2nd Civ. No. B236337

IN THE COURT OF APPEAL OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

S[redacted] GRAY,

Defendant and Appellant,

RESPONDENT'S SUPPLEMENTAL BRIEF

Appeal from the Appellate Division of the Superior Court for Los Angeles County
Justices McKay, Kalin and Keosian
Appellate Division Case Number BR048502

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INTRODUCTION

As has been the case throughout these proceedings, Appellant's sole argument on appeal of his conviction for running a red light is that the City gave warning notices and public announcements of the presence of the automated red light system ["ARLES"] when the system was initially implemented in the City rather than at the time the intersection of Appellant's violation came on line. The trial court rejected that contention, holding that the City's "programmatic" warning notices and public announcements complied with the requirements of Vehicle Code[1], § 21455.5(b) and the Los Angeles Superior Court Appellate Division ("LASCAD") affirmed the judgment. Those findings are firmly supported by the clear language of the statute as well as its legislative history, principles of statutory construction and California case law, as detailed in the Respondent's Brief and supplemented below.

In addition to the finding that the City had complied with section 21455.5(b), the LASCAD correctly held that even if the City had not done so, compliance was not an element of the People's case such that a failure to prove it was not a condition precedent to the trial court's jurisdiction nor did non-compliance mandate that the citation be dismissed. (Gray Opinion, pp. 1-2).

With his case now before this Court by way of transfer, Appellant once again relies without success on a decision of the Orange County Superior Court Appellate Division ("OCSCAD") entitled *People v. Park* (2010) 187 Cal.App.4th Supp. 9. (*Park*). As the LASCAD held, the holding in *Park* interpreting section 21455.5(b) to require intersection-specific warning notices and announcements is the result of faulty analysis. Specifically, the OCSCAD failed in *Park* to consider whether compliance constituted part of the People's burden of proof. (Gray Opinion, p.4:2-8.) Had the OCSCAD undertaken the requisite deeper analysis in

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[1] Unless otherwise noted, all subsequent statutory references are to the Vehicle Code.

which the LASCAD engaged, it would have concluded – as did the latter court – that compliance with section 21453(b) emphatically is not an element of the crime of failure to stop at a red light. Thus, non-compliance goes merely to the weight of the evidence, as further established by the fact that section 21455.5 provides neither a remedy for non-compliance nor any exclusion for evidence derived absent compliance. In turn, as the LASCAD held, the undisputed evidence establishes each prima facie element of Appellant's violation of section 21453, subd.(a). Further, the OCSCAD failed in *Park* to address the question of whether there was a miscarriage of justice, as required for reversal. Here, the LASCAD decided that the undisputed evidence established all elements of Appellant's violation such that he was not prejudiced relative to the issue of compliance and that there was no miscarriage of justice supporting reversal of the judgment of conviction against him.

Because Appellant's argument provides no basis for reversal, the People respectfully request that this Court affirm the judgment of conviction.

LEGAL DISCUSSION

I.

THE CITY COMPLIED WITH THE WARNING REQUIREMENTS OF SECTION 21455.5(b) SUCH THAT APPELLANT'S SOLE ARGUMENT ON APPEAL DOES NOT SUPPORT REVERSAL OF HIS CONVICTION

A. The Citation Was Sufficient And Properly Conferred Jurisdiction On The Trial Court.

As described above, Appellant's lone theory in these proceedings, *i.e.*, that the City's manner of complying with the warning notices/public announcement provision of section 21455.5(b) resulted in a flawed citation that deprived the trial court of jurisdiction lacks merit and fails to support reversal. That fact is evident from the language of the statute itself, which provides, 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)." (Section 21455.5(b).)

In the present case, the City met the warning requirement prior to issuing citations under the ARLES program by undertaking the required thirty (30) day warning notices only period in 1998, when the ARLES program was initiated in the City. (Clerk's Transcript ("CT"), p. 631.) Appellant's argument that the City did not comply is predicated on his erroneous interpretation of the word "system" in the statute to mean the individual camera and equipment at each intersection rather than the citywide automated red-light enforcement program as a whole. Both the trial court and LASCAD agreed that the latter interpretation is correct and the language of the statute and analogous provisions, its legislative history and long-settled principles of statutory interpretation support that determination.

