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APPENDIX A

[STAMP IN UPPER RIGHT:
FILED
Superior Court of California
County of Los Angeles
AUG 28 2023
David W. Slayton, Executive Officer/Clerk of the Court
By: L. Johnson, Deputy]

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

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent, v. ISIDRO JAVIER ARMENTA,
Defendant and Appellant.

23APIN00010
Metropolitan Trial Court No. 006249EA

OPINION

Defendants Isidro Javier Armenta appeals the judgment following conviction of failing to stop for a red arrow signal (Veh. Code, § 21453, subd. (c)). [FOOTNOTE 1: All further statutory references are to the Vehicle Code unless otherwise specified.] In a trial where evidence of the violation was obtained from an automated traffic enforcement system (ATES) (see §§ 21455.5-21455.7). Defendant contends the judgment should be reversed because his constitutional rights to confrontation, to due process and equal protection, to a fair trial, and to be free from unlawful searches were violated. As discussed below, we affirm.

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BACKGROUND

The citation indicated defendant committed the infraction on June 21, 2022, while heading east on Exposition Boulevard and turning north on Vermont Avenue in the City of Los Angeles. Under “Code and Section,” the citation stated, “21453 (c),” and under “Description,” it indicated, “Fail to Stop at Red Signal.” The citation also stated, “Violation was not committed in my presence. The above is declared on information and belief and is based on photographic evidence” (capitalization omitted), and was signed under penalty of perjury on July 5, 2022, by Maria A. Gonzales from the Los Angeles County Sheriff’s Department. On December 9, 2022, defendant pleaded not guilty at arraignment, and the case was set for trial on January 17, 2023.

Officer Xie with the Los Angeles County Sheriff’s Department testified at trial that she was appearing “on behalf of Officer Gonazale[s].” Xie testified the Sheriff’s Department established policies and procedures for the issuance and approval of red light photo citations in areas where Metro Rail trains operate in Los Angeles, and she explained how an ATES operates, tracking a vehicle by radar and through trigger points in the roadway as a vehicle approaches and goes into an intersection. Cameras take photographs and video clips when a vehicle enters an intersection against a red light, which are then forwarded to the Sheriff’s Department to decide whether a citation should issue. Xie also explained the maintenance and accuracy checks performed on the ATES.

Xie noted, “The three things that must occur for the violation to be approved: First and foremost, the traffic light must be in

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the red phase. The previolation and post-violation trigger points are only active during the red phase of the light. Citations will be issued for vehicles entering the intersection during the green or amber phases. [¶] Secondly, the vehicle must pass the limit line entering the intersection during the red phase. [¶] And, lastly, the citation must be reviewed by an authorized person for it to be approved by the Sheriff's Department as a valid citation."

The court was provided with videos and photographs of the June 21, 2022 violation, showing the vehicle driven by defendant from the front and from the rear. [FOOTNOTE 2: The videos and photographs were not transmitted to this court for this appeal. (Cal. Rules of Court, rule 8.921.)] Xie testified the photographs and videos showed defendant's vehicle behind the limit line of the intersection in the left turn lane, and the light having phased to red 0.41 seconds prior to the vehicle crossing the limit line at 18 miles per hour. The light was yellow for 3.04 seconds before it turned red, and a photograph showed the vehicle on the train tracks turning towards the left 2.59 seconds after the light turned red. According to Xie, one of the photographs showed the vehicle subsequently completing a U-turn 4.09 seconds after the light turned red. Xie testified there were other vehicles in front of defendant in the left turn lane that turned left, but defendant's vehicle was the last to turn, and it did so by crossing the limit line against the red light.

In response to defendant's objection that the failure to have Gonzales testify violated his right to confrontation, Xie testified Sheriff's Department personnel assigned to the ATES "operate as a unit." None of the personnel witness a violation occurring at the time it happens. All the officers are

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certified to observe the videos and photographs after they are provided to them, and “each of us can come and represent what another officer has cited you for within our redlight camera unit.”

Defendant testified, “I did not move into the intersection on a steady read light, and in this instance, was moving forward on the yellow light.” But, the court noted it had viewed the video and found “the arrow was red when the last car proceeded through the crosswalk and into making the turn.... The last person to make it through was the person in front of you. With your car, it was red.”

Defendant argued the 0.41 seconds that Xie testified the light was red when he crossed the limit line, “goes against what’s in a California DMV commercial training manual where a person’s reaction is from 3/4 of a second to one second that is much more than that.” The court responded the yellow light’s delay prior to the light phasing to red addresses a person’s reaction time, by giving a motorist time to come to a stop. Defendant additionally argued, “[t]he train traffic signal is also illegal. It doesn’t comply with standards,” [FOOTNOTE 3: Xie testified that a train was waiting for the cars to turn left prior to passing through the intersection, and a “train light” was activated when the light turned yellow.”] but the court indicated, “No. The traffic signal complies with the standards.”

