

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN GRAY,

Defendant and Appellant.

B236337

(Los Angeles County
Super. Ct. No. C165383)

(Appellate Div. No. BR048502)

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

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

Wilson, Elser, Moskowitz, Edelman & Dicker, Robert Cooper for Drew Wren as
Amicus Curiae on behalf of Defendant and Appellant.

Law Offices of Joseph W. Singleton and Joseph W. Singleton for Mishel Rabiean
as Amicus Curiae on behalf of Defendant and Appellant.

Dapeer, Rosenblit & Litvak, William Litvak and Caroline K. Castillo for Plaintiff
and Respondent.

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 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. We disapprove of *People v. Park* (2010) 187 Cal.App.4th Supp. 9, which comes to a contrary conclusion.

Steven Gray appeals from a judgment entered after the trial court found him guilty of violating Vehicle Code section 21453, subdivision (a),¹ by failing to stop at a red light at an intersection in Culver City. Gray's conviction for this violation was based on evidence produced by an ATES.

Culver City provided the 30-day warning notice period and public announcement when ATES equipment was placed in operation 10 years before Gray's citation was issued. We reject Gray's claim that Culver City should have provided another 30-day warning notice period and public announcement when ATES equipment became operational at the intersection where Gray's violation occurred. No violation of section 21455.5, subdivision (b) occurred, and we affirm the judgment.

¹ Unless otherwise specified, statutes in this opinion will refer to the Vehicle Code.

FACTUAL AND PROCEDURAL HISTORY

On November 21, 2008, a citation was issued charging defendant Steven Gray with violating section 21453, subdivision (a) by failing to stop for a red signal at the intersection of Washington Boulevard and Helms Avenue in Culver City. An ATES recorded the violation.

Gray was arraigned and pleaded not guilty. The defense made a pre-trial motion to dismiss based on Culver City's alleged failure to provide the 30-day warning notice period and public announcement requirements of section 21455.5, subdivision (b) before ATES equipment was installed at Washington Boulevard and Helms Avenue. Culver City stipulated that "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 allegedly running a red light." The trial court denied Gray's motion to dismiss.

At trial, Gray stipulated that he was the driver depicted in the photographs and video captured by the ATES. The police officer in charge of Culver City's ATES testified about the installation, functioning, operation, and maintenance of that system.

At conclusion of the trial, the court found that the ATES-produced evidence was admissible, found Gray guilty of the charge, and ordered Gray to pay a fine.

Gray appealed to the Appellate Division of Los Angeles County Superior Court, which affirmed the judgment in *People v. Gray* (2011) 199 Cal.App.4th Supp. 10.

On October 12, 2011, pursuant to Code of Civil Procedure section 911 and California Rules of Court, rule 8.1002, we ordered the case transferred to this court and subsequently set the matter for hearing.

ISSUE

The issue is whether a local jurisdiction using an ATES must comply with section 21445.5, subdivision (b) once, when the ATES first becomes operational in that local jurisdiction, or each time ATES equipment becomes operational at each intersection where it is used.

DISCUSSION

1. *A Local Jurisdiction Must Comply with Section 21455.5, Subdivision (b) When It Commences Operation of the ATES, But Not Each Time ATES Equipment Is Placed in Operation at Each New Intersection*

A. *The Statute*

Section 21455.5 establishes requirements for a governmental agency to operate an ATES at an intersection and at other designated locations. Subdivision (b) of section 21455.5 states: “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.” (italics added).

Subdivision (b) thus has two requirements. First, the local jurisdiction must establish a 30-day warning program: for 30 days before issuing citations under section 21455.5, a local jurisdiction using an automated traffic enforcement *system* must issue only warning notices. Second, at least 30 days before commencement of the enforcement program—i.e., at least 30 days before it begins issuing citations under section 21455.5—a local jurisdiction must make a public announcement of the automated traffic enforcement program. Both requirements are timed according to the date the local jurisdiction first issues citations generated by the automated traffic enforcement *system*.

B. *The Term “System” in the Statute Refers to the Integrated Technology Used in the ATES Program, Not to ATES Equipment at Each Intersection*

The first step in construing a statute is to examine its actual language and give to its words their ordinary, everyday meaning. If the words are reasonably free from uncertainty and ambiguity, the plain meaning of the language controls and no further construction is needed. (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082-1083.)

In order to interpret section 21455.5, subdivision (b), we must determine what the term “system” in the statute means because the statute requires the local jurisdiction to give a 30-day warning notice period and to make a 30-day public announcement before it can issue citations under its automated traffic enforcement *system*. Gray argues that the ATES equipment installed at each traffic intersection is a self-contained “system” because that equipment is capable of operating independently. Thus, he argues, the 30-day warning notice period and public announcement must be given each time the ATES equipment is installed at a new intersection. The People argue that “system” refers to a local jurisdiction’s entire automated traffic enforcement program, and therefore a local jurisdiction must comply with section 21455.5, subdivision (b) before the automatic traffic enforcement system begins operation but not each time ATES equipment is subsequently installed at other intersections. An analysis of the context of section 21455.5, subdivision (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.