1. Appellant's Assertion That The City Stipulated That It Failed To Provide Warning Notices And Public Announcements As Required Under Section 21455.5(B) Misstates The Record.

Before considering the indisputable error of Appellant's interpretation of the warning notices provision, it is critical to note that Appellant's repeated reliance on the contention that the City stipulated to a "failure to comply with the 30-day warning notices and public announcement" (Application for Certification, p. 1:26) is a clear and unabashed misstatement of the record. In fact, as the LASCAD observed, the City stipulated <u>not</u> to any "failure to comply" with the statute but rather to the following:

> "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 running a red light." (CT. p. 631; Gray Opinion, p. 2:14-18.)

Accordingly, there exists no stipulation or testimony remotely suggesting that the City has agreed with Appellant's erroneous claim that the City failed to comply with section 21455.5(b). Quite to the contrary, the City has demonstrated throughout these proceedings that its giving of warning notices at the commencement of the entire program in the City constituted complete compliance with the notice requirements of section 21455.5(b). Accordingly, rather than supporting Appellant's argument, the stipulation establishes the City's compliance and, as such stipulations do, obviates the need for proof of that fact. (See, *County of Sacramento v. Workers' Comp. Appeals Bd.* (2000) 77 Cal.App.4th 1114, 1118.)

2. Section 21455.5(b) Does Not Require Warning Notices And/Or Public Announcements At Each Individual Intersection Because "System" Pertains To A Local Jurisdiction's Entire Automated Enforcement Program

The trial court properly rejected Appellant's theory of an intersection-specific notice requirement in finding that the word "system" in section 21455.5(b) requires warning notices and public announcements **not** each time an intersection is added to the ARLES, but rather prior to implementation of the program as a whole in a local jurisdiction. (SCT, p. 632.) In turn, the trial court correctly held that the City had complied with Section 21455.5(b) in 1998 when, as stipulated, it issued warning notices and public announcements. (CT, p. 631.)

Specifically, in holding that the requirement of section 21455.5(b) is "programmatic" rather than intersection-specific, the trial court stated that "the subsection itself provides that public announcements made at least 30 days 'prior to the commencement **of the law enforcement program** [emphasis by the trial court],' clearly indicating that such announcements need only be made once before commencement of the overall ARLES program." (CT, pp. 631-632).

a. **Use Of The Term "System" Is Synonymous With The Term "Program".**

Application of well-established rules of statutory construction support the finding of the trial court that the word "system" as referred to in section 21455.5 is programmatic rather than intersection-specific. In turn, in construing section 21455.5(b), a court must apply "the fundamental rule of statutory construction which requires [the] court to first look to the words of a statute and to give those words their usual and ordinary meaning." (*People v. Arias* (2008) 45 Cal.4th 169, 177). The dictionary definition of the word "system" is "a regularly interacting or interdependent *group of items forming a unified whole.*" (Merriam-Webster's Collegiate Dictionary (10th ed. 1993) pg. 1193)(emphasis added). The statutory scheme of the ARLES reflects that the legislature intended to use the usual and ordinary meaning of "system."

Moreover, sections 21455.5 and 21455.6 demonstrate that when the word "system" is used, it is synonymous with the word *program* and refers to the overall coordination and installation of red light cameras throughout the City. Section 21455.5(b) states after the language directing issuance of warning notices for thirty (30) days, that the City must also "make a public announcement of the *automated enforcement system* at least 30 days prior to commencement of the *enforcement program*" (emphasis added). A plain reading indicates that this section requires *one public announcement* to be made prior to commencement of the *entire program*.

