2021 IL App (2d) 190583-U
No. 2-19-0583
Order filed November 9, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 16-CF-1237
BRIAN T. RILEY,	)	Honorable John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Bridges and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in declining to sanction the State for producing in discovery a squad-car video of defendant's traffic stop that had an incomplete audio track. The evidence showed no tampering or deletion but only that the squad car's recording system malfunctioned. Since the State could turn over in discovery only what evidence it had, there was no basis to find a discovery violation. Nor was there a showing that the arresting officer acted in bad faith and thus violated defendant's due process rights.

¶ 2 After a jury trial, defendant, Brian T. Riley, was convicted of aggravated driving with a breath-alcohol content (BAC) of 0.08 or more (DBAC) (625 ILCS 5/11-501(a)(1), (d)(1)(A), (d)(2)(E) (West 2016)) and driving under the influence of alcohol (DUI) (*id.* § 11-501(a)(2),

(d)(1)(A), (d)(2)(E)). The trial court merged the counts and sentenced defendant to 10 years' imprisonment. On appeal, he contends that the trial court erred in refusing to bar the admission of a police squad-car video as a sanction for violating discovery rules and his due process rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 7, 2019, before trial, defendant moved *in limine* to bar evidence of certain statements that he allegedly made during the traffic stop and at the police station afterward. In the first category were: (1) " 'I started to run, but you showed up before I could' " and (2) " 'I did 7 years in prison for DUI and I know I will be going back to prison now.' " In the latter category were: (3) " 'This will be my 6th or 7th DUI. The last judge gave me 7 years for my last DUI;' " (4) a plea that the police let him go so he could "get his life back on track"; and (5) " 'I'm a fuck up. I'm going to prison for 10 years. I need help so I can stop drinking and be a full[-]time dad.' " The motion did not specify the grounds for barring these statements.

¶ 5 On June 11, 2019, defendant filed a motion *in limine* directed against the video of the stop that the arresting officer, Illinois state trooper Antoine Finner, recorded. The motion argued that portions of the video lacked sound and that, during these silent portions, defendant allegedly made his incriminating statements. It requested that the court bar the video and any testimony as to what was said but not properly recorded.

¶ 6 On June 11, 2019, the court heard the motion. Jury selection was scheduled for that day. Defendant argued as follows. The video was "truncated": it started after the police arrived and ended before defendant was arrested. Further, for most of the video, there was no sound. Thus, several of defendant's alleged admissions were not recorded. Defendant did not know whether the original video had been edited by the police or the State, but "it could have occurred." He argued

that, based on *People v. Kladis*, 2011 IL 110920, the video and any statements that it failed to record should be excluded. These included defendant's admission that he had been driving, although the State had disclosed it and other statements it intended to use at trial.

¶ 7 The State responded that the video had not been altered; the recording machinery had malfunctioned, but the video had everything that was recorded. The State expected that Finner would testify on this technical failure. He had explained to the prosecutors that the sound was not properly activated and that he did not become aware of the defect until after the arrest. Finner did not deliberately refuse to turn on the recording system, and the tape had not been altered.

¶ 8 The trial court ruled that both the video and the testimony at issue could come in. The court would consider changing its ruling if evidence were produced that the tape had been intentionally altered or that Finner had intentionally turned off the recording machinery.

¶ 9 At trial, the sole witness was Finner. On direct examination, he testified as follows. On May 14, 2016, at about 11 p.m., while patrolling in a marked squad car, he was dispatched to assist a motorist on westbound Interstate 290 (I-290) at Glendale. He arrived in about three minutes. At the time, the original shoulder of westbound I-290 was in a construction area, so there was a concrete barrier there and solid white lines to indicate the temporary shoulder. On the other side of the shoulder was a "ditch area." Across the highway, alongside the eastbound lanes, was a wooded area. The location was about 50 or 60 feet east of the on-ramp from Thorndale Avenue.

