

ORIGINAL

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
APPELLATE DIVISION**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

APR 01 2010

ALAN CARLSON, Clerk of the Court

A. Thau
BY A. THAU A

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent,

vs.

[REDACTED] FOLEY,

Appellant.

Appeal from the Superior Court of California,
County of Orange—Traffic Division
Commissioner Lyle J. Robertson
Trial Court Case No.: SJ026203PEA
Appellate Division Case No.: 30-2009-00314692

APPELLANT'S OPENING BRIEF

[REDACTED] Foley
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Appellant, In Pro Per

I. INTRODUCTION

Appellant ██████████ Foley ("Foley") was convicted of a red light camera violation arising from an alleged May 2009 incident in the City of San Juan Capistrano, California. The conviction was predicated on two erroneous legal rulings in the trial court by Commissioner Lyle J. Robertson. These errors were basic, and but for those erroneous rulings plainly there would have been insufficient evidence for a conviction.

At Foley's trial, it was conceded that the photograph of the driver of the vehicle in question was not at all clear. In fact, as reflected in the record of this matter, the photograph is downright unintelligible and cannot reasonably be presumed to be of Foley. Basic due process dictates that no one should be convicted of a violation without solid evidence that that individual actually committed the violation. Indeed, California Vehicle Code Section 210, the predicate act that authorizes red light camera systems, states that such systems must be designed to produce a clear photograph of the accused driver. Nevertheless, in Foley's case, Commissioner Robertson ruled that a clear photograph of the driver of the vehicle was not needed, in contravention of the plain language of Section 210. In essence, he ruled that the photograph in question was "close enough."

Commissioner Robertson ruled that Section 210 requires only that the camera system be "designed" to produce a clear photograph, not that it actually do so. This interpretation is tortured and contrary to common sense and due process. However, even if this interpretation were correct, still no conviction of Foley would be justified. There

was no evidence submitted at trial showing that the system in question was even “designed” to produce clear photographs.

Under California law, also necessary to Foley’s conviction was evidence that the yellow warning signal have a duration of at least three seconds. The video and photographic evidence do not show this duration. The only evidence that this duration requirement was satisfied was a printout created by a third party corporation and mailed to the testifying officer. This document was completely without authentication, had no indicia of reliability and was inadmissible hearsay. Yet, Commissioner Robertson erroneously admitted it into evidence and relied upon it to convict Foley.

While this is an infractions case, the rule of law and burden of proof still apply. The government cannot convict without following rules of evidence and written statutes. Foley’s conviction should be overturned.

II. STATEMENT OF THE CASE

A. Nature of Action and Relief Sought

The government accused Foley of violation of California Vehicle Code Section 21453(c), which essentially prohibits a driver from entering an intersection while the electronic signal is red. The government sought to impose a fine of \$436.00 upon Foley for this alleged violation. With this appeal, Foley seeks to have his conviction overturned, the case dismissed and his bail returned.

B. Ruling of Trial Court and Statement of Appealability

On September 9, 2009, the case came on for trial before Commissioner Lyle J. Robertson. Commissioner Robertson rendered a guilty verdict and issued final judgment. Because final judgment was rendered, this appeal is proper.

C. Summary of Material Facts¹

On May 5, 2009, a vehicle registered to Foley was photographed traveling through the intersection of Ortega Highway and Del Obispo Street in the City of San Juan Capistrano, California. The photographic and video evidence appears to show that the vehicle crossed the intersection line a nano-second prior to the left turn signal turning from yellow to red. Neither the photographic nor the video evidence shows the duration of the yellow signal. The City of San Juan Capistrano has chosen not to maintain video evidence of the duration of the yellow signal, purportedly due to cost considerations.

Some weeks after May 5, 2009, Foley received in the mail a notice of violation of California Vehicle Code Section 21453(c). The notice asserted that he was the driver of the vehicle photographed on May 5, 2009. No clear or intelligible photograph of the driver was provided at that time, or ever.

Foley denied the charge and demanded a trial. On September 9, 2009, trial occurred. Foley argued that the lack of a clear photograph—which was conceded by all—

¹These facts are taken from the official record on appeal as reflected in the Statement of Appeal including attachment for Item 5c. Commissioner Robertson accepted the Statement of Appeal with minor modifications and it is the record to be used on this appeal.

mandated an acquittal. Commissioner Robertson summarily rejected this argument on the grounds that no clear photograph was necessary.

