

SIXTH APPELLATE DISTRICT

CALIFORNIA HIGHWAY PATROL

Petitioner

H029406

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SANTA CRUZ

Respondent

FILED

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RICHARD J. OUTGEBY

Real Party in Interest and Defendant

Santa Cruz County Superior Court Nos. 4SM21812-4WMO23863

4SM023894, 4SM023271, and 4SM044470

The Honorable Michael Barton, Judge

CHP'S REPLY TO PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF AND DECLARATION OF KAREN KYO HUSTER IN SUPPORT THEREOF

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CALIFORNIA HIGHWAY PATROL,

Petitioner,

H029406

v.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF SANTA CRUZ,

Respondent,

RICHARD J. QUIGLEY,

Real Party in Interest and Defendant.

ARGUMENT

I.

AFTER CONCEDING THAT HELMET VIOLATIONS ARE NOT NAMED IN VEHICLE CODE SECTION 40610, REAL PARTY URGES AN INTERPRETATION OF SECTION 40303.5 THAT WOULD YIELD AN ABSURD RESULT

Real Party in Interest insists that section 40303.5 renders all "equipment violations" set forth in Divisions 13, 14.8, 16, 16.5 and 16.7 correctable. But this interpretation flies in the face of common sense.

For example, consider sections 27400 and 28150. They prohibit, respectively, the wearing of earplugs or headsets in both ears while driving, and

the possessing and use of radar jamming devices. Under Real Party's interpretation of the statute, these too are "equipment violations" set forth in section 40303.5, and a driver could "correct" such violations by appearing at the CHP office and providing demonstrating that they are no longer wearing the earplugs or headsets, or no longer possessing or using a jamming device. The CHP would then be required to "sign-off" on such violations. Likewise, section 28100 requires the driver of a pilot car to display at least one red warning flag on each side of the pilot vehicle. A driver found to be in violation of this section could subsequently "correct" the violation by taking such flags to the local CHP office, where the CHP would be required to sign-off on the violation. This is an absurd result, and would effectively strip the CHP of its ability to meaningfully enforce these laws. This interpretation should be rejected.

II.

**EVEN IF SECTION 27803 DID APPLY TO A
HELMET VIOLATION, UNDISPUTED FACTS
DEMONSTRATE THAT REAL PARTY IS
DISQUALIFIED FROM CORRECTION THE
VIOLATION**

Although briefs are outside the record, "the Court may take factual assertions contained in a party's appellate brief as admissions." (*Davenport v. Blue Cross of California* (1997) 52 Cal. App.4th 435, 444.) Such evidence can be "reliable indications of a party's position on the facts as well as the law, and

the reviewing court may make use of the statements therein as admissions against the party.” (*DeRose v. Carswell* (1987) 196 Cal.App.3d 1011, 1019, fn. 3, citing 9 Witkin, Cal.Proc.3d ed. 1985.)

Here, attached as Attachment 1 to Petitioner’s Reply Brief, is an excerpt from Real Party’s website, titled “Helmet Law Fight in California.” Among other things, Real Party sets forth a “CHRONOLOGY OF CITATIONS,” at <http://usff.com/calbolt/history.html>. (last visited December 5, 2005) which, according to Real Party, is “an overview of all the helmet tickets I have been issued since I started this campaign in 1998, listing dates, citing agencies, name(s) of officers and the outcome of each.” (Attachment 1, Bates stamped 001 - 009.) Real Party lists 32 citations between June of 1999 and August of 2004, and states that he has been stopped for such violations “well over 100” times. Real Party further indicates that “Following the asinine (and bigoted) decision by the courts, I was so pissed I rode the entire year of 2002 bare-headed.” (Attachment 1, 007, para. 3, (paren. in original.))

This evidence provides the requisite basis for disqualifying Real Party under the provisions of section 40610(2)(b) (1) “evidence of fraud or persistent neglect” and (3), “the violator does not agree to, or cannot, promptly correct the citation.”

Furthermore, even one violation meets the requirement of 40610(2)(b)(2), that “the violation presents an immediate safety hazard.” Real

Party argues that "motorcycle helmets do not cause accidents." (Opposition, p.8.) CHP does not dispute this assertion, and assuming *ad arguendo* that Real Party intends to argue that Real Party's refusal to wear a helmet does not cause accidents, this argument is not germane. The helmet's purpose is not to prevent accidents, but to prevent the serious, potentially fatal or lifelong head injuries that would occur in a motorcycle accident. Though it is impossible to predict when an accident will occur, it cannot be disputed that they occur frequently on the roads of California.

CONCLUSION

For the above reasons, CHP requests that this Court direct respondent Court to vacate its May 20, 2005 Order directing the CHP to "sign-off" on the subject helmet violations.

Dated: December 5, 2005

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

California Court of Appeal, Sixth Appellate District

Pursuant to California Rules of Court, Rules 56(b)(6) and 14(c), I certify that all text, including footnotes, in the attached **REPLY TO OPPOSITION TO PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF** spaced, uses 13 point Times New Roman font, and contains 1,046 words.

Dated: December 5, 2005

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