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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 30 2011

John A. Clarke, Executive Officer/Clerk
By Connie L. Hudson Deputy
CONNIE L. HUDSON

APPELLATE DIVISION OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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|---|---|--------------------------|
| PEOPLE OF THE STATE OF CALIFORNIA, |) | No. BR 048502 |
| Plaintiff and Respondent, |) | Santa Monica Trial Court |
| v. |) | No. C165383 |
|  GRAY, |) | |
| Defendant and Appellant. |) | ORDER |

On appellant's application, the appellate division is certifying the above-mentioned case for transfer to the Court of Appeal to settle the following important question of law: Whether, in the absence of a showing of prejudice, a reversal is required for a traffic infraction judgment prosecuted under the provisions of the automated traffic enforcement system (Veh. Code, §§ 21455.5-21455.7), and where there was no compliance with statutory warning notice provisions. (Veh. Code, § 21455.5, subd. (b).)

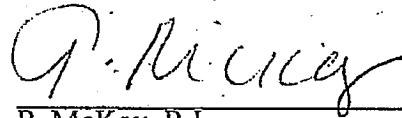
On September 2, 2011, the appellate division filed its written opinion in this cause, holding that under article VI, section 13 of the California Constitution, prejudice was required before a traffic infraction judgment could be reversed for the failure to comply with Vehicle Code section 21455.5, subdivision (b). Our holding was contrary

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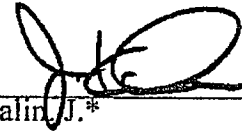
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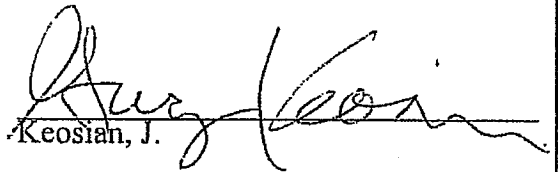
1 to the decision reached by the Orange County Appellate Division in *People v. Park*
2 (2010) 187 Cal.App.4th Supp. 9.

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5 P. McKay, P.J.

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8 Kalin, J.*

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11 Keosian, J.

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27 *Retired judge of the Los Angeles Superior Court sitting under assignment by the Chairperson of
28 the Judicial Council.


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SEP 30 2011

John A. Clarke, Executive Officer/Clerk
By *Connie L. Hudson* Deputy
CONNIE L. HUDSON

APPELLATE DIVISION OF THE SUPERIOR COURT
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| PEOPLE OF THE STATE OF CALIFORNIA, |) | No. BR 048502 |
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| v. |) | No. C165383 |
|  GRAY, |) | |
| Defendant and Appellant. |) | ORDER |

The request of Redflex Traffic Systems, Inc. for publication of the court's opinion is granted.

P. McKay
P. McKay, P.J.

Karin J.
Karin, J.*

Greg Keosian
Keosian, J.

*Retired judge of the Los Angeles Superior Court sitting under assignment by the Chairperson of the Judicial Council.

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TO BE PUBLISHED IN THE OFFICIAL REPORTS

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 30 2011

John A. Clarke, Executive Officer/Clerk
By *[Signature]* Deputy
CONNIE L. HUDSON

This opinion has been certified for publication in the Official Reports. It is being sent to assist the Court of Appeal in deciding whether to order the case transferred to the court on the court's own motion under rules 8.1000-8.1018.

CERTIFIED FOR PUBLICATION
APPELLATE DIVISION OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,) BR 048502
Plaintiff and Respondent,) (Santa Monica Trial Court
v.) No. C165383)
[REDACTED] GRAY,)
Defendant and Appellant.) **OPINION AND JUDGMENT**

APPEAL from a judgment of the Superior Court of the Los Angeles County, Santa Monica Trial Court, Lawrence Cho, Judge. Affirmed.

Law Offices of Sherman M. Ellison and Sherman M. Ellison for Defendant and Appellant.

Dapeer, Rosenbilt & Litvak and Caroline Castillo for Plaintiff and Respondent.

* * *

This is an appeal from the judgment rendered following a court trial where the citation was issued pursuant to the provisions of the automated traffic enforcement system (ATES). (Veh. Code, §§ 21455.5-21455.7.) The only issue presented on appeal whether the judgment should be reversed due to the failure of the governmental agency to issue warning notices only for 30 days, and to make a public announcement at least

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1 30 days prior to commencement of the automated traffic enforcement program. (Veh.
2 Code, § 21455.5, subd. (b).) As explained below, we affirm the judgment.

