

Case No. H029406

Santa Cruz County Superior Court
Cases Nos. 4SM21812,
4SM028271, 4SM044470,
4WM023363, 4WM034801

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CALIFORNIA HIGHWAY PATROL,

Petitioner,

v.

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

Respondent

RICHARD J. QUIGLEY,

Real Party in Interest.

SUPERIOR COURT OF SANTA CRUZ COUNTY
HON. MICHAEL BARTON, JUDGE

**PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF
MANDATE, PROHIBITION OR OTHER APPROPRIATE RELIEF**

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Real party in interest Richard Quigley submits this memorandum of points and authorities in response to the order to show cause issued November 10, 2005. There is no basis for issuing a writ of mandate.

The trial court correctly concluded that real party was entitled to correct his violations of the motorcycle safety helmet law, and that the Highway Patrol was required to sign a Certificate of Correction when real party appeared at the Highway Patrol's Aptos office "with a helmet bearing

a certification of compliance (the symbol ‘DOT’)” [Pet., Ex. 1].

I.

**THE COURT SHOULD ISSUE A PUBLISHED OPINION
DENYING MANDATE.**

The Highway Patrol asserts that this case is about “enforceability of the helmet law across the state” [Petition, p. 8]. In Section II, below, real party shows that the trial court enforced the law in the manner the Legislature contemplated – i.e., by requiring real party to correct violations of Vehicle Code section 27803.

Nevertheless, real party agrees with the Highway Patrol that this Court should clarify the law concerning correction of helmet violations. The issue is not the safety of 24 million licensed drivers [Pet., p. 5], because motorcycle helmets do not cause accidents and therefore do not endanger all of the state’s licensed drivers, and because giving motorcyclists an opportunity to identify and replace noncompliant helmets will enhance public safety. Still, it is important that the Court speak, to establish that the state’s 7,100 Highway Patrol officers must comply with the Vehicle Code provisions allowing a motorcyclist to correct a helmet law violation.

Having issued an order to show cause, the Court must file an opinion (Sixth District Outline of Original Proceedings and Relief Ancillary to Appeal (March, 2005), p. 9). That opinion should hold that motorcycle helmet tickets are correctable equipment violations for the reasons shown in Section II, below. It should be published, because the case involves a legal issue of continuing public interest (Cal. Rules of Court, Rule 976, subd.

(c)(3)). As the petition points out [p. 8], until a court definitively resolves the correctability issue, Highway Patrol officers and motorcyclists alike will be plagued by uncertainty and uneven application of the law.

II.

BECAUSE HELMET LAW VIOLATIONS ARE EQUIPMENT VIOLATIONS SUBJECT TO VEHICLE CODE SECTION 40303.5, IT DOES NOT MATTER THAT THEY ARE NOT LISTED IN SECTION 40610.

Vehicle Code section 40610 creates a procedure for correction of certain Vehicle Code violations unless “disqualifying conditions” exist. Section 40610 applies directly to “violations of license, all-terrain vehicle safety certificate, or mechanical requirement” provisions of the Vehicle Code, as the Highway Patrol notes [Pet., p. 10]. The problem with the Highway Patrol’s analysis is that it proceeds from this accurate observation to the erroneous conclusion that, because helmet law violations do not fit into one of those categories, respondent trial court abused its discretion [*Id.*].

Vehicle Code section 40303.5 identifies various other kinds of infractions that may be corrected under section 40610. Safety helmet violations are one of these categories. Thus, section 40303.5 provides:

Whenever any person is arrested for any of the following offenses, the arresting officer shall permit the arrested person to execute a notice containing a promise to correct the violation in accordance with the provisions of Section 40610 unless the arresting officer finds that any of the disqualifying conditions specified in subdivision (b) of Section 40610 exist:

* * *

(d) *Any infraction involving equipment set forth in Division 12* (commencing with Section 24000) . . . ¹

Emphasis added.

