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**FILED**  
Superior Court Of California  
County Of Los Angeles

JUL 25 2013

John A. Clarke, Executive Officer/Clerk  
By B. Garcia, Deputy  
B. Garcia

APPELLATE DIVISION OF THE SUPERIOR COURT  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

TAYO POPOOLA,

Defendant and Appellant.

) BR 050478

) Beverly Hills Trial Court

) No. WX204887

) **OPINION**

Defendant Tayo Popoola appeals the judgment entered after his conviction for failing to stop for a red light in violation of Vehicle Code section 21453, subdivision (a). He contends on appeal that the trial court erred in admitting the deputy's testimony regarding the operation, calibration, and maintenance of the automated red light enforcement system (ARLES), and the data obtained therefrom on the grounds that it was hearsay and violated his Sixth Amendment right of confrontation. As explained below, we affirm the judgment.

**BACKGROUND**

On November 9, 2011, a notice to appear issued pursuant to ARLES.<sup>1</sup> The notice alleged that on November 1, 2011, defendant failed to stop for a red light at the intersection of

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<sup>1</sup>See Vehicle Code sections 21455.5-21455.7.

1 Beverly Boulevard and Robertson Boulevard in the City of West Hollywood (City). The cause  
2 proceeded to a court trial on July 26, 2012.

3 Deputy Zenon Porche of the Los Angeles Sheriff's Department and defendant were the  
4 only witnesses to testify at trial. The deputy testified in two stages.<sup>2</sup> His stage one testimony  
5 included the following: he has been assigned to the Photo Red Light program for the City since  
6 1999, has reviewed more than 200,000 citations, and has performed maintenance on the  
7 ARLES equipment more than 5,000 times since 1999. Porche further testified that he had  
8 completed three training courses in the theory and operation of ARLES, had reviewed  
9 thousands of violations, and performs regular maintenance checks at least twice per month on  
10 the ARLES equipment at every intersection in the City.

11 The deputy further testified during stage one that the City contracted with a vendor —  
12 ACS State & Local Solutions (ACS) — to provide equipment and to perform certain  
13 installation work and processing functions for the ARLES. The installation work by ACS  
14 includes the placement of ground induction loops in the pavement at the selected intersections,  
15 the erection of poles and installation thereon of cameras and computer elements with  
16 connections to the ground induction loops and traffic signals. In addition, Porche testified that  
17 citations that are issued based upon the ARLES photos can only be issued at the direction of  
18 either himself or another qualified deputy, by whom all citations are reviewed and either  
19 approved or rejected. If approved, the citation is mailed to the registered owner by ACS within  
20 15 days of the date of the violation.

21 Porche further testified as follows: The equipment at each intersection where the ARLES  
22 is installed is subjected to maintenance checks three times a month by an ACS technician. The  
23 technician also checks to verify that the signs notifying motorists of the presence of the system

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24 <sup>2</sup>The trial court explained that during stage one, the deputy makes a presentation to all ARLES  
25 defendants collectively as to certain issues common to all cases, including, but not limited to, the steps  
26 taken by the City to comply with the Vehicle Code requirements for implementation of an ARLES, a  
27 description of how the system works, and an explanation of the documents that the People will  
28 introduce during trial. The defendants are given an opportunity to ask questions related to the deputy's  
testimony as it applies to the ARLES generally. The second stage occurs when each matter is called  
individually.

1 are posted and visible. In addition, the technician examines the external components of the  
2 ARLES for any visible signs of damage. The camera is also tested. A function key is  
3 depressed and actual traffic lights are observed to verify that the ARLES is synchronized  
4 properly with the traffic lights. Porche said the results of the maintenance checks are  
5 transmitted digitally to him whereby he has exclusive access. Porche then personally checks  
6 each log, verifies it and if he approves it, he digitally signs it. In addition to the maintenance  
7 checks conducted by the ACS technicians, Porche and another qualified deputy personally  
8 perform the same type of maintenance checks twice per month at each ARLES intersection.<sup>3</sup>

9 With respect to the photographic evidence, Porche testified in general that the ARLES is  
10 triggered when a vehicle passes over the induction loops at a speed of 15 miles per hour or  
11 more after the light has been red for more than 0.1 second. The computer that operates the  
12 camera device for the ARLES then takes a series of photographs which show: (1) the vehicle  
13 prior to crossing the limit line; (2) the vehicle after entering the intersection; (3) a close-up of  
14 the driver; and (4) the license plate of the vehicle. A simultaneous photo of a "data box" is  
15 superimposed on the vehicle photos. The data box consists of information that is displayed on  
16 the computer at the precise time that the photos are taken for each violation. Said information  
17 includes, inter alia, the duration of the yellow light and the number of seconds (to 1/100th of a  
18 second) the light has been red at the time the first photo of the vehicle behind the limit line is  
19 taken.