¶ 10 Finner testified that, when he arrived, he saw two vehicles on the right shoulder: a gray passenger car and, behind it, a gray pickup truck. The car's front right passenger-side wheel was tilted in and the right passenger-side fender was damaged. The truck was directly behind the car. It was undamaged. Two men were standing between the vehicles. Finner learned that they were defendant and his brother. Finner asked whether either one had been driving the car. Defendant

told him, " 'I was driving the vehicle.' " Defendant appeared distraught; he was looking down and shaking his head. He smelled of alcohol and his eyes were bloodshot, glassy, and red.

¶ 11 Finner testified that he asked defendant whether he had been drinking. Defendant said he had had two drinks. He said that his driver's license was revoked, but he fumbled through his wallet and found other identification. After looking in the damaged car for a while, defendant produced his insurance card. Finner asked defendant what had happened. Defendant responded that he came down the ramp too fast and did not know how he hit the wall. He never mentioned anyone being in the car with him. Defendant told Finner that he had come from a friend's house, but he could not recall the friend's name or the location of the house. He said that he had drunk two "Rum and Cokes," starting at 8 p.m. and ending at 10 p.m. Defendant also "said he was going to run, but he said then [Finner] showed up."

¶ 12 Finner testified that he asked defendant to take several field sobriety tests. On the horizontal gaze nystagmus (HGN) test, defendant exhibited all six "clues"; only two were needed to establish that he had been drinking. On the walk-and-turn test, there were eight possible clues; two were sufficient to establish impairment. Defendant exhibited five clues. On the one-leg-stand test, which required two out of four clues to establish impairment, defendant exhibited three. Finner then put defendant under arrest. Another state trooper had arrived by the end of the field sobriety tests. Finner drove defendant to the Addison police station.

¶ 13 Finner testified that, at the station, he observed defendant for the required continuous 20-minute period. At about 12:58 a.m., defendant took a breath-alcohol test. Finner showed him the result, and defendant agreed to talk to him. As he answered questions, defendant cried so persistently that Finner had to cut the interview short. At one point, defendant asked Finner why the officer could not just let him go. He added that "he was a fuck-up and he just wanted to be a

full-time dad and stop drinking." Finner concluded that defendant was under the influence of alcohol, based on his driving, the field sobriety test, the odor of alcohol, his bloodshot and glassy eyes, and the result of the breath-alcohol test.

¶ 14 Finner testified that, on May 14-15, 2016, his squad car had a video camera. The camera and an audio recorder were both activated by clicking a button three times. Finner did so as he responded to the accident scene; the clicking also activated the car's overhead lights. Finner assumed that the video and audio were working because the red light on top of the screen came on. After exiting his squad car, Finner could tell that the camera was still recording by looking through the windshield and seeing that a green light was on. The audio was "on [his] shoulder, so it [was] like right here."

¶ 15 Finner testified that at no point during the stop did he become aware that either the video or the audio was not working. The first time that he noticed a problem was on the drive to the Addison police station. The camera had restarted, although he had not restarted it. In viewing the video before testifying, Finner noticed that the audio was not working during part of it. The audio normally came on automatically when he "click[ed] and turn[ed] on [his] lights." On May 14-15, 2016, Finner did not manually override either the audio or the video.

¶ 16 Finner testified that, before May 14, 2016, he had had "issues where [the recording equipment] was restarted and coming back on." Well before May 14, 2016, Finner wrote a memo to his sergeant about the problem. It took about four to seven months—long after May 15, 2016, for his squad car to get a new system. Even the new system repeatedly shut down, and it was replaced. Other than the omissions caused by the defective machinery, the video fairly and accurately portrayed the events at issue. Finner had not edited or altered it in any way.

¶ 17 The court held a sidebar. Defendant again moved to bar the video and any testimony about the events and statements connected with it. He argued that Finner's testimony had just shown that he had been aware long before the stop that the system had repeatedly failed. Defendant analogized the situation to *Kladis*, which barred a video with which the State had tampered before trial. The State argued that Finner had engaged in no intentional editing or deletions and had even tried to get his defective equipment replaced before May 2016. There was no discovery or due process violation, because nobody had altered or destroyed the video that was created during the stop and arrest.

