

Francco
[Redacted]
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Defendant and Appellant in Pro Per

**APPELLATE DIVISION OF THE SUPERIOR COURT
OF CALIFORNIA, COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

**PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff and Respondent,)
v.)
[Redacted] Franco)
Defendant and Appellant)**

Case No. 30-2008-00093057

**MOTION TO AUGMENT
THE RECORD**

Appellant moves this court for an order augmenting the record on appeal.

On July 17, 2008, Commissioner Allen Kelley Stone of the Superior Court of California, County of Orange- North Justice Center filed a Settled Statement of Appeal which stated the following: 1) Appellant made no objection to the introduction and receipt of evidence regarding the photo and video evidence as provided by Nestor Transportation Systems (NTS) and submitted as the People's evidence; 2) Appellant declined to cross examine the officer present regarding the People's evidence; and 3) Appellant stated she believed the contract for the red light system was not legal because she had no opportunity to cross-examine the citing officer. Appellant claims these statements are inaccurate. Appellant submits herewith Appellant's Exhibit II- Statement of Evidence, as originally submitted by Appellant to the Orange County District Attorney's office as part of Appellant's initial Notice of Appeal, and moves that the record be augmented to incorporate it.

The relevance of said Exhibit II- Statement of Evidence is as follows. On December 26, 2007, Appellant objected three different times to the introduction of the People's photo and video evidence due to the questionable legality of the contract between the City of Fullerton and NTS (the language contained in said contract is in direct violation of CVC 21455.5). As said contract contains what the Appellant believes is illegal language, any photo and/or video documentation resulting from this contract and presented as the People's evidence in the case would be inadmissible. The objection was overruled by Commissioner Stone (he stated he would not allow that particular defense due to an existing appeal already in process with regard to the same issue). The requested addition of Exhibit II- Statement of Evidence is needed to detail the actual defenses presented by Appellant and to evaluate the potential appellate merit of the motion to dismiss the People's evidence.

DATED: September 4, 2008

Respectfully submitted,

A large black rectangular redaction box covers the signature of the defendant and appellant.

Franco, Defendant and Appellant in Pro Per

DECLARATION OF [REDACTED] FRANCO, APPELLANT

I am appellant in pro per in this matter.

The facts stated in this declaration are within my personal and firsthand knowledge. If called as a witness in this action, I could and would testify competently under oath to the following facts.

I have engaged in a preliminary review of the present record on appeal in this case. Based upon my review, I have determined that the present record is incomplete in the respect noted in the attached motion to augment the record. In the interest of economy, the discussion in the motion to augment is incorporated by reference.

As is reflected by the attached motion, it is my opinion that I cannot receive a full and fair review of the trial court proceedings unless the motion is granted. It is also my good faith belief that the item requested in the motion is essential for appellate review.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of September 2008 at Los Angeles, California.

[REDACTED]

Francco

(FRANCO)