The court found defendant guilty, and ordered that he pay a fine and be allowed to attend traffic violator school. Defendant filed a timely appeal from the judgment.

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DISCUSSION

We review the constitution challenged to the judgment de novo. (See *People v. Seijas* (2005) 36 Cal.4th 291, 304; *People v. Cromer* (2001) 24 Cal.4th 889, 901.) None of defendant's arguments are meritorious. [FOOTNOTE 4: Although defendant in his appellate brief included headings for his arguments, his inclusion of numerous subpoints without headings, and without a clear indication whether they were intended as separate arguments, makes it difficult to access his points. (Cal. Rules of the Court, rule 8.928(a)(1) [briefs must state each point under a separate heading or subheading].) We address defendant's arguments as best we can discern what they are.]

Confrontation

Defendant argues Gonzales's failure to testify at trial violated his Sixth Amendment right to confront the witnesses against him, because he was unable to question Gonzales at the trial regarding her qualifications to issue the citation, including whether she was "a peace officer" or a "qualified employee of a law enforcement agency," and her "expertise, understanding of the cited section, [and] process from evidence review to signing citation and mailing."

A person has the right under the Sixth Amendment to the United States Constitution to confront and cross-examine the witnesses presented against the person by the prosecution. "This clause precludes admission of any 'testimonial' out-of-court statement offered against a criminal defendant, unless the witness is unavailable at trial and the defendant had a

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prior opportunity for cross-examination. [Citation.]” (*People v. Holmes* (2012) 212 Cal.App.4th 431, 436; see also *Crawford v. Washington* (2004) 541 U.S. 36, 59.) [FOOTNOTE 5: “Testimonial” means evidence prepared for possible use at a criminal prosecution that is “made with some degree of formality or solemnity.” (*People v. Lopez* (2012) 55 Cal.4th 569, 581-582.)

Gonzales signed the citation under penalty of perjury, describing the violation, and authorizing the issuance of the citation. But, she indicated in the citation, “The above is declared on information and belief and is based on photographic evidence.” Defendant’s right to confrontation was not violated, because Gonzales’s declaration and the statements in the citation were not presented as evidence in the trial. Instead, the evidence consisted of Xie’s testimony as to how the ATES operates and the photographs and video that documents defendant failing to stop for the red arrow light.

Section 21455.5, subdivision (c), states a governmental agency may operate an ATES only if it develops guidelines for law enforcement to screen and issue violations, but compliance with the guidelines is not an element of the failure to stop for a red arrow signal statute. [FOOTNOTE 6: “A driver facing a steady red arrow signal shall not enter the intersection to make the movements indicated by the arrow and, unless entering the intersection to make a movement permitted by another signal, shall stop at a clearly marked limit line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and shall remain stopped until an indication permitting

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movement is shown.” (§ 21453, subd. (c).) (See, e.g., *People v. Gray* (2014) 58 Cal.4th 901, 908-909 [§ 21455.5(b) does state what consequences, if any, might follow from a city’s noncompliance with its requirements, and the red light traffic law does not indicate a city must prove compliance with this section to obtain a conviction].) Hence, Gonzales determining a citation should be issued was not an element of the case required to be proved by the prosecution, and failure to call Gonzales as a witness did not deprive defendant of the right to confrontation. [FOOTNOTE 7: Section 40518, subdivision (a), provides a written notice to appear for a violation recorded by an ATES issued by “a peace officer or by a qualified employee of a law enforcement agency” can constitute a complaint to which a defendant may enter a plea. But, defendant cites not authority that the prosecution’s failure to call as a witness a citing officer violates a person’s rights.]

Due Process and Equal Protection

Defendant argues his right to procedural due process was violated for reasons that include his having been deprived of “the opportunity to cross-examine testimony against him,” and “the [c]ourt’s allowance of a stranger to prosecute the case... where there was no prosecution present, no prosecutor in lieu present [*sic*.]” He further maintains he was deprived of his right to equal protection of the law because the traffic control signal indicating the presence of a train at the intersection where the violation occurred failed to comply with the California Manual on Uniform Traffic Control Devices (CMUTCD).

The right to due process is protected by the Fourteenth Amendment to the United States Constitution and under

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article I, section 7 of the California Constitution. “[P]rocedural due process requires, at a minimum, notice and an opportunity to be heard....” (*Traverso v. People ex rel. Dept. of Transportation* (1993) 6 Cal.4th 1152, 1169.) Under the federal and California Constitutions, a person may not be denied equal protection of the laws (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7.) “The right to equal protection of the law is violated when “the government... treat[s] a [similarly situated] group of people unequally without some justification.”” [Citation.]” (In re Murray (2021) 68 Cal.App.5th 456, 462.)