¶ 18 The court agreed with the State, reasoning as follows. The law did not require the stop to be recorded at all, and many DUI arrests were not recorded. According to the testimony, which the court had no reason to disbelieve, Finner had known that the machinery had previously malfunctioned—apparently sporadically and not consistently, but:

> "[I]n either event, it is not as if [Finner] undertook to manipulate the evidence, alter the evidence, the events are described by him, the explanation is described by him, the defense is free to challenge that and challenge his credibility.
>
> And to suggest that in some way they have been denied evidence because of what the trooper did in light of his testimony, all of which goes to the weight of his testimony and the credibility of the witness.
>
> You know, it is a typical example of the ineptitude of government to respond, particularly the State of Illinois who has been operating as functionally bankrupt for years and this is what happens. Stuff doesn't work. The testimony seems credible on that point. You're free to pursue an alternative explanation that would challenge the credibility of the witness, but that which was recorded appears to have been recorded accurately.

That which wasn't recorded is subject to cross and subject to the trier of fact *** weighing the evidence and deciding the case. So your motion is denied."

¶ 19 When the trial resumed, the video was played for the jury, with a portion removed by stipulation. We summarize the video.

¶ 20 The video starts silently with a view of the rear of the truck. In the first two minutes, defendant appears, and he and Finner talk while standing between the squad car and the truck. Finner goes to his squad car, returns, and speaks with defendant, then returns to his squad car, exits, examines the damaged car, and returns and again speaks to defendant. The audio comes on at marker 2:39 and shuts off again at marker 3:10. During this span, Finner speaks to defendant, examines what appears to be defendant's identification, and then returns to his squad car.

¶ 21 At marker 4:20, defendant reappears on the right side, crosses in front of the squad car, and walks to the driver-side window of the truck, where he pauses briefly, looks in, and appears to say something. He then walks ahead and reemerges at the passenger-side window, again leaning in, and talking. Approximately between markers 4:40 and 6:55, defendant is standing still, appears to be speaking to the truck driver, and occasionally glancing in the direction of the squad car. At approximately marker 6:55, Finner approaches and speaks briefly to defendant. Defendant then walks ahead to the damaged car. The passenger-side door is open, and, at about marker 7:45, defendant returns, carrying some papers. He walks back out of range of the camera. Between this time and about marker 12:52, nobody is in the squad car camera's view.

¶ 22 At about marker 12:52, Finner appears and walks to the driver-side of the truck. He appears to be speaking to the driver. Defendant appears to the right of the squad car, but Finner motions him back. Defendant is holding some papers, and the second trooper is standing between him and

the barrier. Defendant places the papers on the hood of the squad car. At marker 13:19, the truck drives away.

¶ 23 At marker 15:05, Finner appears and speaks to defendant. (There is still no audio, but the video makes clear what is happening.) At marker 15:35, Finner starts to explain the HGN test. Defendant takes the test, talking back and forth with Finner at one point. At marker 17:30, Finner explains the walk-and-turn test, and defendant attempts to perform it. At about marker 19:12, the sound comes on as Finner explains the one-leg-stand test and tells defendant to perform it. Several times, Finner tells defendant that his foot is still on the ground. Defendant agrees to try the test again. Again, Finner tells him several times that his foot is still on the ground. At about marker 21:13, Finner orders defendant to stop. He goes to his squad car and soon returns. The video ends.

¶ 24 Finner's testimony continued as follows. Throughout the video, defendant's brother was "in the car, in his pickup truck." Defendant did not indicate that he had any physical limitations that would interfere with the field sobriety tests. During the one-leg-stand test, Finner told defendant several times that his foot was on the ground, although he had been instructed to hold it off the ground. Defendant's result on the breath test was 0.15.

¶ 25 Finner testified on cross-examination as follows. He arrived at the scene at about 11:19 p.m. and administered the field sobriety tests about 10 or 15 minutes later. None of defendant's statements to which Finner had testified were recorded on the video.

