

No. S 202483

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff & Respondent,

vs.

 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

Sherman M. Ellison (SBN 045102)
LAW OFFICES OF SHERMAN M. ELLISON
15303 Ventura Boulevard, 9th Floor
Sherman Oaks, California 91403
Tel: (818) 994-8888
Fax: (818) 780-8989

Counsel for Petitioner

 GRAY

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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).

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- [REDACTED] 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 9, 2012

Respectfully submitted,

SHERMAN M. ELLISON
Attorney for Petitioner
[REDACTED] GRAY

SERVICE LIST

Office of the Clerk
CALIFORNIA SUPREME COURT
Room 1295
350 McAllister Street
San Francisco, CA 94102-4797

Federal Express

The following addressees were served by U.S. Mail

The Honorable Lawrence H. Cho
SANTA MONICA JUDICIAL DISTRICT
Los Angeles Superior Court
Attn: Clerk, Department S
1725 Main Street
Santa Monica, CA 90401

William Litvak, Esq. and
Caroline K. Castillo, Esq.
Dapeer, Rosenblit & Litvak, LLP
Suite 500
11500 W. Olympic Blvd.
Los Angeles, CA 90064
Attorneys for Respondent

Robert Cooper, Esq,
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
29th Floor
555 South Flower Street
Los Angeles, California 90071
Attorneys for Amicus Curiae

OFFICE OF THE ATTORNEY GENERAL
300 South Spring Street
Los Angeles, CA 90013

COURT OF APPEAL
Second Appellate District
Attn: Clerk, Division Three
Ronald Reagan State Building
300 S. Spring St., Second Floor
Los Angeles, California 90013

APPELLATE DIVISION
Los Angeles Superior Court
Attn: Clerk, Department 70
111 No. Hill Street
Los Angeles, CA 90012