As the trial court noted (CT, p. 632), other statutory sections also reflect that the term "system" suggests a comprehensive, all-encompassing scheme, rather than a more limited definition that is restricted to the cameras at an individual intersection. Such language is reflected in section 21455.5(d), which provides that the activities listed in subdivision (c) that relate to operation of the system may be contracted out by the governmental agency, if it maintains "***overall control and supervision of the system.***" (Emphasis added.) Further, section 21455.6(a)

provides that there shall be a public hearing on the proposed use of an automated enforcement system prior to authorizing the city or county "to enter into a contract for the use of the system." Clearly, in both section 21455.5(d) and section 21455.6(a), the word "system" refers to the entire ARLES program in a city and not merely to a particular intersection. To conclude otherwise would contravene a fundamental caveat of statutory construction providing that a court must avoid a statutory construction that would produce absurd consequences. (*People v. Mendoza* (2000) 23 Cal.4th 896, 908.) Here it would be palpably absurd to interpret sections 21455.5(d) and 21455.6(a) to mean that the City need only exercise "control and supervision" over the ARLES equipment at a particular intersection or that the City would enter into a vendor contract for an individual intersection. It would be equally absurd to interpret "system" as used in section 21455.5(b) as referring to an individual intersection.

Similarly, section 21455.5(c) et. seq. provides that only law enforcement agency may operate a "system," which includes "[d]eveloping **uniform** guidelines" and "[e]stablishing guidelines for **selection of location**" (emphasis added). If "system" meant one intersection, then the term "uniform" would be out of place. The term "uniform" only has meaning if it was referring to more than one location. Likewise, the "selection of location" would not make sense if "system" meant only one intersection. Thus, use of the term "system" in these contexts is consistent with the fact that the term is a synonym for "program" as opposed to a reference to one intersection. By clear analogy, such is the case, too, with section 21455.5(b).

In striking contrast to the statute's use of the term "system", when referring to the individual cameras at a particular intersection, the statute uses the term "equipment." For example, sections 21455.5(c)(2)(B) and(C) provide that operating an ARLES includes "[e]nsuring that the **equipment** is regularly inspected" and "[c]ertifying that the **equipment** is properly installed and calibrated, and is operating properly" (emphasis added).

Additionally, when the statutes referred to the presence of the ARLES at a particular intersection, it specifically used the term "intersection." (*See* Section 21455.5(a)(" . . . the ***intersection*** . . . may be equipped with an automated enforcement system")(emphasis added); Section 21455.7(a)("***at an intersection*** at which there is an automated enforcement system in operation")(emphasis added). Had the legislature intended that the thirty (30) day warning period apply to each and every intersection, it would have been expressly provided in section 21455.5(b) as it has done consistently throughout the entire statutory scheme.

The Legislature's decision not to include such language in section 21455.5(b) must be understood by application of the principle of *expressio unius est exclusio alterius*, which establishes that "the expression of one thing in a statute ordinarily implies the exclusion of other things." (*In re J W* (2002) 29 Cal.4th 200, 209)(*citing Gikas v. Zolin* (1993) 6 Cal.4th 841, 852). Indeed, the court must presume that just as every word of a statute has been used for a purpose, the court must presume that every word *excluded* from a statute has been excluded for a purpose. (*Arden Carmichael, Inc. v. County of Sacramento* (2001) 93 Cal.App.4th 507, 516). Thus, in drafting section 21455.5(b) – the section at issue here -- the legislature did not specify that a warning period be required for each intersection or following each installation of the camera equipment because *it did not intend* for this to be the requirement.

The trial court further noted that, other provisions of the enabling statutes illustrate that the legislature would explicitly use the term "intersection" when a prerequisite condition was intersection-specific, citing, section 21455.5(a), which requires warning signs to be posted before each ARLES equipped intersection. (CT, pp. 631-632.) In turn, the absence of any reference to "intersection" in section 21455.5(b) supports the position that the warning periods and public announcements are programmatic and not intersection specific. (CT, pp. 632.) Finally, the trial court noted, by way of an analogous subsection of the enabling statutes which requires a public hearing prior to implementation of the ARLES

program, it is clear that the legislature intended for the public hearing to apply as a prerequisite to the overall program itself and not to each individual intersection in which camera equipment is installed (CT, pp. 631-632.)

b. The Legislative History Demonstrates That "System" Pertains To A Local Jurisdiction's Entire Automated Enforcement Program

