LIU, J.

Case No. S202483

IN THE SUPREME COURT

OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff/Respondents,

vs.

STEVEN EDWARD GRAY,

Defendant/~~Petitioner~~. Appellant.

After a Decision by the Court of Appeal
Second Appellate District, Division Three
2nd Civ. No. B23633; App. Div. No. BR048502;
Trial Court Case No. C165383 – Hon. Lawrence H. Cho

ANSWER TO PETITION FOR REVIEW

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ISSUE PRESENTED

The sole issue raised in Defendant's Petition for Review pertains to the construction of Vehicle Code[1], § 21455.5, subd.(b), which comprises part of the Automated Traffic Enforcement System ("ATES") legislation[2] and provides for the issuing of warning notices to red light violators for 30 days before issuing citations and the making of a public announcement of the presence of the ATES. More particularly, the question here is whether a locality must comply with those requirements once, when the system is introduced in a jurisdiction, or repeatedly, *i.e.,* at each new intersection at which the ATES becomes operational.

In the present case, the Second Appellate District of the Court of Appeal decided that a local jurisdiction must comply with section 21455.5, subd.(b) only once, *i.e.*, when the ATES program is initiated in a locality. Here, Defendant argues that review should be granted because although Culver City ("the City") performed the requirements of section 21455.5, subd.(b) when it introduced the ATES in the City, it did not do so again for the intersection of Defendant's violation when that intersection was added to the ATES program. As detailed in this brief, Defendant's argument provides

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

[2] Section 21455.5, subdivision (b) 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."

no support for his Petition nor does there exist any other ground warranting review by this Court.

INTRODUCTION

As established below, Defendant fails in his Petition to present any of the grounds for review articulated in California Rules of Court, Rule 8.500(b)(1). In fact, Defendant's single argument for review, *i.e.*, that there is a lack of uniformity of decision relative to section 21455.5, subd.(b) is fatally flawed. The opinion in the present case is the sole decision by a Court of Appeal addressing the narrow issue of the timing of warning notices and public announcement requirements under section 21455.5, subd.(b). Defendant's reliance on a lower appellate court case, *People v. Park* (2010) 187 Cal.App.4th Supp. 9, to create the illusion of a contradiction in decisional authority is unavailing. Because *Park* was decided by a court not of equal dignity with the Court of Appeal – and because the opinion in the present case expressly disapproves *Park* – there is no conflict in precedent requiring this Court's intervention to guarantee uniformity of decision. Moreover, there exists no need to resolve an important question of law because the Court of Appeal's decision in this case is based on sound legal analysis and provides clear and well-reasoned precedent to guide future ATES litigants as well as our courts.

Accordingly, Respondent, the People of the State of California, respectfully request that this Court deny the Petition.

SUMMARY OF FACTS & PROCEDURAL HISTORY

Defendant was found guilty of violating section 21453a, for failing to stop at a red light signal in the City. His violation was recorded by ATES equipment at the intersection of his violation.

At trial, Defendant moved to dismiss on the ground that the 30–day warning notice period and public announcement requirements of the ATES enabling statutes, as provided in section 21455.5, subd. (b), require that warning notices should have been issued and a public announcement should have been made when ATES equipment was installed at the particular intersection of Defendant's violation. The City stipulated that it had issued warning notices and public announcements prior to the commencement of the entire program in the City in 1998, and that no such notices or announcements were done specifically for the intersection of Defendant's violation. The trial court found that in so doing, the City had complied with section 21455.5, subd. (b) and denied Defendant's motion, holding that warning notices and public announcements are required only prior to a locality's implementation of the overall ATES system and not anew for and at each intersection added to the program. The trial court held that the ATES evidence was admissible and found Defendant guilty under section 21453a of violating the red light law.

The Appellate Division of Los Angeles County Superior Court affirmed the trial court's judgment in *People v. Gray* (2011) 199 Cal.App.4th Supp. 10. The Court of Appeal ordered the case transferred, ultimately affirming the judgment of conviction against Defendant in *People v. Gray* (2012) 204 Cal.App.4th 1041 and stating "[w]e hold that the local jurisdiction need only provide one 30–day warning notice period and one 30–day public announcement" (*Id.* at p. 1045), requirements the City had met such that there was no violation of section 21455.5, subd.(b). In so holding, the Court of Appeal noted "[w]e disapprove of *People v. Park* (2010) 187 Cal.App.4th Supp. 9, which comes to a contrary conclusion." (*Id.*).

