

NOV 17 2017

Sharon L. ... Officer Clerk  
By: [Signature] 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. )

DAMON [REDACTED], )

Defendant and Appellant. )

BR 053324

Santa Monica Trial Court

No. S059028

OPINION

INTRODUCTION

Defendant Damon [REDACTED] appeals the judgment imposed after the court found him guilty of violating the basic speed law (Veh. Code, § 22350).<sup>1</sup> Defendant contends a speed trap was involved (§§ 40804, subd. (a), 40805), because the engineering and traffic survey (ETS) for the area where the offense occurred incorrectly set the speed limit. Specifically, defendant maintains the ETS's reduction of the speed limit below the 85th percentile or critical speed was unjustified. Defendant argues the ETS improperly relied in this regard on the location being a residential area, which he maintains was readily apparent to drivers. (See § 627, subd. (b)(3)

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<sup>1</sup>All further statutory references are to the Vehicle Code unless otherwise specified.

1 [listing "roadside conditions not readily apparent to the driver" as one of the factors an ETS can  
2 rely on].) As discussed below, we reverse the judgment.<sup>2</sup>  
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4 BACKGROUND

5 On August 29, 2016, defendant was given a citation for driving his vehicle at 50 miles  
6 per hour (mph) on the 2000 block of San Vicente Boulevard in the City of Santa Monica, in an  
7 area where the speed limit was 35 mph. Defendant pled not guilty to the offense, and the  
8 matter proceeded to trial.

9 At trial, defendant attempted to question the citing officer about the ETS which was  
10 lodged with the court, but the officer indicated he had no personal knowledge regarding how  
11 the ETS was conducted. The officer testified that the residential character of the neighborhood  
12 adjacent to the roadway was readily apparent. Defendant argued the ETS improperly set the  
13 speed limit at 35 mph because the justification to lower the speed limit to this speed was that  
14 San Vicente was a residential area, and this was readily apparent to drivers.

15 The trial court rejected the argument, concluding the ETS was based on the proper  
16 factors required to lower the speed limit. The court found defendant guilty, and ordered that he  
17 pay a fine. Defendant filed a timely notice of appeal.

18 DISCUSSION

19 In pertinent part, a speed trap is defined as a section of highway with a prima facie speed  
20 limit that is not justified by an engineering and traffic survey conducted within the previous  
21 five years, and where radar or another electronic device is used to enforce the speed limit.  
22 (§ 40802, subd. (a)(2).) So long as specified conditions are satisfied, a survey may be extended  
23 up to seven years (§ 40802, subd. (c)(1) & (2)(B)(i)(I)), or up to 10 years (§ 40802, subd. (c)(1)  
24 & (2)(B)(i)(II)).

25 If the testimony of a witness is "based upon or obtained from or by the maintenance or  
26 use of a speed trap," that witness is deemed incompetent to testify. (§ 40804, subd. (a).)  
27 Further, the court presiding over a case in which speed trap evidence is admitted is without

28 <sup>2</sup>Defendant also contends we should reverse the judgment because the trial court "acted as  
prosecutor/expert witness" in interpreting the ETS to justify the speed limit. But, given our disposition,  
we do not address this contention.

1 jurisdiction to render a judgment of conviction. (§ 40805.) The prosecution has the burden to  
2 prove a defendant was not the victim of a speed trap. (*People v. Earnest* (1995) 33 Cal.App.4th  
3 Supp. 18, 21.)

4 “A local authority may, based on a survey, set a prima facie speed limit . . . which is  
5 most appropriate to facilitate the orderly movement of traffic and is reasonable and safe.”  
6 (*People v. Goulet* (1992) 13 Cal.App.4th Supp. 1, 9 (*Goulet*)). An ETS must be prepared “in  
7 accordance with methods determined by the Department of Transportation.” (§ 627, subd. (a).)  
8 “Methods required by the Department of Transportation are published in a traffic manual.”  
9 (*Goulet, supra*, 13 Cal.App.4th at p. Supp. 10.) Quoting the California Manual, *Goulet*  
10 indicated, “Speed limits should be established preferably at or near the 85 percentile speed,  
11 which is defined as that speed at or below which 85 percent of the traffic is moving.” (*Ibid.*,  
12 citation omitted.) “The speed limit normally should be established at the first five mile per  
13 hour increment below the 85 percentile speed. However, in matching existing conditions with  
14 the traffic safety needs of the community, engineering judgement [*sic*] may indicate the need  
15 for a further reduction of five miles per hour.” (*Id.* at p. Supp. 11, citation omitted.)

16 Section 627, subdivision (b), requires that an ETS consider all of the following:

17 “(1) Prevailing speeds as determined by traffic engineering measurements. [¶] (2) Accident  
18 records. [¶] (3) Highway, traffic, and roadside conditions not readily apparent to the driver.”

19 Section 22358.5 provides, in relevant part, “It is the intent of the Legislature that physical  
20 conditions such as width, curvature, grade and surface conditions, or any other condition  
21 readily apparent to a driver, in the absence of other factors, would not require special  
22 downward speed zoning . . . .”

23 The ETS found the 85th percentile or critical speed on San Vicente between 17th and  
24 26th Street—which included the 2000 block where defendant was cited—was 42 mph for  
25 traffic heading west and 41 mph for traffic heading east.<sup>3</sup> It then concluded a five mph

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28 <sup>3</sup>The record on appeal does not indicate which direction defendant was driving on San Vicente.

1 reduction was warranted, which, rounded down (see § 21400, subd. (b)), called for a speed limit  
2 of 35 mph.

3 The ETS stated the reduction was warranted because the stretch of highway at issue was  
4 a "RESIDENTIAL AREA." However, the officer testified it was readily apparent the location  
5 was a residential area, and there was no testimony presented about any hidden dangers that  
6 might be associated with the area in question. The fact the location was a residential area did  
7 not support the speed reduction, because a "condition readily apparent to a driver, in the  
8 absence of other factors, would not require special downward speed zoning." (§ 22358.5; see  
9 also § 627, subd. (b)(3) [ETS must consider "roadside conditions not readily apparent to the  
10 driver"].)

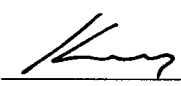
11 Since there was no evidence of other factors that might warrant reducing the speed limit,  
12 the ETS failed to disprove that a speed trap existed. The officer could thus not competently  
13 testify as a witness, and the court lacked jurisdiction to render a judgment of conviction.  
14 (§§ 40804, subd. (a), 40805.)

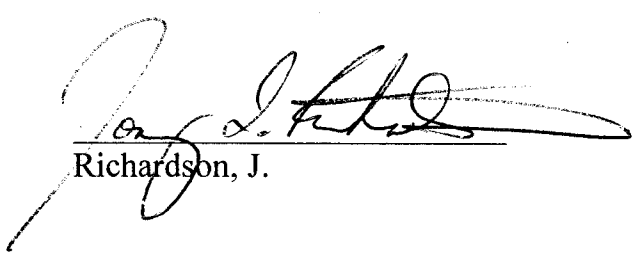
15 DISPOSITION

16 The judgment is reversed.

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Ricciardulli, J.

20 We concur:

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Kumar, Acting P. J.

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Richardson, J.