The fact that the warning period of section 21455.5(b) is aimed at *advance* notice of the ARLES at the time that the entire program is established in the City rather than at the time of its implementation at a particular intersection is clear from the fact that both the warning period requirement and the public announcement requirement of section 21455.5(b) were intended to provide this *initial* advance notice of the entire program. That intention is illustrated by the fact that the second sentence of *the same section* requires a public announcement prior to starting the program (*See,* Section 21455.5(b)). Thus, the entirety of 21455.5(b) -- both the thirty (30) day warning period requirement and the public announcement requirement -- were intended to provide this *initial* advance notice of the entire program to the general public.

Further, the intention of the Legislature to provide general advance notice of the presence of the ARLES in the City is demonstrated by Section 21455.5(a)(1),[2] which requires posting identifying signs at that time indicating the presence of the ARLES *or* posting signs at all major entrances to the City. If each intersection were to be treated independently, the Legislature would not have allowed the posting at entrances to the City in lieu of posting signs at each

[2] That provision provides that the local jurisdiction should do the following: "(1) Identif[y] the system by signs that clearly indicate the system's presence and are visible to traffic approaching from all directions, or posts signs at all major entrances to the city, including, at a minimum, freeways, bridges, and state highway routes." (Section 21455.5(a)(1)).

intersection. This confirms that the intent of the Legislature was to require general notice that ARLES is present in the City in advance of the commencement of operation of the entire system rather than at a particular location.

The present language of section 21455.5(b), as quoted above, became effective as of January 1, 2004. The original wording of the statute (enacted in 1995; effective January 1996) pertaining to the 30-day warning period provided as follows:

> "Any city utilizing an automated traffic enforcement system *at intersections* shall, prior to issuing citations, 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.*" (Section 21455.5(a);1995)(emphasis added).

The original wording of the statute, as well as the current version, uses the words "system" and "program" to describe a jurisdiction's introduction of automated enforcement cameras. Additionally, the original wording, by using the plural "intersections," demonstrates that the Legislature understood that more than one intersection might be equipped with automated enforcement cameras, but intended that the thirty day period envisioned by the statute applied to the ARLES program as a whole and not each intersection.

In comparing the previous and current versions of section 21455.5, it becomes apparent that the thrust of the 2003 amendments was to address the overall programs for ARLES. It is the whole of the amendment that must be considered and when that is done, it becomes quite clear that the Legislature did **not** intend that every time an intersection is added, the community would have to be notified that the system is operating in the City, in the press, require new contracts to be executed and have public hearings held.

Finally, the City originally began the automated enforcement program over ten years ago, under the requirements of the prior statute that specified warning

notices only need be issued for the first thirty days at the inception of the program at any and all intersections, and it was under this understanding of the statute that the City continued to add additional intersections, including the subject intersection. Upon enacting the newer section 21455.5(b), had the Legislature intended warning notices be issued at each intersection from thereon, it would have expressly enacted this requirement in light of the prior language of the statute and the increasing number of cities adopting an ARLES.

There simply is no language in either the code or in its legislative history requiring a local jurisdiction to give a thirty (30) day notice every time it adds a camera to an intersection.

3. Even If The City Did Not Comply With Section 21455.5(b), Non-Compliance Does Not Compel Acquittal or Dismissal of the Citation or Deprive The Court of Jurisdiction

a. <u>Section 21455.5(b) Does Not Require The Prosecution To Show Compliance With the Warning Provisions As Part Of Its Prima Facie Case</u>

The People's burden in a criminal prosecution is to prove each element of the charged offense beyond a reasonable doubt. (*In re Khamphouy* (1993) 12 Cal.App.4th 1130, 1134.) Here, the People's burden of proof did not include a showing of compliance with section 21455.5 because such is not an element of a *prima facie* case for violation of section 21453, subd.(a). The elements of that offense are (1) defendant, while driving a vehicle; (2) faced a steady circular red signal; and (3) failed to stop (a)(1) at the marked limit line, (2) at the near side of the crosswalk before entering the intersection, or (3) before entering the intersection; or (b) failed to remain stopped until an indication to proceed was shown." (Section 21453, subd.(a); see also, Gray Opinion, p. 4:11-17). In turn, as the LASCAD correctly held in the present case, "all of the necessary elements were either proven or stipulated to at trial" (Gray Opinion, p. 4:16-17), thus "[e]ven assuming arguendo that the term "system" as contained in the statute

references each separate automated intersection, a failure to comply with the statute nevertheless does not compel reversal." (*Id.* at pp. 4:21-23.)