Foley also argued that a printout called an "Operations Log" purporting to show duration of the yellow signal at the intersection was inadmissible. This Operations Log printout was the only evidence of the yellow light duration at the time of the alleged violation; this was conceded at trial by the testifying officer. The testifying 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 camera system. The officer testified that he received the Operations Log in the mail from the private company.

Foley argued to Commissioner Robertson that based on this testimony the Operations Log printout was inadmissible as evidence on grounds of lack of authentication and hearsay. Again, Commissioner Robertson summarily rejected the argument, admitted the printout into evidence and relied upon it in his ruling. Commissioner Robertson convicted Foley and fined him \$436.00.

III. ARGUMENT

A. The Trial Court Erred in its Interpretation of Vehicle Code Section 210, And A Clear Photograph of the Driver Is Necessary for a Conviction

California Vehicle Code Section 210 states as follows:

An "automated enforcement system" is any system operated by a governmental agency, in cooperation with a law enforcement agency, that photographically records a driver's responses to a rail or rail transit signal or crossing gate, or both, or to an official traffic control signal described in Section 21450, and is designed to obtain a clear photograph of a vehicle's license plate and the driver of the vehicle.

Cal. Veh. Code § 210 (emphasis added). Section 210 thus defines the type of automatic enforcement system that can result in tickets issued to drivers (further requirements are set for at California Vehicle Code Section 21455.5 et seq.). Section 210 makes clear that the system must produce a clear photograph of the driver.

Indeed, this is only common sense because violations arising from the automated system are moving violations that are the responsibility of the driver of the vehicle, not necessarily the registered owner. Unless the identity of the driver is proven, there should not be a conviction under the automated camera system scheme outlined in California law.

In Foley's case, the automated system did not produce a clear photograph. This was conceded by all at the trial, and is self-evident from a review of the photograph in the

record. The photograph is blurred and the figure in the photograph cannot reasonably be identified.

At trial, Foley moved for dismissal of the case on the grounds that there was no clear photograph, citing Section 210. Commissioner Robertson summarily denied this request, stating that Section 210 does not require an actual clear photograph of the driver. Rather, according to Commissioner Robertson, the automated system need only be designed to produce a clear photograph, not that it actually do so. This is a literal reading of the statute that is tortured and devoid of context or common sense. The obvious purpose of Section 210's language about a clear photograph is to ensure that the driver can be identified. This purpose is defeated if the need for a clear photograph can be ignored.

The use of the word "designed" in the statute logically was not intended as an "out" or to provide a mulligan to the government when the system fails. Rather, the legislature was expressing a concept in a common sense manner. Saying that the system must be designed to produce a clear photograph means that the system should produce a clear photograph. Contrary to Commissioner Robertson's interpretation, it does not suggest that it is ok for the system to produce an unclear photograph so long as the intention or design was good. This would be like interpreting a statute that says a building must be "designed" to withstand an earthquake to mean that the building need

not actually be able to withstand an earthquake, but rather it is sufficient for some design plans to indicate it will. The result is what matters.

The Commissioner's interpretation of Section 210 also begs the question as to how the Commissioner or anyone could conclude that the automated system was designed to produce a clear photograph when it actually did not. In fact, even if Commissioner Robertson's reading of the statute were correct, which it is not, there was no evidence introduced at the trial that the automated system was even "designed" to produce a clear photograph. The record is clear in this respect. No evidence was provided as to the photographic equipment used, the process used to develop the photographs, nor was there any other evidence that in any way would support a conclusion that the system was designed to produce a clear photograph. It certainly did not with respect to the incident at issue.

The guilty verdict was plainly contrary to Section 210's requirements. Moreover, there simply was no evidence that Foley was the driver of the vehicle in question, other than the fact that the vehicle was registered to him. This is insufficient evidence to support a conviction. The conviction should be overturned for this reason alone.

B. The Trial Erroneously Admitted Into Evidence an Unreliable Hearsay Document

Commissioner Robertson committed a second reversible error by allowing a key printout into evidence even though it is completely without authentication and is inadmissible hearsay.

As reflected in the record, it was conceded by the government at trial that a conviction could result only if the yellow signal that preceded the red signal in question lasted a duration of at least three seconds. See also Cal. Vehicle Code § 21455.7. The government asserted that the yellow signal in this instance lasted 3.2 seconds. The government conceded that neither the photographic nor the video evidence showed this duration.

