

Case No. S201443

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

THE PEOPLE OF THE STATE OF CALIFORNIA, **SUPREME COURT
FILED**
Plaintiff and Respondent,

VS.

APR 19 2013

CARMEN GOLDSMITH,
Defendant and Appellant.

Frank A. McGuire Clerk
Deputy

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE
DISTRICT, DIVISION THREE, CASE No. B231678

**APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES
FOR LEAVE TO FILE AMICUS CURIAE BRIEF, AND
PROPOSED AMICUS CURIAE BRIEF IN SUPPORT OF
PLAINTIFF AND RESPONDENT PEOPLE OF THE STATE
OF CALIFORNIA**

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**TO THE HONORABLE CHIEF JUSTICE OF THE
CALIFORNIA SUPREME COURT:**

Under Rule 8.520, subdivision (f) of the California Rules of Court, the League of California Cities (“League”) submits this application to file an amicus curiae brief in support of plaintiff and respondent People of the State of California. This application is timely made under Rule 8.520, subdivision (f)(2).

**DESCRIPTION OF AMICUS CURIAE AND STATEMENT OF
INTEREST**

The League is an association of 469 California cities dedicated to protecting and restoring local control in order to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of California. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as being of statewide significance.

Pending before the Court are two issues: (1) What testimony, if

any, regarding the accuracy and reliability of an Automated Traffic Enforcement System (ATES) is required to admit ATES-generated evidence?; and (2) Is ATES evidence hearsay and, if so, do any exceptions apply? The League is interested only in the first issue as described below.

At least 19 cities in California recently notified the League that they continue to use an ATES program to identify and potentially to prosecute drivers who run red lights at intersections. Many other cities have discontinued their ATES programs and some cities never installed ATES in the first place. This Court's decision will impact not only the 19 cities known to the League to use an ATES, but also any other city in California awaiting the Court's ruling to determine whether to introduce or re-introduce an ATES program.

A decision by this Court in favor of appellant Carmen Goldsmith will dramatically increase the costs of prosecuting a driver based on ATES evidence. The accompanying proposed amicus brief sets forth statistics reported by 19 cities known to have ATES programs. Those statistics provide the Court with an idea of the magnitude of those potential increased costs.

All cities in California, including those that do not currently

operate an ATES program, have a stake in the outcome of this case.

As the proposed amicus brief discusses, an ATES reduces the number of fatal car accidents caused by drivers who run red lights. Cities, authorized under Article XI, section 7 of the California Constitution to exercise their police power in the interest of the public health, safety and welfare, continuously weigh and consider programs to protect their residents and visitors. Cities that wish to continue, re-start, or start an ATES program born of the desire to reduce fatal crashes will no doubt consider the potential financial consequences of an adverse decision by this Court.

Counsel for the League is familiar with the issues in this case and the scope of their presentation, and believes further argument is needed on the following points: (1) Whether the standard for authenticating ATES-generated evidence should be the same as the standard for the closely analogous radar gun device in use for decades; and (2) The potential financial and public safety consequences to cities of an adverse decision by this Court.

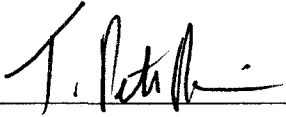
Dated: April 16, 2013

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**[PROPOSED] BRIEF OF AMICUS CURIAE LEAGUE OF
CALIFORNIA CITIES IN SUPPORT OF PLAINTIFF AND
RESPONDENT PEOPLE OF THE STATE OF CALIFORNIA**

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I. Introduction and Summary of Argument

An Automated Traffic Enforcement System (ATES) provides an opportunity that might otherwise be lost for law enforcement to prosecute drivers who run red lights. Many California cities operate ATES programs.

A device closely analogous to ATES equipment is the radar gun used by law enforcement to cite drivers exceeding the speed limit. California courts have held that the testimony of a law enforcement officer familiar with the operation of a radar gun suffices to authenticate the information about vehicle speed produced by that gun. It is not necessary to subpoena the manufacturer of the radar gun to trial to testify as to its assembly and functioning. There is no basis for treating ATES-generated evidence any differently.

A decision by this Court holding that ATES-generated evidence requires extra authentication as urged by appellant Carmen Goldsmith (Goldsmith) would significantly increase the costs of prosecuting drivers who run red lights. The many cities with ATES programs would be forced to reconsider the viability of those programs, even in the face of strong evidence that cameras at intersections reduce fatal accidents.

The Court should affirm the decision of the Court of Appeal.

II. Authentication Requirements For Digital Images Generated By ATES Should Be The Same As The Requirements In The Analogous Area Of Evidence Derived From Radar Devices.

