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7
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 THE PEOPLE OF THE STATE OF
CALIFORNIA,

11 Plaintiff,

12 v.

13 DOUG BUCKLEY,

14 Defendant.

Case No. 20T1279735C

POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT'S
MOTION TO COMPEL DISCOVERY
AND FOR MONETARY SANCTIONS

Date: July 12, 2021

Time: 9:00 a.m.

Dept.: A

Witnesses: 0

Estimated Time: 10 minutes

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17 **INTRODUCTION**

18 In a normal traffic infraction case, a peace officer issues a citation. Next, the peace officer
19 files the citation with the court. The peace officer then testifies at trial, and produces any
20 necessary evidence, such as a lidar calibration. A prosecutor does not receive, review, or file the
21 citation. A prosecutor does not appear in court and prosecute the case. If a defendant asks the
22 prosecutor for discovery, the prosecutor refers the defendant to the law enforcement agency that
23 issued the citation.

24 Defendant is not happy with this state of affairs, and desires that the prosecutor act as a
25 go-between for the production of discovery. For example, if a defendant wants any notes the
26 issuing officer may have made, Defendant desires that the defendant be allowed to request those
27 notes from the prosecutor, that the prosecutor be required to fetch those notes, and the prosecutor
28 be required to deliver the notes to the defendant. Because the prosecutor is not actively involved

1 in infraction cases, and because involving the prosecutor would unnecessarily complicate
2 infraction cases, Defendant's desires and motion should be denied.

3 **STATEMENT OF THE CASE**

4 On August 1, 2020, a California Highway Patrol officer using lidar observed Defendant
5 driving at a speed of 97 miles per hour in a 65 mile per zone on I-805. The officer cited
6 Defendant for a violation of Vehicle Code section 22349, exceeding the maximum speed limit.
7 Defendant was released after signing a promise to appear.

8 On October 14, 2020, Defendant was arraigned and a not guilty plea was entered. A court
9 trial was calendared for January 20, 2021. On January 20, 2021, the trial was continued to
10 May 14, 2021.

11 On April 7, 2021, defense counsel served an informal discovery request upon the City
12 Attorney and the California Highway Patrol.

13 On May 14, 2021, Defendant appeared with retained counsel and filed motions to dismiss
14 and to compel discovery. The trial was continued to August 2, 2021, and the motions were
15 calendared for June 4, 2021.

16 On June 4, 2021, Defendant and retained counsel appeared for the motion hearings.
17 Apparently because no response to the defense motions had been filed, the court continued the
18 motion hearing to July 12, 2021, with a written response from all parties due to be filed by
19 June 25, 2021. Per the court, defense counsel was to serve the San Diego City Attorney and San
20 Diego District Attorney by mail by June 9, 2021.¹

21 **STATEMENT OF FACTS**

22 For over twenty years the San Diego City Attorney's Office (CAO) has not participated in
23 traffic infraction cases. The CAO does not investigate such cases. The CAO does not issue such
24 cases. The CAO does not prepare such cases for trial. The CAO does not take part in any
25 negotiations of such cases. The only involvement in such cases is to process witness subpoenas
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27 ¹ The City Attorney was served and notified of the June 4, 2021, date. It appears neither
28 the City Attorney nor District Attorney were notified of the July date. It is the People's
understanding that the District Attorney is aware of the motions and declines to participate.

1 for the initial traffic trial date as a courtesy to the Superior Court. All this is in accord with the
2 practices of the San Diego District Attorney’s Office.

3 Recognizing this lack of involvement and with an eye toward fiscal savings and
4 conserving resources, the CAO decided to redirect discovery requests which it had previously
5 responded to, and instead follow the practice of the San Diego District Attorney’s Office,
6 whereby any such requests they received would be redirected to the investigating agency. Starting
7 in or around November 2017, the CAO contacted the various investigating agencies responsible
8 for issuing traffic infraction cases and advised them that their records division would need to take
9 over any such discovery requests. After several meetings to work out a process, the plan to
10 redirect such requests was in place as of April 2018. At that time the CAO began advising
11 defendants and defense attorneys with traffic cases discovery requests to redirect such request to
12 the records division of the law enforcement agency that issued the citation. (A copy was lodged
13 by Defendant as Exhibit C.) That letter provided the contact information for the fifteen law
14 enforcement agencies of their address, telephone number, website address and/or email address.