LEGAL AUTHORITY

I.

THIS COURT SHOULD REFUSE TO GRANT THE PETITION BECAUSE THERE ARE NO GROUNDS FOR REVIEW

A. This Case Presents No Necessity To Assure Uniformity Of Decision Because The Decision In This Case Is The Sole Opinion At The Court Of Appeal Level Deciding The Issue And Because The Opinion Expressly Disapproves The Case Relied On By Defendant

In petitioning this Court for review of the opinion affirming the judgment of conviction against him, Defendant fails to make the required showing, *i.e.*, that review "is necessary to secure uniformity of decision or to settle important questions of law." (Cal. Rules of Court, rule 8.500(b)(1)). While Defendant bases his bid for review on the claim that there is conflicting authority on the proper construction of section 21455.5, subd.(b), the "conflicting" decision on which he relies is *People v. Park* (2010) 187 Cal.App.4th Supp. 9, not a Court of Appeal opinion but one issued by the Orange County Superior Court Appellate Division ("OCSCAD"). Notwithstanding the fact that *Park* holds that section 21455.5, subd.(b) is intersection-specific, *i.e.*, the duty of issuing warning notices and making a public announcement arises anew each time an ATES becomes operative at each new intersection, *Park* provides no basis for review of the present case. More particularly, *Park* creates no lack of uniformity in the case law because opinions issued by appellate divisions "are not, of course, binding on either of the higher reviewing courts..." (9 Witkin, Cal. Proc. 5th (2008) Appeal, §

503, p. 565-566.)[3] In turn, because *Park* does not provide binding legal precedent, that decision does not conflict with the Court of Appeal's decision in the present case holding that warning notices and a public announcement need be given only once, *i.e.*, when the ATES is first implemented in a locality. Indeed, the Court of Appeal expressly disapproved *Park* (*Gray, supra*, 204 Cal.App.4th at 1045) and went on to detail, as discussed below, why *Park*'s intersection-specific finding contravened the clear meaning of section 21455.5, subd.(b).

In sum, Defendant's claim that *Park* necessitates review of the decision in the present case to assure uniformity of decision is simply wrong. Moreover, as discussed below, no important question of law remains for resolution here such that Defendant's Petition is not supported by that basis for review either.

B. This Case Presents No Need To Address An Important Question Of Law Because The Opinion Is Well-Reasoned And Resolves Rather Than Raises Any Such Questions

Because "[f]inality is intended to accompany the District Court's judgments", this Court has stated that review is appropriate only "when error appears upon the face of the opinion of the appellate court, or when a doubtful and important question is presented ... upon which [the Court] desire[s] to hear further argument" (*People v. Groves* (1935) 9 Cal.App.2d

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[3] Citing *Cotton v. Municipal Court* (1976) 59 Cal.App.3d 601, 604 ([Appellate Department decision not controlling, the Court of Appeal will make its own evaluation of the issue raised; *Worthington v. Unemp. Ins. App. Bd.* (1976) 64 Cal.App.3d 384, 389]). Indeed, even among appellate divisions of different counties "superior court appellate division cases are not binding authority." (*People v. Cole* (2008) 165 Cal.App.4th Supp. 1, 17).

317, 322, quoting *Burke v. Maze*, 10 Cal. App. 206). In the present case, there is no error on the face of the appellate court's opinion nor does any doubtful or important question of law remain unresolved. Thus, this Court should refuse review of the present case, allowing opinion of the Court of Appeal the finality intended to accompany its decisions.

1. There Is No Error In The Court Of Appeal's Opinion Because It Correctly Construes Section 21455.5, Subdivision (b).

a. Principles Of Statutory Construction Support The Finding That The Warning Notices And Public Announcement Required By Section 21455.5, Subd.(b) Need Be Given Only Once, At The Inception Of The Program In A Locality

In concluding that "the context of section 21455.5, subd. (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" (*Gray, supra*, 204 Cal.App.4th 1048), the Court of Appeal undertook a sound and reasonable construction of the statute. In that regard, the court noted that because "both requirements [of the provision] are timed according to the date the local jurisdiction first issues citations generated by the automated traffic enforcement *system,*" the first step is to determine the meaning of the word "system" in the context of the ATES statutes. (*Gray*, *supra*, 204 Cal.App.4th at 1047). In analyzing the meaning of the word "system", the Court of Appeal looked to the dictionary definition of the word, a proper approach based on 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), a determination properly made by consulting a dictionary. (*In re Marriage of Bonds* (2000) 24 Cal.4th 1, 16).