3 BACKGROUND

4 On November 21, 2008, a citation was issued charging defendant and appellant
5 ██████████ Gray with violating Vehicle Code section 21453, subdivision (a) —
6 failure to stop for a red signal. Specifically, the citation alleged that on the same date —
7 November 21, 2008 — defendant failed to stop for the red light at the intersection of
8 Washington Boulevard and Helms Avenue in the City of Culver City. The violation
9 was recorded by the ATES located at the subject intersection.

10 Thereafter, defendant was arraigned and pled not guilty. Prior to the cause
11 proceeding to trial, a series of pretrial proceedings and hearings took place. One such
12 hearing was a defense motion to dismiss based upon the City's failure to comply with
13 Vehicle Code section 21455.5, subdivision (b).¹ The testimony and/or stipulation from
14 the hearing was that "Culver City has only conducted such warning notices and public
15 announcements prior to the commencement of the entire program in Culver City in
16 1998, and that no such notices or announcements were done specifically for the
17 intersection (at the intersection of Washington Boulevard and Helm[s] Avenue, Culver
18 City) at which defendant was photographed allegedly running a red light." (*Sic.*) The
19 court denied defendant's motion and trial was eventually held.

20 At trial, defendant stipulated that he was the driver depicted in the photographic
21 and video evidence captured by the ATES. Sergeant Omar Corales, the Culver City
22 police officer in charge of the municipality's ATES, testified regarding the installation,
23 function, operation, and maintenance of the system. At the conclusion of the trial, the
24 court found that the ATES-produced evidence was admissible, and thereafter found
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26 ¹Vehicle Code section 21455.5, subdivision (b) requires that a local jurisdiction, prior to
27 issuing citations pursuant to a an ATES, issue warning notices only for 30 days. In addition, the
28 statute requires the local jurisdiction to make a public announcement of the ATES at least 30
days prior to the commencement of the enforcement program.

1 defendant guilty of the charge. Defendant was ordered to pay a fine. This timely appeal
2 followed.

3 DISCUSSION

4 Vehicle Code section 21455.5, subdivision (b) provides as follows: "Prior to
5 issuing citations under this section, a local jurisdiction utilizing an automated traffic
6 enforcement system shall commence a program to issue only warning notices for 30
7 days. The local jurisdiction shall also make a public announcement of the automated
8 traffic enforcement system at least 30 days prior to the commencement of the
9 enforcement program."² Defendant contends that Culver City was required to comply
10 with subdivision (b) of section 21455.5 each and every time it installed cameras at a new
11 intersection following its initial 1998 decision to participate in an overall ATES plan. In
12 support of his contention, defendant relies upon — and urges this court to follow — the
13 recent Orange County Superior Court Appellate Division case entitled *People v. Park*
14 (2010) 187 Cal.App.4th Supp. 9 (*Park*).

15 In *Park, supra*, the court held that the requirement that the city make a public
16 announcement and issue notice of the ATES 30 days prior to enforcement applied to
17 each particular intersection at which an automated photographic system was installed,
18 rather than merely to the overall city plan to institute automated enforcement. (*People v.*
19 *Park, supra*, 187 Cal.App.4th at pp. Supp.13-14.) In doing so, the *Park* court stated as
20 follows: "It would make little sense for the scope of the 30-day warning period to be
21 limited temporally and to be defined arbitrarily by the geographic size of the local
22 jurisdiction, inasmuch as the legislatively stated purpose of the warning requirement is
23 to deter red light violations. This purpose is best achieved by the issuance of new
24 warnings and announcements to proximate users each time automated enforcement

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26 ²Defendant urged the trial court to interpret the term "system" in the statute to refer to the
27 automated enforcement equipment installed at each individual intersection within a local
28 jurisdiction. The People urged the court to interpret "system" to mean the overall enforcement
program encompassing all the automated equipment at all intersections throughout the city.

1 equipment commences operation at an intersection.” (*Id.* at p. Supp. 15.)

2 We are not required to follow *Park* and decline to do so. (*People v. Corners*
3 (1985) 176 Cal.App.3d 139, 146 [decision of an Appellate Division of one Superior
4 Court is not binding upon the Appellate Division of another Superior Court].) In
5 reaching its decision, we note that the *Park* court failed to consider or analyze whether
6 compliance with section 21455.5³ constituted an element of the crime, or whether non-
7 compliance resulted in a miscarriage of justice within the meaning of article VI, section
8 13 of the California Constitution.