15 In the present case, Defendant asked the Court for a motion to produce/compel discovery
16 on the CAO on May 14, 2021, for his traffic infraction case. The Court set the motion for
17 discovery on June 4, 2021. Presumably because there was no representative of the CAO present
18 in court on June 4, 2021, the Court directed Defendant to serve a copy of the order setting such
19 motion on the CAO, and to provide proof of service of that order to the CAO by June 19, 2018.

20 **ARGUMENT**

21 **I**

22 **THE CITY ATTORNEY DOES NOT NORMALLY**
23 **“PROSECUTE” INFRACTION CASES**

24 Generally speaking, the San Diego City Attorney’s Office, like the San Diego District
25 Attorney’s Office, does not participate in traffic infraction cases. This lack of participation in the
26 decision to file cases, to appear on cases, to arrive at dispositions, or to try such cases effectively
27 means there is no prosecuting attorney for purposes of discovery under Penal Code section 1054.
28 This is not to say that a traffic infraction defendant is not entitled to any discovery, but rather in

1 keeping with the established practice of simplified processes for handling of traffic infraction
2 cases due consideration is given by directing the requests for discovery to the investigating
3 (ticketing) agency. Accordingly, the San Diego City Attorney’s Office is not the proper recipient
4 of any discovery request or order, and Defendant’s motion to compel should be denied.

5 **II**

6 **THE LACK OF PARTICIPATION BY THE CITY**
7 **ATTORNEY’S OFFICE IN TRAFFIC INFRACTION CASES**
8 **REMOVES THEM FROM BEING THE “PROSECUTING**
9 **ATTORNEY” AND THEREFORE IT IS NOT SUBJECT TO**
10 **THE CRIMINAL DISCOVERY REQUIREMENTS OF**
11 **PENAL CODE SECTION 1054**

12 Under California law, the only means for obtaining discovery in a criminal case, unless
13 otherwise required by the United States Constitution or express statutory provision, is by
14 compliance with the discovery statutes contained in Chapter 10 of the Penal Code. Penal Code
15 section 1054.5, subdivision (a) states, in pertinent part:

16 No order requiring discovery shall be made in criminal cases
17 except as provided in this chapter. This chapter shall be the only
18 means by which the defendant may compel the disclosure or
19 production of information from prosecuting attorneys, law
20 enforcement agencies which investigated or prepared the case
21 against the defendant, or any other persons or agencies which the
22 prosecuting attorney or investigating agency may have employed to
23 assist them in performing their duties.

24 *See also* Penal Code section 1054(e); *In re Littlefield*, 5 Cal. 4th 122, 129 (1993); *Hines v.*
25 *Superior Court*, 20 Cal. App. 4th 1818, 1823 (1993). “In criminal proceedings, under the
26 reciprocal discovery provisions of section 1054 et seq., all court-ordered discovery is governed
27 exclusively by-and is barred except as provided by- . . . [Penal Code section 1054–1054.10].” *In*
28 *re Littlefield*, 5 Cal. 4th at 129. Thus, Penal Code section 1054.5 clearly states a defendant may
obtain an order for discovery from three different sources: the prosecuting attorney, the law
enforcement agency that investigated or prepared the case against the defendant, and any other
third party used either by the prosecuting agency or the investigating agency.

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1 The district attorney is charged with the exclusive power to conduct prosecutions, “except
2 as otherwise provided by law.” Cal. Gov’t Code § 26500. Those powers include attending the
3 courts and initiating prosecutions. *Id.* City attorneys are similarly authorized as district attorneys
4 by section 40.1 of the City of San Diego City Charter which gives the San Diego City Attorney
5 concurrent jurisdiction with the San Diego District Attorney, California Government Code
6 section 41803.5 which gives city attorneys the same powers in the prosecution of misdemeanors
7 as district attorneys, and Penal Code section 19.7 which apply the provisions of law relating to
8 misdemeanors to infractions (except as otherwise provided by law).

9 While traffic infractions are public offenses (Penal Code sections 16, 17; *People v.*
10 *Hamilton*, 191 Cal. App. 3d Supp. 13, 18 (1986)), by statute and case law the city attorney has
11 been relieved of the obligation to act as the “prosecuting attorney” in traffic infraction cases.