¶ 26 Finner testified that, while demonstrating the HGN test, Finner approximated the required angles and distances at which to hold the stimulus. In scoring defendant's performance of the one-leg-stand test, Finner found a clue, an inability to keep balance, although he wrote it down as "swaying." On the walk-and-turn test, defendant did not start in the right position, so Finner counted the step that brought him into position as a required step, putting him one over the correct

number. Finner admitted that, in the video of his instructions for the one-leg-stand test, he did not specify that defendant's foot should be six inches off the ground.

¶ 27 Finner testified that, at the police station, he did not record any of defendant's statements or ask defendant to write anything down.

¶ 28 Finner testified that, "[p]robably a few months" before May 14, 2016, he knew that there had been problems with his squad car's recording equipment. The errors happened "routinely." Finner admitted that the video showed that the other trooper arrived before Finner began the tests. Finner did not ask to use his car's recording equipment. At the time, Finner did not know that his car's equipment was not working properly at that time.

¶ 29 On redirect, Finner testified that, several times during the HGN test, he told defendant to redo the test without moving his head. Defendant did not keep his balance during either the instructional or performance phase of the walk-and-turn test. In the performance phase, he did not touch his toe to his heel and kept his arms out while turning.

¶ 30 Defendant put on no evidence. The jury found him guilty of DBAC and DUI. In his posttrial motion, he argued that the court erred in admitting his inculpatory statements. The trial court denied the motion and sentenced him to 10 years' imprisonment. He timely appealed.

¶ 31 II. ANALYSIS

¶ 32 On appeal, defendant argues that the trial court erred in allowing the State to introduce the squad-car video and Finner's testimony that defendant made inculpatory statements that were not recorded at either the accident scene or the police station. Defendant contends primarily that the State violated the discovery rules and the supreme court's holding in *Kladis*. He also invokes (1) section 30(b) of the State Police Act (20 ILCS 2610/30(b) (West 2018)), which provides that all Illinois State Police patrol vehicles shall contain in-car video camera recording equipment and

that such equipment shall record activities outside the vehicle during an enforcement stop, and (2) section 30(f) of the same statute, which requires the police to retain any recordings for at least 90 days and forbids any alterations or erasures within that period (*id.* § 30(f)). Finally, defendant contends that the State's use of the video violated due process.

¶ 33 We review *de novo* whether the State committed a discovery violation. *People v. Althoff*, 2020 IL App (2d) 180993, ¶ 23. For the following reasons, we hold that defendant has not shown any violation. We consider in turn the alleged grounds for finding one.

¶ 34 We turn first to *Kladis*. There, the defendant, who had been charged with DUI and had petitioned to rescind the summary suspension of her driving privileges, requested under Illinois Supreme Court Rule 237 (eff. July 1, 2005) that the State turn over the arresting officer's recording of the traffic stop that led to her arrest. The State did not honor the request. On June 3, 2008, the defendant moved to require the State to tender the recording, and the State requested the recording from the police. *Kladis*, 2011 IL 110920, ¶¶ 3-5. On June 17, 2008, the next court date, the State notified the defendant that the police had erased the recording early on the morning of June 3, 2008, before the hearing. *Id.* ¶¶ 5-6). The defendant moved for sanctions. *Id.* ¶ 6. After the arresting officer testified about what the recording would have shown, the trial court ruled that it would bar any testimony about what had been on the video. The court noted that, after the defendant had requested that the State preserve " '[a]n important piece of evidence,' " that evidence had been destroyed. *Id.* ¶ 9.

¶ 35 The trial court heard and granted the defendant's rescission petition. The defendant then moved to quash her DUI arrest and suppress evidence, and the court granted the motion. On the State's appeal, the appellate court upheld the sanction. *Id.* ¶¶ 13-17.

