

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

Counsel appearing
for Defendant

Kung

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**

[REDACTED] Kung
In Pro Per
[REDACTED]
APPELLANT'S ATTORNEY

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

CC: FHJ/ Traffic