Digital images generated by ATES serve the same function in red-light cases as the information generated by radar devices serves in speeding cases. The ATES and the radar device are technological close cousins and the law should recognize that. Both the ATES camera and the radar device provide objective data untainted by human input.

The ATES and the radar device prove closely analogous for another important reason explained by Goldsmith in her reply brief on the merits. The following passage, quoted verbatim from page 1 of the reply brief, could have been written about radar devices:

The authentication issues raised here involve traffic infraction cases where (1) convictions are obtained *exclusively* based on ATES materials in lieu of personal observation by an officer, (2) there is no right to a jury or

appointed counsel [citation], (3) the entire trial typically lasts a few minutes, (4) the proper defendant faces a well-rehearsed witness from a prosecuting agency but (5) has no incentive to spend thousands of dollars in attorneys' fees to fight a [] citation." (Reply Brief at p. 1 [*italics original*].)

It follows from Goldsmith's own argument that this Court should, in establishing authentication requirements in the ATES context, consider the established law with respect to authenticating data recovered from radar devices in speeding cases.

The necessary foundation for admitting evidence derived from radar guns may be laid by the citing officer alone, even if that officer is not an expert in the operation of radar guns. In *People v. Flaxman*, 74 Cal.App.3d Supp. 16 (1977), the Appellate Division of the Superior Court considered an arresting police officer's competency to present evidence of vehicle speed determined by a radar gun. The officer testified that he had calibrated the machine just prior to issuing the ticket, but otherwise he could "not explain the functioning of the radar machine." (*Id.* at p. 23.) In holding that the evidence of vehicle

speed from the radar gun was properly admitted, the court stated, “[i]t is sufficient that the operator of a radar machine be familiar with the device and its operation and, recognizing that the device might not be properly functioning upon occasion, take a reasonable amount of precautionary measures to assure that it is properly operating.” (*Id.* at pp. 23-24.)

The standard for admitting radar gun evidence in “speed trap” cases is codified in Vehicle Code Section 40802.¹ To obtain a conviction for speeding, the arresting officer must have minimal training in radar gun usage and be able to provide foundational testimony establishing that the radar gun used “meets or exceeds the minimal operational standards of the National Traffic Highway Safety Administration, and has been calibrated within the three years prior to the date of the alleged violation by an independent certified laser or radar repair and testing or calibration facility.” (Vehicle Code § 40802(c)(1)(D).)

Thus, radar gun evidence may be authenticated solely by the

¹ This statute requires, in certain circumstances, that radar gun evidence of speeding violations be accompanied by an engineering and traffic survey showing that the established speed limit is justified. This requirement prevents law enforcement agencies from unfairly profiting from “speed traps.” (*See* Vehicle Code § 40802(a)(2).)

citing officer, so long as he or she has minimal training in radar gun operation and is aware of certain facts about the radar gun. There is no need for citing agencies to call an expert or a representative from the radar gun manufacturer to testify as to the validity and accuracy of the device. *See People v. MacLaird*, 264 Cal.App.2d 972, 975 (1968) (“We have concluded that the validity and accuracy of radar devices is a proposition of such common and universal knowledge that it must be judicially noticed and there is no necessity to call an expert witness to establish this commonly known and accepted proposition.”)

Goldsmith relies on *State v. Hanson*, 85 Wis.2d 233 (1978) (*Hanson*) for the proposition that a more rigorous authentication standard is warranted in ATES cases. (See Reply Brief at pp. 23-24.) But *Hanson* actually undermines Goldsmith’s position. *Hanson* is a 1978 Wisconsin Supreme Court speeding ticket case involving the use of then-newly invented handheld (as opposed to stationary) radar guns. Contrary to Goldsmith’s assertion, the court observed that “expert testimony is not needed to determine the initial admissibility of speed radar readings. The radar reading may be introduced by the operating law enforcement official, if he is qualified in its use and operation.” (*Hanson*, 85 Wis. 2d at pp. 244-45.)

