

**FILED**  
SAN MATEO COUNTY

JUN 02 2010

By   
DEPUTY CLERK

APPELLATE DIVISION

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR COUNTY OF SAN MATEO

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| PEOPLE OF THE STATE OF CALIFORNIA, | } | Case No: AD-5141          |
|                                    | } |                           |
| Plaintiff/Respondent,              | } | <b>JUDGMENT ON APPEAL</b> |
|                                    | } |                           |
| vs                                 | } |                           |
|                                    | } |                           |
| NORIKO DURNEY,                     | } |                           |
|                                    | } |                           |
| Defendant/Appellant.               | } |                           |
| _____                              | } |                           |

DISCUSSION

Appellant raises several issues on appeal, many of which are without merit. The assertions that Appellant was denied the right to call witnesses on her own behalf; denied her right to trial before an impartial finder of fact; denied the right to a speedy trial; and denied the right to having her trial recorded are not found persuasive by this Court.

The Appellant raises one issue found by this reviewing court to have merit. Specifically, the pertinent question in this appeal is whether or not there was sufficient admissible evidence presented at trial to sustain the conviction.

Sergeant Aronis is "in charge" of the Millbrae Police Department's Photo Red Light program. Officer Aboud is a 19-year veteran of the Millbrae Police Department and has been involved in the Photo Red Light program since October 2006. Officer Aboud asserts that he was qualified to testify under Evidence Code

§1271(c) as a *Custodian of Records* for American Traffic Solutions (ATS)<sup>1</sup>. This Court finds that the record does not support any finding that Officer Aboud was qualified to testify as a custodian of records for Automated Traffic Solutions.

There is no evidence in the record demonstrating that anyone with direct and substantial knowledge of the workings of the camera-computer system testified at trial. From the record it may be inferred that Officer Aboud attended some type of training session at American Traffic Solutions in 2008, however the content of that training program was never set forth in the record.

To be fair, it appears that Officer Aboud received a packet of materials from American Traffic Solutions and then simply presented testimony based upon the content of the materials he received. This testimony and the documentary evidence presented at trial does not meet the criteria for admission under Evidence Code § 1280 – Official Records Exception, nor was there any argument made that it was offered under that provision of law.

The exhibits offered at trial do not comply with the admissibility requirements of the business record exception set forth under Evidence Code § 1271. An appropriate witness must be called to lay the business record foundation (*Bhatt v State Department of Health Services* (2005) 133 Cal.App.4<sup>th</sup> 923, 929) The proponent of the admission of documents must meet the burden of establishing the requirements for admission and trustworthiness. (*Palmer v Hoffman* (1943) 318 U.S. 109. In the instant case, Officer Aboud is an employee of a public agency, the Millbrae Police Department. The officer is not an employee of American Traffic Solutions, nor did he demonstrate sufficient knowledge of the current operational workings, maintenance status of equipment or recordkeeping of ATS. Simply stated, Officer Aboud presented the information

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<sup>1</sup> The court file contains a photocopy of a “Certificate of Completion” issued to Jim Aboud from American Traffic Solutions dated May 15, 2008 for *2008 Customer Conference*. The court file also contains a one page document marked “10”, titled: *Statement of Technology Red Light Camera Automated Enforcement System City of Millbrae, CA*. This letter is purportedly signed by Raymond L. Pedrosa, Senior Project Manager for American Traffic Solutions. The letter describes how the Millbrae Red Light Camera Enforcement System operates.

provided through officials of Automated Traffic Solutions as if it was true and correct, without any basis for doing so. The Appellant was denied the right to effectively cross examine anyone relating to the specifics of the system and/or its operational status.

Without the appropriate foundation, admission of Exhibits 1 through 10 was erroneous<sup>2</sup>.

The judgment is reversed with directions that the charge be dismissed.

Dated: **MAY 20 2010**

  
H. James Ellis  
Acting Presiding Appellate Judge<sup>3</sup>

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<sup>2</sup> The content of the letter from Raymond L. Pedrosa was clearly *testimonial* in nature and Appellant was not able to cross examine this “witness” who was not present at the trial.

<sup>3</sup> Sitting by assignment of the Chief Justice of the California Supreme Court