Indeed, if the Legislature had intended that compliance constituted part of the People's burden, it would have expressly so provided as it has relative to other Vehicle Code violations. For example, the speed trap statutes under Vehicle Code, §§ 40803 et seq. provide express requirements for establishment of a prima facie case for violations of speed laws (Sections 22348 et seq.). In contrast, there simply is no language in section 21455.5(b) requiring that proof of compliance be an element of Section 21453(a).

As the LASCD noted in the present case, when the Legislature intends that a requirement constitute a prima facie element relative to a violation under the Vehicle Code, it includes express language providing for exclusion of evidence obtained in contravention of such requirement. In that regard, California's speed trap laws expressly exclude evidence and testimony derived from the operation of a speed trap. (Section 40803(a), Section 40804(a)).

Thus, any failure to comply with any mandatory sections of section 21455.5 would not automatically dispose of this case as Appellant insists.

b. Lack of Remedy Indicates That Compliance Is Not Part of Prima Facie Case

Notwithstanding Appellant's indignation that the lack of remedy for a failure to comply with section 21455.5, the LASCAD found that absence persuasive as to the fact that compliance is not a prima facie element of the violation. In that regard, the LASCAD stated "we note that in enacting the ATES statutory scheme, the Legislature failed to include any remedy for a municipality's non-compliance with the notice provisions. Had the Legislature intended for proof of compliance to be part of the prosecution's prima facie case – or for non-compliance to be a basis for the exclusion of evidence – it would simply have included the appropriate language in the statute." (Gray Opinion, p. 5:3-8).

c. Compliance Or Non-Compliance With Section 21455.5(b) Goes To The Weight Of The Evidence And Is Not Jurisdictional

Even assuming this Court disagrees with the trial Court findings that the City complied with 21455.5(b), non-compliance does not compel automatic judgment of acquittal or dismissal of the citation. Evidence obtained in violation of a statute is not inadmissible unless the statutory violation has a constitutional dimension. (*People v. Brannon* (1973) 32 Cal.App.3d 971, 975) [*holding* that failure to comply with the mandatory language of Section 13353 as to mandatory calibration relative to breathalyzer tests did not render the results of the blood alcohol test inadmissible]. In other words, non-compliance with mandatory administrative regulations or the warning requirement language of the ARLES statute does not render ARLES evidence obtained thereby inadmissible. (See, *People v. Adams* (1976) 59 Cal. App.3d 559). In *Adams*, the court stated that when a statute does not specifically provide that evidence shall be excluded for failure to comply with the relevant statute and that there are no constitutional issues involved, such evidence is admissible. Thus, statutory compliance or noncompliance with section 21455.5(b) in the present case does not affect admissibility but merely goes to the weight of the evidence. (*Adams, supra*, 32 Cal.App.3d at pp. 566-567; Gray Opinion, p. 5).

Here, as the LASCAD observed, there are no constitutional issues involved such that even if there had been a failure to comply with mandatory requirements of Section 21455.5(b) – and there was not – that would not render the ARLES evidence inadmissible. (Gray Opinion, pp. 4:23-26) Further, as established above, there is no provision for exclusion of non-complying evidence in Section 21455.5(b).