¶ 36 On appeal to the supreme court, the State conceded that the sanction was proper in the civil summary-suspension proceeding. However, it contended that the trial court had no power to impose the sanction in the misdemeanor DUI case, because, under *People v. Schmidt*, 56 Ill. 2d 572 (1974), video recordings were not discoverable in misdemeanor cases. *Id.* ¶¶ 20-23. The supreme court disagreed. The court explained that *Schmidt*'s holding simply reflected the scope of discovery that the case law and statutes provided in 1974. *Id.* ¶¶ 25-26. Since then, the recording of traffic stops had become routine and courts had recognized the importance of such evidence. Therefore, under *Schmidt*, "these video recordings are discoverable in misdemeanor DUI cases." *Id.* ¶ 29. The court held that the video was relevant and admissible. Thus, upon receiving the Rule 237 request, the State was placed on notice and "should have taken appropriate steps to ensure that [the video] was preserved." *Id.* ¶ 38.

¶ 37 Defendant contends that, under *Kladis*, The State committed a discovery violation. He concedes that, in *Kladis*, the State destroyed the recording after the defendant made a Rule 237 request for it, whereas here "the video was presumably not destroyed or altered after a request by [the] defense was made." However, he contends that *Kladis* applies because the video "was destroyed or altered before such a request could be made." He contends that the timing of the "destruction or alteration" should make no difference.

¶ 38 Defendant stretches *Kladis* too far. Nothing in *Kladis* supports defendant's contention that the State committed a discovery violation merely because Finner's defective equipment failed to record parts of what was said and done during the traffic stop. In *Kladis*, the defendant filed a Rule 237 request for the recording of the traffic stop, putting the State on notice that the recording must be preserved. Because the police then destroyed the evidence, the supreme court found a discovery violation. Here, defendant *concedes* that, in response to his Rule 237 request, the State

turned over the entire recording without the police, the State, or anyone else having deleted, edited, or altered any of it. *Kladis* fails to support defendant's discovery-violation claim. Further, defendant admits that the basis on which *Kladis* found the violation does not exist here.

¶ 39 Moreover, courts applying *Kladis* have rejected defendant's broad reading of it. In *People v. Strobel*, 2014 IL App (1st) 130300, a DUI case, the defendant subpoenaed all video and audio recordings made in the case. The State promptly turned over the arresting officer's squad-car video of the traffic stop and arrest, but the recording had no audio. The defendant moved to exclude any State witness from testifying about matters that were captured on the video and to allow a presumption that any unrecorded audio portions would have been favorable to him. He contended that the lack of audio was a " 'discovery violation' " that *Kladis* forbade. *Id.* ¶ 3.

¶ 40 The State responded that the video was silent only because the officer had forgotten to activate the audio device beforehand. Thus, *Kladis* did not apply. In that case, a video that existed when the defendant requested it was later destroyed, but in *Strobel*, the audio had never existed and the State had turned over all of the video that had ever existed. *Id.* ¶ 4.

¶ 41 The trial court agreed with the defendant's claim of a discovery violation, and it barred any testimony about, or videotape of, the performance of field sobriety tests. *Id.* ¶ 5.

¶ 42 The State appealed. The appellate court reversed and remanded. It held that there had been no discovery violation and that the trial court had misread *Kladis*. The court explained:

> "The record in this case is clear that no audio recording of the police encounter with the defendant ever existed. *Kladis* does not stand as authority for imposing a sanction against the prosecution where the requested discovery material never existed in the first instance. *Kladis* instructs that a non-due-process discovery violation may be found where the State, without bad faith, destroyed relevant evidence after being put on notice of the

> defendant's request for the evidence. [Citation.] Here, when the police stopped defendant[,] they failed to activate the audio recording function on their squad car video camera. As a result, the State tendered to defendant 's attorney everything it possessed and controlled: the video of the traffic stop without an audio component. There is nothing in this record to support any inference or suggestion that the police or the prosecution intentionally or inadvertently destroyed any preexisting discoverable evidence. Therefore, the imposed exclusion sanction punished the prosecution for something that was outside its control and cannot reasonably be viewed as conduct that caused unfairness to the defendant or deprived him of an opportunity to prepare his defense." *Id.* ¶ 11.

