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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 17 2010

ALAN CARLSON, Clerk of the Court

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9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
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13 THE PEOPLE OF THE STATE OF
CALIFORNIA,

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15 Plaintiff,

16 vs.

17  CALHOON,

18 Defendant.
19

) Case No.: SA151929PE

) **PEOPLE'S TRIAL BRIEF**

) Date: June 17, 2010

) Time: 1:30 p.m.

) Dept.: C-52

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21 TO DEFENDANT, DEFENDANT'S ATTORNEY, AND THE HONORABLE COURT:

22 COMES NOW Plaintiff, The PEOPLE OF THE STATE OF CALIFORNIA, and presents
23 the following Trial Brief regarding the prosecutorial authority of the Santa Ana City Attorney, as
24 well as the sufficiency and admissibility of the red light camera evidence to be presented in
25 support of Defendant's alleged violation of *Vehicle Code* section 21453(a), Failure to Stop at Red
26 Light.

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1 ***I. THE SANTA ANA CITY ATTORNEY HAS THE AUTHORITY TO PROSECUTE***
2 ***THE INSTANT MATTER***

3 The Santa Ana City Attorney has the statutory authority to prosecute misdemeanor and
4 infraction state code violations. *Government Code* section 72193 states that, "Whenever the
5 charter of any city creates the office of city prosecutor, or provides that a deputy city attorney
6 shall act as city prosecutor, and charges such prosecutor with the duty, when authorized by law,
7 of prosecuting misdemeanor offenses arising out of violations of state laws, the city prosecutor
8 may exercise the following powers" of prosecution.

9 The *Santa Ana City Charter* provides such prosecutorial authority to the City Attorney.
10 Specifically, section 703(d) of the *Charter* provides that the City Attorney shall have the power to
11 "prosecute on behalf of the people such criminal cases for violation of this charter, or City
12 ordinances, and of misdemeanor offenses and infractions arising upon violations of the laws of
13 the state as in his opinion, or that of the City Council, or of the City Manager, warrant his
14 attention." Essentially, the City Charter provides the City Attorney authority to prosecute
15 misdemeanor and infraction state law violations, as required by *Government Code* section 72193
16 for City Attorney state code violation prosecution.

17 *Government Code* section 72193 also requires that the prosecution of misdemeanor
18 offenses arising out of violations of state laws by a City Attorney must be authorized by law.
19 *Government Code* section 41803.5(a) provides such authorization by stating that, "with the
20 consent of the district attorney of the county, the city attorney of any general law city or chartered
21 city within the county may prosecute any misdemeanor committed within the city arising out of
22 violation of state law."

23 The Santa Ana City Attorney has been granted consent from the Orange County District
24 Attorney's Office to appear on behalf of the People of the State of California to prosecute red
25 light camera violations of the *Vehicle Code*, as required by *Government Code* section 41803.5(a)
26 for the Santa Ana City Attorney to prosecute violations of such state law committed with the City
27 of Santa Ana. Based upon this consent from the District Attorney's Office, as well as statutory

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1 authority, the Santa Ana City Attorney's Office has the right to appear on behalf of the People of
2 the State of California to prosecute such state code violations.

3 Defendant may contend that the Santa Ana City Attorney is not authorized to act as
4 prosecutor for the People of the State of California based upon the case of *People v. Dehle*,
5 (2008) 166 Cal.App.4th 1380. However, this case is distinguishable from the issues presented in
6 the instant matter. The *Dehle* case discussed the appearance of a private attorney at a restitution
7 hearing in place of the prosecutor. The reference in the *Dehle* case to the district attorney as the
8 public prosecutor was to emphasize that private prosecutions are not permitted, not that a city
9 attorney cannot serve as the public prosecutor. Thus, the *Dehle* case does not provide guidance
10 on the Santa Ana City Attorney's authority to prosecute state code violations.

