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SUPREME COURT COPY

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September 21, 2010

Chief Justice Ronald M. George
Associate Justices Baxter, Chin, Corrigan,
Kennard, Moreno and Werdegar
CALIFORNIA SUPREME COURT
350 McAllister Street
San Francisco, CA 94102-3600

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Reference: *People v. Park -- Request for Depublication*
Superior Court, Appellate Division No. 30-2009-00329670

Dear Chief Justice George and Honorable Associate Justices:

Pursuant to California Rules of Court, Rule 8.1125(a), the City of West Hollywood respectfully requests depublication of the Orange County Superior Court, Appellate Division's opinion in *People v. Danny Byongun Park*.¹ The *Park* opinion was issued on July 23, 2010 and, and certified for publication on that same date. A copy of the *Park* opinion is attached as Exhibit A.

The City of West Hollywood makes this request because it, as well as numerous other California cities, operates a red light photo enforcement system pursuant to Vehicle Code § 21455.5 and regularly prosecutes violations of Vehicle Code §21453 (failing to stop for a red light) with evidence obtained from red light cameras. In operation now for nearly ten years,² the City's automated

¹ *People v. Park*, 2010 Error! Main Document Only.WL 3378978, -- Cal.Rptr.3d -- (July 23, 2010).

² The City of West Hollywood's Red Light Camera program has been the subject of two Court of Appeal decisions, the most recent of which is pending before this Court on Review. See *Leonte v. ACS State and Local Solutions, Inc.* (2004) 123 Cal.App.4th 521; *In Re Red Light Photo Enforcement Cases*, S165425;

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red light enforcement system has proven successful in altering driver behavior and reducing dangerous side-impact collisions caused by otherwise careless or inattentive motorists.

REASONS WHY THE PARK OPINION SHOULD BE DEPUBLISHED

Before issuing a citation for running a red light using evidence obtained from a red light camera, the agency must issue only warning notices in the first 30 days of the system's operation. Often times, however, cities will install additional red light photo enforcement cameras at intersections where it is determined that the red light camera would serve to reduce side impact collisions. When a new camera is subsequently installed, must a city again issue warning notices at that intersection? The *Park* court dismissed a red light photo citation for a city's failure to provide a 30-day warning period at *each* subsequent intersection that comes online into a city's red light photo enforcement system.

Other courts have consistently rejected the precise argument raised in *Park*.³ While not binding in other judicial districts, or any higher reviewing court (*People v. Comers* (1985) 176 Cal.App.3d 139, 146), the published opinion stands to create confusion in those courts where red light photo citations are adjudicated. See Rules of Court, Rule 1105(c).

The effect of the *Park* decision would be to immunize from prosecution any red light violators captured by a red light camera during the 30-day period following the installation of subsequent cameras, but perhaps long after the initial commencement of the city's red light photo enforcement system. More troubling, however, the *Park* opinion seemingly renders invalid all citations issued by a camera at which the 30-day warning period was not given, even if issued long after the 30-day warning period expired. See *Park*, at pg. 6.

(..continued)

formerly published at 163 Cal.App.4th 1314 (2008). In the latter, the Court of Appeal ruled that Plaintiff, a driver not captured by a red light camera, lacked standing to challenge the warning notice provision because "[a]ny noncompliance with the grace period . . . did not pertain to the expenditure of public funds, prerequisite to a taxpayer waste claim."

³ *People v. Accardi*, Los Angeles Superior Court, Appellate Department Case No. BR044495, August 9, 2006 (unpub); see also *People v. Fischetti*, 2009 WL 221042, -- Cal.Rptr.3d -- (Dec. 18, 2008) (Like *Park*, the *Fischetti* court dismissed a red light photo citation for a city's failure to provide **Error! Main Document Only**.a 30-day warning period at *each* subsequent intersection – the Supreme Court depublished the opinion on February 25, 2009 (Supreme Court Case No. S170231).

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Red light photo enforcement systems reduce red light violations and the resultant accidents, injuries and fatalities. Requiring the resurrection of the warning obligation every time a new intersection is brought online in the system, as *Park* seemingly requires, would defeat the goal.

A. *The Park Decision*

Before operating a red light photo enforcement program, a local agency must comply with Vehicle Code section 21455.5(b), which states, in relevant part, that "a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days." As stated above, the *Park* court addressed whether Vehicle Code §21455.5 creates the obligation to issue warning notices every time a new intersection is brought online in the system.

The *Park* court addressed whether Section 21455.5(b) required the issuance of warning notices only during the first 30 days after the initial installation of photo enforcement equipment, or for each camera that subsequently becomes operational with the local agency's jurisdiction. The *Park* court ruled the latter, finding that Section 21455.5(b) required the issuance of warning notices for the first 30 days "at each individual automated system operated at an intersection within the municipal jurisdiction." Overturning defendant's conviction, the court concluded:

Because the record in this case shows a lack of compliance with the requirement of Vehicle Code section 21455.5, subdivision (b), that a municipality utilizing an automated enforcement system at an intersection comply with the prescribed warning requirements "[p]rior to issuing citations," the conviction must be reversed.

