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FILED
LOS ANGELES SUPERIOR COURT
FEB 23 2009
John A. Clarke, Executive Officer/Clerk
By *Victoria A. Bud*, Deputy

APPELLATE DIVISION OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,) BR 046561
 Plaintiff and Respondent,) Lancaster Trial Court
 v.) No. LC04465
 ██████████ McDONALD,)
 Defendant and Appellant.) **MEMORANDUM JUDGMENT**

Pursuant to the provisions of Vehicle Code sections 21455.5 through 21455.7 (automated traffic enforcement system), ██████████ McDonald was issued a citation by mail for failing to stop for a steady red arrow. (§ 21453, subd. (c).)¹ Following a court trial, he was found guilty of the infraction, ordered to pay a fine, and thereafter timely filed notice of appeal. As explained below, we affirm the judgment.

FACTUAL BACKGROUND

Part of Los Angeles County Deputy Sheriff Jonathan White's job duties include reviewing the evidence obtained from the automated traffic enforcement system located at the intersection of Avenue L and 20th Street West in the City of Lancaster. On July 10, 2007, White was reviewing evidence of the traffic that was traveling through the above-

¹Unless otherwise indicated, all unspecified statutory references are to the Vehicle Code.

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1 mentioned intersection on July 8, 2007. The evidence reflected that at approximately 1:01
2 p.m., a 2004 Honda with California license plate number [REDACTED] was traveling at
3 approximately 30 miles per hour, and made a left turn onto northbound 20th Street from
4 eastbound Avenue L. The intersection is controlled by traffic lights and, at the time of the
5 left turn, the light had been in the red phase for 0.18 seconds. Based upon his observations
6 of the automated traffic enforcement evidence, White caused a citation to be issued. White
7 presented for the court's review a set of exhibits which was marked collectively as
8 People's exhibit no. 1. Contained therein were photographs of the previously identified
9 vehicle in an intersection, the driver of the vehicle, the notice to appear issued to
10 defendant, and a declaration signed under penalty of perjury by the custodian of records.
11 White opined that defendant, who was present in court, was the person depicted driving
12 the Honda in People's exhibit no. 1, and the person making the left turn against the red
13 arrow. In addition, a video of the violation was marked as People's exhibit no. 2 and was
14 viewed by the court.

15 With regard to the requirements set forth in section 21455.5, White testified that on
16 April 25, 2006, the Lancaster City Council held a public hearing regarding the automated
17 system; that on September 6, 2006, public announcements appeared in two local papers
18 and in the City's quarterly magazine which is distributed to households citywide; that on
19 September 8, 2006, the City commenced a 30-day citation warning program; and that as
20 motorists approach the intersection, clearly identifiable signs are posted advising them of
21 the presence of the cameras.

22 ISSUES ON APPEAL

23 Defendant seeks reversal of the judgment on the grounds that the court lacked
24 jurisdiction² over his case for the following reasons: (1) the prosecutor failed to introduce
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26 ²Although defendant argues that each complained of error by the trial court deprived it of
27 jurisdiction over the infraction, he fails to develop the jurisdictional component with argument and
28 citation to authority. For that reason, we treat the jurisdiction contentions as waived and do not
address the issue.

1 evidence establishing compliance with section 21455.5, subdivisions (c)(1) and (g)(1); (2)
2 the prosecution failed to comply with the reciprocal discovery act; and (3) the court
3 limited the defense case to 15 minutes.

4 DISCUSSION

5 The prosecution was not required to introduce evidence establishing compliance with
6 section 21455.5, subdivisions (c)(1) and (g)(1), and its failure to do so neither deprived the
7 court of jurisdiction nor required the court to exclude the evidence obtained by the
8 automated traffic enforcement system.

9 Defendant contends, in essence, that it is part of the prosecution's prima facie case
10 in an automated traffic enforcement matter to present evidence proving that the automated
11 system satisfies the requirements of section 21455.5, subdivisions (c) through (f). The
12 general argument is advanced that, without such proof, the court lacked jurisdiction over
13 defendant's case, and was therefore required to exclude all evidence obtained by the
14 automated system. Specifically, defendant complains that no evidence was introduced to
15 prove that the contract between the City of Lancaster and Redflex, the operator of the
16 automated traffic enforcement system, satisfied the requirements of section 21455.5,
17 subdivision (g)(1), and that no testimony was offered regarding whether there were
18 uniform guidelines and procedures for issuing and processing citations as required by
19 subdivision (c)(1).

