

High court to consider admissibility of traffic camera photos

The state Supreme Court could save each of us upwards of \$500 this week, as on April 3 it will hear oral argument in *People v. Goldsmith*, No. 8231678. The case deals with an issue that touches the lives of thousands of Californians every day - the automated traffic enforcement system (ATES), otherwise known as a red light camera traffic ticket.

Generally, there are two reasons why the state Supreme Court exercises its discretionary review: (1) to secure uniformity of decision among the lower courts; and (2) to settle an important question of law. When the court decides *Goldsmith*, it will be forced to pick sides between the appellate divisions of Orange County and Los Angeles County.

The split began in 2010 in Orange County with *People v. Khaled*, 186 Cal. App. 4th Supp. 1. That case held that photographs from an ATES purporting to show the defendant driving through a red light were inadmissible because the testifying officer could not properly lay the evidentiary foundation needed for the photographs because (1) the officer was not a percipient witness, and (2) because the officer was not personally responsible for setting up the camera. *Khaled* also held that the photographs constituted inadmissible hearsay, in that they were not admissible business records (*Evid. Code* Section 1271) or official records (*Evid. Code* Section 1280). Specifically, the hearsay evidence contained in the photograph include the date, time, how long the light was red, and other information. The evidence was plainly offered for its truth because "[w]ithout these documents, there is a total lack of



evidence to support the Vehicle Code violation in question." The person who entered the information into the camera-computer system did not testify and was not subject to being cross-examined on the underlying source of that information.

In 2011, the Appellate Division of the Los Angeles County Superior Court disagreed with *Khaled* in *People v. Goldsmith*, 193 Cal. App. 4th Supp. 1. The court in *Goldsmith* concluded (1) that the photographs taken by an ATES may be admissible even if the testifying officer was not a percipient witness to the violation and was not personally responsible for setting up the camera; (2) the accuracy of the photographs is subject to a rebuttable presumption of authenticity pursuant to *Evidence Code* Sections 1552(a)

and 1553; and (3) the data and images on the photographs did not constitute hearsay because they did not amount to a "statement" from a human declarant. *Goldsmith* was subsequently transferred to the 2nd District Court of Appeal, Division 3.

In 2012, the 2nd District upheld an ATES conviction, adopting the Los Angeles County Superior Court's approach, and rejecting Orange County's approach. *People v. Goldsmith*, 203 Cal. App. 4th 1515 (2012).

"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." The court concluded that the photo "was generated by a machine, not a per-

son. The printed data on the photographs was not subject to cross-examination. It was therefore not a statement constituting hearsay." The state Supreme Court granted review of *Goldsmith* in May 2012.

The state Supreme Court simultaneously granted review of *People v. Borzakian*, 203 Cal. App. 4th 525 (2012), on its own motion and deferred ruling pending disposition of *Goldsmith*. In *Borzakian*, Division 7 of the 2nd District reversed an ATES conviction, but did so based on a lack of proper authentication and foundation.

Borzakian held photographs and videotapes are considered "writings" under Evidence Code Section 250, and as such, require a foundation, which the testifying officer could not adequately provide. *Evid. Code* Section 1401.

Most of the contact by average law-abiding citizens with law enforcement and the courts comes by way of traffic infractions. Enforcement of laws which are widely perceived as unreasonable and unfair generates disrespect and even contempt toward those who make and enforce those laws. The state Supreme Court's opinion will directly touch the lives of millions of Californians in a very tangible way.

The court's opinion could completely cripple the successful prosecution of ATES allegations. If *Goldsmith* is reversed, ATES convictions will require substantial resources. For example, since *Khaled* was published, the cities in Orange County that continued to operate red light camera systems found it necessary to have an employee of the camera system contractor appear as a witness in order to authenticate the evidence. However, it soon became apparent that a prosecuting attorney was needed to call the camera company witness, conduct direct examination of the witness, and introduce the evidence. As in most counties in California, the Orange County district attorney has chosen not to appear on traffic cases. *See People v. Carlucci*, 23 Cal. 3d 249 (1979). Some cities in Orange County have even retained a private law firms to purportedly represent "The People of the State of California" in the prosecution of ATES allegations.

When a defendant undertakes

to hold the people accountable to follow the rules and produce admissible evidence, the courts should do their part and require that the evidence proffered by the people meets the standards of admissibility under the law. The fact ATES allegations are infractions, or that the cities and the camera contractors claim a safety benefit, does not justify allowing the people and the courts to apply a lower standard of proof, or depart from the California Evidence Code, in order to achieve convictions more easily.

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