With regard to the meaning of the term “system” in the automated traffic enforcement “system,” the trial court heard the following evidence about the construction and operation of the ATES. Several “loop” metal detectors buried underneath the roadway sense the presence of vehicles approaching a lighted intersection, and are linked to cameras programmed to take still photographs and a video of a suspected violator. Those cameras are activated when the traffic light at the intersection turns red for oncoming traffic. The sensors detect the presence of oncoming cars, calculate their

speed, and send timed signals to the cameras to shoot photos and videos to capture evidence of the suspected offender. The ATES places a date and time stamp on the photographs and videos along with recorded electronic data showing the speed of the suspect as calculated by the buried loop sensors, the amount of time the light was red when each photograph was taken, and the time each photograph was taken. This information is stored digitally and transmitted through the internet to the company in Arizona with which Culver City has contracted to operate the ATES. Company employees review the information and transmit it to Culver City police officers to review for red light violations.

Given the actual operation of the ATES, the ATES equipment at each intersection is not an independent unit because it cannot operate without the facility in Arizona which receives information from each intersection. Instead the automated traffic enforcement “system” in section 21455.5, subdivision (b) corresponds to the dictionary definition of “system” as “a regularly interacting or interdependent group of items forming a unified whole.” (Merriam-Webster’s Collegiate Dict. (10th ed. 1993) p. 1197). Thus when section 21455.5, subdivision (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.

Further, subdivision (b) of section 21455.5 requires a governmental agency commencing an ATES program to provide a 30-day warning notice period and public announcement “[p]rior to issuing citations under this *section*” (italics added). The word “section” refers to the authorizing statute—section 21455.5—which gives the local jurisdiction the authority to utilize an ATES. There can be only one point in time that is “prior to issuing citations under this section.” Therefore once the governmental agency has given warning notices for 30 days, made the public announcement, and started issuing citations under section 21455.5, subdivision (b), there can be no other period of time “prior to issuing citations under this section” and no requirement for any additional 30-day warning notice period and public announcement.

If the Legislature had meant to require 30-day warnings before installation of ATES programs at each intersection, it could have specified that before issuing citations, “a local jurisdiction utilizing an automated traffic enforcement system at an *intersection* shall commence a program to issue only warning notices for 30 days,” and that the local jurisdiction had to “make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program at the *intersection*.” But it did not so specify; instead the Legislature generally required warning notices for 30 days “[p]rior to issuing citations under this section,” and required a public announcement of the ATES program at least 30 days “prior to the commencement of the enforcement program.”

We disagree with the conclusion of *People v. Park, supra*, 187 Cal.App.4th Supp. 9 (*Park*) 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 plan in a local jurisdiction. (*Park*, at Supp. p. 12.) Relying on a definition of “system” as “a group of regularly interacting or interdependent items forming a unified whole,” *Park* determined that because ATES equipment operating at different intersections within a city did not need to interact with each other to fulfill their function, they could not form a “system.” (*Id.* at Supp. p. 13.) This misstates how the ATES functions, and ignores the fact that even if ATES equipment at one intersection does not interact with ATES equipment at other intersections, all ATES equipment must communicate with a central computer in order to produce ATES evidence. (ATES equipment at an intersection does not produce photographs or a video; it generates digital information and sends it to another location, where a computer converts the digital information to produce photographic and video evidence.) Thus ATES equipment at a particular intersection does not form the “unified whole” of a “system.” ATES equipment at a particular intersection is only one component part of “a regularly interacting or interdependent group of items forming a unified whole.” (Merriam-Webster’s Collegiate Dict. (10th ed. 1993) p. 1197). We believe that the latter

interpretation of “system” comports with the plain meaning of section 21455.5, subdivision (b).

C. Other Provisions of Sections 21455.5 and 21455.6

Other provisions of section 21455.5 support this interpretation of the requirements of subdivision (b). Subdivision (d) of section 21455.5 states: “The 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.” The “system” here must refer to the entire ATES enforcement program rather than to ATES equipment at an individual intersection. It would be inefficient and illogical to expect a local jurisdiction to contract the operation of an ATES system at each individual intersection to a different contractor. We disagree with *People v. Park*, which suggests that a local jurisdiction may elect to contract out operation of intersection-specific systems to multiple contractors and based on this suggestion, construes the maintenance of “overall control and supervision of the system” in subdivision (d) to “not necessarily” refer to the entire aggregation of ATES equipment operated by a governmental agency. (*Park, supra*, 187 Cal.App.4th at p. Supp. 13.) We believe it to be unlikely that local jurisdictions would adopt such complicated and cumbersome “intersection specific” contracting, and have no evidence that they have done so. We reject the analysis of *Park*, and conclude that both references to “the system” in subdivision (d) refer generally to the ATES as a whole, not to particular equipment at a particular intersection.

