CR-143

Proposed Statement on Appeal (Infraction)

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.

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

Clerk stamps date here when form is filed.

ENDORSED FILED ALAMEDA COUNTY

MAY **04** 2010

CLERK OF THE SUPERIOR COURT FELIX CHAVEZ

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 Alameda

Fremont Hall of Justice 39439 Paseo Padre Parkway Fremont, CA 94538-2309

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

Trial Court Case Number:

0050608153

Trial Court Case Name:

The People of the State of California

Kung

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

Appellate	Division Case Number:	

Street address:			CA	
Street		City	State	Zip
Mailing address (if different):	Street			
DI		City	State	Zip
Phone:	E-mail (optional):	.net		
o. Appellant's lawyer (skip this if the	e appellant is filling out this	form):		
The lawyer filling out this form (c	heck (1) or (2)):			
(1) was the appellant's lawyer	in the trial		A 4.	_
court.	(2) 📋	is the appellant's lawy		ıl.
Name:		State Bar num	ber:	
Street address:				
Street		City	State	Zip
Mailing address (if different):				,
	Street	City	State	Zip
Phone: ()	_ E-mail (optional):			
Fax (optional): ()				

Your Information

Name:__

Trial Court Case Name: Kung	Trial Court Case Number: 0050608153	
Information About Your Appeal		
O 2011	y client filed a <i>Notice of Appeal and</i> peal as the record of what was said in	
Proposed Statement		
(3) The Charges Against Me/My Client		
a. If the charges against you/your client are based on a citation (ticket) you (fill in the citation number from your ticket): N025752B	received, provide the citation number	
b. The charges against me/my client were (list all of the charges indicated prosecutor with the court): California Vehicle Code Section 21453(a	on the citation or complaint filed by the	
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))	and outpo.	
b. In the spaces below, describe any motions (requests for orders) made in accurate summary of what was said at any hearings on these motions and these motions:	the trial court. Write a complete and d indicate how the trial court ruled on	
(1) [I] I/My client made the following requests (motions) in the trial co	ourt (check all that apply):	
(a) To submit a photograph or photographs as evidence (describ		
20 Photographs for examining the Prosecution's compl	iance 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 accithis hearing:	urate summary of what was said at	
The court ✓ did ☐ did not accept the photographs.		
✓ Check here if you need more space to describe the motion as describing it. At the top of each page write "CR-143, item 40".	nd attach a separate page or pages b(1)(a).''	

Trial Court Case	Name:Kung	Trial Court Case Number: 0050608153
4) b(1) (continu (b)	To submit a map or maps as evidence (describe the maps): Map of City of Newark for examining the Prosecution 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 acc hearing:	curate summary of what was said at this
	The court ☑ did ☐ did not accept the maps.	
	✓ Check here if you need more space to describe the motion a describing it. At the top of each page write "CR-143, item 4	and attach a separate page or pages 4b(1)(b).''
(c)	To submit other material as evidence (describe what you associate): Opinion of Melendez-Diaz v. Massachusetts, 1	ked to submit as evidence in the trial (29 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 accident	urate summary of what was said at this
-		
-	The court ☑ did ☐ did not accept this material.	
[Check here if you need more space to describe the motion and describing it. At the top of each page write "CR-143, item 4.	nd attach a separate page or pages b(l)(c).''
(d) [Other (describe any other request you made in the trial cour denied this request): A motion to exclude evidence from denied.	t and whether the court granted or the Prosecution was requested and
	✓ Check here if you need more space to describe the motion describing it. At the top of each page write "CR-143, ite	on and attach a separate page or pages om 4b(1)(d)."
(2)	The prosecutor made the following request (motion) in the trial prosecutor made in the trial court and whether the court grante	court (describe any request the

Trial Court Case Name: Kung	0050608153
(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 a hearing:	eccurate summary of what was said at this
The trial court granted this motion. did not gra	nt this motion.
Other (describe any other action the trial court took conc	erning this motion):
Check here if you need more space to describe this motion describing it. At the top of each page, write "CR-143, ite	on and attach a separate page or pages om 4b(2)."
Check here if other motions were filed, and attach a separate pidentifying who made them and whether there was a hearing of the hearing on the motion, and indicating whether the trial coueach page, write CR-143, item 4b(3).	n the motion summarizing what was said at
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 \bigcirc (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 actually said; do not comment on or give your opinion ab	y you/your client gave. Include only what out what you said):
Check here if you need more space to summarize your/yo page or pages summarizing this testimony. At the top of e	our client's testimony and attach a separate each page, write "CR-143, Item 5b."
c. Did an officer from the police department, sheriff's office, or other 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	s name):Duncan Hall

