

No. 30-2009-00329670

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
APPELLATE DIVISION**

PEOPLE,

Plaintiff and Respondent,

v.

██████████ Park,

Defendant and Appellant.

Court of Appeal

No. 30-2009-00329670

(Superior Court No. SA137669PE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JAN 19 2010

ALAN CARLSON, Clerk of the Court

BY J. GOMEZ

Appeal From a Judgement of

The Superior Court of California, County of Orange

The Honorable Daniel M. Ornelas, Commissioner

APPELLANT'S OPENING BRIEF

██████████ Park, self-represented

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STATEMENT OF THE CASE

This is a Red Light Camera case. The Defendant/Appellant is seeking *de novo* review by the Appellate Court in this case. First, Defendant/Appellant alleges that despite objections, People's testimony lacking foundation was admitted into evidence and obscured matters of law. The Defendant/Appellant is calling upon the Appellate Court for interpretation of relevant statute as a matter of law and to determine whether or not the Trial Court abused judicial discretion in its measure of an automated enforcement system's conformance to statutory requirements allowing its use.

STATEMENT OF APPEALABILITY

This appeal is from the judgment of the County of Orange Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1).

STATEMENT OF FACTS

On the afternoon of February 17, 2009, at approximately 1:47 p.m., in Santa Ana, California, Defendant/Appellant made a right turn, from the right turn lane along southbound Bristol St. onto westbound Segerstrom Ave. in his [REDACTED] Toyota [REDACTED]. A video camera, comprising the main component of an AES (Red Light Camera) was installed at that intersection. That system automatically took photographs of the intersection, Defendant/Appellant's front license plate on the vehicle and the driver of the vehicle. Subsequently, on or about February 26, 2009, nine days after the alleged offense, a City of Santa Ana Automated Enforcement Traffic Violation was issued to the Defendant/Appellant by First Class Mail. The

Citation numbered SA137669PE, contained reprints of four photographs mentioned earlier, and commanded Defendant/Appellant to appear before the County of Orange Superior Court, Harbor Justice Center, on April 7, 2009. Defendant/Appellant appeared on April 7, 2009, in Department C54 of the Superior Court, was duly advised of his rights as an infraction defendant. The Defendant/Appellant was granted extension to post bail by 4/21/2009 of \$436.00. The Defendant/Appellant posted bail of \$436.00 on 4/21/2009 and the case was set for trial on 05/27/2009 at 1:30 PM. The case came on regularly for court trial on May 27, 2009, before Officiating Judge Daniel M. Ornelas, Commissioner. The trial was scheduled on the 1:30 p.m. Calendar. At the trial, Defendant/Appellant was found Guilty, The Defendant/Appellant filed a timely Notice of Appeal and Proposed Statement on Appeal. This appeal ensued.

ARGUMENT

Issue 1

A. THE CITY DID NOT PROVIDE A 30-DAY GRACE PERIOD WHEN THE INTERSECTION OF BRISTOL ST. AND SEGERSTROM AVE. WAS EQUIPPED WITH AN AUTOMATED ENFORCEMENT SYSTEM.

Uncontested by People, the AES at Bristol St. and Segerstrom Ave. went into effect without the 30-day grace period mandated by Vehicle Code § 21455.5 for intersections equipped with AES. During the grace period, alleged red-light violators picked-up by an AES are issued warnings rather than citations. To uphold lawful intent, the failure to comply with explicit requirements of Vehicle Code § 21455.5 must render meaningless citations issues by the defiant AES.

Defendant/Appellant alleges that the trial court overstepped judicial discretion when waiving the 30-day grace period required by Vehicle Code § 21455.5 for the AES at Bristol St. and Segerstrom Ave.

21455.5 (b) states that:

“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.” (emphasis added)

The appropriateness of issuing warning notices at each intersection equipped with an AES is intuitive: issuing warning notices to driver at one location is meaningless to a different group of drivers at another. The application of the law should not arbitrarily be subject to the size of the jurisdiction. Furthermore, issuing warning notices only at one location is not sufficient to fulfill the broader intent of the law. The objective of AES, improving traffic safety, includes educating commuters about an impending automated enforcement system. To gain public support and confidence, Legislatures were careful to include a grace period rather than shocking the community with direct and indirect penalties that result from a citation.

There is a similar case from Costa Mesa. In January of 2005 an Appellate court found, in *People v. Fischetti*, that the city of Costa Mesa should have issued warning tickets for 30 days upon the installation of each new camera. Judge Charles Margines concludes the following:

“In addition, reversal is warranted based upon respondent’s failure to implement a 30-day grace period... Respondent’s construction of section 21455.5(b) appears to be inconsistent with the structure and purpose of Section 21455.5 as a whole. Because section 21455.5(a) provides that “the intersection” may be equipped with an automated enforcement system, “automated enforcement

system” in Section 21455.5(b) cannot refer to a municipality’s overall automated enforcement plan, but must instead refer to each individual automated system operated at an intersection within the municipal jurisdiction. Nor would it make sense, from the perspective of the motorists for whom the statutory requirements were intended to provide protection, for the geographic scope of the 30-day grace period to depend arbitrarily upon the size of each municipal jurisdiction. Tellingly, respondent itself offers legislative history of a 2003 amendment to Section 21455.5(SB-780) which would have expressly provided for the grace period “during the first 30 days after the first recording unit is installed”- the omission of this language from the amendments enacted in 2003 must be viewed not as an intention to adopt the omitted language, as respondent asserts, but rather as legislative rejection of a link between the grace period and the installation of the municipality’s first automated system.”