B. *Park is Incorrectly Decided*

The *Park* court's analysis turned on its interpretation of the terms "automated traffic enforcement system" contained in Section 21455.5(b).⁴ According to the Court, because there is no systemic interaction or interdependency between red light cameras installed at various intersections throughout the city, "automated enforcement system" cannot refer to a municipality's overall

⁴ To support its analysis, the *Park* court cited to the dictionary definition of "system." *Park*, at pg. 4. The definition, "a regularly interacting or interdependent *group of items forming a unified whole*," lends support for the position that "system" means the City's overall plan for the installation of red light cameras at designated intersections within its jurisdiction. See Merriam-Webster's Collegiate Dictionary (10th ed. 1993) pg. 1194 (emphasis added).

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automated enforcement plan, but must instead refer to each individual automated system operated at an intersection within the municipal jurisdiction." *Park*, at pg. 4.

When "system" is used in Vehicle Code §§21455.5 and 21455.6, however, it refers to overall coordination and installation of red light cameras throughout a city's jurisdiction. See Vehicle Code §21455.6 ("A city council or county board of supervisors shall conduct a public hearing on the proposed use of an automated enforcement system. . . ."); § 21455.5(c) ("Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system."); § 21455.5(d) ("The activities listed in subdivision (c) that relate to the operation of the system"). In contrast, when referring to individual cameras that together make up the "system," the statutory scheme uses the term "equipment." See Vehicle Code §21455.5(c)(2)(B) (ensuring that the *equipment* is regularly inspected); §21455.5(c)(2)(C) (requiring a city to ensure that the *equipment* is properly installed, calibrated and working properly).⁵ Indeed, under the *Park* court's reading, a city cannot hold one public hearing and execute one contract for installation of cameras (as authorized by Vehicle Code §21455.6(a)), but must instead hold as many public hearing and execute as many contracts as there are intersections to be incorporated into a city's photo enforcement system.

Opining that the warning notice provision was designed to "protect" motorists by providing notice, the Court also stated that the geographic scope of such protection should not be arbitrarily determined by the size of the municipality operating the automated enforcement system. *Park*, at pg. 6. Contrary to the *Park* opinion, there is no indication on the face of the statute that the "program to issue only warning notices for 30 days" was intended as a mechanism for protecting, or notifying, motorists at all. See *Park*, at 6. The public hearing requirement of section 21455.6(a), the identifying sign requirement of section 21455.5(a)(1), and the 30-day advance public announcement requirement set forth in the second sentence of section 21455.5(b) are all expressly aimed at providing the general public with advance notice of an automated enforcement system.

From its inception, Vehicle Code section 21455.5(a), pertaining to warning signs, has required that a jurisdiction erect warning signs to alert drivers to the use of automated enforcement within the

⁵ As the *Park* court noted, red light photo enforcement was enacted pursuant to Senate Bill No. 833. In the analysis (attached hereto as Exhibit B at pgs 3 and 4), it notes: "Sponsors of the red light photographic enforcement equipment provisions cite the use of such equipment in reducing the rate of violations as well as the number of accidents and fatalities at intersections. Various studies and tests of the equipment have concluded that a substantial portion of urban vehicle crashes occur at intersections involving drivers running through red SB 833 lights."

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city. This sign requirement, however, allows for the city to choose one of two methods to warn motorists of the automated enforcement system: either by placing the signs "clearly indicating the systems presence, visible to traffic approaching from all directions," or, "if signs are posted at all major entrances to the city, including at a minimum freeways, bridges, and state highway routes." Therefore, if a city chooses to post the signs announcing the program at the major entrances to the city, there is no requirement that each individual intersection be marked with signs. If, as the *Park* court opines, the Legislature intended the 30-day program to be implemented over and over again so as to provide to motorists notice of the camera's presence, why would the same Legislature not require warning signs at each and every intersection? This defeats any argument that the legislature intended that the public be given warning as to each individual intersection where automated enforcement cameras may be located.

Indeed, the 30-day warning program does virtually nothing to provide the general public with additional "notice" of the system because the only people that would even receive that "notice" would be those few motorists who illegally run a red light during those 30 days—hardly providing "protection" to anyone else driving through, or intending to drive through, the city. The requirement of a "program to issue only warning notices for 30 days" provides the local agency, in connection with law enforcement, the opportunity to operate a fully-functioning system for 30 days, and to work out any bugs in the new system along the way without the risk of erroneously issuing an invalid citation during that initial phase of the learning curve. While such a program has obvious benefits for the city and the community at the commencement of the system, it would be nothing more than a redundant exercise if done every single time a new intersection is brought online to the city's system.

The primary goal of red light photo enforcement is to change driver behavior, thereby reducing the number of red light violations and the resulting number of right angle collisions, injuries and deaths. The notion that the Legislature intended the 30-day program to be implemented over and over again, long after the city has begun operation of the system, would frustrate the legislative purpose, not advance it.

Based on the foregoing, the City of West Hollywood respectfully requests that *People v. Park* be depublished. Thank you for your consideration of this request.

Very truly yours,



John C. Cotti