Vehicle Code section 27803, the statute requiring motorcycle safety helmets, is part of Division 12, which deals with lights, brakes, mirrors, and similar vehicle equipment. “Equipment” means “the set of articles or physical resources serving to equip a person or thing” (The Merriam-Webster Collegiate Dictionary (10th ed.), p. 392). A helmet is an article that equips a person, and there is no Vehicle Code provision creating a more specialized definition that could apply to motorcycle helmets. Therefore, when section 40303.5 speaks of an “infraction involving equipment,” it necessarily includes infractions involving helmets.

When the language of a statute is clear, as is true of section 40303.5, there is no room to apply a different interpretation based on supposed legislative intent. In construing statutes, a court’s duty is “simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . .” (Code Civ. Proc., §1858). The actual language of the statute must control.

[I]t is the language of the statute itself that has successfully braved the legislative gauntlet. It is that language which has

¹Subdivisions (a)-(c) deal with vehicle registration, driver’s license, and bicycle equipment violations. The rest of subdivision (d) deals with equipment for: tow trucks (§29000); trucks, buses, semitrailers, and manufactured homes (§34500), agricultural vehicles (§36000), off-highway vehicles (§38000), and bicycles (§39000).

been lobbied for, lobbied against, studied, proposed, drafted, restudied, redrafted, voted on in committee, amended, reamended, analyzed, reanalyzed, voted on by two houses of the Legislature, sent to a conference committee, and, after perhaps more lobbying, debate and analysis, finally signed “into law” by the Governor.

Halbert’s Lumber, Inc. v. Lucky Stores, Inc. (1992) 6 Cal.App.4th 1233, 1238.

The Legislature could have written in section 40303.5, subdivision (d), “any infraction involving equipment set forth in Division 12, except motorcycle helmet infractions.” But it did not do so, and the Highway Patrol cannot take it upon itself to rewrite the statute. There is no basis for excluding helmet law violations from the operation of Vehicle Code section 40303.5.

III.

NO “DISQUALIFYING CONDITIONS” PRECLUDE CORRECTING REAL PARTY’S HELMET LAW VIOLATIONS.

The Highway Patrol argues that even if Vehicle Code section 40610 would otherwise require it to sign off on real party’s helmet tickets, the statute does not apply because real party falls within the statute’s “disqualifying conditions” [Pet., pp. 4, 10-11]. Under section 40610, a police officer is to issue a notice to correct “unless the officer finds any of the following: (1) Evidence of fraud or persistent neglect. (2) The violation presents an immediate safety hazard. (3) The violator does not agree to, or cannot, promptly correct the violation.”

The petition does not establish any such finding by any officer at the

time real party was cited. Nor was evidence of disqualifying conditions presented at the hearing at which the trial court found the violations were correctable [Pet., Ex. 3]. Therefore, there is no factual basis on which this Court could find that real party is disqualified from relying on section 40610.

Further, the Highway Patrol's legal arguments about disqualification are baseless. The petition claims that, because real party received several helmet tickets, he had a pattern of persistent neglect [Pet., p. 11]. But real party was wearing a helmet on several of the occasions for which he was cited, and some of the helmets had DOT stickers on them. Being arrested because a police officer does not approve of a motorcyclist's helmet does not establish neglect because, without a scientific laboratory, neither a motorcyclist nor a police officer can ascertain which helmets comply with statutory requirements. Indeed, one court held it would be "absurd" to interpret section 27803 as requiring the consumer or enforcement officer to decide if the helmet is properly fabricated (*Buhl v. Hannigan* (1993) 16 Cal.App.4th 1612, 1622).

Vehicle Code section 27802 allows the Highway Patrol to adopt specifications and standards for safety helmets and requires that helmets be conspicuously labeled in accordance with Federal Motor Vehicle Safety Standard No. 218. The Highway Patrol has adopted Standard No. 218 as the California standard for motorcycle helmets (13 Cal. Code Regs., §982). Standard No. 218 consists of ten single-spaced pages of engineering specifications (*see, Easyriders Freedom F.I.G.H.T. v. Hannigan* (9th Cir.