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5)c. (cont	inued)	
	(2) This officer testified that (write a complete an only what the officer actually said; do not commer an automatic enforcement system has capture	d accurate summary of the officer's testimony. Include nt on or give your opinion about what the officer said): d the alleged act of violation. Based on the video and t system, he issued the citation for the alleged act.
	Check here if you need more space to summa pages summarizing this testimony. At the top	rize the officer's testimony and attach a separate page or of each page, write "CR-143, Item 5c."
d. 🗸 V	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 r	name):
	(2) The witness \(\sum \) was \(\sum \) was not an offi	cer from the government agency that charged me/my clien
		my client. the prosecution.
	(4) This witness testified that (write a complete Include only what the witness actually said; witness said):	and accurate summary of the witness's testimony. do not comment on or give your opinion about what the
	·	
wi pre	thess that testified at your trial, stating whether the	each a separate page or pages identifying each other at witness testified on your/your client's behalf or the ness said in his or her testimony. At the top of each page,
The Trial Co	ourt's Findings	
6 a. I/My o	client was found guilty of the following offenses (lwas found guilty): California Vehicle Code Sect	ist all of the offenses for which you were/your ion 21453(a)

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6 (continued)	
c. The following charges were dismissed after proof of correction charges that were dismissed): N/A	n was shown to the judge (list all of the
7 The Sentence	
The trial court imposed the following fine or other punishment on required information):	me/my client (check all that apply and fill in any
a. A fine of (fill in the amount of the fine): \$ 446	
b. 🕢 Traffic school	
c. Community service (fill in the number of hours):	
d. Other punishment (describe any other punishment that the continuous)	court imposed on you):
8 Reasons for Your Appeal	
Remember, in an appeal, the appellate division can only review a c.	ase for whether certain kinds of legal errors
	to learn about these legal errors):
Remember, in an appeal, the appellate division can only review a converse made in the trial court proceedings (read form CR-141-INFO) • There was not "substantial evidence" supporting the judgment, or	to learn about these legal errors): order, or other decision you are
Remember, in an appeal, the appellate division can only review a converge made in the trial court proceedings (read form CR-141-INFO) There was not "substantial evidence" supporting the judgment, convergeding A "prejudicial error" was made during the trial court proceeding The appellate division:	to learn about these legal errors): order, or other decision you are
Remember, in an appeal, the appellate division can only review a converge were made in the trial court proceedings (read form CR-141-INFO) There was not "substantial evidence" supporting the judgment, of appealing A "prejudicial error" was made during the trial court proceeding the appellate division: Cannot retry your case or take new evidence	to learn about these legal errors): order, or other decision you are gs.
Remember, in an appeal, the appellate division can only review a converge made in the trial court proceedings (read form CR-141-INFO) There was not "substantial evidence" supporting the judgment, convergeding A "prejudicial error" was made during the trial court proceeding The appellate division:	to learn about these legal errors): order, or other decision you are gs.
Remember, in an appeal, the appellate division can only review a consider whether witnesses were evidence. Remember, in an appeal, the appellate division can only review a consider whether was not "substantial evidence" supporting the judgment, of appealing. A "prejudicial error" was made during the trial court proceeding. 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 the trial court's decision.	to learn about these legal errors): order, or other decision you are gs. specific the second specific that there was
Remember, in an appeal, the appellate division can only review a converse made in the trial court proceedings (read form CR-141-INFO) There was not "substantial evidence" supporting the judgment, of appealing A "prejudicial error" was made during the trial court proceeding. 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 su	to learn about these legal errors): order, or other decision you are gs. exporting your position than there was eve were made that are the reason for this appeal, ent, order, or other decision I am/my client is

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(8) (continued)		
b. The following error or errors about either the law or court harm to me/my client. (Describe each error and how you	procedure was/were made that caused substantial were/your client was harmed by that error.)	
(1) Describe the error: The Court was without jurisdiction to find defendant guilty by shift burden of proof from the Prosecution to the defendant.		
Describe how this error harmed you/your client: By shifting burden of proof from the Prosecut the defendant, the defendant had to prove his innocence beyond reasonable doubt, instead o		
		Prosecution had to prove the defendant guilty beyond

(2) Describe the error: The Court committed "prejudicual error" by denying defendant's

Constitutional right of procedural due process.

Describe how this error harmed you/your client: By denying the defendant's right of due process, the defendant could not receive an adequate hearing.

(3) Describe the error:

Describe how this error harmed you/your client:

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

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: May 3, 2010	
Kung	
Type or print name	Signature of appellant or attorney

describing the errors. At the top of each page, write "CR-143, item 8."

People v. 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.