12 Vehicle Code section 40500–40518 provides the exceptions to the requirement of a public
13 prosecutor. Those code provisions remove the prosecutor in traffic infraction cases from initiating
14 charges, amending charges, or recommending dismissal of charges and instead allows those
15 functions to be performed by the “issuing agency,” i.e., the law enforcement. Accordingly, the
16 CAO no longer has involvement in any relevant aspect of the traffic infraction cases² from the
17 filing of the charges through the disposition of charges, including appearance in any such cases.
18 Looking at Vehicle Code section 40500 as well as other claims including due process, cases have
19 held that prosecuting attorneys are not required to be present at traffic infraction trials. *People v.*
20 *Daggett*, 206 Cal. App. 3d Supp. 1, 5 (1988); *People v. Carlucci*, 23 Cal. 3d 249 (1979); *People*
21 *ex rel. Kottmeier v. Municipal Court*, 220 Cal. App. 3d 602, 608–10 (1990).

22 Case law has similarly removed traffic infractions from many of the procedural
23 requirements governing other criminal matters. Traffic matters are “[u]nconstrained by the more
24 stringent procedural requirements of a major criminal trial,” *In re Dennis B.*, 18 Cal. 3d 687,
25 695 (1976). “[O]n the record” waiver of constitutional rights as prerequisite to guilty plea not
26 required in infractions. *Mills v. Municipal Court*, 10 Cal. 3d 288, 302 n.13 (1973). Holding

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28 ² The City Attorney’s involvement in traffic infraction cases is limited to processing
witness subpoenas for the initial traffic trial date and responding to cases on appeal.

1 conviction of a traffic infraction not a bar to prosecution for a more serious related offense. *In re*
2 *Dennis B.*, 18 Cal. 3d at 692. Municipal courts allow commissioners and traffic referees to “have
3 the same jurisdiction and exercise the same powers and duties as the judges of the court with
4 respect to any infraction.” *People v. Lucas*, 82 Cal. App. 3d 47, 49 (1978); Cal. Gov’t Code §§
5 72190, 72401(c).

6 Recently the Fourth District Court of Appeal affirmed that under normal circumstances a
7 prosecutor need not appear in traffic infraction cases. *People v. Cotsirilos*, 50 Cal. App. 5th 1023
8 (2020). In *Cotsirilos*, the court held that a prosecutor need not appear when a Penal Code section
9 1538.5 motion to suppress has been filed, nor does the prosecutor need to file responsive
10 pleadings. In so holding the court approvingly cited *People v. Marcroft*, 6 Cal. App. 4th Supp. 1
11 (1992) for the proposition that economic realities preclude the presence of a prosecutor at most
12 infraction trials.

13 In reaching its conclusion the *Cotsirilos* court pointed out the numerous bases for the
14 public policy of allowing separate treatment for traffic infraction cases, a public policy based
15 mainly upon a cost benefit analysis. *Id.* at 595–96. Such treatment provides defendants who
16 commit minor infractions with a quick and less expensive disposition without risking major
17 penalties, while the public also benefits by allowing prosecution and the courts and law
18 enforcement resources to focus on more serious criminal behavior. *In re Dennis B.*, 18 Cal 3d at
19 695. “[I]t is in the interests of the defendant, law enforcement, the courts, and the public to
20 provide simplified and expeditious procedures for the adjudication of less serious traffic offenses”
21 and that “the courts and the Legislature have repeatedly evidenced their determination to keep the
22 processing of traffic infractions free from the procedural intricacies that characterize more serious
23 criminal proceedings.” *Carlucci*, 23 Cal. 3d at 257. “It is not unreasonable to extend recognition
24 of the realities of present-day funding concerns to encompass discretion in appearing in court to
25 conduct prosecutions.” *Daggett*, 206 Cal. App. 3d Supp. 1 at 5. Requiring compliance with Penal
26 Code section 1054 to all traffic infractions would run counter to the simplified and expeditious
27 procedures of traffic cases. In the 2015 fiscal year there were 281,539 traffic infraction cases filed
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1 Penal Code section 19.7 provides, “Except as otherwise provided by law, all provisions of
2 law relating to misdemeanors shall apply to infractions including, but not limited to, powers of
3 peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to
4 trial and burden of proof.”