The Wisconsin high court created an additional list of showings required *to support a conviction* where the newly invented *handheld* radar devices were used, but this test was a provisional one to be used only “[u]ntil a radar device is invented that is accurate under any conditions.” (*Hanson*, 85 Wis. 2d at p. 246.)²

Unlike handheld radar guns in 1978, the ability of digital cameras in 2013 to capture accurate images of the world is not the subject of widespread debate, and images from both digital cameras and traffic devices may be admitted as evidence in California with a *rebuttable* presumption of authenticity, with any further questions regarding the sufficiency of the evidence to support a conviction going to the weight of the evidence. (*See* Evid. Code § 1553; Vehicle

² The following authentication standard articulated in *Hanson* is not substantially different than the requirements of Vehicle Code Section 40802: “(1) The officer operating the device has adequate training and experience in its operation. (2) That the radar device was in proper working condition at the time of the arrest. This will be established by proof that suggested methods of testing the proper functioning of the device were followed. (3) That the device was used in an area where road conditions are such that there is a minimum possibility of distortion. (4) That the input speed of the patrol car must be verified, this being especially important where there is a reasonable dispute that road conditions may have distorted the accuracy of the reading (*i.e.*, presence of large trucks, congested traffic and the roadside being heavily covered with trees and signs). (5) That the speed meter should be expertly tested within a reasonable proximity following the arrest and that such testing be done by means which do not rely on the radar device's own internal calibrations.” (*Hanson*, 85 Wis. 2d at p. 245.)

Code § 41101(b); *People v. Martinez*, 22 Cal.4th 106, 132 (2000).)

Goldsmith conflates a rebuttable presumption of authenticity with a presumption of guilt. (*See, e.g.*, Reply Brief at p. 12 [comparing rebuttable presumption of authenticity with statute involving rebuttable presumption of a violation based on the mere issuance of a ticket].) But just because ATES evidence is presumed to be authentic in accordance with California law does not mean it will conclusively establish guilt. Where ATES videos and photos do not clearly depict a suspect running a red light, a conviction is simply not very likely.³ Even if charges nevertheless are filed, a defendant does not need a seasoned criminal law attorney to point to a video monitor and say “that is not me,” “that is not my car,” or “I was out of town on that day and time.” It would be much more difficult to rebut the evidence of speeding generated by a radar gun, and yet courts have repeatedly recognized that an officer operating the radar gun can authenticate that evidence for admission at trial.

³ One study of 11 ATES intersections in Sacramento, California over a four-year period found that only 35 percent of the pictures taken by the ATES cameras resulted in citations being issued. *See* National Highway Traffic Safety Administration, *Analysis of Red Light Violation Data Collection From Intersections Equipped with Red Light Photo Enforcement Cameras*, at p. viii (2006).

There is no basis for adopting for authentication of ATES evidence a standard more onerous than that for authenticating data generated by a radar device. This Court should reject Goldsmith's effort to establish a heightened evidentiary standard for ATES digital information.

III. The New And Unsupported Authentication Standard Urged By Goldsmith Would Substantially Increase Costs For Cash-Strapped Municipalities.

Goldsmith calls for computer operators and technicians from ATES manufacturers to authenticate video and digital photographs at trial. (*See* Opening Brief at pp. 15-16). If this Court establishes that threshold for authentication, the costs to municipalities that prosecute violations based on ATES evidence would increase dramatically.

In early 2013, 19 cities in California reported to the League of California Cities that they continue to use ATES.⁴ Another 17 cities

⁴ The nineteen cities, in alphabetical order, are: (1) Belmont, (2) Cerritos, (3) Fremont, (4) Hawthorne, (5) Laguna Woods, (6) Menlo Park, (7) Napa, (8) Oceanside, (9) Oxnard, (10) Redding, (11) Redwood City, (12) Riverside, (13) San Buenaventura, (14) San Mateo, (15) San Rafael, (16) Santa Clarita, (17) South San Francisco, (18) Stockton, and (19) Vista.

informed the League that they do not have, or no longer use, any ATES.

In the 19 cities that continue to use ATES, the number of intersections where ATES is used varies widely. For example, larger cities such as Stockton and Riverside have 13 and 21 ATES intersections, respectively. Smaller cities such as Belmont, Redwood City, and San Rafael, have only one or two ATES intersections.

On average, each ATES intersection in those 19 cities produces 977 red-light citations per year, or 2.68 per day. The raw results for the 19 cities are listed below. The first number is the number of ATES intersections in the city, and the second number reflects either the average number of citations issued in that city per year for ATES violations, or the total number of citations issued in 2012 for ATES violations.

Belmont – 2 and 2,399

Cerritos – 3 and 4,170

Fremont – 10 and 9,564

Hawthorne – 4 and 10,200

Laguna Woods – 2 and 2,522

Menlo Park – 3 and 4,500

Napa – 4 and 3,017

Oceanside – 4 and 5,000

Oxnard – 11 and 3,670

Redding – 5 and 3,645

Redwood City – 1 and 954

Riverside – 21 and 30,000

San Buenaventura – 18 and 4,473

San Mateo – 3 and 5,704

San Rafael – 1 and 2,500

Santa Clarita – 7 and 6,500

South San Francisco – 2 and 5,940

Stockton – 13 and 7,200

Vista – 5 and 4,315

In all 19 cities using the ATES, a vendor under contract performs all the maintenance work on the ATES components. Vehicle Code Section 21455.5(d) directly authorizes this arrangement, so long as cities maintain overall supervision and control of the system.

