approximately 22
8 years, with the last six years assigned to the Red Light Photo Enforcement Unit. The officer
9 received 40 hours of training at Redflex, the Arizona company that contracted with the City
10 of Santa Ana to provide services related to the ATE system's operation. As part of his
11 training, Officer Bell has personally observed the installation of the cameras and the speed
12 sensors that are part of the ATE system at various intersections. Officer Bell did not
13 personally observe the installation of the ATE system at Harbor and Warner. Officer Bell
14 has also observed that at various intersections monitored by the ATE system traffic boxes
15 located at the intersection contain computers that are part of the ATE system. Officer Bell
16 did not personally inspect the traffic box located at Harbor and Warner to confirm it has a
17 computer within the traffic box. The officer explained that through training and experience
18 he is familiar with how the ATE system generally operates. He is also familiar with the
19 requirements of Vehicle Code § 21455 through 21455.7 and knows the steps the City of
20 Santa Ana took to comply with these requirements. In addition, Officer Bell knows the
21 procedures followed by Redflex and the SAPD Red Light Photo Enforcement Unit to issue
22 citations based on evidence obtained by the ATE system.

23 Officer Bell testified that in 2002, the city council for the City of Santa Ana held a
24 public hearing regarding the installation and use of an ATE system. The City then issued
25 public announcements about the installation and use of the system. To establish that the
26 City publicly announced the installation of the ATE system at the intersection of Warner and
27 Harbor Blvd, Officer Bell offered Exhibits 10 through 15. Exhibits 10 through 15 are
28 affidavits of publication executed by employees of the Orange County Reporter, the Orange

1 County Register, and La Opinion to show that between November 23, 2009 and November
2 27, 2009 these newspapers published public announcements notifying the public that the
3 City of Santa Ana operates ATE systems at specific intersections identified in the
4 announcement, including the intersection at Warner and Harbor.

5 In addition, Officer Bell testified that the City installed and maintains signs
6 announcing the use of the ATE system. These signs are located at entrances to the City as
7 well as at the specific intersections where the ATE system is in operation, including the
8 intersection at Warner and Harbor. Officer Bell also explained that for a 30-day period,
9 between November and December 2009, persons captured by the ATE system violating
10 Vehicle Code § 21453 at Harbor and Warner received only warning notices and were not
11 cited for the violations.

12 Officer Bell stated that at Warner and Harbor the posted speed limit is 45mph and
13 that the yellow change interval at that intersection is set at 4.5 seconds, which meets or
14 exceeds the minimum values in Section 4D-10 of the California Manual on Uniform Traffic
15 Control Devices. Officer Bell offered Exhibit 16 in support of his testimony. Exhibit 16 is a
16 memorandum from Vinh Nguyen, Sr. Civil Engineer certifying that the yellow change interval
17 at the Warner/Harbor intersection is set at 4.5 seconds.

18 Based on his training, Officer Bell explained the operation of the system as follows:
19 At the intersection of Warner and Harbor there are three photo cameras and one video
20 camera that automatically take photographs and video of cars crossing the intersection.
21 Embedded on the roadway, prior to approaching the intersection, are speed sensors set
22 approximately three feet apart. When a vehicle drives over the two sensors the computer
23 calculates the approximate speed of the vehicle based on how much time it took the vehicle
24 to travel between the two speed sensors. When the light is red and the approximate vehicle
25 speed exceeds 16 mph, the cameras commence to take photos and record video. At the
26 time the system captures the photos and the video the computer bundles the data together
27 and encrypts the photos and video with a digital signature (a combination of letters and
28 numbers that uniquely identify the data). At the same time, the computer also encrypts on

