

S202483

No. _____

LIU, J.
SUPREME COURT
FILED

MAY 14 2012

Frederick K. Ohlrich Clerk

Deputy

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff & Respondent,

vs.

STEVEN EDWARD GRAY

Defendant & Petitioner.

After Decision by Court of Appeal, Second District, Div. Three
Appeal Transferred from Appellate Division
of Los Angeles Superior Court
Appeal No. B236337; App. Div. No. BR048502;
Trial Court No. C165383
Hon. Lawrence H. Cho, Judge

PETITION FOR REVIEW

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ISSUE PRESENTED

Whether, in an automated red light traffic enforcement system prosecution ["ATES"], the 30-day warning notice period and the public announcement requirements -- pursuant to Vehicle Code § 21455.5(b) -- are "*intersection specific*" (*People v. Park*¹) OR "*system general*" requirements (*People v. Gray*²). [Gray is attached as Exhibit "A hereto.]

This is a straight-forward case regarding "legislative intent", "statutory construction", the "rule of lenity" and the "public policy" to be served.

The relevant "enabling statute" is Vehicle Code § 21455.5, subdivision (b), quoted as follows:

"Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program." [Emphasis added.]

Park interprets the enabling statute's "notice requirements" to apply at each intersection at which the ATES is employed. *Gray* interprets the enabling statute to require notice compliance only at the first intersection implemented into the ATES in that local jurisdiction and never again.

¹. *People v. Park* (2010) 187 Cal.App.4th Supp. 9.

². *People v. Gray* (2012) 204 Cal.App.4th 1041.

INTRODUCTION

Tens of thousands residents in California are issued automated photo red light traffic enforcement system [ATES] citations by California municipalities annually. A number of the municipalities have ceased using this method of traffic enforcement based upon a failure to statistically demonstrate that such programs actually improve safety to the motoring public, *inter alia*.

In **1993**, the California legislature authorized the use of automated traffic enforcement systems ["ATES", *supra*] at railroad crossing intersections, conditioned upon the local jurisdiction's compliance with the "notice requirements" in the enabling statutes pursuant to Vehicle Code § 21455.5(b), *et seq.*

In **1996**, the California legislature authorized the use of ATES at regular intersections, again with the same "notice requirements" of complying with the requirements in the enabling statutes pursuant to Vehicle Code § 21455.5(b), *et seq.*

In **1998**, Culver City - at the intersection of La Cienega Boulevard and Washington Boulevard - issued the 30-days of warning notices and the public announcement to the motoring public, pursuant to Vehicle Code § 21455.5(b), prior to its commencement of the automated photo-enforcement, only advising that Culver City was going to use such ATES at the La Cienega and Washington Boulevard intersection.

In 2006, 8 years and over 20 additional intersections later, Culver City then added the intersection of Helms Avenue and Washington Boulevard to its ATES program . . . without compliance with the 30-day warning notice period and the public announcement requirements pursuant to Vehicle Code § 21455.5(b).

In fact, and as was stipulated by Culver City, it only provided the 30-day warning notice period and public announcement at its first intersection of La Cienega and Washington Boulevards in 1998, and never again satisfied the 30-day warning notice period and/or public announcement requirements at any of the subsequent 20 or more intersections in its jurisdiction.

Thereafter, in 2008, without such notice compliances with the requirements of said "enabling statutes", petitioner was cited at the Helms-Washington intersection by the ATES for an alleged violation of Vehicle Code § 21453(a).

GROUNDNS WHY REVIEW SHOULD BE GRANTED

Pursuant to California Rules of Court, Rule 8.500(b), the Supreme Court may order review to secure uniformity of decisions. Further, the Supreme Court may order review to settle an important question of law. Both applicable in the instant mattter. Petitioner had also timely raised these issues in the Court of Appeal [Rule 8.500(c)].

There is a conflict of published decisions in the *Park* and *Gray* cases on the only substantive issue raised herein, *infra*. [Please see "Issue Presented", *supra*.]

The expressed disagreement of the appellate courts cries out for review. Trial courts across the state are faced with two conflicting, published opinions; one which is logical, the other merely result oriented.

Gray is also internally inconsistent and has contradictory holdings.

LEGAL DISCUSSION

A. CONFLICTING PUBLISHED OPINIONS

1. PEOPLE V. PARK

In *People v. Park* (2010), 187 Cal.App.4th Supp. 9, 115 Cal.Rptr.3d 337 (*Park*) held that "automated traffic enforcement system" in section 21455.5, subdivision (b) refers to ATES equipment operated at each intersection and not to the overall automated enforcement program in a local jurisdiction. [*Park*, at Supp., page 12.]

Quoting *Park*, in relevant part, as follows:

"It would make little sense for the scope of the 30-day warning period to be limited temporally and to be defined arbitrarily by the geographic size of the local jurisdiction, inasmuch as the legislatively stated purpose of the warning requirement is to deter red light violations. This purpose is best achieved by the issuance of new warnings and announcements to proximate users each time automated enforcement equipment commences operation at an intersection."

