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FILED

JUL 21 2011

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

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF NAPA
12 APPELLATE DIVISION

13 PEOPLE,

14 Plaintiff and Respondent,

15 vs.

16 [REDACTED] DAUGHERTY,

17 Defendant and Appellant.

) Case No.: CR 154602
(Trial Court Case No. NA0005213)

APPELLANT'S REPLY BRIEF

Hearing date: 9 August 2011
Time: 2:00 p.m.
Dept: C

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19
20 Appellant [REDACTED] Daugherty replies to the People's Appeal Brief as Called for in
21 Order Granting Rehearing as follows:

22 A. Introduction.

BY FAX

23
24 On 11 May 2011, Appellant [REDACTED] Daugherty was cited for failing to stop at a red
25 light on 2 May 2010, after Redflex Traffic Systems, Inc., an Arizona company that contracts
26 with the City of Napa to supply and operate red light cameras, reported the possible violation

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28 APPELLANT'S REPLY BRIEF

1 to the Napa Police Department. After a court trial, at which the People relied entirely on the
2 testimony of Officer John Brandt, Defendant was found guilty of the infraction. Appellant
3 timely appealed to the Appellate Division. The People made no appearance. At Appellant's
4 request, the Court heard oral argument, after which it issued its decision. Appellant timely
5 requested certification for publication.
6

7 The People moved for a rehearing, which the Court granted, specifying seven
8 questions that the People should address. The People requested oral argument.
9

10 B. Appellant responds in order to the questions posed by the Court in its Order
11 Granting Rehearing, dated 24 June 2011:

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

18 If the Napa Police Department issues only one red light camera ticket in a given
19 month, the fee payable by the City to Redflex would be the amount of that ticket. If it issues
20 two tickets, the fee would double; and so on, with the fee increasing on a per-ticket basis until
21 the amount reaches the cap. That is a dollar-for-dollar return to Redflex on tickets issued
22 under the contract. That is what the Legislature unambiguously outlawed when it passed
23 Vehicle Code 21455.5(g)(1), which states that a contract with a red light camera supplier
24 "may not include... payment... based on the number of citations generated, or as a percentage
25 of the revenue generated..."
26

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

6 By contracting with a private provider of services, the City of Napa unavoidably
7 creates an incentive for a private business to profit from the contract. With its cost neutrality
8 provision, the City went one step further and created an impermissible incentive.

9 The People urge the Court to believe that the Legislature would have adopted broad
10 language barring incentives had it intended to bar all financial incentives. Private service
11 providers need some incentive. Recognizing that reality, the Legislature barred specific
12 practices that create inappropriate incentives. A flat fee is an incentive to offer a service; a
13 pay-per-ticket or contingent fee creates an incentive to boost the number of citations by any
14 available means. The Legislature prudently gave cities and courts a clear standard to ensure
15 the integrity of red light camera citation processing.

16 The City argues that it alone decides which citations to issue. It fails to acknowledge
17 that it depends on Redflex to provide the necessary data, in the form of a digital video feed,
18 digital still shots, and computer-generated time-stamping. We have no way of knowing what
19 Redflex does to the video timing and the time stamps on the still shots. What we know is that
20 Redflex has an illegal incentive to manipulate that data to ensure its full revenue stream.

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

23 The record contains no evidence of whether the City issued sufficient citations to
24 avoid invoking the cost neutrality provision. It makes no difference. The point of the Code is
25 to prohibit contractual arrangements that undermine the fairness of the criminal justice
26 process.

1 The City should not be heard to argue that it did not invoke that provision because it
2 issued sufficient citations. We can only wonder what Redflex did to ensure it generated
3 enough data to support the citations the City issued. No one from Redflex appeared to testify,
4 and be cross-examined, about the processes used by Redflex to manipulate its data. If that
5 term seems harsh, consider that the data is worthless without timing for the video feed and
6 time stamps for the still images. The People admit that Redflex time-stamped the still
7 images. Readily available technology would allow Redflex to change a green light to red or
8 vice versa, to insert a vehicle in a video, or to move its position or orientation.

9 We can make no assumptions about the accuracy of the evidence generated and
10 manipulated by Redflex to support this and, apparently, hundreds of other red light camera
11 tickets. Instead, we have the unambiguous direction of the Legislature that we should not
12 have to worry whether an illegal financial incentive resulted in manufactured data. It is
13 illegal.

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

17 Evidence Code section 1553 states, "A printed representation of images stored on a
18 video or digital medium is presumed to be an accurate representation of the images it purports
19 to represent. This presumption is a presumption affecting the burden of producing evidence.
20 If a party to an action introduces evidence that a printed representation of images stored on a
21 video or digital medium is inaccurate or unreliable, the party introducing the printed
22 representation into evidence has the burden of proving, by a preponderance of evidence, that
23 the printed representation is an accurate representation of the existence and content of the
24 images that it purports to represent."