1 the photos a data bar with information related to the incident such as: location, date, time,
2 lane used by the car, and the amount of time the light was red when the car crossed the
3 limit line. Then through a secured server operated by Redflex the computer electronically
4 sends the data (including pictures and video) to a computer located at Redflex's facilities in
5 Arizona. If the server is down, the computer located at the intersection stores the data and
6 makes future attempts to send the data to Redflex. Redflex employees also have the ability
7 through their computer system in Arizona to retrieve the data from the local computer. At
8 Redflex, Redflex employees, using a secure password, retrieve the photos and video now
9 stored at the computer system in Arizona. The Redflex employees review the photos and
10 video captured by the cameras at the Santa Ana intersection to determine whether the ATE
11 system properly captured the incident and whether the photos depict the face of the driver
12 of the car and the license plate number of the car. Using the computer at Redflex, the
13 employee creates a duplicate of the photos originally captured by the cameras at the
14 intersection. Using the copy, the employee zooms-in on the face of the driver and the
15 license plate number of the car. These modified photos are saved and become part of
16 Exhibit 1 (the citation with four photos, two of which show the face of the driver and license
17 plate number of the car). The original photos taken by the camera also remain on the
18 system unmodified, Exhibits 3A through 3D. Officer Bell explained that during training at
19 Redflex, he has personally observed Redflex employees following the procedures just
20 described.

21 Redflex then sends the photos and video to the SAPD Red Light Photo Enforcement
22 Unit for review. At the Red Light Photo Enforcement Unit a sworn police officer reviews the
23 evidence and decides if the photos and video depict a violations of Vehicle Code § 21453.
24 If the officer determines that the photos and video depict a violation, the officer authorizes
25 Redflex to issue a citation to the registered owner of the vehicle. Redflex mails the citation
26 to the register owner of the vehicle. SAPD files the citation with the court. Some register
27 owners send a form to SAPD nominating a third party as the driver of the vehicle. When
28 that happens the SAPD officer may proceed to issue a new citation in the name of the

1 nominated person. Sometimes, the register owner appears at SAPD to contest the citation.
2 When that happens, the SAPD officer determines whether the register owner looks like the
3 person depicted in the photos and if not, the officer will request dismissal of the case. Other
4 times, the register owner pleads not guilty and the matter is set for trial. Prior to trial, the
5 SAPD officer determines, based on the DMV photo of the defendant, whether the defendant
6 appears to be the driver of the car, if not, then the officer requests a dismissal of the case.

7 Officer Bell offered the following exhibits and testified as follows with regard to each
8 exhibit:

- 9 • Exhibit 1 is the Notice of Traffic Violation issued to defendant Marcela Olivia
10 Soriano. Exhibit 1 includes four photos, two of the photos depict the alleged
11 violation and the other two photos show identify, i.e., one shows the face of
12 the driver and the other one shows the license plate of the car involved in the
13 incident. The four photos are derived from Exhibits 3A through 3D. The photo
14 showing the face of the driver and the one showing the license plate are close
15 up renditions of Exhibit 3C.
- 16 • Exhibit 2 is a declaration of the custodian of records at Redflex. The
17 document is prepared by Redflex and is sent to SAPD with the photos and
18 video to present at trial.
- 19 • Exhibits 3A through 3D are the photos taken by the camera at the intersection
20 with no modifications. The information encrypted on the data bar of the photos
21 was encrypted by the local computer at the intersection at the time the
22 cameras captured the photos and video.
- 23 • Exhibit 4 is the DMV photo of the registered owner of the vehicle. The officer
24 retrieved this DMV photo from DMV's data base.
- 25 • Exhibit 5 is a 12 second video captured by the video camera located at the
26 intersection and automatically stored by the computer.
- 27 • Exhibit 10 is the proof of publication declaration from the Orange County
28 Reporter showing that on November 23 and November 25, 2009, the City of

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Santa Ana announced the installation and operation of the ATE system at the intersection of Harbor and Warner.

- Exhibit 11 is a Copy of Notice issued by the Orange County Reporter showing the announcement of the installation and operation of the ATE system published on November 27, 2009.
- Exhibit 12 is the proof of publication declaration from the Orange County Register showing that on November 23 and November 24, 2009, the City of Santa Ana announced the installation and operation of the ATE system at the intersection of Harbor and Warner.
- Exhibit 13 is the proof of publication declaration from the Orange County Register showing that on November 27, 2009, the City of Santa Ana announced the installation and operation of the ATE system at the intersection of Harbor and Warner.
- Exhibit 14 is the proof of publication declaration from La Opinion showing that On November 24 and November 25, 2009, the City of Santa Ana announced the installation and operation of the ATE system at the intersection of Harbor and Warner in the Spanish newspaper.
- Exhibit 15 is a certified English translation of the Spanish announcement published in La Opinion on November 24 and November 25, 2009.
- Exhibit 16 is a memorandum from Vinh Nguyen, Sr. Civil Engineer at the City of Santa Ana regarding the yellow timing at Warner and Harbor Blvd.