CONCLUSION

Because the record in this case shows a lack of compliance with the requirement of Vehicle Code section 21455.5, subdivision (b), that a municipality utilizing an automated enforcement system at an intersection comply with the prescribed warning requirements "[p]rior to issuing citations," the conviction must be reversed. (See *Ralph v. Police Court* (1948) 84 Cal.App.2d 257, 258-259, 190 P.2d 632; *People v. Municipal Court (Pellegrino)* (1972) 27 Cal.App.3d 193, 206, 103 Cal.Rptr. 645.)"

DISPOSITION

The judgment is reversed, with directions that the charge be dismissed."

2. PEOPLE V. GRAY

In *People v. Gray* (2012) 204 Cal.App.4th 1041, 139 Cal.Rprt.3d

489, the Court stated:

"INTRODUCTION

Before a local jurisdiction may issue traffic citations utilizing an automated traffic enforcement system (ATES), it must comply with two requirements in Vehicle Code section 21455.5, subdivision (b):

(1) it must issue warning notices for 30 days before issuing citations, and

(2) it must make a public announcement of the ATES at least 30 days before commencement of the enforcement program.

The issue in this appeal is whether the local jurisdiction must provide one 30–day period of warning notices and one 30–day public announcement at the commencement of the ATES [program] in that jurisdiction, or . . .

whether it must provide the 30–day warning notice period and public announcement each time ATES equipment is installed at a new intersection in that jurisdiction.

We hold that the local jurisdiction need only provide one 30–day warning notice period and one 30–day public announcement [at the commencement of the enforcement program at the first intersection in the ATES in 1998 in Culver City; no additional

intersections added to the ATEs thereafter need to comply with the notice and publication requirements of Vehicle Code § 21455.5(b)].

We disapprove of *People v. Park* (2010) 187 Cal.App.4th Supp. 9, 115 Cal.Rptr.3d 337, which comes to a contrary conclusion." [Gray, page 490.]

[Underlined emphasis; and bracketed, parenthetical phrases added.]

B. RULES OF STATUTORY CONSTRUCTION

The basic rules for statutory construction are well settled. In any case involving statutory interpretation, the fundamental task is to determine the Legislature's intent so as to effectuate the law's purpose. [*People v. Murphy* (2001) 25 Cal.4th 136, 142, 105 Cal.Rptr.2d 387, 19 P.3d 1129.]

The task begins with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent. [*People v. Watson* (2007) 42 Cal.4th 822, 828, 68 Cal.Rptr.3d 769, 171 P.3d 1101; accord, *Catlin v. Superior Court* (2011) 51 Cal.4th 300, 304, 120 Cal.Rptr.3d 135, 245 P.3d 860.]

The plain meaning controls if there is no ambiguity in the statutory language. [*People v. King* (2006) 38 Cal.4th 617, 622, 42 Cal.Rptr.3d 743, 133 P.3d 636.]

If, however, the statutory language may reasonably be given more than one interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.

Rhetorically, petitioner asks . . . why did the California legislature enact Vehicle Code § 21455.5(b)? The "public policy" would logically be to give notice to the motoring public, who frequently drive in that local jurisdiction's community, of the commencing of the ATES at that specific intersection.

Further, an experienced trial judge ruled on the record in an ATES prosecution [in which he dismissed the ATES red light citation involving a Culver City red light prosecution for failing to comply with the warning notice period and publication requirements]. That judge stated that the 30-day warning notice period would also give the local jurisdiction (including its police agency and its equipment contractor) the opportunity to test the various components of the ATES system (to wit, the laptop computer, still camera system, cabling, internet connectivity, secure transfer of encrypted data, software installation and function, yellow phase timing settings, video camera system and electro-magnetic loops at the intersection, *inter alia*).

What is painfully missing from the Court of Appeal's analysis of the 30 day warning notice period and public announcement requirements is any reference whatsoever to the Legislature's specific intent. Public policy would unquestionably favor compliance with these "notice requirements".

C. RULE OF LENITY

Consistent with the "Rules of Statutory Construction", and if there are two plausible interpretations of the statutory language in Vehicle Code § 21455.5(b) the court must apply the "Rule of Lenity," under which courts resolve doubts as to the meaning of a statute in a criminal defendant's favor. [*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 312, 58 Cal.Rptr.2d 855, 926 P.2d 1042.]

It has been frequently noted, as it is here, that the Rule of Lenity applies only if two reasonable interpretations of the statute stand in relative equipoise. [*People v. Soria* (2010) 48 Cal.4th 58, 65, 104 Cal.Rptr.3d 780, 224 P.3d 99; accord, *People v. Lee* (2003) 31 Cal.4th 613, 627, 3 Cal.Rptr.3d 402, 74 P.3d 176.]