11 Defendant may also cite to *City of Merced v. County of Merced*, (1966) 240 Cal.App.2d
12 763 and *People v. Menveg*, (1964) 226 Cal.App.2d 569 to argue that only a district attorney has
13 the authority to prosecute violations of state law. The *Menveg* court ruled that the city attorney
14 could not prosecute a specific state code violation. The *Merced* court determined that the district
15 attorney was required to prosecute state law violations. However, the *Merced* court also noted
16 that "it is possible that the Legislature may see fit to change the legal rule with respect to
17 prosecutions in justice courts in cities such as Merced." *City of Merced*, 240 Cal.App.2d at 768.
18 In 1967, in response to these rulings, the Legislature enacted *Government Code* section
19 41803.5(a) to specifically allow city attorneys the opportunity to prosecute state law violations.
20 See, *People v. Enriquez*, (1968) 267 Cal.App.2d 424, 427.

21 Defendant may also contend that if a city attorney prosecutes state law violations, they
22 must prosecute all state code violations within the city. However, this argument does not follow
23 the language of *Government Code* section 41803.5(a), which specifically states that with district
24 attorney authority, the city attorney "*may* prosecute any misdemeanor committed within the city
25 arising out of violation of state law (emphasis added)." As such, a city attorney's authority to
26 prosecute state code violations is permissive, not a mandatory duty. See, *Montgomery, et al. v.*
27 *The Superior Court of Solano County*, (1975) 46 Cal.App.3d 657, 666.

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1 Defendant may further argue that a city attorney cannot prosecute state code violations
2 because the state has an interest in assuring that state law is applied uniformly, which is
3 accomplished by making the various district attorneys subordinate to the Attorney General. If
4 such uniform application of the law argument was accurate, then there would never be a situation
5 in which city attorneys were allowed to prosecute state code violations. However, there are
6 several examples of city attorneys prosecuting state code violations. In addition, the authority
7 cited herein, most notably *Government Code* sections 41803.5 and 72193, clearly discuss the
8 authority of city attorneys to prosecute state code violations.

9 The Orange County District Attorney exercises his prosecutorial discretion to not appear
10 on traffic infractions. As such, the District Attorney's Office granted the authority to the Santa
11 Ana City Attorney's Office to appear on behalf of the People of the State of California to
12 prosecute red light camera violations of the *Vehicle Code* in the City of Santa Ana, as authorized
13 pursuant to *Government Code* sections 41803.5 and 72193 and *Santa Ana Charter* section 703(d),
14 as detailed above.

15 **II. PHOTOGRAPHIC AND DOCUMENTARY EVIDENCE FROM REDFLEX IS**
16 **PROPERLY ADMISSIBLE PURSUANT TO THE RULES OF EVIDENCE**

17 The photographic and video evidence to be presented by the People at the time of trial is
18 admissible. The People oppose any contention that photographic or video evidence cannot be
19 admitted into evidence as hearsay. Photographs and video are not statements, and therefore are
20 not hearsay. Pursuant to *Evidence Code* section 1553, "A printed representation of images stored
21 on a video or digital medium is presumed to be an accurate representation of the images it
22 purports to represent." Essentially, photographs and videos are "demonstrative evidence
23 depicting what the camera sees. They are not testimonial and they are not hearsay." *People v.*
24 *Cooper*, (2007) 148 Cal.App.4th 731, 746. See also, *People v. Bowley*, (1963) 59 Cal.2d 855,
25 860, and *People v. Doggett*, (1948) 83 Cal.App.2d 405. Accordingly, no photographic or video
26 evidence should be precluded from trial as inadmissible hearsay.

27 The information in the data bar on the photographs, including the date and time of the
28 alleged violation, is automatically generated by a computer and is thus not hearsay. See, *People*

1 v. *Hawkins*, (2002) 98 Cal.App.4th 1428. In *Hawkins*, the Court held that the timing of a
2 “computer’s clock” is presumed accurate under *Evidence Code* section 1522. The *Hawkins* Court
3 explained that a computer’s internal time and date clock are records of its internal operations and
4 not hearsay because “the Evidence Code does not contemplate that a machine can make a
5 statement.” Therefore, the information in the data bar is not hearsay, and no hearsay exception
6 should be necessary to admit the data bar into evidence.