The sole evidence of the purported 3.2 second duration is a printout called an operations log, which was marked at trial as Exhibit 3 and is included in the clerk's transcript of this matter. The printout has an entry that says the yellow signal lasted 3.2 seconds at the time of the alleged violation at issue.

Under questioning at trial, and as reflected in the statement on appeal, the testifying 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 camera system. The officer testified that he received the operations log in the mail from the private company.

The officer's testimony shows that there is no basis for the admissibility of the operations log printout. The officer had no personal knowledge and could not authenticate the document or establish its reliability; in fact, he admitted he could not vouch for the accuracy of the data. See Cal. Evid. Code § 702 ("the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. . . ."); see also Cal. Evid. Code §1400. The basic test of authenticity and admissibility was not met with respect to the printout.

In addition, even if the document had been properly authenticated, which it was not, the document still was inadmissible hearsay because it "is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." See Cal. Evid. Code §1200. The document contains assertions of fact by a non-testifying party and was intended as evidence proving the truth of its contents, which is the very definition of inadmissible hearsay. Moreover, the document was created by a private party so the government records exception to the hearsay rule does not apply. See Cal. Evid. Code § 1280. The business records exception to the hearsay rule does not apply for numerous reasons, not least of which is that no custodian of the private business was put forward to testify as to the mode of the document's preparation. See Cal. Evid. Code § 1271.

It is also worth noting that the government's reliance in this case on a document from a private party to prove the yellow light duration is particularly inappropriate given

the explicit statutory language that overseeing the establishment or change in signal phases and the timing thereof is a duty that cannot be delegated to a private entity. Cal. Veh. Code § 21455.5(d).

The trial court erred by admitting the operations log into evidence. This error was prejudicial because the operations log was the only evidence submitted at trial that could prove the duration of the yellow signal, which is a key predicate of the offense with which Foley was charged. The conviction cannot be based on this inadmissible document, and thus the conviction should be overturned.

IV. CONCLUSION


There is insufficient evidence that Foley was the driver of the vehicle in question, and due process, basic fairness and California Vehicle Code Section 210 mandate that he cannot be convicted of the offense. Only by misinterpreting Section 210 could the trial court render its guilty verdict. Moreover, a key predicate of the offense is that the yellow signal stay yellow for at least three seconds before turning to red. The only evidence that this predicate was satisfied in this case was a mystery printout created by a third party private corporation and mailed to the testifying officer. This printout is inadmissible as evidence under California law, yet the trial court erroneously admitted it. The trial court verdict is dependent upon these erroneous rulings, and there is insufficient admissible

evidence to sustain a conviction. Foley respectfully requests that the trial court's verdict be overturned, the case dismissed, and his bail money be returned to him.

DATED: April 1, 2010

Respectfully submitted,

By: 

 Foley
Appellant, In Pro Per

CERTIFICATE OF WORD COUNT

The text of this brief consists of 2517 words as counted by the Corel Wordperfect program used to generate the brief.

Dated: April 1, 2010

 Foley

PROOF OF SERVICE
People v. Foley
Trial Court Case No.: SJ026203PEA
Appellate Division Case No.: 30-2009-00314692

STATE OF CALIFORNIA, COUNTY OF ORANGE:

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action. On April 1, 2010, I caused the foregoing document(s) described as **APPELLANT'S OPENING BRIEF** to be served on the interested parties in this action as follows:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

**Appellate Counsel for the People of
the State of California
Orange County District Attorney
4601 Jamboree RD, STE 102
Newport Beach CA 92660**

**Clerk of Court
Orange County Superior Court
Harbor Justice Center
23141 Moulton PKWY
Laguna Hills CA 92653**

**Anthony Rackaukas
Orange County District Attorney
PO Box 808
Santa Ana CA 92702**

BY MAIL: I am "readily familiar" with the practice of collection and processing correspondence for mailing. I placed this document in the proper channels with postage prepaid so that it would be deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

BY OVERNIGHT COURIER: I caused such envelope to be placed for collection and delivery on this date in accordance with standard delivery procedures.

BY FACSIMILE: I caused such document(s) to be transmitted by facsimile transmission from a facsimile transmission machine. The facsimile transmission was reported as complete without error by a transmission report, issued by the facsimile transmission machine upon which the transmission was made. A true and correct copy of the transmission report is attached hereto and incorporated herein by reference.

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the above-referenced person(s).

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

Executed on April 1, 2010, at Santa Ana, California.



LOPEZ