If the two plausible, reasonable interpretations are as expressed in *Park* and in *Gray*, and are of relative equipoise, then the statute should be interpreted consistent with the *Park* decision based on the Rule of Lenity.

D. A WRONG WITHOUT A RIGHT TO A REMEDY?

The language of the California legislature in Vehicle Code § 21455.5(b) cannot be a nullity.

Firstly, Culver City stipulated that it did not comply the 30-day warning notice period and/or public announcement in 2006 when it commenced the ATES enforcement program at the intersection of Washington Boulevard and Helms Avenue in Culver City. So, there is no uncertainty about that fact.

Secondly, it is and has been petitioner's contention and argument that, as a result of the stipulated non-compliance by Culver City with statutory warning-notice and public announcement requirements at the Washington-Helms intersection, Culver City thereby lacked the statutory authority to issue the citation to petitioner-Gray using an ATES for an alleged red light violation.

1. Contradiction No. 1:

Notwithstanding, the Court of Appeal in *Gray* stated . . .

"Even if Culver City failed to comply with section 21455.5, subdivision (b) by not commencing the 30-day warning notice program and not making the public announcement when the ATES was used at the intersection of Washington Boulevard and Helms Avenue, that non-compliance did not require exclusion of the ATES evidence, dismissal of the citation, or acquittal." [*Gray*, page 496.]

". . . the Legislature did not establish any remedy for a local jurisdiction's failure to comply with section 21455.5(b)." [*Gray, id.*]

2. Contradiction No. 2:

This inconsistency in the Court of Appeal's opinion in *Gray* is telling in their "result oriented" decision. Division 3 of the Court of Appeal for the Second Appellate District then contradicts itself and states:

"Before a local jurisdiction may issue traffic citations utilizing an automated traffic enforcement system (ATES), it must comply with two requirements in Vehicle Code section 21455.5, subdivision (b): (1) it must issue warning notices for 30 days before issuing citations, and (2) it must make a public announcement of the ATES at least 30 days before commencement of the enforcement program." [Gray, at page 490.] [Emphasis added.]

Continuing from *Gray*, at page 490:

"We hold that the local jurisdiction need only provide one 30-day warning notice period and one 30-day public announcement." [Emphasis added.]

Petitioner rhetorically asks . . .

Is the Court of Appeal stating that -- even if Culver City never complied with the 30-day warning notice period and never complied with the public announcement requirements in Vehicle Code § 21455.5(b) at any of their ATES intersections -- that Culver City would still be able to issue and prosecute citations pursuant to an ATES program?

Or, must the local jurisdiction comply only one time therewith?

CONCLUSION

WHEREFORE, for the reasons stated herein and in the record in this matter, Petitioner-Steven Edward Gray prays that this Honorable Court will grant review of this matter from the Court of Appeal for the Second Appellate District in order to secure uniformity of decisions and to settle important questions of law.

Dated: May 11, 2012

Respectfully submitted,

A handwritten signature in black ink that reads "Sherman M. Ellison". The signature is written in a cursive, flowing style.

SHERMAN M. ELLISON
Attorney for Petitioner
STEVEN EDWARD GRAY

CERTIFICATION OF WORD COUNT

Pursuant to California Rules of Court, Rule 8.504(d), counsel for petitioner herein certifies that the word count in the above-reference Petition for Review to the California Supreme Court is 2054.

This certification by counsel is based upon the word count from the WordPerfect computer program that was used to prepare this brief.

Dated: May 11, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sherman M. Ellison". The signature is written in a cursive, flowing style.

SHERMAN M. ELLISON
Attorney for Petitioner
STEVEN EDWARD GRAY

PROOF OF SERVICE

STATE OF CALIFORNIA)
)ss.
COUNTY OF LOS ANGELES)

I am resident in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 15303 Ventura Boulevard, 9th Floor, Sherman Oaks, California 91403.

On May 11, 2012, I personally served the foregoing document described as PETITION FOR REVIEW [CRC, Rule 8.500] on the interested parties in this action by Federal Express overnight delivery to the California Supreme Court, e-mailing, and/or depositing in the U.S.Postal Service said motion, as listed herein below, a true copy thereof in a sealed envelope, addressed to other interested parties.

See Attached Service List

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, except as to those matters stated on information and/or belief, and as to those matters, I believe them to be true; and that this Declaration was executed on May 11, 2012.



SHERMAN M. ELLISON, ESQ.

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EXHIBIT “A”

EXHIBIT “A”

204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489, 12 Cal. Daily Op. Serv. 3774, 2012 Daily Journal D.A.R. 4333
 (Cite as: 204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489)

H

Court of Appeal, Second District, Division 3, California.
 The PEOPLE, Plaintiff and Respondent,

v.

Steven GRAY, Defendant and Appellant.

No. B236337.

April 3, 2012.

As Modified April 11, 2012.