Based on the photos and the video (Exhibits 1 through 5), Officer Bell testified that in his opinion the photos and video show a violation of Vehicle Code § 21453 by the defendant, the registered owner of the vehicle.

Admissibility of Evidence

Defendant is charged with a violation of Vehicle Code § 21453. To establish a violation of Section 21453 the government has to prove that defendant was facing a steady circular red signal and failed to stop at the limit line before entering the intersection or

1 making a right turn. Here, evidence of the alleged infraction is based on the photos and the
2 video captured by the City of Santa Ana's ATE system at the intersection of Harbor and
3 Warner.

4 In presenting the evidence, Officer Bell testified that the City of Santa complied with
5 Sections 21455.5 through 21455.7 of the vehicle code in the adoption and operation of the
6 ATE system. Sections 21455.5 through 21455.7 require that a city follow certain
7 procedures in the adoption and operation of an ATE system, such as: the city must conduct
8 a public hearing before approving the use of the ATE system; the city must publicly
9 announce the use of the ATE system at the specific intersections; warning notices must be
10 issued during the first 30 days of operation; visible signs must be posted; and the yellow
11 light time limit at the intersection must meet the requirements of the California Manual on
12 Uniform Traffic Control Devices. Defense counsel objected to the admissibility of Officer
13 Bell's narrative testimony regarding compliance with Sections 21455.5 through 21455.7 on
14 the ground that the officer lacked personal knowledge (Evidence Code § 701) to testify
15 about the City's compliance with Vehicle Code §§ 21455.5 through 21455.7.

16 In the typical red light violation case, one that does not rely on evidence captured by
17 an ATE system, the government does not have to prove as an element of the offense any of
18 the factors enumerated in Sections 21455.5 through 21455.7. In fact, there is a
19 presumption that traffic signs and devices comply with the requirements of the law unless
20 the contrary is established by competent evidence. (Vehicle Code § 41101). There is
21 nothing in the language used by the legislature in Sections 21455.5 through 21455.7 to
22 suggest that the requirements of those statutes become elements of the red light violation
23 offense when the evidence is based on photos and videos captured by the ATE system.
24 Moreover, the court found no published decision in California that has ruled that the
25 requirements of Vehicle Code §§ 21455.5 through 21455.7 are foundational issues, i.e., that
26 the government is required to provide testimony as to each part of these code sections as a
27 necessary part of the government's case in chief. Since establishing compliance with
28 Sections 21455.5 through § 21455.7 is not required as part of the government's case in

1 chief, issues of none-compliance with that section have to be raised as an affirmative
2 defense. Here defendant did not raise as an affirmative defense ATE compliance issues,
3 i.e. defendant did not present evidence to show that the City of Santa Ana failed to comply
4 with the requirements of Sections 21455.5 through 21455.7. Accordingly, Officer Bell was
5 not required by law to establish the City of Santa Ana's compliance with Sections 21455.5
6 through 21455.7 during the government's case-in-chief. Therefore, it is not necessary that
7 the court rule on the admissibility of the officer's testimony regarding the city's compliance
8 with Sections 21455.5 through 21455.7. The testimony is not relevant to the court's
9 determination of guilt or innocence in this case. For these reasons, the court declines to
10 rule on the admissibility of Exhibits 10 through 16.

11 Based on this ruling, there are only two issues before the court in this case:
12 (1) whether the photos and video are admissible; and (2) whether those exhibits, if
13 admissible, prove that defendant violated Section 21453.

14 Exhibit 1 (citation with four photos) - Exhibit 1 is composed of two parts: on the left
15 side of the document is the Notice of Traffic Violation which contains the date and time of
16 violation, the name and address of the register owner of the vehicle, the license plate
17 number and description of vehicle, the signature of the SAPD officer who approved the
18 issuance of the citation, and a certification of mailing signed by a Redflex employee; on the
19 right side of the exhibit are four photos which are modified versions of Exhibit 3A through
20 3D, two of the four photos show a close-up of the face of the vehicle's driver and the license
21 plate number of the vehicle. Counsel objected to the admissibility of this exhibit based on
22 authentication, hearsay, secondary evidence, and violation of the Sixth Amendment right to
23 confrontation. The notice to appear contains the same type of information found in a typical
24 citation, except that the defendant did not sign a promise to appear instead there is a
25 certificate of mailing. A notice to appear filed with the court serves as a verified complaint to
26 which the motorist may plead guilty or no contest. (Vehicle Code § 40513(a)). Since the left
27 side of Exhibit 1 is nothing more than a complaint, the information contained is not evidence
28 and thus evidentiary objections do not apply to that portion of the exhibit. On the other