20 We disagree with the basic premise of defendant's contention, and find that the
21 prosecution's case-in-chief with respect to proof of a violation under the automated traffic
22 enforcement system, in addition to proof of the charged infraction, is limited to evidence
23 proving compliance with subdivisions (a) and (b) of section 21455.5. We reach this
24 conclusion by applying the fundamental rule of statutory construction which requires this
25 court to first look to the words of a statute and to give those words their usual and ordinary
26 meaning. (*People v. Arias* (2008) 45 Cal.4th 169, 177.) The use of the words "all of the

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1 following requirements” in subdivision (a)³ of section 21455.5 refers only to the
2 requirements listed thereafter in subsections (a)(1) and (a)(2), and not to the matters
3 addressed in subdivisions (b) through (g) of section 21455.5. The placement of the term
4 “all of the following” within subdivision (a) indicates a legislative intent to limit the
5 requirements to that one subdivision, and not to expand its meaning to encompass all of
6 the remaining subdivisions of section 21455.5.

7 Turning our attention to the two subdivisions upon which defendant is seeking
8 relief in this appeal, we note the following: section 21455.5, subdivision (c),⁴ defines who
9 can operate an automated traffic enforcement system, and sets forth within subsections
10 (c)(1) and (c)(2) the “activities” that are included in the definition of “operate.”
11 Subdivision (g)(1),⁵ meanwhile, governs the contents of the contract between the
12 governmental agency and companies such as Redflex.

13 Unlike subdivisions (a) and (b) of section 21455.5, there is no language in either
14 subdivision (c) or subdivision (g) conditioning the use of the automated system or the
15 issuing of citations on compliance with either the operational activities that are listed in
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17 ³“The limit line, the intersection, or a place designated in Section 21455, where a driver is
18 required to stop, may be equipped with an automated enforcement system if the governmental agency
19 utilizing the system meets *all* of the following requirements: [¶] (1) Identifies the system by signs
20 that clearly indicate the system’s presence and are visible to traffic approaching from all directions,
or posts signs at all major entrances to the city, including, at a minimum, freeways, bridges, and state
21 highway routes. [¶] (2) If it locates the system at an intersection, and ensures that the system meets
the criteria specified in Section 21455.7.” (§ 21455.5, subd. (a), italics added.)

22 ⁴“Only a governmental agency, in cooperation with a law enforcement agency, may operate
23 an automated enforcement system. As used in this subdivision, ‘operate’ includes all of the
24 following activities: [¶] (1) Developing uniform guidelines for screening and issuing violations and
for the processing and storage of confidential information, and establishing procedures to ensure
25 compliance with these guidelines. [¶] (2) Performing administrative functions and day-to-day
functions, including, but not limited to, all of the following:[¶] . . . [¶]” (§ 21455.5, subd. (c).)

26 ⁵“A contract between a governmental agency and a manufacturer or supplier of automated
27 enforcement equipment may not include provision for the payment or compensation to the
28 manufacturer or supplier based on the number of citations generated, or as a percentage of the
revenue generated, as a result of the use of the equipment authorized under this section.” (§ 21455.5,
subd. (g)(1).)

1 subdivision (c), or on proof that the terms of the contract satisfy the language of
2 subdivision (g). Had the Legislature intended for such compliance or contract language to
3 be conditions precedent to the issuance of citations, part of the prosecution's prima facie
4 case, or a basis for the exclusion of evidence, it would have simply included the
5 appropriate language reflecting its intent in the statute. The Legislature's failure to do so
6 requires us to apply the principle of *expressio unius est exclusio alterius*, that is, that "the
7 expression of one thing in a statute ordinarily implies the exclusion of other things.
8 [Citation.]" (*In re J.W.* (2002) 29 Cal.4th 200, 209.)⁶

9 Thus, we find that the elements of the infraction of which defendant was convicted
10 do not require the prosecution to present evidence to establish, beyond a reasonable doubt,
11 compliance with subdivisions (c) and (g) of section 21455.5.⁷ Accordingly, defendant is
12 not entitled to a reversal of the judgment on this ground.

13 *The trial court did not err in denying defendant's motion for sanctions based upon the*
14 *prosecution's failure to comply with his discovery request.*⁸

15 Here, defendant argues, in essence, that because the prosecution failed to comply
16 with his discovery request, the trial court was required, but failed, to either delay his trial
17 until there was compliance or, in the alternative, to dismiss the infraction. We are not
18 persuaded that defendant is entitled to a reversal on this ground.