If, as Goldsmith urges, cities are required to authenticate ATES information with the testimony of employees or agents of the ATES manufacturer, each of the nineteen cities would incur that extra expense for *each* citation issued. The substantial costs of doing so would reach into the tens of thousands or hundreds of thousands of dollars depending upon the city.

IV. Studies Show That An ATES Reduces the Number of Deadly Accidents and The Total Cost of Accidents.

Numerous studies of vehicle crashes conducted over the last decade suggest that ATES cameras reduce the number of serious and deadly accidents caused by people running red lights. Studies also show a concomitant reduction in the overall cost of crashes.

ATES cameras reduce the number of drivers who run red lights, and studies show that the longer a light has been red, the fewer the drivers who run the light. See McCartt & Hu, *Effects of Red Light Camera Enforcement on Red Light Violations in Arlington County, Virginia* (2013). The reduction in the number of drivers running red lights decreases the number of serious and fatal “t-bone” or “right angle” accidents. One study conducted in six Virginia counties over a

seven-year period found that, while the overall number of crashes at ATES intersections increased after the cameras were installed due to rear-end fender benders, the number of more dangerous “red light-running” crashes decreased by 42% in all six of the counties studied. Garber *et al.*, *The Impact of Red Light Cameras (Photo-Red Enforcement) on Crashes in Virginia*, at p. xi. (2007).

A comprehensive national study looking at 14 U.S. cities found a decrease of roughly 24 percent in fatal red light-running accidents at ATES intersections, with a smaller but still statistically significant decrease in fatal red light-running accidents at intersections in the same jurisdictions without ATES cameras. *See* Wu, McCartt, Teoh, *Effects of Red Lights Camera Enforcement on Fatal Crashes in Large US Cities*, at p. 1 (2011). The reduction at non-ATES intersections is potentially due to what is known as the “spillover” effect, which theorizes that people become more conscious of running red lights in jurisdictions with ATES cameras, and therefore run fewer red lights. *See* Aeron-Thomas & Hess, *Red Light Cameras For the Prevention of Road Traffic Crashes (Review)* at p. 4 (2005). The Aeron-Thomas & Hess study—which was a meta-analysis of international data comprising over 30 studies—also found a substantial reduction in

fatal crashes at ATES intersections. *Id.* at p. 1.

Regarding the economic benefit of the ATES, a comprehensive national study covering 132 sites conducted by the Federal Highway Administration found an overall average reduction of between \$39,000 and \$50,000 in the total cost of crashes *per site* per year. *See* United States Federal Highway Administration, Report FHWA-HRT-05-048 Executive Summary, *Safety Evaluation of Red Light Cameras* at p. 7 (2005). The cost savings associated with reducing red light-running accidents overshadowed the increased cost imposed by the greater number of rear-end fender benders.

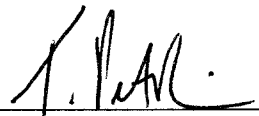
Goldsmith ignores the uncontroverted evidence that ATES cameras save lives and reduce the staggering costs to the public generated by traffic accidents. Goldsmith simply observes the unremarkable fact that some drivers respond to ATES cameras by stopping abruptly at yellow lights, increasing the incidence of rear-end fender-benders. (*See* Reply Brief, at p. 21). That observation, without more, discounts the gravity of the situation facing law enforcement officials when deciding whether to use cameras as a traffic enforcement tool.

V. Conclusion

This Court should affirm the judgment of the Court of Appeal.

Dated: April 16, 2013

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CERTIFICATE OF CONFORMITY

Under Rule 8.520, subdivision (b)(1) and Rule 8.204(c)(1) of the California Rules of Court, this certifies that this Amicus Curiae brief contains 2,575 words according to the word count function on the word processing program used to generate the brief.

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

Executed on April 16, 2013

A handwritten signature in black ink, appearing to read 'T. Peter Pierce', is written over a horizontal line.

T. Peter Pierce

PROOF OF SERVICE

I, Clotilde Bigornia, declare:

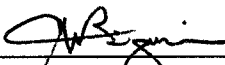
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand, 40th Floor, Los Angeles, California. On April 16, 2013, I served the within documents:

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SUPPORT OF PLAINTIFF AND RESPONDENT PEOPLE
OF THE STATE OF CALIFORNIA**

[X] (BY MAIL) By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth on the attached Service List. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid 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 contained in this affidavit.

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

Executed on April 16, 2013, at Los Angeles, California.



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