1 hand, the four photos contained on the right side of the exhibit are evidence. Since these
2 four photos are modified versions the Exhibits 3A through 3D, the admissibility of this
3 portion of Exhibit 1 will be addressed later when the court addresses the issue of the
4 admissibility of the photos and the video (Exhibits 3A through 3D and Exhibit 5).

5 Exhibit 2 (Custodian of Records Declaration) – Court finds that portions of Exhibit 2
6 are not admissible. There is no question that Exhibit 2 contains an out of court statement by
7 Redflex employees. A portion of the document satisfies the public record exception to the
8 hearsay rule under Evidence Code Section 1280. The document was prepared by a public
9 employee. Evidence Code § 195 defines a “public employee” as an officer, agent or
10 employee of a public entity. Since the City of Santa Ana entered into a contract with
11 Redflex to install and operate the ATE system, documents prepared by Redflex in their
12 capacity as an agent of the City of Santa Ana fall within the scope of documents prepared
13 by a public employee. See Imachi v. DMV (1992) 2 Cal. App. 4th 809, 816-817 (blood test
14 report prepared by a private lab technician would be admissible under the public record
15 exception because the lab technician acts as an agent of the public entity and thus meets
16 the definition of public employee). Exhibit 2 certifies the following information: (1) on
17 January 4, 2010, Redflex received the photos and video from the intersection; (2) a Redflex
18 employee confirmed the validity of the digital signature on the data; (3) the items of
19 evidence, which include the items of evidence identified at trial as Exhibit 1 through 3 and
20 Exhibit 5, were prepared by Redflex and delivered to SAPD for trial; and (4) the items of
21 evidence are a true copy of the original information maintained at Redflex. These
22 statements the court finds admissible pursuant to Evidence Code § 1280. Some
23 information contained in Exhibit 2, however, goes beyond the elements necessary to
24 establish authenticity and chain of custody. Specifically, the portion of Exhibit 2 that
25 describes the three-fold approach used by Redflex to check the system does not meet the
26 requirements of Evidence Code § 1280 because it does not explain who checked the
27 system and how the signers of the declaration know that the system check actually
28 occurred. The court finds that this portion of Exhibit 2 goes beyond basic authenticity and

1 chain of custody and for that reason that portion is hearsay and not admissible. In
2 determining the admissibility of Exhibits 1 through 3, and Exhibit 5, the court will not
3 consider that portion of Exhibit 2 found to be inadmissible.

4 Counsel objected to the admissibility of the photos and the video Exhibit 3A through
5 3D and Exhibit 5 on the ground of authenticity, hearsay, lack of foundation, secondary
6 evidence, and a violation of the confrontation clause of the Sixth Amendment. The court
7 finds that Exhibits 3A through 3D, and the modified photos contained in Exhibit 1, are not
8 hearsay. Photographs are not writings or out of court statements subject to a hearsay
9 objection. Neither is the information contained in the data bar (date, time, location, etc) an
10 out of court statement. There is no witness encrypting the data bar information on the
11 photograph. The data bar is encrypted in the photograph by the computer at the time the
12 cameras take the photos. Although it is true that at some point when the computer was
13 installed at the Harbor/Warner location a Redflex employee had to program the computer
14 with date, time, and location, the Redflex's software program on its own maintains the
15 information, runs internal checks to make sure the information remains accurate, and
16 automatically encrypts the photos with the data bar. For example, Officer Bell explained
17 that the software program runs a check to make sure the date/time entry properly
18 coordinates with the national clock system. Thus, the information contained on the data bar
19 is not based on a witness' out of court statement.