The court noted that the defendant argued that the audio might have aided the defendant's case; but, the court reasoned, it was "equally possible [that] the unrecorded audio had 'the potential to banish any hope of exoneration.' " *Id.* ¶ 12 (quoting *People v. Gentry*, 351 Ill. App. 3d 872, 878 (2004)). Speculation about prejudice availed the defendant nothing in the absence of any basis to impose a sanction. Thus, the trial court erred in doing so. *Id.*

¶ 43 *Strobel* is on point here. As in *Strobel*, the State responded to a defense request for the squad-car video by turning over the complete video, with no editing or deletions. As in *Strobel*, the primary basis of the defense motion for sanctions was that the video lacked audio. As in *Strobel*, the missing audio had never existed in the first place, the only difference being that, instead of forgetting to activate the audio, Finner activated an audio system that failed to function properly. In response to defendant's request, the State "tendered to defendant's attorney everything it possessed and controlled" and, as the trial court observed, nothing in the record supports any contention that "the police or the prosecution intentionally or inadvertently destroyed any preexisting discoverable evidence." *Strobel*, 2014 IL App (1st) 130300, ¶ 11. Finally, as in

Strobel, there is only speculation that a full audio recording would have aided defendant; it might as easily have corroborated Finner's testimony in important respects. Thus, this case no more fits *Kladis* than did *Strobel*. We follow *Strobel* as it is well-reasoned and fully consistent with *Kladis*.

¶ 44 Defendant attempts to distinguish *Strobel* by asserting that here, unlike in *Strobel*, the evidence at issue *was* destroyed or altered, although he concedes that the destruction or alteration occurred before his Rule 237 request. He contends that the timing of the "destruction or alteration" should make no difference. Defendant's argument has no basis in the evidence.

¶ 45 In contending that the video was altered at some point, defendant relies on (1) Finner's testimony that, before he exited his squad car, he turned on the audio and video and saw that the green light was activated, meaning that both were functioning and (2) the incompleteness of both the audio and the video in the actual recording. Defendant appears to be arguing that, because the green light at the outset of the encounter showed that all systems were "go," the only way to account for the gaps in the video and audio is to infer that Finner erased parts of both.

¶ 46 Defendant's argument ignores the evidence and the conclusions that the trial court properly drew from it. Finner testified that he did not edit or alter the video in any way. He also testified that he did not notice any problem with the video until after he completed the arrest, when, on the way to the police station, the camera system restarted spontaneously. Finner testified that, on more than one previous occasion, he had had similar problems with the squad-car video machinery, to the point where he requested a replacement. The trial court credited this testimony because it lacked a reason to discredit the testimony. Thus, the court found that the defects in the final video resulted not from any alteration or editing, but from an initial malfunction that was not detected until later. As the court said, "Stuff doesn't work."

¶ 47 *Althoff* also supports the trial court's decision. There, a police officer stopped the defendant for DUI and activated his emergency lights, which also activated his squad-car video recorder. To the officer's knowledge, the system was functioning properly. The officer had the defendant perform field sobriety tests, with the squad car positioned to record the tests. Again, he saw no sign of a problem with the audio or video. However, after he arrested the defendant and drove to the police station, he discovered that the recording of the stop had not been uploaded to the main system and was thus unavailable. *Althoff*, 2020 IL App (2d) 180993, ¶¶ 6-11.

¶ 48 Before his trial for DUI, the defendant asked the State to produce videos of the stop (and the subsequent booking, some of which the station recording machinery failed to capture). *Id.* ¶ 3. The State produced only what it had: no video of the stop and the incomplete video from the booking room. The defendant moved to dismiss the case or to bar the State from eliciting testimony about events that the missing videos would have recorded. *Id.* ¶¶ 3-4. After a hearing, the court denied the motion, noting that there was no evidence that any recording of the stop or the missing portion of the booking video had ever existed. *Id.* ¶ 20. A jury then convicted the defendant of DUI, and he appealed.