We assume, without deciding, defendant’s arguments were not forfeited by failing to argue at trial that due process and equal protection were violated (see *People v. McCullough* (2013) 56 Cal.4th 589, 593 [constitutional rights may be forfeited if not timely asserted in the trial court]), and conclude the claims lack merit. Defendant was given the opportunity to cross-examine Xie, and as discussed above, Gonzales’s failure to testify did not violate his rights or deprive him of notice of the charges and the right to be heard at trial. Also, because the case was a traffic infraction, a prosecutor was not required to be present, and the prosecutor’s absence did not deprive defendant of any right. (*People v. Carlucci* (1979) 23 Cal.3d 249, 258.)

It appears defendant, in his equal protection argument, is referring to the “train light” Xie mentioned at trial. But, the sign’s compliance with CMUTCD is not an element of section 21453, subdivision (c). Also, defendant does not explain how the presence at an intersection of a train sign, even if not in compliance with the CMUTCD, would exonerate him of

violating the statute or cause him to be treated differently than a person in any other similarly situated group.

Fair Trial

Defendant contends the court, by failing to dismiss the case due to Gonzales's absence at trial, and by "acting as a prosecutor," violated his right to a fair trial.

““[T]he ‘constitutional floor’ of a ‘fair trial in a fair tribunal,’ [is] a fair hearing before a neutral or unbiased decision-maker.” [Citation.]’ [Citation.]” (*People v. Kocontes* (2022) 86 Cal.App.5th 787, 879.) “A biased decisionmaker is constitutionally unacceptable.” (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 559.) Defendant did not ask the court for a dismissal, and in any event, there were no grounds for the court to dismiss the case. In addition, although the court at times asked Xie and defendant questions in attempting to clarify the testimony presented, the record of the trial does not support defendant’s claim that the court assumed the role of a prosecutor. (*People v. Carlucci, supra*, 23 Cal.3d at p. 255 [so long as the court’s conduct and questioning of witnesses is “fair, and properly limited in scope,” “it is not merely the right but the duty of a trial judge to see that the evidence is fully developed before the trier of fact and to assure that ambiguities and conflicts in the evidence are resolved insofar as possible”].)

Unlawful Searches

Defendant argues his right to be free from unlawful searches under the Fourth Amendment, and his “right to federal common law” to exclude evidence, were violated.

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His arguments include that the ATES detection of vehicles through roadside trigger points and radar constituted an unconstitutional search, and that the government's accessing a Department of Motor Vehicles database to obtain his photograph to process the citation also violated the law, and all the evidence gathered should have been excluded from the trial.

"The Fourth Amendment protects the right to be free from 'unreasonable searches and seizures.'" (*People v. Macabeo* (2016) 1 Cal.5th 1206, 1219-1220.) The exclusionary rule was created by the courts as "a deterrent sanction that bars the prosecution from introducing evidence obtained by way of a Fourth Amendment violation." (*Davis v. United States* (2011) 564 U.S. 229, 239-232.)

We conclude defendant forfeited his unconstitutional search claims by failing to raise them in the trial court. "[A] defendant who does not raise Fourth Amendment issues by a proper motion in the trial court to suppress evidence under [Penal Code] section 1538.5 cannot raise that issue for the first time on appeal. [Citation.]" (*People v. Provencio* (1989) 210 Cal.App.3d. 290, 303; see *People v. Davis* (2008) 168 Cal.App.4th 617, 629 ["review of a suppression issue may be obtained if and only if at some point before conviction the defendant raised the issue"].)

DISPOSITION

The judgment is affirmed.

____/s/____
Ricciardulli, J.

We concur:

____/s/____ ____/s/____
Kumar, Acting P.J. Richardson, J.

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APPENDIX B

[STAMP IN UPPER RIGHT:
COURT OF APPEAL - SECOND DIST.
FILED
Oct 25, 2023
EVA McCLINTOCK, Clerk
JLozano Deputy Clerk]

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA SECOND APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent, v. ISIDRO JAVIER ARMENTA,
Defendant and Appellant.

B332178
(Super. Ct. L.A. County No. 006249EA
(App. Div. Case No. 23APIN00010)

MEMORANDUM OF NO TRANSFER

THE COURT*: It appearing that transfer of the above
entitled matter to this Court is not necessary (Cal. Rules of
Court, rule 8.1002), the request for transfer, filed October 4,
2023, is denied.

____/s/____
*BENDIX, Acting P.J.
____/s/____ ____/s/____
CHANAY, J. WEINGART, J.