Based on the dictionary definition, the Court of Appeal found that "system" means "a regularly interacting or interdependent group of items forming a unified whole." (*Gray, supra*, 204 Cal.App.4th at 1048, citing Merriam–Webster's Collegiate Dict. (10th ed. 1993) p. 1197). In applying that definition to the facts of the present case, the Court of Appeal found that because the information as to red light violations gathered by the ATES at an intersection is transmitted to the Arizona company which reviews and then forwards the information to the City, "the ATES equipment at each intersection is not an independent unit. (*Gray, supra*, 204 Cal.App.4th at 1048 (emphasis added)). Accordingly, "when section 21455.5, subd. (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." (*Gray, supra*, 204 Cal.App.4th at 1048).

In arriving at its construction of section 21455.5, subd.(b), the Court of Appeal expressly disapproved *Park* and the OCSCAD's holding that the word "system" applies to the equipment at each intersection such that section 21455.5, subd. (b) requirements must be met every time a new intersection is added to the program. (*Gray, supra*, 204 Cal.App.4th at 1045). In this regard, the Court of Appeal stated "ATES equipment at a particular intersection is only one component part of 'a regularly interacting or interdependent group of items forming a unified whole.'" (*Gray, supra*, 1049). In turn, the decision in *Park* is erroneous precisely because its interpretation of "system" as referring to an individual intersection – and

triggering the requirements of section 21455.5, subd.(b) -- ignores the fact that all ATES equipment must communicate with a central computer in order to produce ATES evidence. (*Gray, supra*, 204 Cal.App.4th at p. 1049).

In sum, the Court of Appeal correctly applied the principles of statutory construction to the facts surrounding the workings of the ATES and the operation of section 21455.5, subd.(b) and such that the decision in this case offers neither error nor any doubtful legal question that could provide a basis for review. (*Groves, supra,* 9 Cal.App.2d at 322).

b. Other Statutory Provisions In Section 21455.5 Support The Finding That The Requirements Of Section 21455.5, Subd.(b) Are Programmatic Rather Than Intersection-Specific

In its decision, the Court of Appeal correctly pointed to the importance of the fact that "[o]ther provisions of section 21455.5 support the interpretation of "system" as referring to the system as a whole and not the equipment at each intersection." (*Gray, supra*, 204 Cal.App.4th at 1050). This reasoning supports the court's interpretation of the requirements of the section 21455.5, subd.(b) because "when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute." (*People v. Dillon* (1983) 34 Cal.3d 441, 468).

In regard to the other provisions of the ATES enabling statute supporting the court of appeal's construction of the word "system", the court pointed to section 21455.5, subd. (c), noting that that provision defines the overall operation of an ATES, including developing guidelines and establishing procedures in such a way that makes it clear that the word

"system" therein refers to the operation of an ATES as a whole. (*Gray, supra,* 204 Cal.App.4th at 1050-51). Similarly, section 21455.5, subd.(d) provides that "[t]he 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", thus clearly referring to "system" in a global manner as involving the overall ATES and not that at an individual intersection. (*Id.* at p. 1050).

Indisputably, too, the hearing requirement in section 21455.6, subd. (a) also supports the interpretation that "system" refers generally to use of the ATES and not to the operation of ATES equipment at a particular intersection. Specifically, that provision requires a single public hearing on the use of an ATES prior to contracting for the use of an automated enforcement "system." (*Gray, supra*, 204 Cal.App.4th at 1051). Moreover, section 21445.6, subd. (a) does not require a further public hearing each time ATES equipment is placed in operation at a particular intersection.

