

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
APPELLATE DEPARTMENT

REMITTITUR

ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 4 2011

Plaintiff/Respondent: **People of the State of California**

vs.

Defendant/Appellant: **[Redacted] Kung**

CLERK OF THE SUPERIOR COURT  
By Shay Ryans, Deputy

Appellate No. **5113**

Trial Court No. **50608153**

To:

**[Redacted] Kung**  
In Pro Per  
**[Redacted]**

(Appellant's Attorney)

Catherine Kobal, DDA  
District Attorney Alameda County  
1225 Fallon St. 9<sup>th</sup> Floor  
Oakland, CA 94612

(Respondent's Attorney)

Appeal from: **FHJ**

The Court having fully considered this matter orders:

- Appeal Dismissed  Abandonment having been filed  
 Judgment Affirmed  Judgment Reversed 3-0  Action Dismissed  
 Remanded to Trial Court for Further Proceedings  
 Appellant  Respondent to Recover Costs  
 Each Party to Bear Own Cost  
 Costs are Not Awarded in this Proceeding  
 Other: Motion for Reconsideration Denied.  
 Writ of Mandate & Request for stay: Granted  Denied   
 Writ of Mandate: Granted  
 Writ of Mandate: Denied  
 Writ of Mandate: Granted & Denied in part/Refer to opinion

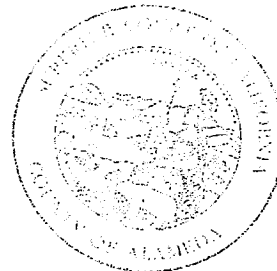
I, Pat Sweeten, Executive Officer/Clerk of the Superior Court, State of California, County of Alameda, do hereby certify that the following is a true and correct copy of the judgment and opinion entered in the above-entitled action on **June 2, 2011**.

Witness my hand and the seal of the court affixed at my office this **August 4, 2011**.

Pat Sweeten, Executive Officer/Clerk

By \_\_\_\_\_

Deputy, Appellate Department  
(510) 891-6001



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

Date: June 1, 2011

Hon. Judge Gloria Rhynes, Presiding Judge  
Judge Jon Tigar  
Judge John True

DEPT. 01  
Shay Ryans, Deputy Clerk  
Not Reported, Reporter

People of the State of California

Counsel appearing  
for Plaintiff

Plaintiff/Respondent

VS

No Appearance



Kung

Counsel appearing  
for Defendant

Defendant/Appellant

No Appearance

NATURE OF PROCEEDINGS:

RULING RE:  
RULING ON APPEAL

Action No.  
Trial Court  
FHJ



5113  
50608153

The judgment of the trial court is reversed 3-0. See, *Melendez-Diaz v. Massachusetts* (2009) 129 S.Ct. 2527. Here, as in that case, there was no live testimony by any person actually involved in the preparation or production of the crucial evidence. Like the affidavits in *Melendez-Diaz*, the Redflex Traffic Systems Court Evidence Package (the "Redflex Packet") consists of after-the-fact documentation of an alleged infraction: e.g., the Redflex co-custodian's declaration that the Redflex Packet was prepared in the normal course of business and according to certain protocols. In this case, as in *Melendez-Diaz*, the co-custodian was not present in court or otherwise available for cross examination. Moreover, the sole testifying witness here, Officer Hall did not testify as to having any knowledge as to: how many technicians at Redflex were assigned to process City of Newark cases, who the technicians were who created the system for Newark, who installed it, or who the technicians at Redflex were who reviewed this particular violation. Because the defense was not able to freely and adequately cross-examine the testifying witness on any of these issues, and because of the absence of a witness who could have testified as to the facts underlying the Redflex Packet, Appellant's Sixth Amendment rights were violated, and the judgment below must be reversed.

Remittitur to issue.

Copies of this minute order mailed this date: June 2, 2011

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

 Kung  
In Pro Per  
  
APPELLANT'S ATTORNEY

Catherine Kobal, DDA  
District Attorney's Office  
1225 Fallon St. 9<sup>th</sup> Floor  
Oakland, CA. 94612  
RESPONDENT'S ATTORNEY

CC: FHJ/ Traffic