Background: Defendant was convicted in the Superior Court, Los Angeles County, No. C165383, Lawrence H. Cho, J., of failing to stop at a red light. Defendant appealed. The Appellate Division of the Superior Court affirmed, 199 Cal.App.4th Supp. 10, 131 Cal.Rptr.3d 220. The Court of Appeal ordered the case transferred.

Holdings: The Court of Appeal, Kitching, J., held that:

(1) installation of automated traffic enforcement system (ATES) equipment at new intersection did not require new 30-day warning period, disapproving People v. Park, 187 Cal.App.4th Supp. 9, 115 Cal.Rptr.3d 337;

(2) compliance with requirement of 30-day warning period is not an element of offense of failing to stop at red light; and

(3) noncompliance with requirement of 30-day warning period does not require exclusion of evidence.

Affirmed.

West Headnotes

[1] Automobiles 48A 🔑11

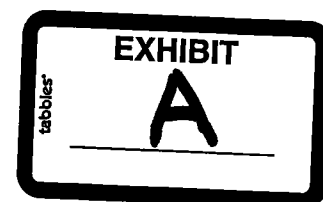
48A Automobiles

48A Control, Regulation, and Use in General

48Ak11 k. Construction and operation of regulations in general. Most Cited Cases

Automobiles 48A 🔑349(1)

48A Automobiles



204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489, 12 Cal. Daily Op. Serv. 3774, 2012 Daily Journal D.A.R. 4333
(Cite as: 204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489)

48AVII Offenses

48AVII(B) Prosecution

48Ak349 Arrest, Stop, or Inquiry; Bail or Deposit

48Ak349(1) k. In general. Most Cited Cases

A local jurisdiction must comply with the statutory requirement of a public announcement and a 30-day warning period only when it commences operation of an automated traffic enforcement system (ATES), but not each time ATES equipment is placed in operation at each new intersection; disapproving *People v. Park*, 187 Cal.App.4th Supp. 9, 115 Cal.Rptr.3d 337. West's Ann.Cal.Vehicle Code § 21455.5(b). See *Annot., Automated Traffic Enforcement Systems (2007) 26 A.L.R.6th 179; 2 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, § 259; Cal. Jur. 3d, Automobiles, § 297.*

[2] Automobiles 48A ↪11

48A Automobiles

48AI Control, Regulation, and Use in General

48Ak11 k. Construction and operation of regulations in general. Most Cited Cases

Automobiles 48A ↪349(1)

48A Automobiles

48AVII Offenses

48AVII(B) Prosecution

48Ak349 Arrest, Stop, or Inquiry; Bail or Deposit

48Ak349(1) k. In general. Most Cited Cases

Under the statute requiring a public announcement and a 30-day warning period when a local jurisdiction commences operation of an automated traffic enforcement system (ATES), the term "system" refers to the integrated technology used in the ATES program, not to ATES equipment at each intersection. West's Ann.Cal.Vehicle Code § 21455.5(b).

[3] Automobiles 48A ↪11

48A Automobiles

48AI Control, Regulation, and Use in General

48Ak11 k. Construction and operation of regulations in general. Most Cited Cases

Automobiles 48A ↪349(1)

204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489, 12 Cal. Daily Op. Serv. 3774, 2012 Daily Journal D.A.R. 4333
(Cite as: 204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489)

48A Automobiles

48AVII Offenses

48AVII(B) Prosecution

48Ak349 Arrest, Stop, or Inquiry; Bail or Deposit

48Ak349(1) k. In general. Most Cited Cases

After a local jurisdiction contracts for use of an automated traffic enforcement system (ATES), the statute requiring "public hearing on the proposed use of" an ATES does not require a further public hearing each time ATES equipment is placed in operation at a particular intersection. West's Ann.Cal.Vehicle Code § 21455.6(a).

[4] Automobiles 48A ↪335

48A Automobiles

48AVII Offenses

48AVII(A) In General

48Ak335 k. Violation of traffic regulations. Most Cited Cases

A local jurisdiction's compliance with the statutory requirement of a public announcement of an automated traffic enforcement system (ATES) and a 30-day warning period is not an element of the offense of failing to stop at a red light. West's Ann.Cal.Vehicle Code §§ 21453, 21455.5(b).

[5] Automobiles 48A ↪11

48A Automobiles

48A Control, Regulation, and Use in General

48Ak11 k. Construction and operation of regulations in general. Most Cited Cases

Automobiles 48A ↪349(1)

48A Automobiles

48AVII Offenses

48AVII(B) Prosecution

48Ak349 Arrest, Stop, or Inquiry; Bail or Deposit

48Ak349(1) k. In general. Most Cited Cases

The Legislature did not establish any remedy for a local jurisdiction's failure to comply with the statutory requirement of a public announcement of an automated traffic enforcement system (ATES) and a 30-day warning period. West's Ann.Cal.Vehicle Code § 21455.5(b).