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21 ⁶By way of comparison, the statutory scheme governing speed traps (§§ 40800-40808)
22 contains numerous provisions wherein the Legislature set forth what the prosecution must prove in
23 a speeding case involving the use of radar or any other electronic device to capture the speed of a
24 vehicle and the admissibility of speed trap evidence. (See §§ 40801, 40802, subd. (c), 40803, 40804,
40805, 40808.)

25 ⁷Defendant does not challenge the sufficiency of the evidence. Accordingly, we limit our
discussion to the issues as framed by defendant.

26 ⁸Although not raised as a discrete issue on appeal, dispersed throughout defendant's brief,
27 and especially as to this issue, are comments regarding the lack of a prosecutor during defendant's
28 trial. Other than to note that under *People v. Carlucci* (1979) 23 Cal.3d 249, an infraction trial may
proceed in the absence of a prosecutor, we decline to further address this issue.

1 The trial court found that there was no discovery violation because the prosecution
2 had complied with defendant's discovery request. Its finding was based on defendant's
3 statements, in response to the court's questioning, that prior to trial he had received a copy
4 of People's exhibit no. 1, and had viewed the video, People's exhibit no. 2, online. These
5 were the only exhibits offered or used during trial by the prosecution. Nevertheless, the
6 court offered defendant a brief continuance, if needed, in order to prepare his defense.
7 Defendant informed the court that he wanted to delay the trial until such time that the
8 prosecution complied with his discovery request. The court denied the request and the trial
9 proceeded.

10 It is against the above background that defendant seeks relief on appeal. In the trial
11 court, defendant generally complained of the prosecution's failure to disclose
12 approximately 24 requested items that would be potentially favorable to the defense. On
13 appeal, defendant complains of the prosecution's (1) failure to provide the inspection,
14 calibration, and maintenance records for the red light camera and traffic light; (2) failure
15 to provide, prior to trial, the declaration of the custodians of records,⁹ and (3) failure to
16 provide a videotape and photographs that had different resolution and size from the
17 exhibits that were used during the trial.

18 With limited exceptions, Penal Code section 1054 et seq. sets forth an almost
19 exclusive procedure for discovery in criminal cases. (*People v. Superior Court (Barrett)*
20 (2000) 80 Cal.App.4th 1305, 1311.) "[N]o discovery shall occur in criminal cases except
21 as provided by this chapter, other express statutory provisions, or as mandated by the
22 Constitution of the United States." (Pen. Code, § 1054, subd. (e).) The prosecution is
23 required to disclose to the defense those items specified in Penal Code section 1054.1,
24 subdivisions (a) through (f), if such items are in the possession of the prosecuting attorney,
25 or if the prosecuting attorney knows them to be in the possession of the investigating
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28 ⁹At no time during the trial did defendant raise the issue of the timeliness of the disclosure
of the declaration for the custodians of records.

1 agencies. When the defendant makes an informal request for discovery under the Penal
2 Code, the prosecution is required to disclose the information within 15 days of the request.
3 (Pen. Code, § 1054.5, subd. (b).)

4 When there is an untimely disclosure, such as the photographs and videotape in the
5 instant matter, a defendant is not entitled to relief on appeal unless he meets his burden of
6 showing that he was prejudiced by the delay, and that a continuance would not have cured
7 the harm. (*People v. Carpenter* (1997) 15 Cal.4th 312, 386-387, superseded on other
8 grounds in *Verdin v. Superior Court* (2008) 43 Cal.4th 1096, 1106.) Here, the trial court
9 offered defendant a continuance in order to prepare his defense based upon his contention
10 that the videotape and photographs were of different size and resolution from what he had
11 viewed prior to trial. Defendant rejected the continuance because he wanted to delay the
12 trial until there was compliance with his outstanding discovery requests. Defendant,
13 having failed to meet his burden of proof on this issue, is not entitled to relief on appeal.

14 In addition to its statutory duty to provide discovery, the prosecution has a
15 constitutional obligation to disclose exculpatory evidence to the defense. (*Brady v.*
16 *Maryland* (1963) 373 U.S. 83, 87.) In order to obtain relief on this basis, defendant is
17 required to establish that the undisclosed information was favorable and that there is a
18 reasonable probability that the results of the trial would have been different had the
19 information been disclosed. (*In re Miranda* (2008) 43 Cal.4th 541, 575; *People v. Cook*
20 (2008) 39 Cal.4th 566, 587.) A reasonable probability is defined as one that “is sufficient
21 to undermine confidence in the outcome.” (*People v. Memro* (1995) 11 Cal.4th 786, 837.)
22 Under this standard, reversal is not warranted. Other than speculation, there is no basis to
23 conclude that the calibration and maintenance report contained information favorable to
24 defendant.

