

JUN 25 2010

ALAN CARLSON, Clerk of the Court

[Signature]
BY J. GOMEZ

APPELLATE DIVISION
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

 FOLEY,

Defendant and Appellant.

CASE NO. 30-2009-314692

JUDGMENT ON APPEAL
from the
SUPERIOR COURT
of
ORANGE COUNTY
HARBOR JUSTICE CENTER

HON. LYLE ROBERTSON
COMMISSIONER

Defendant appeals his conviction of violation of Vehicle Code section 21453(c), failure to stop for a red light. The subject citation was issued through the City of San Juan Capistrano's Automated Enforcement System, commonly referred to as a red light camera. On appeal, appellant contends the People failed to prove that the system in question was "designed to obtain a clear photograph" of the driver, as required by Vehicle Code section 210. He further contends the court erred in admitting the "operations log" demonstrating the length of the yellow light interval preceding the violation. The judgment is reversed for the reasons discussed below.

Although appellant framed the issue as whether the system is "designed to obtain a clear photograph," this court determines that the significant issue is whether the photograph obtained provided sufficient evidence from which the trial court

1 could have concluded that appellant was guilty, beyond a
2 reasonable doubt. In reviewing the sufficiency of the evidence
3 in support of a judgment, an appellate court examines the entire
4 evidentiary record to determine whether substantial evidence
5 exists such that a rational trier of fact could have found the
6 essential elements of the crime beyond a reasonable doubt.
7 (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *People v.*
8 *Cuevas* (1995) 12 Cal.4th 252, 260-261.) Substantial evidence is
9 "evidence that reasonably inspires confidence and is 'of solid
10 value.'" (*People v. Bassett* (1968) 69 Cal.2d 122, 139.) The
11 Appellate Division must view the record in the light most
12 favorable to the judgment, deferring to the trier of fact on
13 issues of weight and credibility and inferring the existence of
14 every supportive fact which may reasonably be deduced from the
15 evidence. (*People v. Johnson* (1980) 26 Cal.3d 557, 576-578;
16 *People v. Henderson* (1949) 34 Cal.2d 340, 346-347.)

17 In this case, this court concludes the evidence was
18 insufficient. Virtually none of the driver's face is visible.
19 Based on the lack of a clear photograph of the driver, the
20 evidence was insufficient to permit the trial court to conclude
21 that appellant was, in fact, the person shown in the photo.

22 Additionally, the court erred in admitting the "operations
23 log" to establish a yellow light interval of sufficient length.

24 The officer's testimony was insufficient to permit admission of
25 the log as a "business record" pursuant to Evidence Code section
26 1271. Evidence Code section 1271 imposes 4 requirements for
27 admission as a business record: (a) The writing was made in the
28 regular course of a business; (b) The writing was made at or near

1 the time of the act, condition, or event; (c) The custodian or
2 other qualified witness testifies to its identity and the mode
3 of its preparation; and (d) The sources of information and
4 method and time of preparation were such as to indicate its
5 trustworthiness. Here, the deputy was not a proper
6 authenticating witness in that he did not know how the log was
7 generated; he testified only that it is generated by a private
8 company and he receives it in the mail. Lacking the operations
9 log, the People failed to establish that the yellow light
10 interval met the mandatory minimum.

11 The double jeopardy clause of the United States
12 Constitution precludes trying a defendant a second time after a
13 reversal of the conviction on appeal, if the basis for reversal
14 was the insufficiency of the evidence. (*Burks v. U.S.* (1978)
15 437 U.S. 1; *People v. Guillen* 91994) 25 Cal.App.4th 756.) The
16 judgment of the trial court is reversed with instructions to
17 dismiss.



21 GREGORY H. LEWIS, Judge