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(Cite as: 204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489)

[6] Criminal Law 110 ↪ 392.21

110 Criminal Law

110XVII Evidence

110XVII(I) Competency in General

110k392.1 Wrongfully Obtained Evidence

110k392.21 k. Electronic surveillance; telecommunications. Most Cited

Cases

A local jurisdiction's failure to comply with the statutory requirement of a public announcement of an automated traffic enforcement system (ATES) and a 30-day warning period is not a basis for excluding evidence obtained by an ATES. West's Ann.Cal.Vehicle Code § 21455.5(b).

***490** Law Offices of Sherman M. Ellison and Sherman M. Ellison, Sherman Oaks, for Defendant and Appellant.

Wilson, Elser, Moskowitz, Edelman & Dicker, Los Angeles, Robert Cooper for Drew Wren as Amicus Curiae on behalf of Defendant and Appellant.

Law Offices of Joseph W. Singleton, Woodland Hills, and Joseph W. Singleton for Mishel Rabiean as Amicus Curiae on behalf of Defendant and Appellant.

Dapeer, Rosenblit & Litvak, Los Angeles, William Litvak and Caroline K. Castillo for Plaintiff and Respondent.

KITCHING, J.

INTRODUCTION

Before a local jurisdiction may issue traffic citations utilizing an automated traffic enforcement system (ATES), it must comply with two requirements in Vehicle Code section 21455.5, subdivision (b): (1) it must issue warning notices for 30 days before issuing citations, and (2) it must make a public announcement of the ATES at least 30 days before commencement of the enforcement program. The issue in this appeal is whether the local jurisdiction must provide one 30–day period of warning notices and one 30–day public announcement at the commencement of the ATES in that jurisdiction, or whether it must provide the 30–day warning notice period and public announcement each time ATES equipment is installed at a new intersection in that jurisdiction. We hold that the local jurisdiction need only provide one 30–day warning notice period and one 30–day public announcement. We disapprove of People v. Park (2010) 187 Cal.App.4th Supp. 9, 115 Cal.Rptr.3d 337, which comes to a contrary conclusion.

Steven Gray appeals from a judgment entered after the trial court found him guilty of violating ***491**Vehicle Code section 21453, subdivision (a), ^{FN1} by failing to stop at a

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red light at an intersection in Culver City. Gray's conviction for this violation was based on evidence produced by an ATES.

FN1. Unless otherwise specified, statutes in this opinion will refer to the Vehicle Code.

Culver City provided the 30-day warning notice period and public announcement when ATES equipment was placed in operation 10 years before Gray's citation was issued. We reject Gray's claim that Culver City should have provided another 30-day warning notice period and public announcement when ATES equipment became operational at the intersection where Gray's violation occurred. No violation of section 21455.5, subdivision (b) occurred, and we affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

On November 21, 2008, a citation was issued charging defendant **Steven Gray** with violating section 21453, subdivision (a) by failing to stop for a red signal at the intersection of Washington Boulevard and Helms Avenue in Culver City. An ATES recorded the violation.

Gray was arraigned and pleaded not guilty. The defense made a pre-trial motion to dismiss based on Culver City's alleged failure to provide the 30-day warning notice period and public announcement requirements of section 21455.5, subdivision (b) before ATES equipment was installed at Washington Boulevard and Helms Avenue. Culver City stipulated that "Culver City has only conducted such warning notices and public announcements prior to the commencement of the entire program in Culver City in 1998, and that no such notices or announcements were done specifically for the intersection (at the intersection of Washington Boulevard and Helm[s] Avenue, Culver City) at which defendant was photographed allegedly running a red light." The trial court denied Gray's motion to dismiss.

At trial, Gray stipulated that he was the driver depicted in the photographs and video captured by the ATES. The police officer in charge of Culver City's ATES testified about the installation, functioning, operation, and maintenance of that system.

At conclusion of the trial, the court found that the ATES-produced evidence was admissible, found Gray guilty of the charge, and ordered Gray to pay a fine.

Gray appealed to the Appellate Division of Los Angeles County Superior Court, which affirmed the judgment in People v. Gray (2011) 199 Cal.App.4th Supp. 10, 131 Cal.Rptr.3d 220.

On October 12, 2011, pursuant to Code of Civil Procedure section 911 and California Rules of Court, rule 8.1002, we ordered the case transferred to this court and

204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489, 12 Cal. Daily Op. Serv. 3774, 2012 Daily Journal D.A.R. 4333
(Cite as: 204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489)

subsequently set the matter for hearing.

ISSUE

The issue is whether a local jurisdiction using an ATES must comply with section 21445.5, subdivision (b) once, when the ATES first becomes operational in that local jurisdiction, or each time ATES equipment becomes operational at each intersection where it is used.