In sum, Appellant's argument for reversal ultimately boils down to his theory that lack of compliance with section 21455.5 disables the citation of his violation and deprives the court of jurisdiction. Not only does that argument fail because the City did comply with the statute but because, as stated by the

LASCAD, a lack of compliance with section 21455.5 raises no constitutional issue and thus is not jurisdictional. (Gray Opinion, p. 4:20).

d. Appellant Lacks Standing To Argue For Notices Within Thirty (30) Days

Importantly, too, even assuming the City was required to issue warning notices for the first (30) thirty days following the installation of cameras at the intersection of his violation, Appellant is precluded from asserting that he did not receive the notice required by section 21455.5(b) because he did not receive his citation within those initial thirty (30) days. Thus, regardless of the manner in which the City complied with section 21455.5(b) – whether on a programmatic or intersection-specific basis – Appellant would not have received a warning notice rather than a citation. Appellant's lack of standing to assert the warning period precludes his use of an operational requirement of the system to avoid the consequences of his dangerous breach of the rules of the road.

e. Appellant's Reliance On *People v. Park* Provides No Support For Reversal

Appellant's reliance on *People v. Park* (2010) 187 Cal.App.4th Supp. 9, 115 Cal.Rptr.3d 337, is without merit because the finding in *Park* that the word "system" used in Section 21455.5(b) refers to individual intersections in an ARLES program is the product of flawed judicial reasoning on several fronts.

As described above, the court in *Park* failed to make the critical threshold determination as to whether compliance with section 21455.5 constituted an element of the crime of red light violation. Conversely, in the present case, the LASCAD undertook that important inquiry, holding that such compliance is not an element of a section 21453, subd.(a) violation and distinguishing its analysis from the faulty theorizing in *Park*. (Gray Opinion, p. 4:3-19). On that basis, the decision in *Park* is not only distinguishable here but fails to provide any sound legal basis for its determination that failure to comply with section 21455.5 subd.(a) required dismissal of Park's citation.

Further, the court in *Park* relies on a definition of "system" (*Park*, *supra*, 115 Cal.Rptr.3d at 340) meaning, *inter alia*, "a regularly interacting or interdependent group of items forming a unified whole..." (Merriam-Webster Online,www.merriamwebster.com/dictionary/system) (emphasis added.) The court in *Park* then opines that the ARLES equipment at each intersection comprises such a "unified whole" because the equipment at separate intersections need not interact with installations at other intersections. (*Park*, *supra*, 115 Cal.Rptr.3d at 340.) But the *Park* opinion ignores the fact the equipment must interact with the central computer processing installations of the system that convert the digital codes from the intersection into photographs at a distant location. Accordingly, the equipment at each intersection cannot comprise a "unified whole" such that even by the definition invoked by the court in *Park*, each individual intersection cannot comprise a "system". This is further established by the Merriam-Webster definition of "system" as (d) "a group of devices ... forming a network especially for distributing something or serving a commonpurpose..."(MerriamWebsterOnline,www.merriamwebster.com/dictionary/system.)

Relative to the ARLES, the "network" necessary to creating a "system" is that between the equipment at each intersection and the main computers that print out the information collected. In sum, to call an installation of a photographic device that is able to record digital codes but is unable to convert those codes into photographs an "automated enforcement system" is erroneous and fails to support Appellant's contention that the word "system" as used in Section 21455.5(a) refers to each individual installation.

f. Appellant's Reliance On The Unpublished Opinion in *People v. Fields* Is Improper and Provides No Support For Reversal

Appellant's reliance on *People v. Fields* (2011) BR 04861, (Ex. A. to Application for Certification), an unpublished case from the LASCAD is, as Appellant concedes, citable – *at most*— in an effort to show that the reasoning of

the LASCAD in that case was different from that court's analysis in the present case. Appellant's attempt in his Application for Certification to present *Fields* as substantive precedent is improper and must be disregarded. And even if *Fields* were properly considered here, it is distinguishable because in that case there was *no evidence whatever* of the City of Lancaster's compliance with the warning period of section 21455.5(b). (Application, p. 13; *Fields* Opinion, p. 4:1.) In the present case, there is indisputable evidence of the City's compliance with the notice by way of the very stipulation upon which Appellant relies stating that the City issued warning notices and public announcements in 1998 when the City first instituted the ARLES program.

II.