5 Therefore, if the provisions of Penal Code section 19.7 apply to discovery motions in
6 infraction cases then it could be argued that such a motion would lie against a prosecuting agency.
7 However, if the provisions of Penal Code section 19.7 do not apply to motions for discovery in
8 infraction cases, then such a motion cannot be brought against a prosecuting agency.

9 In *People v. Prince*, 55 Cal. App. 3d Supp. 19 (1976), the court held that while due
10 process requires defendants in misdemeanor cases to be advised of the right to assistance of
11 counsel, in infraction cases that is not required. In coming to that decision, the court decided not
12 to apply the same procedural rules of misdemeanors to infractions per Penal Code section 19.7
13 based upon the cases of *In re Johnson*, 62 Cal. 2d 325 (1965), *Mills*, 10 Cal. 3d at 303 and the
14 related discussion in those cases of the rule of convenience and the ejusdem generis rule of
15 statutory construction.

16 **A. UNDER THE RULE OF CONVENIENCE THE DISCOVERY RULES**
17 **APPLICABLE IN MISDEMEANORS AND FELONIES DO NOT APPLY IN**
18 **INFRACTION CASES**

19 The rule of convenience was explained in *In re Johnson*, 62 Cal. 2d at 336 as follows:

20 While there can be no impairment of the fundamental constitutional
21 rights of any defendant, however minor his crime, in certain
22 situations there may be a choice of valid ways to implement these
23 rights. Where such is the case-and constitutional rights are
24 respected-the convenience of the parties and the court should be
25 given considerable weight. For example, probably the vast majority
26 of citizens haled into court on traffic violations share the judge’s
27 interest in prompt disposition of their cases, feeling themselves
28 sufficiently inconvenienced by having to make personal
appearances in the first place. (n. omitted.) To require the judge to
orally examine each such defendant at length for the purpose of
determining his capability of defending himself would seem to be
an idle and time-wasting ritual. Compliance with the spirit of the
constitutional mandate that an intelligent waiver of counsel must
affirmatively appear in the record may be efficiently achieved in
such cases in a variety of acceptable ways.

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1 In *Johnson*, the court held that the collective advisement of constitutional rights in
2 misdemeanor cases was sufficient absent proof of its inadequacy in the case of an individual
3 defendant. *Id.* at 332. This rule of convenience was again noted in cases involving minor offenses
4 in *Mills*, 10 Cal. 3d at 303 where the court stated:

5 The *Johnson* decision thus teaches that in evaluating the procedures
6 utilized in inferior courts for advising defendants of their rights and
7 obtaining ‘on the record’ waivers, the realities of the typical
8 municipal and justice court environment cannot be ignored, and
9 that, so long as the spirit of the constitutional principles are
10 respected, ‘the convenience of the parties and the court should be
11 given considerable weight.’ (*Id.*, see *In re Smiley* (1967) 66 Cal.2d
12 606, 622.)

13 Application of the rule of convenience to discovery procedures in infraction cases
14 demonstrates that defendants should obtain discovery directly from law enforcement agencies. In
15 the normal traffic infraction case the prosecuting attorney has essentially no involvement in the
16 prosecution and has no custody of relevant evidence. The law enforcement agency, and often the
17 citing officer, retains custody over any evidence and should be responsible for disclosing it.
18 Clearly it would be more convenient for discovery to be conducted between defendants and law
19 enforcement agencies without the involvement of the “prosecuting attorney”—who has no
20 involvement in these infraction cases.

21 Additionally, the courts and the Legislature have repeatedly evidenced their determination
22 to keep the processing of traffic infractions free from the procedural intricacies that characterize
23 more serious criminal proceedings. *Carlucci*, 23 Cal. 3d at 257 (“it is in the interests of the
24 defendant, law enforcement, the courts, and the public to provide simplified and expeditious
25 procedures for the adjudication of less serious traffic offenses.”); *People v. Marcroft*, 6 Cal. App.
26 4th Supp. 1, 4 (1992) (Economic realities preclude the presence of prosecuting attorneys at most
27 infraction trials.) Given the simple nature of infraction cases, the relatively low consequences
28 involved, the high volume of cases, simplified procedures for their fair and efficient disposition is
29 necessary. Application of the rule of convenience therefore indicates that any motion to suppress
30 in infraction cases should be heard at trial and not in a separate pretrial hearing.