DISCUSSION

1. *A Local Jurisdiction Must Comply with Section 21455.5, Subdivision (b) When It Commences Operation of the ATES, But Not Each Time ATES Equipment Is Placed in Operation at Each New Intersection*

A. *The Statute*

Section 21455.5 establishes requirements for a governmental agency to operate an *492 ATES at an intersection and at other designated locations. Subdivision (b) of section 21455.5 states: “Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement *system* shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement *system* at least 30 days prior to the commencement of the enforcement program.” (italics added).

[1] Subdivision (b) thus has two requirements. First, the local jurisdiction must establish a 30-day warning program: for 30 days before issuing citations under section 21455.5, a local jurisdiction using an automated traffic enforcement *system* must issue only warning notices. Second, at least 30 days before commencement of the enforcement program—i.e., at least 30 days before it begins issuing citations under section 21455.5—a local jurisdiction must make a public announcement of the automated traffic enforcement program. Both requirements are timed according to the date the local jurisdiction first issues citations generated by the automated traffic enforcement *system*.

B. *The Term “System” in the Statute Refers to the Integrated Technology Used in the ATES Program, Not to ATES Equipment at Each Intersection*

The first step in construing a statute is to examine its actual language and give to its words their ordinary, everyday meaning. If the words are reasonably free from uncertainty and ambiguity, the plain meaning of the language controls and no further construction is needed. (MacIsaac v. Waste Management Collection & Recycling, Inc. (2005) 134 Cal.App.4th 1076, 1082–1083, 36 Cal.Rptr.3d 650.)

[2] In order to interpret section 21455.5, subdivision (b), we must determine what the term “system” in the statute means because the statute requires the local jurisdiction to give a 30-day warning notice period and to make a 30-day public announcement be-

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fore it can issue citations under its automated traffic enforcement *system*. Gray argues that the ATES equipment installed at each traffic intersection is a self-contained “system” because that equipment is capable of operating independently. Thus, he argues, the 30–day warning notice period and public announcement must be given each time the ATES equipment is installed at a new intersection. The People argue that “system” refers to a local jurisdiction’s entire automated traffic enforcement program, and therefore a local jurisdiction must comply with section 21455.5, subdivision (b) before the ATES begins operation but not each time ATES equipment is subsequently installed at other intersections. An analysis of the context of section 21455.5, subdivision (b) and other provisions of the ATES enabling statutes convinces us that the term “system” refers to the overall ATES project and not to the installation of ATES equipment at each intersection.

With regard to the meaning of the term “system” in the automated traffic enforcement “system,” the trial court heard the following evidence about the construction and operation of the ATES. Several “loop” metal detectors buried underneath the roadway sense the presence of vehicles approaching a lighted intersection, and are linked to cameras programmed to take still photographs and a video of a suspected violator. Those cameras are activated when the traffic light at the intersection turns red for oncoming traffic. The sensors detect the presence of oncoming cars, calculate their speed, and send timed signals to the cameras to shoot photos and *493 videos to capture evidence of the suspected offender. The ATES places a date and time stamp on the photographs and videos along with recorded electronic data showing the speed of the suspect as calculated by the buried loop sensors, the amount of time the light was red when each photograph was taken, and the time each photograph was taken. This information is stored digitally and transmitted through the internet to the company in Arizona with which Culver City has contracted to operate the ATES. Company employees review the information and transmit it to Culver City police officers to review for red light violations.

Given the actual operation of the ATES, the ATES equipment at each intersection is not an independent unit because it cannot operate without the facility in Arizona which receives information from each intersection. Instead the automated traffic enforcement “system” in section 21455.5, subdivision (b) corresponds to the dictionary definition of “system” as “a regularly interacting or interdependent group of items forming a unified whole.” (Merriam–Webster’s Collegiate Dict. (10th ed. 1993) p. 1197). Thus when section 21455.5, subdivision (b) refers to an “automated traffic enforcement system,” and the 30–day preconditions for using the “system,” it refers not to equipment at individual intersections but to the entire group of technological components linked electronically and digitally and forming a unified whole.

Further, subdivision (b) of section 21455.5 requires a governmental agency commencing an ATES program to provide a 30–day warning notice period and public an-

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nouncement “[p]rior to issuing citations under this *section*” (italics added). The word “section” refers to the authorizing statute—section 21455.5—which gives the local jurisdiction the authority to utilize an ATES. There can be only one point in time that is “prior to issuing citations under this section.” Therefore once the governmental agency has given warning notices for 30 days, made the public announcement, and started issuing citations under section 21455.5, subdivision (b), there can be no other period of time “prior to issuing citations under this section” and no requirement for any additional 30-day warning notice period and public announcement.

If the Legislature had meant to require 30-day warnings before installation of ATES programs at each intersection, it could have specified that before issuing citations, “a local jurisdiction utilizing an automated traffic enforcement system at an *intersection* shall commence a program to issue only warning notices for 30 days,” and that the local jurisdiction had to “make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program at the *intersection*.” But it did not so specify; instead the Legislature generally required warning notices for 30 days “[p]rior to issuing citations under this section,” and required a public announcement of the ATES program at least 30 days “prior to the commencement of the enforcement program.”