Case #: FL45261PE

EXHIBIT II- STATEMENT OF EVIDENCE

On December 26, 2007, I was present for my trial (contesting citation #FL45261PE) in front of Commissioner Allen K. Stone at the Superior Court of California, North Justice Center in Fullerton. When other civil cases were completed and the "red-light" tickets were ready for trial, Com. Stone called all "red-light ticket" defendants forward. He asked us to sit in the seats behind the defense table and watch what he said would be "interesting" trial proceedings. When my case was called, I and Officer Warner of the Fullerton City Police Department approached the tables set up for defendant and prosecutor. Officer Warner began first, reciting his tenure as a City of Fullerton police officer and then proceeded to discuss the automated red-light enforcement cameras as installed by Nestor Transportation Systems ("NTS") per their contract with the City of Fullerton. As soon as he mentioned the cameras, I said, "Objection", intending to argue that any photos or video provided by said cameras was inadmissible evidence due to the fact that the language in the contract is in violation of the law per CVC 21455.5. Before I could finish what I was saying and why I was objecting, however, Com. Stone said, "Overruled" and Officer Warner continued his testimony. Once again, when Officer Warner began to speak of the photos and video taken by the NTS cameras, I attempted to object, but again Com. Stone overruled my objection before I could say why I was objecting. Finally, right as Officer Warner was about to play the NTS video, I objected and proceeded to say why I was objecting. Com. Stone then paused and reluctantly asked me to explain my objection. I read section g of CVC code 21455.5, and then read the relevant paragraph of Fullerton's contract with NTS. Com Stone looked at me and said that there was already a lengthy appeals process in the courts about it, and as it hadn't been overturned yet, he wasn't going to allow me to use that argument to keep the video from being played. Officer Warner then proceeded to play the video of me going through the red light. Once he was finished, Com. Stone asked if I had any questions for Officer Warner. The first question I asked him is if he was familiar with CVC 21455.5. He said he was generally familiar. I then asked him if he was aware of section g of that code; he said he wasn't specifically aware of that section. I gave him a copy of it as printed from the DMV's website then asked him if he was familiar with Fullerton's contract with NTS and the payment provisions in it. He said he was not at all familiar with the contract. I gave him a copy of the initial contract and subsequent amendments and proceeded to ask again about the payment language. Officer Warner did not have an answer for me with reference to the payment clauses in the contract being in violation of CVC 21455.5. As we seemed to have hit an impasse with this line of defense, Com. Stone then asked me if I had anything else. I then gave Com. Stone and Officer Warner copies of the maintenance logs provided by NTS that I had gotten from the Fullerton City Clerk's office showing that the cameras in the intersection from my ticket kept having multiple problems the week I received that ticket. Com Stone said that the maintenance logs were not valid evidence for my defense since Officer Warner had already testified that the cameras had been working properly. Com. Stone then asked me if I had anything else. I told the court that the light had been red less than a quarter of a second (.232 seconds, to be exact, per NTS) when I went through, and that the powering of the bulbs varies to sometimes take up to a quarter of second for the power to actually reach the bulbs, and as such may not qualify as a "steady red light" under CVC 21453. Com. Stone then asked me what the light being red for two (2) seconds had to do with me running it and that not being against the law. I corrected him that the light had actually been red less than a quarter of a second, and repeated that due to that fact and the varying timing issues for powering bulbs, it may not fall within CVC 21453. He stated that it didn't matter how long the light had been red, that the fact that it had been red at all was all that counted.

At that point, Com. Stone asked if I had anything else. I did not and stated so. Com. Stone stated that given all of the evidence presented, he was basing his decision on Officer Warner's testimony and finding in favor of the people. I told him that I intended to appeal his ruling, and he said I was more than welcome to do that.

[REDACTED]

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APPELLATE DIVISION OF THE SUPERIOR COURT
OF CALIFORNIA, COUNTY OF ORANGE

PEOPLE OF THE STATE OF CALIFORNIA,)
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v.)
[REDACTED] FRANCO)
Defendant and Appellant)

Superior Court No. 30-2008-00093057

PROOF OF SERVICE

I, [REDACTED], declare:

1. I am over the age of eighteen and not a party to the within action.
2. My business address is [REDACTED] Street, Los Angeles, CA 90071, in the county within which the mailing herein mentioned occurred.
3. On September 4, 2008, I served the within Motion to Augment the Record by placing true copies thereof in separate envelopes, said envelopes being addressed to:

Appellate Division, Superior Court of California, County of Orange, Central Justice Center, 700 Civic Center Drive West, Santa Ana, CA 92701.

Orange County District Attorney's Office, 401 Civic Center Drive West, Santa Ana, CA 92701.

Commissioner Allan Kelley Stone, Orange County Superior Court, North Justice Center, 1275 North Berkeley Avenue, Fullerton, CA 92832-1258.

Each said envelope was then, on September 4, 2008, sealed and deposited in the United States Mail at Los Angeles in Los Angeles County, with the postage thereon fully prepaid.

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 9/4/08

[REDACTED SIGNATURE]

[REDACTED]
[REDACTED]
[REDACTED], CA
[REDACTED]

Commissioner Allan Kelley Stone
Orange County Superior Court, North Justice Center
1275 North Berkeley Avenue
Fullerton, CA 92832-1258



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Orange County District Attorney's Office
401 Civic Center Drive West
Santa Ana, CA 92701
Attn: Tony Rackauckas



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Superior Court of California, County of Orange
Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92701
Attn: Appellate Division