20 During stage two, Porche presented photographic evidence of defendant's violation, as  
21 well as copies of Field Technician Service and Inspection Logs (logs), and an Officer Audit  
22 Record.<sup>4</sup> The logs showed that ACS technician Danny Martinez conducted system checks on  
23 the ARLES at the subject intersection on October 31, 2011, and November 4, 2011, and that it

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24 <sup>3</sup>The record on appeal indicates that defendant made a motion in limine to exclude the deputy's  
25 testimony as well as the digital images and data obtained from the ARLES (discussed *post*) on the  
26 grounds of lack of foundation, hearsay, and violation of his Sixth Amendment rights. The court denied  
his motion.

27 <sup>4</sup>Defendant took no steps to have any of the trial exhibits transmitted to this court. (See Cal.  
28 Rules of Court, rule 8.921.)

1 was working properly on both occasions. Porche testified that he personally maintains the  
2 Officer Audit Record, which indicated that he conducted system checks on October 14, 2011,  
3 October 26, 2011, November 9, 2011, and November 22, 2011, and that it was working  
4 properly on each date. A certificate of mailing was also introduced to establish that the citation  
5 was mailed to defendant on November 9, 2011.

6 According to Porche, the photographic evidence established that “before [defendant]  
7 crossed the limit line at Beverly and Robertson the light had been red for 0.3 seconds, and that  
8 it had been yellow before that for 3.6 seconds.” Another photograph established that defendant  
9 “had crossed the limit line and was within the intersection after the light had been red for  
10 1.3 seconds.”

11 Defendant testified on his own behalf that he was reasonably certain the light had not  
12 changed from yellow to red at the time he entered the intersection, and that he doubted the  
13 accuracy of the ARLES’s calibration.

14 At the conclusion of the trial, the court found defendant guilty of the charged infraction  
15 and imposed a fine. This timely appeal followed.

#### 16 DISCUSSION

17 Defendant contends that admission of the deputy’s testimony regarding the operation of  
18 the ARLES by a vendor absent from trial, as well as the data obtained therefrom and the logs,  
19 violated his Sixth Amendment right of confrontation because said evidence was “testimonial.”  
20 According to defendant, there was no evidence that the ACS technicians were unavailable to  
21 testify at trial, and he had not previously cross-examined them. Defendant’s contention is  
22 premised on the assertion that the complained-of evidence was “testimonial” as defined in  
23 *Bullcoming v. New Mexico* (2011) \_\_ U.S. \_\_ [131 S.Ct. 2705] (*Bullcoming*), *Melendez-Diaz v.*  
24 *Massachusetts* (2009) 557 U.S. 305 (*Melendez-Diaz*), *Crawford v. Washington* (2004) 541 U.S.  
25 36 (*Crawford*), and *United States v. Bustamante* (9th Cir. 2012) 687 F.3d 1190 (*Bustamante*).  
26 We disagree.

27 The extent of a defendant’s right to confrontation was explained in *Crawford, supra*. In  
28 that case, the United States Supreme Court held that the right to confront witnesses, as

1 guaranteed by the Sixth Amendment, is violated by the admission of a testimonial out-of-court  
2 statement unless the declarant is unavailable as a witness, and the defendant had a prior  
3 opportunity to cross-examine the declarant regarding said statement. (*Crawford, supra*, 541  
4 U.S. at pp. 53-54.) The opinion described the “core class of ‘testimonial’ statements” to  
5 include affidavits and certificates “. . . made under circumstances which would lead an  
6 objective witness reasonably to believe that the statement would be available for use at a later  
7 trial,” [citation].” (*Id.* at pp. 51-52.)

8 In *Melendez-Diaz, supra*, the court held that the admission into evidence of certain  
9 “certificates of analysis” by state analysts — which indicated that the substance analyzed was  
10 cocaine — violated the defendant’s Sixth Amendment right. (*Melendez-Diaz, supra*, 557 U.S.  
11 at p. 313.) The court reasoned that the certificates constituted testimonial statements, and that  
12 the analysts were “witnesses” for purposes of the Sixth Amendment. Unless there was a  
13 showing “that the analysts were unavailable to testify at trial *and* that petitioner had a prior  
14 opportunity to cross-examine them, petitioner was entitled to “be confronted with” the  
15 analysts at trial. [Citation.] [Fn. omitted.]” (*Id.* at p. 311, original italics.)

