

Trial Court Case Name: Kung

Trial Court Case Number:
0050608153

Information About Your Appeal

- ② On (fill in the date): April 22, 2010, I/my client filed a *Notice of Appeal and Record of Oral Proceedings (Infraction)*, choosing to use a statement on appeal as the record of what was said in this case.

Proposed Statement

③ The Charges Against Me/My Client

- a. If the charges against you/your client are based on a citation (ticket) you received, provide the citation number (fill in the citation number from your ticket): N025752B
- b. The charges against me/my client were (list all of the charges indicated on the citation or complaint filed by the prosecutor with the court): California Vehicle Code Section 21453(a)
- c. I/My client (check (1), (2), or (3))
- (1) pleaded not guilty to all of the charges.
- (2) pleaded guilty to only the following charges: _____
- (3) pleaded guilty to all of the charges.

④ Summary of Any Motions

- a. Were any motions (requests for the trial court to issue an order) made in this case?
 Yes (fill out b) No (go to item ⑤)
- b. In the spaces below, describe any motions (requests for orders) made in the trial court. Write a complete and accurate summary of what was said at any hearings on these motions and indicate how the trial court ruled on these motions:

- (1) I/My client made the following requests (motions) in the trial court (check all that apply):

- (a) To submit a photograph or photographs as evidence (describe the photographs):

20 Photographs for examining the Prosecution's compliance in California Vehicle Code Section 21455.5(a)(1)

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept the photographs.

- Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(a)."

④ b(1) (continued)

- (b) To submit a map or maps as evidence (*describe the maps*):

Map of City of Newark for examining the Prosecution's compliance in California Vehicle Code Section 21455.5(a)(1)

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept the maps.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(b)."

- (c) To submit other material as evidence (*describe what you asked to submit as evidence in the trial court*): Opinion of Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009)

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The court did did not accept this material.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(c)."

- (d) Other (*describe any other request you made in the trial court and whether the court granted or denied this request*): A motion to exclude evidence from the Prosecution was requested and denied.

Check here if you need more space to describe the motion and attach a separate page or pages describing it. At the top of each page write "CR-143, item 4b(1)(d)."

- (2) The prosecutor made the following request (motion) in the trial court (*describe any request the prosecutor made in the trial court and whether the court granted or denied this request*):

4 b(2) (continued)

There was was not a hearing on this motion.

If there was a hearing on this motion, write a complete and accurate summary of what was said at this hearing: _____

The trial court granted this motion. did not grant this motion.

Other (describe any other action the trial court took concerning this motion): _____

Check here if you need more space to describe this motion and attach a separate page or pages describing it. At the top of each page, write "CR-143, item 4b(2)."

Check here if other motions were filed, and attach a separate page or pages describing these other motions, identifying who made them and whether there was a hearing on the motion, summarizing what was said at the hearing on the motion, and indicating whether the trial court granted or denied the motion. At the top of each page, write CR-143, item 4b(3).

5 Summary of Testimony

a. Was there a trial in your case?

No (skip items b, c, and d and go to item 6)

Yes (complete items b, c, and d)

b. Did you/your client testify at the trial?

No

Yes (write a complete and accurate summary of the testimony you/your client gave. Include only what you actually said; do not comment on or give your opinion about what you said):

Check here if you need more space to summarize your/your client's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 5b."

c. Did an officer from the police department, sheriff's office, or other government agency that charged you/your client testify at the trial? (Check one):

No

Yes (complete (1) and (2)):

(1) The name of the officer who testified is (fill in the officer's name): Duncan Hall

5 c. (continued)

(2) This officer testified that (write a complete and accurate summary of the officer's testimony. Include only what the officer actually said; do not comment on or give your opinion about what the officer said): an automatic enforcement system has captured the alleged act of violation. Based on the video and photos captured by the automatic enforcement system, he issued the citation for the alleged act.

Check here if you need more space to summarize the officer's testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write "CR-143, Item 5c."

d. Were there any other witnesses at the trial?

No

Yes (fill out (1)-(4)):

(1) The witness's name is (fill in the witness's name):

(2) The witness was was not an officer from the government agency that charged me/my client.

(3) The witness testified on behalf of me/my client. the prosecution.

(4) This witness testified that (write a complete and accurate summary of the witness's testimony. Include only what the witness actually said; do not comment on or give your opinion about what the witness said):

Check here if other witnesses testified at the trial. Attach a separate page or pages identifying each other witness that testified at your trial, stating whether that witness testified on your/your client's behalf or the prosecution's behalf, and summarizing what that witness said in his or her testimony. At the top of each page, write "CR-143, item 5e."

The Trial Court's Findings

6 a. I/My client was found guilty of the following offenses (list all of the offenses for which you were/your client was found guilty): California Vehicle Code Section 21453(a)

b. I/My client was found not guilty of the following offenses (list all of the offenses for which you were/your client was found not guilty): N/A

6 (continued)

c. The following charges were dismissed after proof of correction was shown to the judge (list all of the charges that were dismissed):

N/A

7 The Sentence

The trial court imposed the following fine or other punishment on me/my client (check all that apply and fill in any required information):

a. [x] A fine of (fill in the amount of the fine): \$ 446

b. [x] Traffic school

c. [] Community service (fill in the number of hours):

d. [] Other punishment (describe any other punishment that the court imposed on you):

8 Reasons for Your Appeal

Remember, in an appeal, the appellate division can only review a case for whether certain kinds of legal errors were made in the trial court proceedings (read form CR-141-INFO to learn about these legal errors):

- There was not "substantial evidence" supporting the judgment, order, or other decision you are appealing
• A "prejudicial error" was made during the trial court proceedings.

The appellate division:

- Cannot retry your case or take new evidence
• Cannot consider whether witnesses were telling the truth or lying
• Cannot consider whether there was more or stronger evidence supporting your position than there was supporting the trial court's decision

(Check all that apply and describe the legal error or errors you believe were made that are the reason for this appeal.)

a. [x] There was not substantial evidence that supported the judgment, order, or other decision I am/my client is appealing in this case. (Explain why you think the judgment, order, or other decision was not supported by substantial evidence): The Court was without jurisdiction to find defendant guilty after having admitted, over defendant's objection, evidence based on hearsay and lack of foundations.

People v. [REDACTED] Kung (Docket #: 0050608153)

CR-143 Item 4b (1 a, b, c, d)

A motion to exclude evidence (Item 1d) was request during the hearing. Evidence (as mentioned it Item 1a, 1b, 1c) was introduced to support the motion.

The defendant argues that the Prosecution failed to satisfy California Vehicle Code Section 21455.5 in implementing automatic enforcement system by:

1. Failure to satisfy the requirement set by California Vehicle Code Section 21455.5(a)(1) (By the use of the evidence for Item 1a and 1b)
2. Failure to satisfy the requirement set by California Vehicle Code Section 21455.5(b)
3. Failure to satisfy the requirement set by California Vehicle Code Section 21455.5(g)(1)
4. Denial of Constitutional right of procedural due process by denying the defendant to confront any material witnesses (By the use of the evidence for Item 1c)

With the defendant's objection, the Prosecution argues the motion based on the testimony of the Office with no actual evidence produced to the Court to argue the motion request.

All evidence was admitted and the motion was denied based on the testimony of the Office.