

**FILED**

MAY 26 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

OPINION

**INTRODUCTION**

**[REDACTED]** Daugherty appeals from her conviction for violation of Vehicle Code section 21453(a), failure to stop at a red signal. Defendant contends: (1) the trial court's finding of guilt was not supported by substantial evidence showing the accuracy of the time stamping on the photographic/video evidence; and (2) the City's contract with Redflex is in violation of statute. The court agrees with defendant that the City's contract with Redflex is in violation of statute and, therefore, reverses her conviction.

**DISCUSSION**

The City's contract with Redflex is in violation of statute.

During trial, defendant presented as evidence the City's contract with Redflex, the contractor that provides red light camera services for the City of

Napa. Section 1 of Exhibit "B" "Payment Provisions" to the contract provides that the City will pay a specified fixed monthly fee for each designated intersection. However, section 1.2 entitled "Cost Neutrality" provides, "Cost neutrality is assured to City – City will never be required to pay Redflex more than actual cash received." Section 1.2 goes on to describe a process whereby the City is obligated to pay Redflex monthly "to the extent of gross cash received by the City."

Defendant contends these payment provisions are in violation of Vehicle Code section 21455.5, subsection (g)(1), which provides, "A contract between a governmental agency and a manufacturer or supplier of automated enforcement equipment may not include provision for the payment or compensation to the manufacturer or supplier *based on the number of citations generated*, or as a percentage of the revenue generated, as a result of the use of the equipment authorized under this section." (*Emphasis added.*)


This court agrees with defendant that the Redflex contract's cost neutrality provision improperly bases the City's payment to Redflex on the number of citations generated, at least to the extent there are not enough citations generated to cover the fee in a given month. Even if one were to interpret the contract's provision obligating the City to pay "the cumulative balance invoiced" to mean that any outstanding balance unpaid in a given month due to a deficit of citations will be rolled over to invoices for subsequent months, that cumulative balance obligation is still limited "to the extent of gross cash received by the City" and, therefore, may never have to be paid if insufficient citations are issued.

To illustrate, if only one citation was issued every month for the period of the contract, Redflex would never receive the full monthly payment it would otherwise receive if there were sufficient citations issued to cover the monthly fixed fee. In other words, Redflex's receipt of full payment is dependent on the issuance of a sufficient number of citations. The more citations issued, the more Redflex will receive, up to the cap. That type of arrangement has been specifically prohibited by the legislature and cannot be upheld by the court.

## CONCLUSION

Because the City's contract with Redflex is in violation of section 21455.5, the court finds that the evidence from the Redflex system was inadmissible to prove defendant's violation. Thus, the judgment of the trial court is properly reversed with instructions to dismiss the citation. (See *People v. Kriss* (1979) 96 Cal.App.3d 913, 921.) Because the judgment is reversed for the reasons discussed above, this court need not consider the other argument raised by defendant on appeal.

Date: 5/26/11

  
Diane M. Price  
Presiding Judge of the Appellate Division of the  
Superior Court, County of Napa<sup>1</sup>

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<sup>1</sup> Pursuant to Code of Civil Procedure section 77(h), "appeals from convictions of traffic infractions may be heard and decided by one judge of the appellate division of the superior court."