

FILED

JUN 24 2011

Clerk of the Napa Superior Court
By: [Signature]
Deputy

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF NAPA
APPELLATE DIVISION**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff/Respondent,

v.

[REDACTED] DAUGHERTY,

Defendant/Appellant

Reviewing Court No. CR154602

ORDER GRANTING REHEARING

The petition for rehearing filed by the People on June 9, 2011, is
GRANTED.

There is no question the People should have made an appearance in this appeal in the first instance.¹ Having failed to do so, the court would normally be inclined to deny rehearing on that basis alone for most infraction matters. However, this particular infraction appeal presents an important issue of broad public concern that warrants a fully informed appellate decision derived through a complete adversarial process. For this reason, the court exercises its discretion to grant a rehearing of this matter.

¹ There appears to have been some confusion on the part of the Napa Police Department as to the nature of the appellate hearing. A letter filed by the Police on May 10, 2011, requested a dismissal of the underlying case based on the unavailability of a witness and evidence for "trial." Because the Department obviously

The court has read the People's petition for rehearing and supporting memorandum, as well as defendant's answer to the petition. However, the court would like additional briefing from both sides on the following issues:

1. Pursuant to the contract's cost neutrality provision, if the flat fee threshold is not met through a sufficient number of citations over the duration of the contract and the twelve subsequent months, then the City's payment to Redflex would be less than it would be if enough citations are issued to meet the threshold. Under these circumstances, does the contract not provide for payment to Redflex to be based, at least up to the flat fee threshold, on the number of citations generated?

2. Since it could potentially receive less money under the cost neutrality provision, does Redflex have some incentive to generate enough citations to meet the flat fee threshold, thereby violating the legislative purpose behind section 21455.5, subsection (g)(1), and providing a basis for public concern regarding manipulation of the evidence Redflex provides to the City from which the City decides which citations to issue?

3. Is the argument that the cost neutrality provision was never triggered based on an invalid assumption that the flat fee threshold was met through citations issued on accurate evidence?

4. Was the evidentiary presumption of Evidence Code section 1553 applicable to the production of the photographic and video evidence presented by the People at trial in this matter? (See *People v. Goldsmith* (2011)193 Cal.App.4th Supp. 1.)

5. If Evidence Code section 1553 was applicable, and assuming that the City's contract does violate Vehicle Code section 21455.5, subsection (g)(1), then was defendant's presentation of the invalid contract provision sufficient evidence that the images were unreliable such that the burden of presentation switched back to the People to prove that the images were an accurate representation?

did not understand at that time that defendant had already had a trial and was convicted, the court elected to take no action on the letter request and instead proceeded with the appellate oral argument as scheduled.

6. If Evidence Code section 1553 was not applicable in this case, or if defendant met her burden of showing unreliability, then what evidence did the People present to meet the burden of proving by a preponderance of evidence that the images were accurate, i.e. that the photo editing performed by Redflex prior to transferring the images to the City did not compromise the accuracy of the images?

7. If the trial court erred in determining that the contract did not violate Vehicle Code section 21455.5, subsection (g)(1), should the matter be remanded to allow for the reliability of the evidence to be re-determined without a presumption of accuracy, or should the matter be dismissed without further proceedings in the interest of justice?

The People's responsive brief on the foregoing issues shall be filed no later than July 8, 2011. A reply brief by the defendant shall be filed no later than July 21, 2011.

The appeal is re-set for oral argument on July 26, 2011, at 2:00 p.m. in Dept. C.

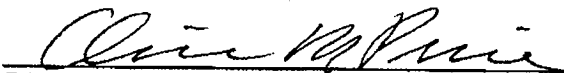
Pursuant to Rules of Court, Rule 8.889, subsection (d), the court's previous decision is hereby vacated.

Lastly, the court notes that Redflex Traffic Systems lacks standing in this matter and, thus, its letter brief filed on June 16, 2011, is not properly before the court. The letter brief is hereby ordered stricken from the record and shall not be considered by the court.

It is so ordered.

Date:

6/24/11



Diane M. Price
Presiding Judge of the Appellate Division of the
Superior Court, County of Napa