7 With respect to any other documents that are presented as evidence and are determined to
8 be hearsay statements offered for the truth of the matter, such evidence would qualify for the
9 official records exception to the hearsay rule pursuant to *Evidence Code* section 1280, as well as
10 the business records exception under *Evidence Code* section 1271. Both the business records
11 exception and the official records exception require that the evidence presented must have been
12 made in the regular course of business, at or near the time of the event, and that there is an
13 indication of trustworthiness. The business records exception also requires that a qualified
14 witness testify to the identity and mode of preparation of the evidence. The official records
15 exception does not require such testimony, so long as the evidence was made by and within the
16 scope of duty of a “public employee.” *Evidence Code* section 195 defines a “public employee”
17 as “an officer, agent, or employee of a public entity.”

18 Redflex is an agent of the City of Santa Ana, which is a public entity, as permitted by
19 *Vehicle Code* section 21455.5(d). Therefore, documents prepared by Redflex may be imbued
20 with the trustworthiness of a public police agency so long as it is functioning as an agent of the
21 government entity. See, *Imachi v. DMV* (1992) 2 Cal.App.4th 809, 816-817 (trustworthiness
22 indicia supplied by fact that private lab technician, acting on behalf of law enforcement agency,
23 was reporting first hand observations as well as presumption of official duty regularly performed,
24 citing *Evidence Code* section 664). The fact that Redflex serves as an agent for the City of Santa
25 Ana meets the chief foundation of the special reliability granted official and business records,
26 which is that they are based on first hand observation of someone whose job it is to know the
27 facts recorded. Thus, Redflex documents are not inadmissible hearsay and can be properly
28 admitted by the court.

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1 With respect to testimony, the business records exception in *Evidence Code* section 1271
2 only requires that "The custodian *or other qualified witness* testifies to its identity and the mode
3 of its preparation (emphasis added)." There is no requirement that the custodian be present.
4 Rather, any qualified witness may testify as to the foundation of the document to qualify for this
5 exception. Every Santa Ana Police Officer who works with the Redflex red light camera system
6 has participated in specialized class and field training through Redflex regarding the technical
7 operation of the system. Upon completion of such training sessions, the Santa Ana Police
8 Officers are certified to operate the Redflex automated enforcement system. Such credentials
9 establish all of the Redflex certified Santa Ana Police Officers as qualified witnesses to testify as
10 to the operation of the Redflex automated enforcement system. In addition, the official records
11 exception in *Evidence Code* section 1280 does not even require any testimony, in contrast to the
12 business records exception. As such, the testimony presented at trial is sufficient to certify the
13 admissibility of the evidence presented in the instant matter.

14 The trustworthiness of the Redflex system may be questioned by Defendant due to an
15 allegation that its fortunes depend on providing evidence of criminal activity. However, as
16 required by *Government Code* section 21455.5(g)(1), the contract between Redflex and the City
17 of Santa Ana does not include a provision for compensation based upon the number of citations
18 generated, but rather is based upon a flat fee. The contract complies with the requirements of
19 *Government Code* section 21455.5(g)(1), which supports the trustworthiness of the Redflex
20 operations.

21 As detailed above, the evidence to be presented in this matter is admissible. Photographic
22 and video evidence are not hearsay. In addition, if documentary evidence from Redflex is found
23 to be presented for the truth of the matter, it is admissible under hearsay exceptions and should be
24 properly admitted into evidence.

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1 **III. THE CONFRONTATION CLAUSE DOES NOT REQUIRE THE TESTIMONY AND**
2 **CROSS-EXAMINATION OF REDFLEX EMPLOYEES REGARDING EVIDENCE**
3 **OBTAINED BY REDFLEX**

4 The Sixth Amendment right to confrontation does not apply to the submission of Redflex
5 photographs and documents into evidence. Accordingly, the admission of such evidence does not
6 require the availability of Redflex employees involved in the preparation of the photographs and
7 documents for cross-examination.

8 Defendant may cite to the United States Supreme Court case of *Melendez-Diaz v.*
9 *Massachusetts*, (2009) 129 S. Ct. 2527, to support a claim that the People must present a Redflex
10 employee at the time of trial for cross-examination. However, the *Melendez-Diaz* case is
11 distinguishable from the matter at hand. In *Melendez-Diaz*, the Court was analyzing the
12 sufficiency of an affidavit relaying the results of a forensic test conducted upon a piece of
13 evidence submitted by the Police Department, which determined that the substance in question
14 was cocaine. Essentially, the Court was making a determination on the admissibility of
15 documentary evidence created as a direct result of scientific analysis to convey the conclusions of
16 an individual who performed actual tests and analysis on a piece of evidence.