There is another similar case from Santa Ana. On August 28, 2008, An Appellate Court found, in *People v. Anna V.*, that the City of Santa Ana should have given 30-day warning upon installation of each new camera. Judge Mary Fingal Shulte concludes:

“The record in this case discloses that the City of Santa Ana mistakenly sought to comply with Vehicle Code 21455.5(b) by issuing warning notices only for the first photographic enforcement cameras installed in the City. The trial court’s determination that the City complied with 21455.5(b) appears to be inconsistent with the structure and purpose of the statute as a whole. Because 21455.5(a) provides that “the intersection” may be equipped with an automated enforcement system, “automated enforcement system” in 21455.5(b) cannot refer to a municipality’s overall automated enforcement plan, but must instead refer to each individual automated enforcement system operated at an intersection within the municipal jurisdiction. The “dictionary” definition of the word “system” does not comport with the trial court’s analysis and conclusion, in the absence of any

evidence that the various sets of equipment located at intersections throughout the city are somehow interactive with, or dependent upon, each other- if such systematic interaction were necessary, operation of the automated enforcement equipment at a lone intersection would be impossible. The legislature in 2003, rejected an amendment to SB 780 which would have expressly provided for the warning period of 21455.5(b) to occur “during the first 30 days after the first recording unit is installed,” and the omission of this language from the amendments enacted in that year reflects a legislative intention to avoid linkage of the 30-day warning notice with a municipality’s initial installation of automated enforcement equipment. (See City of Santa Cruz v. Municipal Court (1989) 49 Cal.3d 74, 88-89.) Nor would it make sense, from the perspective of the motorists for whom the statutory requirements were intended to provide protection, for the geological scope of the 30-day warning period to depend arbitrarily upon the size of the municipal jurisdiction in question.”

The Defendant/Appellant notes that the undisputed nature of this issue alone, could be the basis for summary judgment in favor of the Defendant/Appellant, and brings forth the motion for Summary Judgment, herein.

B. A DIGRESSION INTO LINGUISTIC DELINEATION IS NECESSARY TO DEMONSTRATE “SYSTEM” CONCLUSIVELY REFERS TO A CAMERA SYSTEM AT EACH INTERSECTION.

The statutory scheme governing photo enforcement citations makes eleven references to the “system”, most importantly and clearly in the following:

21455.5(a)”

“The limit line, the intersection, or a place designated in Section 21455, where a driver is required to stop, may be equipped with an automated enforcement system

if the governmental agency utilizing the **system** meets all of the following requirements”(emphasis added)

21455.5(1):

“Identifies 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”(emphasis added)

21455.5(2):

“If it locates the **system** at an intersection, and ensures that the **system** meets the criteria specified in Section 21455.7” (emphasis added)

Legislature would have used the word “equipment” instead of “system” in each of the aforementioned instances. Since “system” is used and not “equipment” the intent of the Legislature is that the “system” be implicitly defined as the collection and functioning of necessary equipment at each individual intersection. This is further supported by the Redflex Company’s own description that “each Camera System consists of a Main Camera (to provide rear-shot images of the vehicle), a Plate Camera (to provide a zoomed image of its rear license plate) and a Face Camera (to capture images of the driver’s face). The Camera system is connected to the traffic signal controller and detection sensors”. (Exhibit 2)

In addition, this is supported by the generally accepted definition of a “system” as “a regularly interacting or independent group of items forming a unified whole.” Merriam-Webster’s Collegiate Dictionary 1194 (10th Ed. 1993). The collection of equipments at each intersection meaningfully and regularly interacts to create a “system”. If any part is removed, the system could not operate. On the other hand, all the photo enforcement cameras operated in Santa Ana are just a collection of these intersection “systems,” not a true “system” in of

themselves. These separate cameras at different intersections do not “interact” nor are they “interdependent” and therefore cannot be defined a “system”. Each intersection is, in fact, independent and could function on its own, as in fact, it did when the first intersection was activated in the city of Santa Ana at Harbor Blvd. and McFadden on June 30, 2003. In addition, particular cameras do not operate due to malfunctions and some are simply shut down without having any effect on other intersections. Therefore, it is once more clear that “system” refers to the collection of equipment at each intersection and not all the automated enforcement system equipment used by the governmental entity.

Issue 2

THE CITY OF SANTA ANA FAILED TO PROVIDE PUBLIC ANNOUNCEMENT FOR THE ENFORCEMENT SYSTEM AT BRISTOL ST. AND SEGERSTROM AVE.

Vehicle Code 21455.5 presents a battery of requirements, all of which must be met before governmental agencies are allowed to equip intersections with an AES, specifically:

21455.5(b):

“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)

The Santa Ana Police Department failed to produce a copy of the public announcement for the AES at Bristol St. and Segerstrom Ave. As was concluded

in argumentation for Issue 1 (A), "program" does not constitute all the camera "systems" but a "system" at each intersection. Furthermore, making a public announcement at each intersection is consistent with the legislative intent of educating and informing the public. Therefore, by not making a public announcement at the commencement of the AES at Bristol St. and Segerstrom Ave, the city of Santa Ana did not uphold lawful intent.

CONCLUSION

The issue here regarding interpretation of Vehicle Code § 21455.7 is not trivial. Based on all of the foregoing, Defendant/Appellant respectfully asks this Court to reverse the Judgment of the Trial Court, set aside the Verdict, and grant Defendant/Appellant a new trial.

Dated: 1/19/10

By: [REDACTED] Park Defendant/Appellant