20 Photos are generally admitted into evidence under two distinct theories each
21 requiring different foundational testimony: (1) photos are used at trial as a graphic portrayal
22 of oral testimony and become admissible when a witness testifies that the photos represent
23 a correct and accurate representation of the facts personally observed by the witness; or (2)
24 photos are admitted as probative evidence in themselves rather than as illustrative
25 evidence. Under this latter theory, the photos are themselves probative evidence of what
26 they depict and take the status of "silent" witnesses. See People v. Bowley (1963) 59 Cal.
27 2d 855, 860; United States v. Taylor, 530 F.2d 639, 642 (5th Cir. 1976). When photos are
28 admitted into evidence under the silent witness theory, the foundation for admission of that

1 evidence requires that a witness explain the reliability of the process by which the photo
2 was created. Id. Photos and video captured by the ATE system depict the violation of
3 Vehicle Code § 21453 and thus the photos and video are themselves probative evidence of
4 the offense.

5 Here Officer Bell testified that he has received 40 hours of training at Redflex and has
6 become familiar with the technical aspects of the ATE system. Officer Bell explained in
7 some detail how the photo and video cameras operate at the intersection, how the data is
8 electronically stored, and how it is electronically transmitted to Redflex by the computer
9 located at the intersection. Officer Bell also explained that the information on the data bar in
10 each of these exhibits is automatically encrypted on the photos by the computer located at
11 the intersection. Officer Bell also testified that the photos contained in Exhibit 1 are the
12 same photos identified as Exhibits 3A through 3D, except that the photos showing a close-
13 up of the face and a close up of the license plate have been modified by a Redflex
14 employee to enlarge the face and license plate number. Officer Bell said that during training
15 he has been shown how the close-up pictures are created from the original photos taken by
16 the camera. Counsel objected to the foundational testimony on the ground that Officer Bell
17 lacked personal knowledge to testify about these matters and that only a Redflex employee
18 would have sufficient information to lay a foundation for the reliability of the ATE system.
19 The court rejects this argument. Officer Bell's training and experience is sufficient to qualify
20 him as an expert on the operation of the ATE system and the procedures followed at
21 Redflex in processing and transmitting the photos to SAPD. The fact that Officer Bell's
22 testimony is based, in part, on information he has learned from Redflex manuals and
23 classes he has attended there, does not make his testimony inadmissible. Even if the
24 government called a Redflex employee to testify about how the ATE system works, that
25 person would have to rely on materials and information the employee learned during
26 training. The rules of evidence do not require that the prosecution call the person who
27 designed the computer software Redflex uses to operate and monitor the system or prove
28 that the system is 100% reliable. All that is required to lay a proper foundation for admission

1 of the photo is that a witness explains the circumstances under which the camera captured
2 the photos and why the photos are reliable. In People v. Lugashi (1988) 205 Cal. App. 3d
3 632, a defendant argued that a bank employee was not qualified to authenticate bank
4 records downloaded from a computer because she had to rely on hearsay evidence to
5 explain how the information was stored and physically converted from computer data into a
6 printout. The court rejected this argument and explained as follows: "That some of her
7 knowledge came from hearsay discussions with fellow workers . . . no more renders her
8 testimony incompetent that if it resulted from reading hearsay information manuals from
9 hardware or software manufacturers . . . If appellant were correct, only the original hardware
10 and software designers could testify since everyone else necessarily could understand the
11 system only through hearsay." Id. at 641. Based on Officer Bell's training and experience,
12 the court finds that Officer Bells has sufficient knowledge about the ATE system to properly
13 authenticate and lay the foundation for the admission of the photos (Exhibit 3A through 3D,
14 and Exhibit 1) and that his testimony was sufficient to admit these exhibits into evidence.

15 Counsel objected to the admission of Exhibits 3A through 3D, and Exhibit 1 on the
16 ground that the exhibits are secondary evidence. This objection is overruled. Evidence
17 Code Section 1521 makes secondary evidence generally admissible. Moreover, Evidence
18 Code §§ 1552 and 1553 create a presumption that Exhibits 1 through 3, and Exhibit 5 are
19 reliable depictions of the incident, unless defendant introduces evidence that the "computer
20 information" is inaccurate or unreliable. Here, defendant did not produce any evidence to
21 show that the cameras or the computer equipment malfunctioned, or that anyone tampered
22 with the evidence. The issues relating to the violation of the right to confrontation will be
23 addressed in a separate section below addressing the Sixth Amendment issues.

