

Clerk stamps date here when form is filed.
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 HARBOR JUSTICE CENTER
 2009 OCT 28 PM 3:31
 ALAN CARLSON, CLERK OF THE COURT
 DEPUTY

Instructions

- This form is only for preparing a statement on appeal in an infraction case, such as a case about a traffic ticket.
- Before you fill out this form, read *Information on Appeal Procedures for Infractions* (form CR-141-INFO) to know your rights and responsibilities. You can get form CR-141-INFO at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.
- This form can be filed at the same time as your notice of appeal. If it is not filed with your notice of appeal, this form must be filed **no later than 20 days after you file your notice of appeal**. If you have chosen to use a statement on appeal and do not file this form on time, the court may dismiss your appeal.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- You must serve a copy of the completed form on each of the other parties in the case and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.
- Take or mail the completed form and proof of service on each of the other parties to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of Orange
 Harbor Justice Center
 23141 Moulton Parkway
 Laguna Hills, CA 92653

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:
 SJ026203PEA
 Trial Court Case Name:
 The People of the State of California
 v. [REDACTED] Foley

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Appellant (the party who is filing this appeal):

Name: [REDACTED] Foley
 Street address: [REDACTED] Street City State Zip
 Mailing address (if different): [REDACTED] Street City State Zip
 Phone: [REDACTED] E-mail (optional): [REDACTED]

b. Appellant's lawyer (skip this if the appellant is filling out this form):

The lawyer filling out this form (check (1) or (2)):
 (1) was the appellant's lawyer in the trial court. (2) is the appellant's lawyer for this appeal.
 Name: _____ State Bar number: _____
 Street address: _____ Street City State Zip
 Mailing address (if different): _____ Street City State Zip
 Phone: () _____ E-mail (optional): _____
 Fax (optional): () _____

MA

Information About Your Appeal

② On (fill in the date): October 8, 2009, 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): SJ026203PEA
- 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): Red light camera violation--Cal. Veh. Code Section 21453(c)

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): _____

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)."



[Handwritten mark]

4 b(1) (continued)

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

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):

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):

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):



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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):

I did not testify factually. I appeared at trial. I presented legal arguments and objections in my defense and asserted that the state had not met its burden of proof.

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): OC Sheriff's Deputy, Name ?



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):*
See attachment.

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)*:

Violation of Cal. Veh. Code Section 21453(c).

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)*:

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):

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. A fine of (fill in the amount of the fine): \$ 436.00
- b. 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. 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):

Necessary predicates of the offense are, among other things, (1) the existence of a clear photograph of the driver of the vehicle; and (2) the yellow turn signal staying yellow for a minimum of three seconds. There was no competent, admissible evidence submitted that remotely satisfied either of these requirements. Erroneous legal rulings by the Commissioner discussed below contributed to the unsupported verdict.

8 (continued)

b. The following error or errors about either the law or court procedure was/were made that caused substantial harm to me/my client. (Describe each error and how you were/your client was harmed by that error.)

(1) Describe the error: Commissioner Lyle J. Robertson erroneously interpreted Cal. Veh. Code 210. Section 210 states the automated red light camera systems must be designed to produce a "clear" photograph of the driver. Comm. Robertson incorrectly and illogically ruled that Section 210 does not require an actual clear photo. Also, no evidence submitted that system here was so "designed."

Describe how this error harmed you/your client: The photograph taken by the red light camera system of the driver in my case was not "clear" by any definition of the word. The photo is fuzzy and decidedly unclear. Only by erroneously ruling that no "clear" photo was needed could Comm. Robertson render a guilty verdict

(2) Describe the error: Comm. Robertson admitted into evidence as an exhibit a document called an "operations log." This was the sole evidence submitted that the yellow light duration was at least the required 3 seconds. Comm. Robertson committed legal error by allowing this evidence over my objections. The document was without foundation, lacked authentication and was hearsay.

Describe how this error harmed you/your client: There was no other evidence submitted that showed the duration of the yellow light. Without the operations log, the state could not satisfy the predicate of the crime and meet its burden of proof. Comm. Robertson's legal error in ignoring the rules of evidence was prejudicial.

(3) Describe the error: _____

Describe how this error harmed you/your client: _____

Check here if you need more space to describe these or other errors and attach a separate page or pages describing the errors. At the top of each page, write "CR-143, item 8."

REMINDER: You must serve and file this form no later than 20 days after you file your notice of appeal. If you do not file this form on time, the court may dismiss your appeal.

Date: October 27, 2009

[Redacted] Foley
Type or print name

[Redacted Signature]
Signature of appellant or attorney

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Foley

CR-143, ITEM 5c

The Officer attempted to present evidence establishing the factual predicates of the red light camera offense of which I was charged. The Officer testified that he did not witness the alleged infraction. He testified that he is the officer in charge of the management of the red light camera system in the City of San Juan Capistrano. All alleged violations are reviewed by him.

The Officer testified that he did not design or install the red light camera system. The design and installation of the system were done by a third party private company which entered into a contract with the City. The Officer testified that he was not an expert in all of the technical workings of the system, but had been trained generally in its operation. During his training, he was taught that if the system was not functioning properly it would simply shut down.

The Officer testified that the infraction alleged against me was based upon my alleged vehicle crossing the intersection line for a left turn after the yellow turn signal had turned to red. The Officer testified that he understands that California law requires the yellow left turn signal to stay yellow for at least three seconds. If the light does not stay yellow for at least three seconds, there can be no infraction.

The Officer presented and the Court admitted into evidence three exhibits—photographic and video evidence of the alleged infraction, DMV records, and a document referred to as an “Operations Log.”

The Officer conceded that none of the photographic or video evidence in my case showed the duration of the yellow left turn signal at the time of the alleged infraction. The Officer testified that the City could maintain video evidence of the duration, but does not do so because of cost considerations. The Officer testified that the evidence that the yellow light properly lasted three seconds or more in my case was contained in the Operations Log. The Operations Log purported to list traffic light activity at the intersection in question at the time of the alleged infraction.

When questioned, the Officer testified that he did not generate the Operations Log and did not know how it was generated, nor could he vouch personally for the accuracy of the data contained in it. The Officer further testified that the Operations Log was generated by the private company that manages the system. The Officer testified that he received the Operations Log in the mail from the private company.

The Officer testified that the photograph of the driver generated by the camera system was the best he had, that no higher resolution could be generated. The Officer testified that he believed there were sufficient similarities between the photo and myself to justify a guilty verdict. The Officer did not testify that the photo was clear. Moreover, the Officer did not offer any testimony or any other evidence showing that the camera system was designed ever to produce a clear photograph of accused drivers.

The Office testified in other respects not relevant to this appeal.

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