We disagree with the conclusion of *People v. Park, supra*, 187 Cal.App.4th Supp. 9, 115 Cal.Rptr.3d 337 (*Park*) that “automated traffic enforcement system” in section 21455.5, subdivision (b) refers to ATES equipment operated at each intersection and not to the overall automated enforcement plan in a local jurisdiction. (*Park*, at Supp. p. 12, 115 Cal.Rptr.3d 337.) Relying on a definition of “system” as “a group of regularly interacting or interdependent items forming a unified whole,” *Park* determined that because ATES equipment operating at different intersections within a city did not need to interact *494 with each other to fulfill their function, they could not form a “system.” (*Id.* at Supp. p. 13, 115 Cal.Rptr.3d 337.) This misstates how the ATES functions, and ignores the fact that even if ATES equipment at one intersection does not interact with ATES equipment at other intersections, all ATES equipment must communicate with a central computer in order to produce ATES evidence. (ATES equipment at an intersection does not produce photographs or a video; it generates digital information and sends it to another location, where a computer converts the digital information to produce photographic and video evidence.) Thus ATES equipment at a particular intersection does not form the “unified whole” of a “system.” ATES equipment at a particular intersection is only one component part of “a regularly interacting or interdependent group of items forming a unified whole.” (Merriam-Webster's Collegiate Dict. (10th ed. 1993) p. 1197). We believe that the latter interpretation of “system” comports with the plain meaning of section 21455.5, subdivision (b).

C. Other Provisions of Sections 21455.5 and 21455.6

Other provisions of section 21455.5 support this interpretation of the requirements of

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subdivision (b). Subdivision (d) of section 21455.5 states: “The activities listed in subdivision (c) that relate to the operation of the system may be contracted out by the governmental agency, if it maintains overall control and supervision of the system.” The “system” here must refer to the entire ATES enforcement program rather than to ATES equipment at an individual intersection. It would be inefficient and illogical to expect a local jurisdiction to contract the operation of an ATES at each individual intersection to a different contractor. We disagree with People v. Park, which suggests that a local jurisdiction may elect to contract out operation of intersection-specific systems to multiple contractors and based on this suggestion, construes the maintenance of “overall control and supervision of the system” in subdivision (d) to “not necessarily” refer to the entire aggregation of ATES equipment operated by a governmental agency. (Park, supra, 187 Cal.App.4th at p. Supp. 13, 115 Cal.Rptr.3d 337.) We believe it to be unlikely that local jurisdictions would adopt such complicated and cumbersome “intersection specific” contracting, and have no evidence that they have done so. We reject the analysis of Park, and conclude that both references to “the system” in subdivision (d) refer generally to the ATES as a whole, not to particular equipment at a particular intersection.

In addition, section 21455.5, subdivision (c) states: “Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system.” Subdivision (c) defines the operation of an automated enforcement system, which includes, inter alia, “[d]eveloping uniform guidelines for screening and issuing violations and for the processing and storage of confidential information, and establishing procedures to ensure compliance with those guidelines” and performing administrative functions, including “[e]stablishing guidelines for selection of location.” (*Id.* subds. (c)(1) and (c)(2)(A).) These definitions relate to the operation of an ATES as a whole. “Developing uniform guidelines” and “establishing guidelines for selection of location” would be inconsistent with a definition specifying ATES equipment used at a specific intersection. If an ATES were defined as the ATES equipment installed at a single intersection, it would make the establishment of “guidelines for selection of location” a superfluous requirement. The development of “uniform guidelines” *495 for screening and issuing violations would be unnecessary if the ATES referred to something other than the entire ATES program used at multiple intersections. The provisions in section 21455.5, subdivision (c) indicate that the “system” in section 21455.5, subdivision (b) refers to the entire system operating at multiple locations, not to particular equipment at a particular intersection.

[3] The hearing requirement in section 21455.6, subdivision (a) also supports the interpretation that “the system” refers generally to use of the ATES and not to the operation of ATES equipment at a particular intersection. Section 21455.6, subdivision (a) provides that “[a] city council or county board of supervisors shall conduct a public hearing on the proposed use of an automated enforcement system authorized under Section 21455.5 prior to authorizing the city or county to enter into a contract for the use of the system.” Section 21455.6, subdivision (a) provides only for a single public hearing on

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the initial proposed “use” of an ATES before a city or county enters a contract for the “use” of an automated enforcement “system.” After contracting for use of that system, section 21445.6, subdivision (a) does not require a further public hearing each time ATES equipment is placed in operation at a particular intersection. This is consistent with the use of “the system” in section 21455.5, subdivision (b) to refer generally to the commencement of an enforcement program using that system, and not to commencement of an enforcement program at a particular intersection.