In addition, section 21455.5, subdivision (c) states: “Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system.” Subdivision (c) defines the operation of an automated enforcement system, which includes, inter alia, “[d]eveloping uniform guidelines for screening and issuing violations and for the processing and storage of confidential information, and establishing procedures to ensure compliance with those guidelines” and performing administrative functions, including “[e]stablishing guidelines for selection of location.” (*Id.* subs. (c)(1) and (c)(2)(A).) These definitions relate to the operation of an automated traffic enforcement system as a whole. “Developing uniform guidelines” and “establishing

guidelines for selection of location” would be inconsistent with a definition specifying an ATES system used at a specific intersection. If an ATES system were defined as the ATES equipment installed at a single intersection, it would make the establishment of “guidelines for selection of location” a superfluous requirement. The development of “uniform guidelines” for screening and issuing violations would be unnecessary if the ATES system referred to something other than the entire ATES program used at multiple intersections. The provisions in section 21455.5, subdivision (c) indicate that the “system” in section 21455.5, subdivision (b) refers to the entire system operating at multiple locations, not to particular equipment at a particular intersection.

The hearing requirement in section 21455.6, subdivision (a) also supports the interpretation that “the system” refers generally to use of the ATES and not to the operation of ATES equipment at a particular intersection. Section 21455.6, subdivision (a) provides that “[a] city council or county board of supervisors shall conduct a public hearing on the proposed use of an automated enforcement system authorized under Section 21455.5 prior to authorizing the city or county to enter into a contract for the use of the system.” Section 21455.6, subdivision (a) provides only for a single public hearing on the initial proposed “use” of an ATES before a city or county enters a contract for the “use” of an automated enforcement “system.” After contracting for use of that system, section 21445.6, subdivision (a) does not require a further public hearing each time ATES equipment is placed in operation at a particular intersection. This is consistent with the use of “the system” in section 21455.5, subdivision (b) to refer generally to the commencement of an enforcement program using that system, and not to commencement of an enforcement program at a particular intersection.

We conclude that the requirements in section 21455.5, subdivision (b) apply to the automated traffic enforcement system and enforcement program as a whole, and that section 21455.5, subdivision (b) does not impose those requirements each time a local jurisdiction operates ATES equipment at each particular intersection.

2. *Compliance with Section 21455.5, Subdivision (b) Is Not an Element of the Charged Violation, and Non-Compliance with Section 21455.5, Subdivision (b) Provides No Basis for Exclusion of Evidence Obtained From an ATES*

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.

The prosecution must prove each element of a criminal offense charged beyond a reasonable doubt. (*In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1134.) Gray was charged with violating 21453, subdivision (a)² by failing to stop for a red signal at the intersection of Washington Boulevard and Helms Avenue in Culver City. Section 21453 sets forth the necessary elements of the violation, but compliance with section 21455.5, subdivision (b) by the local jurisdiction is not a necessary element of the charged violation and thus is not part of the burden of proof of the prosecution. Section 21455.5 contains no provision comparable to section 40803, subdivision (b), which requires the prosecution to establish, as part of its prima facie case, that evidence was not obtained by the use of a prohibited enforcement mechanism.³ The 30-day warning notice period and public announcement of section 21455.5, subdivision (b) give the driving public notice of a new enforcement mechanism. Section 21455.5, subdivision (b), however, does not require the prosecution to show compliance with its requirements in order to use ATES

² Section 21453, subdivision (a) states: “A driver facing a steady circular red signal alone shall stop at a marked limit line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection, and shall remain stopped until an indication to proceed is shown, except as provided in subdivision (b).”

³ Section 40803, subdivision (b) provides that in a prosecution of a charge involving the speed of a vehicle, “where enforcement involves the use of radar or other electronic devices which measure the speed of moving objects, the prosecution shall establish, as part of its prima facie case, that the evidence or testimony presented is not based upon a speedtrap[.]”

evidence in prosecuting a violation of section 21453. Section 21455.5, subdivision (b) instead requires specified notice to the public of an enforcement mechanism. Even if Culver City failed to comply with section 21455.5, subdivision(b) at the intersection of Washington Boulevard and Helms Avenue, there was no failure of proof of the charged violation.

In addition, as the trial court pointed out, the Legislature did not establish any remedy for a local jurisdiction's failure to comply with section 21455.5, subdivision (b). Section 40803, subdivision (a), for example, provides for exclusion of evidence obtained by a prohibited enforcement mechanism. Section 40803, subdivision (a) states that “[n]o evidence as to the speed of a vehicle upon a highway shall be admitted in any court upon the trial of any person in any prosecution under this code upon a charge involving the speed of a vehicle when the evidence is based upon or obtained from or by the maintenance or use of a speedtrap.”⁴ If 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. By contrast to section 40803, the Legislature did not make failure to comply with section 21455.5, subdivision (b) a basis for excluding evidence obtained by an ATES.

⁴ Section 40802, subdivision (a) defines a “speed trap.” Section 40801 prohibits a peace officer from using a speed trap in arresting any person for any alleged violation of the Vehicle Code or in securing evidence as to the speed of any vehicle for the purpose of an arrest or prosecution under the Vehicle Code.

DISPOSITION

The judgment is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.