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1 The trial court did not abuse its discretion in limiting each side to a maximum of 15
2 minutes to present their case on the second day of the trial.

3 This trial was conducted on two separate days, March 14, and May 6, 2008. The
4 first day of trial consumed two hours of court time. Within that time, the court heard and
5 denied defendant's pretrial motion to dismiss on the ground that the prosecution had failed
6 to comply with the reciprocal discovery statute. This was followed by Officer White's
7 testimony regarding the violation, and included the marking of exhibits and the presenting
8 of a videotape of the violation. When the exhibits were offered into evidence, defendant
9 objected on the grounds that the prosecution had failed to comply with his discovery
10 request. The court overruled the objection. This was followed by defense objections to
11 the evidence on the following grounds: (1) that no evidence was presented proving that the
12 contract between the City of Lancaster and Redflex satisfied section 21455.5, subdivision
13 (g); and (2) that no evidence was presented to prove that the automated system complied
14 with section 21455.5, subdivisions (c)(1), (c)(2)(A) and (e).

15 In the midst of arguing his "foundational" objections, defendant sought and
16 obtained permission to question the officer concerning "Redflex's role in the preliminary
17 acquisition, processing of this evidence." The deputy was unable to answer the majority of
18 defendant's questions. Thereupon, defendant made a motion to dismiss the citation based
19 on the officer's answers. The motion was basically an effort to obtain a dismissal due to
20 the lack of proof by the prosecution concerning subdivisions (c) through (g) of section
21 21455.5. The court denied defendant's motion to dismiss and overruled his objections to
22 the admission of the exhibits into evidence. At this point, the court instructed defendant to
23 focus on the evidence concerning the violation, "the relevant evidence of the case."

24 Rather than cross-examine the officer, defendant then made a Penal Code section
25 1118 motion based upon the prosecution's failure to prove, beyond a reasonable doubt,
26 that he was the driver of the vehicle. The motion was denied. However, defendant
27 continued to argue the merits of the motion. This was followed by defendant's cross-
28 examination of the officer. During the course of his cross-examination, defendant made

1 another motion to dismiss. The court informed defendant that it would not entertain
2 another motion to dismiss until the conclusion of the evidence. This was followed by
3 defendant explaining to the court that he had a "fairly lengthy and perhaps tedious"
4 presentation remaining. After further discussion, the trial was continued to another date
5 which was agreeable to the court's schedule, the officer and defendant.

6 When the trial resumed on the agreed-upon date, the court informed defendant and
7 the officer that they each had 15 minutes to "state their best evidence and arguments." The
8 court informed the parties that it was imposing the time limit under its discretionary
9 authority to control the proceedings. (Pen. Code, § 1044.) The court further informed the
10 parties that, in order to assist them in managing their allotted time, it would give warnings
11 at both five-minute and one-minute intervals. The trial proceeded without the court giving
12 any warnings to either defendant or the officer. There are no indications in the record on
13 appeal as to whether defendant exceeded or used less than the allotted time. Moreover,
14 there are no indications that defendant ever sought any additional time from the court.

15 We reject on two grounds defendant's contention that the imposition of the 15-
16 minute time limitation entitles him to a reversal of the judgment. First, the trial court had a
17 duty to see that the trial was conducted in an expeditious and orderly manner. (Pen. Code,
18 § 1044.) Considering the amount of time that had been devoted to the trial because of
19 defendant's proclivity to seek the same relief under various theories, the trial court did not
20 abuse its discretion in setting a time limit. The court had previously sought, without
21 success, to have defendant conclude the evidentiary portion of the trial before making his
22 various motions. We find no abuse of discretion by the trial court in this regard.

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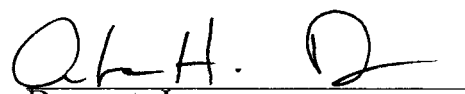
1 Second, article VI, section 13 of the California Constitution provides that "[n]o
2 judgment shall be set aside . . . for any error as to any matter of procedure, unless, after an
3 examination of the entire cause, including the evidence, the court shall be of the opinion
4 that the error complained of resulted in a miscarriage of justice." Assuming, without so
5 finding, that the court erred in imposing a 15-minute time limit on the defense, we do not
6 find that it resulted in a miscarriage of justice because there is no showing that defendant
7 needed additional time or that he was unable to present his entire defense in the time
8 allotted.

9 The judgment is affirmed.

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11 P. McKay, P.J.

12 We concur.

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14 Weintraub, J.

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16 Dymant, J.

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