We conclude that the requirements in section 21455.5, subdivision (b) apply to the ATES and enforcement program as a whole, and that section 21455.5, subdivision (b) does not impose those requirements each time a local jurisdiction operates ATES equipment at each particular intersection.

2. Compliance with Section 21455.5, Subdivision (b) Is Not an Element of the Charged Violation, and Non-Compliance with Section 21455.5, Subdivision (b) Provides No Basis for Exclusion of Evidence Obtained From an ATES

Even if Culver City failed to comply with section 21455.5, subdivision (b) by not commencing the 30-day warning notice program and not making the public announcement when the ATES was used at the intersection of Washington Boulevard and Helms Avenue, that non-compliance did not require exclusion of the ATES evidence, dismissal of the citation, or acquittal.

[4] The prosecution must prove each element of a criminal offense charged beyond a reasonable doubt. (*In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1134, 15 Cal.Rptr.2d 882.) Gray was charged with violating 21453, subdivision (a) ^{FN2} by failing to stop for a red signal at the intersection of Washington Boulevard and Helms Avenue in Culver City. Section 21453 sets forth the necessary elements of the violation, but compliance with section 21455.5, subdivision (b) by the local jurisdiction is not a necessary element of the charged violation and thus is not part of the burden of proof of the prosecution. Section 21455.5 contains no provision comparable to section 40803, subdivision (b), which requires the prosecution to establish, *496 as part of its prima facie case, that evidence was not obtained by the use of a prohibited enforcement mechanism. ^{FN3} The 30-day warning notice period and public announcement of section 21455.5, subdivision (b) give the driving public notice of a new enforcement mechanism. Section 21455.5, subdivision (b), however, does not require the prosecution to show compliance with its requirements in order to use ATES evidence in prosecuting a violation of section 21453. Section 21455.5, subdivision (b) instead requires specified notice to the public of an enforcement mechanism. Even if Culver City failed to comply with section 21455.5, subdivision (b) at the intersection of Washington Boulevard and Helms Avenue, there was no failure of proof of the charged violation.

FN2. Section 21453, subdivision (a) states: “A driver facing a steady circular red signal alone shall stop at a marked limit line, but if none, before entering the

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crosswalk on the near side of the intersection or, if none, then before entering the intersection, and shall remain stopped until an indication to proceed is shown, except as provided in subdivision (b).”

FN3. Section 40803, subdivision (b) provides that in a prosecution of a charge involving the speed of a vehicle, “where enforcement involves the use of radar or other electronic devices which measure the speed of moving objects, the prosecution shall establish, as part of its prima facie case, that the evidence or testimony presented is not based upon a speedtrap[.]”

[5][6] In addition, as the trial court pointed out, the Legislature did not establish any remedy for a local jurisdiction's failure to comply with section 21455.5, subdivision (b). Section 40803, subdivision (a), for example, provides for exclusion of evidence obtained by a prohibited enforcement mechanism. Section 40803, subdivision (a) states that “[n]o evidence as to the speed of a vehicle upon a highway shall be admitted in any court upon the trial of any person in any prosecution under this code upon a charge involving the speed of a vehicle when the evidence is based upon or obtained from or by the maintenance or use of a speedtrap.” FN4 If the Legislature had intended non-compliance with section 21455.5, subdivision (b) to form a basis for exclusion of ATES evidence, it would have included that remedy in the statute. By contrast to section 40803, the Legislature did not make failure to comply with section 21455.5, subdivision (b) a basis for excluding evidence obtained by an ATES.

FN4. Section 40802, subdivision (a) defines a “speed trap.” Section 40801 prohibits a peace officer from using a speed trap in arresting any person for any alleged violation of the Vehicle Code or in securing evidence as to the speed of any vehicle for the purpose of an arrest or prosecution under the Vehicle Code.

DISPOSITION

The judgment is affirmed.

We concur: KLEIN, P.J., and CROSKEY, J.

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H People v. Gray, 204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489, 12 Cal. Daily Op. Serv. 3774, 2012 Daily Journal D.A.R. 4333 (Cal.App. 2 Dist., Apr 03, 2012) (NO. B236337)

History

Direct History

H 1 People v. Gray, 199 Cal.App.4th Supp. 10, 131 Cal.Rptr.3d 220, 11 Cal. Daily Op. Serv. 12,627 (Cal.Super.A.D. Sep 02, 2011) (NO. BR 048502)

Affirmed by

=> 2 **People v. Gray**, 204 Cal.App.4th 1041, 139 Cal.Rptr.3d 489, 12 Cal. Daily Op. Serv. 3774, 2012 Daily Journal D.A.R. 4333 (Cal.App. 2 Dist. Apr 03, 2012) (NO. B236337), as modified (Apr 11, 2012)

Court Documents

Dockets (U.S.A.)

Cal.App. 2 Dist.

3 THE PEOPLE v. GRAY, NO. B236337 (Docket) (Cal.App. 2 Dist. Sep. 30, 2011)