24 Counsel did not object to the admission of Exhibit 4. With regard to the 12-second
25 video (Exhibit 5), the legal analysis that leads the court to conclude that Exhibits 3A through
26 3D are admissible, also cause the court to find that Exhibit 5 is not hearsay evidence. The
27 court further finds that Officer Bell's testimony properly authenticated the video and laid a
28 proper foundation for its admissibility.

1 The Right to Confrontation

2 Defendant objected to the admission of Exhibits 1 through 3, and Exhibit 5 on the
3 ground that admitting those exhibits into evidence violates defendant's Sixth Amendment
4 right to confront witnesses. In Crawford v. Washington, 541 U.S. 36 (2004), the Supreme
5 Court held that the Confrontation Clause categorically bars the admission of testimonial
6 hearsay unless the witness is unavailable to testify and the defendant has had a prior
7 opportunity for cross-examination. Crawford described the class of testimonial statements
8 covered by the Confrontation Clause such as affidavits, custodial examinations, prior
9 deposition testimony. Id. at 51-52. Thus, the issue raised by defendant's objection is
10 whether Exhibits 1 through 3, and Exhibit 5 constitute testimonial hearsay as that term is
11 used in Crawford and its progeny, Melendez-Diaz v. Massachusetts 129 S.Ct 2527 (2009).

12 The photos and the video captured by the ATE system do not contain any testimonial
13 evidence, they are not out of court statements. Thus, there are no witnesses to confront.
14 This case is not like Melendez-Diaz which addressed the admissibility of a laboratory
15 certificate stating that the substance in the possession of the defendant was cocaine. In
16 Melendez-Diaz the lab certificate was prepared by a person (a witness not called to testify)
17 who conducted tests on the substance and made certain physical observations to reach an
18 opinion about its composition and weight. Here, there is no person operating the cameras
19 at the intersection. The cameras are controlled by the local computer located at the
20 intersection. The local computer triggers the cameras to capture photos and video,
21 electronically stores the photos and video, and transmits the data to Redflex. There is no
22 person involved in capturing and storing the photos and video. Thus, there is no one to
23 confront. Consequently, Crawford and Melendez-Diaz do not apply to these exhibits.

24 Counsel also argued at trial that defendant is entitled to confront the Redflex
25 employees who installed the equipment at the intersection, who know exactly how the
26 software system operates to cause the computer to capture, store, and transmit the photos,
27 and who reviewed the photos before transmitting them to SAPD. Crawford and Melendez-
28 Diaz do not support that argument. Those cases specifically excluded foundational

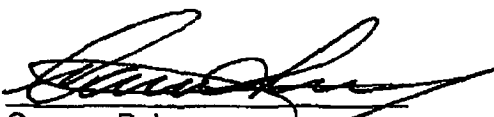
1 evidence from its analysis. See Melendez-Diaz, at 2532 (fn 1) ("we do not hold, and it is not
2 the case, that anyone whose testimony may be relevant in establishing the chain of custody,
3 authenticity of the sample, or accuracy of the testing device, must appear in person as part
4 of the prosecution's case").

5 Here Officer Bell has received 40 hours of training from Redflex about the operation
6 of the ATE system and has had six years experience in using the system to retrieve data
7 from the computer. Officer Bell knows generally how the cameras take the photo, how the
8 computer stores the data, how the data is transmitted to Redflex, and the procedures at
9 Redflex upon receipt of the data. Crawford and Melendez-Diaz have not changed the rules
10 that apply to authenticity and foundational evidence. Defendant had ample opportunity to
11 cross-examine Officer Bell and test the reliability of the photos and video. Accordingly,
12 defendant's right to confront witnesses has not been violated.

13 Conclusion

14 The evidence admitted established a violation of Vehicle Code § 21453(a) by
15 defendant. The court finds that the defendant who appeared in court is the person depicted
16 in the photographs admitted into evidence and that the video shows defendant making a
17 right turn without stopping at a red light. The court imposes a fine of \$100 plus penalty
18 assessments. The court grants defendant until July 15, 2010 to pay the fines or report to
19 the Collections Department if defendant needs a payment plan.

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21 Date: May 25, 2010

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24 Carmen R. Luege
25 Commissioner of the Superior Court
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