17 In the instant matter, Redflex does not conduct an analysis of the evidence presented, does
18 not exercise any judgment, and does not provide any test results in the form of documentary
19 evidence. Rather, Redflex merely provides the photographic and documentary evidence that is
20 collected to the Santa Ana Police Department so that the Santa Ana Police Officers may analyze
21 the evidence and make a determination as to any possible violations depicted. In fact, *Vehicle*
22 *Code* section 21455.5(d) prohibits the activity of analyzing the evidence from being “contracted
23 out to the manufacturer or supplier of the automated enforcement system,” but rather, as required
24 under subsection (c)(2)(F), the police department must be “Maintaining controls necessary to
25 assure that only those citations that have been *reviewed and approved by law enforcement* are
26 delivered to violators (emphasis added).” In accordance with statutory requirements, Santa Ana
27 Police Officers review the photographs and documents provided by Redflex and make the
28 determination as to whether or not citations are issued. Since the Santa Ana Police Officers are

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1 the ones who analyze and form the conclusion, they are present at trial to testify and be cross-
2 examined regarding their analysis.

3 The *Melendez-Diaz* Court considered the fact that there may be a chain of custody to the
4 evidence presented at trial, and determined that it is not necessary to call such individuals in to
5 testify at trial. Specifically, the Court clearly stated that, “we do not hold, and it is not the case,
6 that anyone whose testimony may be relevant in establishing the chain of custody, authenticity of
7 the sample, or accuracy of the testing device, must appear in person as part of the prosecution’s
8 case.” *Melendez-Diaz*, 129 S. Ct. at 2532, fn 1. Accordingly, it is not necessary for a Redflex
9 employee to appear and testify at trial regarding evidence obtained by Redflex.

10 ***IV. THE CITY OF SANTA ANA FULFILLED ALL REQUIREMENTS OF VEHICLE***
11 ***CODE SECTION 21455.5 AND THUS HAS THE AUTHORITY TO ISSUE***
12 ***CITATIONS THROUGH THE USE OF RED LIGHT CAMERAS***

13 The City of Santa Ana has met each and every requirement of *Vehicle Code* section
14 21455.5, including the issuance of warning notices and public announcements, for its automated
15 traffic enforcement system. Specifically, the City of Santa Ana enacted a warning notice phase at
16 each of the intersections in its red light camera photo enforcement system. Warning notices were
17 issued for violations beginning at 12:01 a.m. on November 25, 2009. The warning notice phase
18 concluded and citations were issued for violations occurring at or after 12:01 a.m. on December
19 28, 2009. Thus, warning notices were issued for over thirty days prior to the issuance of
20 citations. In addition, the City of Santa Ana issued multiple public announcements regarding this
21 warning notice phase and the subsequent issuance of citations for violations captured by its red
22 light camera photo enforcement system. Specifically, the public announcement was printed in
23 English in the Orange County Register on November 23, 25, and 27, 2009, and in the Orange
24 County Reporter on November 23, 24, and 27, 2009. The public announcement was also printed
25 in Spanish in La Opinion on November 24 and 25, 2009. These public announcements were all
26 published over thirty days prior to the issuance of citations. Accordingly, the City of Santa Ana
27 has complied with the requirements of *Vehicle Code* section 21455.5(b), thus negating any

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1 argument pertaining to the City of Santa Ana's jurisdiction to issue citations, or lack of reliability
2 and trustworthiness in the automated enforcement system.

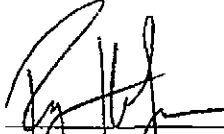
3 *V. CONCLUSION*

4 For the foregoing reasons, any objection or argument as to the prosecutorial authority of
5 the Santa Ana City Attorney's Office, or the sufficiency and admissibility of the evidence in this
6 matter, should be OVERRULED or DENIED.

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8 Respectfully submitted,
9 JOSEPH W. FLETCHER
10 City Attorney

11 Dated: June 17, 2010

12 By:

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14 RYAN O. HODGE
15 Deputy City Attorney
16 Attorneys for THE PEOPLE OF THE STATE OF
17 CALIFORNIA

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