¶ 49 On appeal, the defendant contended that the trial court erred in not sanctioning the State for failing to produce any video of the stop and only an incomplete video of the booking. This court affirmed. As pertinent to *Kladis* and the discovery rules, we held that there was no discovery violation, because the "State does not commit a discovery violation by failing to produce evidence that never existed." *Id.* ¶ 26. We reasoned that, as in *Strobel*, there was no evidence that the recordings at issue had ever existed. We noted specifically that the officer's mere assumption that the squad-car camera and microphone were working did not establish that there had been a recording. *Id.* ¶ 30. Similarly, there was no evidence that any pertinent video from the booking

room, other than what the State tendered, had ever existed. *Id.* ¶ 31. Moreover, that *Althoff* involved malfunctioning equipment rather than the officer's inadvertent failure to turn on the recording equipment did not distinguish it from *Strobel*, except to make an even stronger case against a sanction. This was because nothing in *Althoff* indicated that "the police here affirmatively, whether intentionally or inadvertently, did anything to prevent the recording of the stop or the entirety of what transpired in the booking room." *Id.* ¶ 32.

¶ 50 *Althoff*'s application here is plain. The State turned over everything that had been recorded. It did not violate any discovery rules when it failed to turn over recordings that never existed. As in *Althoff*, the defense received everything that the State could provide it, and the defense was not entitled to receive recordings, whether audio or video, that were never produced owing to the defective functioning of police equipment.

¶ 51 We hold that *Kladis* does not apply and that defendant's first proffered ground for reversal is without merit under well-established precedent.

¶ 52 We turn to defendant's second ground for reversal. He argues that the trial court should have sanctioned the State because Finner or his superiors violated (1) section 30(b) of the State Police Act (20 ILCS 2610/30(b) (West 2018)), which requires all state police patrol vehicles to contain video camera recording equipment and to record activities outside the vehicle during an enforcement stop, and (2) section 30(f) of the statute, which requires the police to retain any recordings for at least 90 days and forbids any alterations or erasures within that period (*id.* § 30(f)).

¶ 53 Defendant has forfeited this contention. At the trial level, he never raised the State Police Act as a basis for finding a discovery violation or imposing a sanction. Indeed, he did not mention the statute at all. On appeal, a party may not obtain a reversal on a ground never raised in the trial

court. *Haudrich v. Howmedica. Inc.*, 169 Ill. 2d 525, 536 (1996). Further, we note that, as defendant concedes, we have held that the statutory sections on which he relies are directory, not mandatory, and cannot support sanctions. *People v. Olsen*, 2015 IL App (2d) 140267, ¶ 17.

¶ 54 We turn to defendant's final ground for reversal. He contends that the State denied him due process. Defendant reiterates the premise of his previous contentions—that the State destroyed or altered evidence. He then acknowledges that proving a due process violation requires a showing of bad faith. See *People v. Hobley*, 159 Ill. 2d 272, 307 (1994). Defendant argues that the evidence proved that Finner acted in bad faith by regularly conducting traffic stops while he and his superiors knew that the squad-car recording machinery was regularly malfunctioning. He also contends that the evidence at issue was crucial to his defense, because the central disputed issue at trial was whether defendant had been driving, and an audio recording of the stop might have contradicted Finner's testimony that defendant admitted driving the car.

¶ 55 Defendant's argument is unsound. Finner and his superiors did not destroy or alter any evidence. Finner did fail to create some evidence, of course. Insofar as the failure to create evidence could support a due process claim, however, there was still no bad faith. Finner testified that, because his squad car's recording equipment sometimes malfunctioned, he requested new equipment that would (hopefully) prevent the type of mechanical failure that happened here. He made the request well before May 2016. For reasons that no employee of a large bureaucracy will find surprising, much less sinister, the remedy was slow in coming. As the trial court concluded, Finner did the best that he could with what he had. The court did not find bad faith, but concluded simply, "Stuff doesn't work." There is no reason for us to conclude otherwise.

¶ 56 Moreover, much as in *Strobel*, defendant's argument that a full audio recording might have helped his defense is a weak reed on which to support a claim of prejudice. There is no more

reason to believe that the audio would exonerate defendant than to believe that it would provide conclusive evidence against him.

¶ 57 Defendant did not prove a discovery violation. Therefore, his appeal fails.

¶ 58 III. CONCLUSION

¶ 59 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 60 Affirmed.