16 In *Bullcoming, supra*, 131 S.Ct. 2705, the defendant was charged with and convicted of  
17 aggravated driving under the influence of alcohol. At the time of the defendant’s arrest, a  
18 sample of his blood was taken. A chemist analyzed the blood sample and found that it  
19 contained a blood-alcohol level in excess of state law. That chemist was not called as a witness  
20 during the trial. Instead, the People presented the testimony of another chemist and introduced  
21 the analyzing chemist’s result as a business record. The court held that the report was  
22 testimonial and that it constituted a violation of the defendant’s right of confrontation to allow  
23 the report into evidence unless the chemist testified or, if the chemist were unavailable to  
24 testify, it constituted a violation unless the defendant had previously been afforded the  
25 opportunity to cross-examine that particular chemist. (*Id.* at pp. 2710-2713.)

26 In *Bustamante, supra*, the prosecution introduced into evidence certain documents to  
27 prove that the defendant was born in the Philippines and was not a United States citizen. One  
28 of the documents was purported to be “a transcription of Bustamante’s birth certificate from the

1 Philippines.” (*Bustamante, supra*, 687 F.3d at p. 1191.) The defendant objected to it on the  
2 ground that it constituted testimonial evidence. The *Bustamante* court agreed, stating that the  
3 document “is an affidavit testifying to the contents of the [Philippine] birth records . . . and is  
4 ‘functionally identical to [the] live, in-court testimony’ that an employee of the Civil  
5 Registrar’s office might have provided. [Citation.]” (*Id.* at p. 1194.)

6 The holdings of *Crawford, Melendez-Diaz* and *Bullcoming* were amplified, and the  
7 definition of testimonial evidence was clarified by the court in *Williams v. Illinois* (2012) \_\_  
8 U.S. \_\_ [132 S.Ct. 2221]. In that case, the high court stated that in all its previous cases  
9 commencing with *Crawford, supra*, which had addressed the issue of “testimonial evidence”  
10 for purposes of the Sixth Amendment, and wherein it had found the evidence to be testimonial,  
11 two characteristics were present. Specifically, these cases “shared the following two  
12 characteristics: (a) they involved out-of-court statements having the primary purpose of  
13 accusing a targeted individual of engaging in criminal conduct and (b) they involved formalized  
14 statements such as affidavits, depositions, prior testimony, or confessions.” (*Id.* at p. 2242.)

15 Neither one of the above characteristics is present in the case *sub judice*. First, the  
16 photographs and data bar at issue here were not created for the primary purpose of targeting  
17 defendant for having violated the Vehicle Code. In fact, at the time the information contained  
18 in the data bar was gathered by the ARLES, the driver of the vehicle had not yet been  
19 identified. Furthermore, there is nothing to show that the information in the data bar was  
20 formalized in any manner. (See, e.g., *Williams v. Illinois, supra*, 132 S.Ct. at p. 2260  
21 [laboratory report lacked formality because it was “neither a sworn nor a certified declaration of  
22 fact”]; cf. *Bustamante, supra*, 687 F.3d at p. 1194 [document was “quite plainly” an affidavit].)  
23 As such, the ARLES evidence did not implicate defendant’s Sixth Amendment rights.  
24 Similarly, the logs were in no way created for the purpose of targeting anyone; they were  
25 simply records of the service and inspection checks conducted by the technician.

26 Lastly, with respect to Porche’s testimony regarding the operation and maintenance of  
27 the ARLES, there was likewise no Sixth Amendment violation. This is because Porche was a  
28 witness with personal knowledge of those issues to which he testified, and was competent to

1 testify to the procedures surrounding the installation, operation, and maintenance of the  
2 ARLES, and was present at trial for cross-examination.

3 The judgment is affirmed.

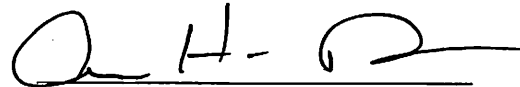
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6 P. McKay, P. J.

7 We concur.

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10 Keosian, J.

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13 Dymant, J.\*

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27 \*Retired judge of the Los Angeles Superior Court sitting under assignment by the Chairperson of the  
28 Judicial Council.