THIS COURT SHOULD AFFIRM THE JUDGMENT OF CONVICTION BECAUSE APPELLANT HAS FAILED TO ESTABLISH ANY MISCARRIAGE OF JUSTICE SUPPORTING REVERSAL

Only a clear miscarriage of justice permits reversal of a judgment. (Cal. Const., art VI, § 13; Gray Opinion, p. 5.) In turn, a miscarriage of justice should be declared only when the court, after an examination of the entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error..." (*People v. Watson* (1956) 46 Cal.2d 818, 837).

Here, as both the trial court and the LASCAD found, the undisputed evidence showed that Appellant failed to stop at a steady red signal. (Gray Opinion, p. 5:13-15; CT, p. 662). Because Appellant's actual violation was indisputably established, Appellant could not show – and did not even try to show – that he would not have been found guilty if the City had given warnings in an intersection-specific manner. Thus, as the LASCAD found, there is no clear showing of any miscarriage of justice required for reversal precisely because there is "nothing in the record indicating that defendant suffered any prejudice, and we

likewise cannot conjure up any, as the result of the circumstances presented herein." (Gray Opinion. pp. 5-6.)

Finally, in distinguishing its own reasoning and result from that of the OCSCAD in *Park*, the LASCAD in the present case noted that *Park* relied on two cases regarding allegations of insufficiency of a charging document that did not discuss the necessity of a miscarriage of justice to support reversal. (Gray Opinion, p.5, fn. 5, citing *Ralph v. Police Court* (1948) 84 Cal.App.2d 257, 258-259 and *People v. Municipal Court* (*Pellegrino*) (1972) 27 Cal.App.3d 193, 206). While Appellant argues in his Application for Certification that the making of this distinction constitutes "speculation" on the part of the LASCAD, one need only read these cases to confirm that they do not discuss the issue of miscarriage of justice.[3] In any event, no miscarriage of justice occurred in the case at bar and no error supports reversal of the judgment of conviction.

CONCLUSION

As established throughout these proceedings and again in this brief, Appellant's sole theory on appeal– that the City did not comply with the notice requirement of section 21455.5 – is without merit. Indeed, even if Appellant were correct, non-compliance would not compel an automatic judgment of acquittal, dismissal of the citation, or even render the ARLES evidence inadmissible, much less deprive the trial court of jurisdiction to render its judgment of conviction against Appellant.

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[3] In fact, the OCSCAD's reliance in *Park* on these two cases is misguided because each represents an effort to prosecute in the absence of charging document requirements far more substantive and fundamental than that of the warning period in section 21455.5(b). In *Ralph*, the court held that the prosecution could not proceed with prosecution of a defendant for reckless driving when no complaint has been filed. (*Ralph, supra*, 84 Cal.App.2d at 258-259.) In *Pellegrino*, *supra*, 27 Cal.App.3d at 206, the court of appeal held that complaints were nullities filed without the authorization of the district attorney. (*Id.*) Thus, in those cases the insufficiency went to the very heart of the charging document. Here, even if non-compliance were found, it would not rise to the level of improprieties in *Ralph* or *Pellegrino*.

In fact, the record establishes that the City complied with the notices requirement of the statute in providing warning notices for thirty (30) days after the inception of the ARLES program in the City. As both the trial court and the LASCAD have agreed, section 21455.5 does not – as Appellant would have it – require that warning notices be given each time a new intersection is added to the program. Rather, the tasks assigned to the City under the enabling statute are programmatic rather than intersection-specific as established by the express language of section 21455.5 and its legislative history as well as fundamental principles of statutory construction. As noted above, even if Appellant could have demonstrated non-compliance with the statute, such a showing would go only to the weight of the evidence obtained by the ARLES. In this case, since the purported administrative deviation did not go to the violation itself, or proof thereof, the credibility of the evidence is not implicated. Even a failure to observe a warning period cannot excuse the violation of a law enacted to prevent dangerous operation of a vehicle that may cause death or injury. Proof of the violation or the laudable purpose for the law is not affected by a warning period that is wholly irrelevant to that goal.

In sum, Appellant has failed to establish any reversible error such that the People respectfully request that this Court affirm the judgment of conviction against Appellant.

Dated: January 23, 2012

Respectfully submitted,
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