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1 **B. APPLICATION OF THE ESJUEDEM GENERIS RULE DEMONSTRATES THAT**
2 **REFERENCES TO “PROSECUTING AGENCY” IN PENAL CODE SECTION**
3 **1054 DO NOT APPLY IN INFRACTION CASES**

4 Similarly, applying the ejusdem generis rule of statutory construction argues against
5 allowing discovery motions against prosecutors in infraction cases. In *Prince*, the court noted that
6 while the language of Penal Code section 19.7 was broad, the principles of ejusdem generis
7 narrowed that broad language and found that Penal Code 19.7 did not extend to the constitutional
8 dimensions regarding the right to counsel or confrontation of witnesses of due process. *Prince*, 55
9 Cal. App. 3d at 32–33.

10 [The] rule of construction known as *ejusdem*
11 *generis* . . . refer(s) to things of the same general nature as those
12 specified. In such cases the particular words are inserted for the
13 purpose of describing certain species and the general words to
14 include other species of the same genus. The rule is founded upon
15 the reason that if the general words were intended to prevail in their
16 full and unrestricted sense the special words would not be
17 employed by the lawmakers at all.

18 *Ex parte Cannon*, 167 Cal. 142, 145 (1914).

19 Here, the special words used in Penal Code section 19.7, the “powers of peace officers,
20 jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden
21 of proof” are not of the same nature as a motion to compel discovery and therefore the ejusdem
22 generis rule argues against application of Penal Code section 19.7 in the motion to suppress
23 context. The special words of Penal Code section 19.7 are not similar to the constitutional
24 dimensions regarding the rights to exculpatory evidence nor even the larger category of general
25 criminal procedural rules. While some pretrial motions such as speedy trial motions would be
26 similar (as it relates to the time period for commencing action), other such motions such as
27 motions to suppress or discovery motions are not similar to the special words used in Penal Code
28 section 19.7. This is not to say that suppression motions and discovery motions would not be
allowed in infraction cases, but rather just that “all provisions of law relating to misdemeanors”
do not necessarily apply to infractions.

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IV

THERE CAN BE NO MONETARY SANCTIONS

Defendant has asked for monetary sanctions against the CAO because he believes (1) the CAO is the “prosecuting attorney” in the case and therefore has a duty to disclose certain information pursuant to Penal Code section 1054.1, and (2) the CAO has failed to comply with that duty. Defendant’s request should be denied because (1) the provisions in Penal Code section 1054.1 regarding the duty of the prosecuting attorney to provide discovery simply do not apply in a traffic infraction case, and (2) there can be no monetary sanctions against the CAO because a court order under Penal Code section 1054.5 is a prerequisite for sanctions and there has been no court order.

CONCLUSION

The CAO should not be found to be the “prosecuting attorney” under the criminal discovery statutes of Penal Code section 1054 where the CAO has no active involvement in the handling of such cases. Defendant’s request for discovery from the CAO should be denied and Defendant should be ordered to direct his informal request for discovery to the proper party, the investigating agency.

Dated: June 24, 2021

MARA W. ELLIOTT, City Attorney

By 

Steven K. Hansen
Deputy City Attorney

Attorneys for Plaintiff

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Date: July 12, 2021
Time: 9:00 a.m.
Dept.: A

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

DECLARATION OF
ELECTRONIC SERVICE

Case No. 20T1279735C
People v. Doug Buckley

I, Donna Armitstead, declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned electronic service occurred. My business address is 1200 Third Avenue, Suite 700, San Diego, California, 92101-4103. I served the following document(s): **POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO COMPEL DISCOVERY AND FOR MONETARY SANCTIONS**, to:

Coleen M. Cusack
Ccusack.policy@gmail.com

On June 24, 2021, I transmitted the above-described document(s) by electronic service to the above-listed electronic service address. The transmission originated from my electronic service address darmitstead@sandiego.gov and was reported as complete and without error. [CCP § 1010.6; C.R.C. Rule 2.251.]

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 24, 2021, at San Diego, California.



Donna Armitstead

PROOF OF SERVICE BY ELECTRONIC SERVICE
C.C.P. § 1010.6 and C.R.C. Rule 2.251