In sum, both facts and law of this case soundly support the Court of Appeal's finding that because the word "system" by definition refers to the ATES as a whole and not to each individual intersection where an ATES is placed, it is the initiation of the ATES program as a whole that triggers the requirements of section 21455.5, subd.(b). Put another way, the requirements of section 21455.5, subd. (b) are programmatic rather than intersection-specific. In turn, as the Court of Appeal held, the City complied with the warning notices and public announcement requirement when it fulfilled these requirements at the inception of the ATES program in the City in 1998.

c. Defendant's Lenity Argument Provides No Basis For Review

Defendant attempts, without success, to invoke the rule of lenity as a basis for review. Application of the rule of lenity is inappropriate here because the *raison d'être* of the rule is to ensure that criminal statutes will provide fair warning concerning the nature of the conduct rendered illegal by a statute. (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 305). Here, the illegal conduct at issue is running a red light, as defined by section 21453a, a statute not challenged by Defendant.[4] In contrast, section 21455.5, subd. (b), the provision in question in this case, does not seek to define or describe the offense of running a red light but is simply part of the ATES enabling statute. Thus, the warning notices and public announcement requirements have no bearing whatever on a defendant's knowledge or understanding of the nature or the elements of the crime with which he is charged, *i.e.*, running a red light (*People ex rel. Lungren v. Superior Court, supra*, 14 Cal.4th at 305), such that the rule of lenity has no application here.

Moreover, invoking of the rule of lenity is inappropriate in the present case because the rule applies only when a court can do no more than guess what the legislative body intended; "there must be an egregious ambiguity and uncertainty to justify invoking the rule." (*People v. Canty* (2004) 32 Cal.4th 1266, 1277). No such ambiguity – egregious or otherwise—is present in section 21455.5, subd. (b). Rather, as detailed above, the

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[4] 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." (Vehicle Code, § 21453, subd.(a).)

language of the statute clearly expresses the Legislature's intent that the requirement of warning notices and a public announcement of the ATES be fulfilled once, when an ATES is first introduced in a locality. Thus, even if section 21455.5, subd.(b) were the kind of statute apprising a defendant of the elements of a crime, application of the rule of lenity would be improper here in light of the clarity of the language of section 21455.5, subd.(b), which mirrors the indisputable legislative intent behind the provision, as correctly determined by the Court of Appeal. Accordingly, Defendant's lenity rule argument provides no support for his Petition and no ground for review by this Court.

2. The Court Of Appeal Correctly Held That Even If The City Had Failed To Comply With The Requirements Of Section 21455.5, Subd. (b) – Which It Did Not – Such Noncompliance Would Not Alter The Result In This Case

Having held that the City complied with section 21455.5,subd. (b), the Court of Appeal further observed that because the prosecution had no burden to prove compliance, even a failure to comply would have had no bearing on the result in this case. (*Gray, supra*, 204 Cal.App.4th at 1052). The court noted that while it is true that the prosecution must prove each element of a criminal offense (*In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1134), the provisions of section 21455.5, subd. (b) are not elements of Defendant's offense, *i.e.*, running a red light. Rather, section 21453a, the charging statute, articulates the elements of that offense and the burden of proof attendant thereto. (*Gray, supra*, 204 Cal.App.4th at 1051-1052). Accordingly, the Court of Appeal correctly stated that even if the City failed to comply with section 214555.5, subd. (b) "there was no failure of proof of the

charged violation" and the ATES evidence was properly admitted to prove Defendant's violation. (*Gray, supra*, 204 Cal.App.4th at 1052).[5]

CONCLUSION

As established above, the decision of the Court of Appeal in the present case comports with existing case and statutory law and thus creates no necessity to assure uniformity of decision nor does it suggest an unsettled or important question of law susceptible to review by this honorable Court.

Accordingly, the People respectfully request that this Court deny the Petition for Review.

Dated: May 30, 2012

Respectfully submitted,

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5 The Court of Appeal in the present case also noted that "[i]f 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" (cite). In so stating, the court distinguished section 21455.5, subd. (b) from Vehicle Code, § 40803, subd. (a), which provides expressly that speed trap evidence is inadmissible at trial.

CERTIFICATE OF WORD COUNT

[Cal. Rules of Court, Rule 8.504(d)]

The text of this ANSWER TO PETITION FOR REVIEW consists of 3471 words as counted by the Microsoft Word X word-processing program used to generate the brief.

Dated: May 10, 2012

Respectfully submitted,

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

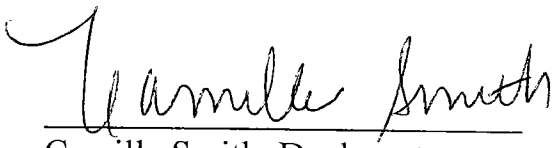
I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11500 W. Olympic Blvd., Suite 550, Los Angeles, CA 90064-1524.

On May 31, 2012, I served the foregoing document described as **ANSWER TO PETITION FOR REVIEW** on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon full prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on May 31, 2012 at Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



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