9 The People’s burden in a criminal prosecution is to prove each element of the
10 charged offence beyond a reasonable doubt. (*In re Khamphouy S.* (1993) 12
11 Cal.App.4th 1130, 1134.) The elements of the charged crime — Vehicle Code section
12 21453, subdivision (a) — are as follows: (1) defendant, while driving a vehicle; (2)
13 faced a steady circular red signal; and (3) failed to stop (a)(1) at the marked limit line,
14 (2) at the near side of the crosswalk before entering the intersection, or (3) before
15 entering the intersection; or (b) failed to remain stopped until an indication to proceed
16 was shown. In the instant matter, all of the necessary elements were either proven or
17 stipulated to at trial. We find that compliance with subdivision (b) of section 21455.5
18 was not part of the People’s burden of proof because it was not an element of the
19 charged crime.

20 Furthermore, we note that compliance with section 21455.5 is not jurisdictional.
21 Even assuming *arguendo* that the term “system” as contained in the statute references
22 each separate automated intersection, a failure to comply with the statute nevertheless
23 does not compel reversal. Where constitutional issues are not involved — as is the case
24 here — non-compliance with the statute goes merely to the weight of the evidence, and
25 does not render the evidence automatically inadmissible. (*People v. Adams* (1976) 59
26 Cal.App.3d 559, 566-567 [results of a breath test were found admissible despite
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28 ³All unspecified statutory references are to the Vehicle Code.

1 laboratory's failure to comply with certain maintenance procedures for testing
2 breathalyzer equipment].)

3 Moreover, we note that in enacting the ATES statutory scheme, the Legislature
4 failed to include any remedy for a municipality's non-compliance with the notice
5 provisions. Had the Legislature intended for proof of compliance to be part of the
6 prosecution's prima facie case — or for non-compliance to be a basis for the exclusion
7 of evidence — it would have simply included the appropriate language in the statute
8 reflecting such intent. The Legislature's failure to do so requires us to apply the
9 principle of *expressio unius est exclusio alterius*, that is, that "the expression of one
10 thing in a statute ordinarily implies the exclusion of other things. [Citation.]" (*In re*
11 *J.W.* (2002) 29 Cal.4th 200, 209.)⁴

12 Lastly, any compliance with the warning notice provisions of the ATES did not
13 result in a miscarriage of justice.⁵ The undisputed evidence before the court was that
14 defendant, while driving a vehicle, failed to stop for the steady circular red signal as
15 captured by the ATES evidence. A judgment may be reversed only upon a clear
16 showing of a miscarriage of justice. (Cal. Const., art. VI, § 13.)⁶ Defendant has failed
17 to show how he was prejudiced. At the time defendant received the citation, Culver
18 City's ATES program had been in operation for approximately 10 years. There is
19 nothing in the record indicating that defendant suffered any prejudice, and we likewise

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21 ⁴By way of comparison, the statutory scheme governing speed traps (see §§ 40800-
22 40808) contains numerous provisions wherein the Legislature set forth that which the
23 prosecution must prove in a speeding case involving radar or any other electronic device used to
capture the speed of a vehicle, and the admissibility of speed trap evidence. (See §§ 40801,
40802, subd. (c), 40803, 40804, 40805, 40808.)

24 ⁵Neither of the two cases cited in *Park — Ralph v. Police Court* (1948) 84 Cal.App.2d
25 257, 258-259, and *People v. Municipal Court (Pellegrino)* (1972) 27 Cal.App.3d 193, 206 —
touched upon the issue discussed by the court in that case.

26 ⁶Article 6, section 13 of the California Constitution provides in relevant part that "[n]o
27 judgment shall be set aside . . . in any cause . . . for any error as to any matter of procedure,
28 unless, after an examination of the entire cause, including the evidence, the court shall be of the
opinion that the error complained of has resulted in a miscarriage of justice."

1 cannot conjure up any, as the result of the circumstances present herein. According,
2 there is no basis for reversal of the judgment.

3 DISPOSITION

4 The judgment is affirmed.

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7 P. MCKAY, P.J.

8 WE CONCUR.

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11 KAIN, J.*

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14 KEOSLAN, J.

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27 *Retired judge of the Los Angeles Superior Court sitting under assignment by the Chairperson
28 of the Judicial Council.