25 In this section lies a trap for the unwary. Appellant cannot know where or how
26 Redflex may have used its improper financial incentive to manipulate the data. It may be that

1 the presumption created by section 1553 correctly applies—that Redflex has presented the
2 images in its computers accurately. That tells the Court nothing about how Redflex
3 manipulated the data in its computer. We already know that Redflex time-stamped the
4 images, without which they prove nothing. The fact remains that Redflex has an illegal
5 incentive to create incriminating data from the images taken by the cameras.

6 The court in People v. Goldsmith, 193 Cal.App.4th Supp. 1(2011), considered the
7 application of Evidence Code sections 1552 and 1553 and concluded that the presumptions
8 created therein supported the admissibility of the red light camera evidence. The instant case
9 differs in two critical respects. First, the City of Napa gave Redflex an illegal contractual
10 incentive to manipulate data to achieve sufficient convictions. Second, Appellant presented
11 uncontroverted testimony that the method used by Redflex to time the images (what the
12 Goldsmith court identified as “data bar printed on the photographs of appellant’s violation”,
13 193 Cal.App.4th Supp. at 5) suffered frequent interruptions affecting its reliability.

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

19 The contract with the City of Napa constitutes sufficient evidence that data provided
20 by Redflex is unreliable. The burden shifts to the People. It offered no evidence to support
21 the accuracy of the data.

22 This is again legal quicksand. It is easy to allow the analysis to focus on sufficiency of
23 each item of evidence at trial. The illegal contract provision requires much more. Even if the
24 People had offered the testimony of a Redflex employee to explain how they manipulated the
25 data before trial, the Court should reject all evidence from Redflex because it has an illegal
26 incentive to manufacture evidence to ensure sufficient convictions.

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

6 The People only offered testimony by Officer John Brandt. While Officer Brandt
7 testified in general terms to the procedures used by Redflex, he could provide no information
8 about the particular images he offered at trial. Having testified that the time-stamping was
9 essential to the conviction, he could not state whether the Internet link to an external clock
10 suffered any interruption that could have affected the time-stamping. Appellant offered
11 expert testimony that such links experience regular interruption and re-establishment. The
12 People provided no evidence of the accuracy of the images provided by Redflex, except
13 Officer Brandt's attenuated testimony that, some time around the time of the alleged
14 violation, he checked his watch while at the subject intersection and confirmed that the
15 Redflex computer had the right time then.

16 7. If the trial court erred in determining that the contract did not violate Vehicle Code section
17 21455.5, subsection (g)(1), should the matter be remanded to allow for the reliability of the
18 evidence to be re-determined without a presumption of accuracy, or should the matter be
19 dismissed without further proceedings in the interest of justice?

20 The illegal contract provision taints the citation to its core. The Legislature could have
21 directed courts engage in a secondary level of inquiry where they find an illegal contract. It
22 did not. Such arrangements are illegal because they undermine the foundations of the
23 criminal justice system. As long as Redflex has the incentive and the ability to manipulate
24 data in any way, the only possible remedy for violation of Vehicle Code 21455.5(g)(1) is
25 dismissal of the tainted citation.

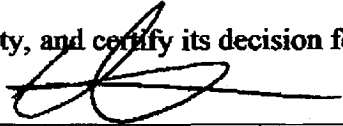
1 In its Order Granting Rehearing, dated 24 June 2011, the Napa Superior Court
2 Appellate Division wrote, "this particular infraction appeal presents an important issue of
3 broad public concern...." The author of 21455.5 wrote: "Paying red light camera vendors
4 [suppliers] based on the number of tickets issued undermines the public's trust and raises
5 concern that these systems can be manipulated for profit." (Official comment by then-
6 Assemblywoman Jenny Oropeza, published in legislative analysis of AB 1022 of 2003.) Red
7 light camera enforcement has generated significant controversy throughout California and
8 beyond. The Appellate Division previously issued a well-reasoned decision that interpreted
9 Vehicle Code 21455.5(g)(1) where no court had done so before. With that decision now
10 vacated, the Court should again provide a clear interpretation of the statute.

11 Allowing the City the easy out of dismissing this citation will only prolong the
12 inevitable litigation that will follow as other citizens demand to have tainted citations
13 dismissed. The Court can make a clear statement that will serve the greater public good.

14 C. Conclusion.

15 Appellant [REDACTED] Daugherty respectfully requests that the Court reverse the decision
16 of the trial court, find the Appellant not guilty, and certify its decision for publication.

17 Dated: 21 July 2011


Peter Winkler, Attorney for
Appellant [REDACTED] Daugherty

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21 Certificate of Compliance

22 Pursuant to Rule 8.883, California Rules of Court, counsel for Appellant hereby
23 certifies that the brief uses proportionately spaced type at 13-point, double-spaced (except for
24 headings and footings), and the word count is 2177.

25 Dated : 21 July 2011


Peter Winkler, Attorney for Appellant