1996) 92 F.3d 1486, 1490).²

Because Standard No. 218 is so difficult for a lay person to apply, *Buhl* held that the law requires “only that the consumer wear a helmet bearing a certification of compliance” – i.e., the “DOT sticker” to which the trial court referred in his order in this case (16 Cal.App.4th at 1622). (A subsequent decision held that a motorcyclist violates the helmet law if he or she has actual knowledge of noncompliance (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1123). However, some of real party’s helmet law citations were for wearing helmets that had certificates of compliance but that police officers nevertheless believed did not comply with the law.³ Real party did not have any way to know they were noncompliant. A party cannot be guilty of persistent neglect of the law

²The regulation is judicially noticeable (Evid. Code, §§ 452, subd. (b), 459). A sample of its language:

Each helmet shall have a protective surface of continuous contour at all points on or above the test line described in S6.2.3. The helmet shall provide peripheral vision clearance of at least 105 [degrees] to each side of the mid-sagittal plane, when the helmet is adjusted as specified in S6.3. The vertex of these angles, shown in Figure 3, shall be at the point on the anterior surface of the reference headform at the intersection of the mid-sagittal and basic planes. The brow opening of the helmet shall be at least 1 inch (2.5 cm) above all points in the basic plane that are within the angles of peripheral vision.

³The Court requested only preliminary opposition, not a return to the writ. Should the Court require a return, real party will supply evidence of inconsistent treatment of various helmets by various law enforcement agencies.

when he does not know he is violating it. Real party may be persistent in insisting that the Highway Patrol comply with the helmet law as the Legislature wrote it, but he is not persistently neglectful.

The second disqualifying factor is that an equipment violation presents an immediate safety hazard. But motorcycle helmets do not cause accidents. If they pose a safety hazard at all, it is not immediate; the danger is only if an accident occurs (unlike a vehicle with defective brakes, for example, which poses an immediate hazard to those driving on the same road). Further, the Highway Patrol has refused to sign off on tickets even as to helmets that bear stickers saying they are certified as complying with Standard No. 218. Presumably those helmets do not pose an immediate safety hazard.

The final disqualifying condition is that the motorcyclist “does not agree to, or cannot, promptly correct the violation.” Real party has appeared and attempted to present compliant helmets, but the Highway Patrol refused to sign off on the tickets.

Therefore, there is no legal or factual basis on which one could conclude that real party was disqualified from correcting his helmet citations under Vehicle Code section 40610.

IV.

THE COURT SHOULD AWARD ATTORNEYS’ FEES TO REAL PARTY.

Code of Civil Procedure section 1021.5 allows a court to award attorneys’ fees to a successful party against an opposing party, including a

government entity, “in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery.”

Defendants as well as plaintiffs may recover private attorney general awards (*County of San Luis Obispo v. Abalone Alliance* (1986) 178 Cal.App.3d 848, 869). A decision refuting the Highway Patrol’s contention that motorcycle helmet tickets are not correctable under Vehicle Code section 40303.5 would confer a substantial benefit on everyone who rides a motorcycle and is cited for wearing a supposedly improper helmet. The financial burden of establishing this principle should not fall on one motorcyclist alone.

CONCLUSION

The Legislature clearly provided for the public to have the right to correct motorcycle helmet citations. Directing the Highway Patrol to comply with the law by allowing motorcyclists to correct helmet law violations will serve the public by encouraging motorcyclists to wear helmets they believe are appropriate while allowing them to bring their equipment into compliance if they are properly apprised of the need to do so.

The Court should deny the writ petition by a published opinion explaining that, under Vehicle Code section 40303.5, a motorcycle helmet ticket is correctable. The Court should award real party Quigley his costs and attorneys' fees.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Rules 14 and 56, California Rules of Court

The text of this opposition consists of 2,104 words as counted by the Corel WordPerfect version 10 word processing program used to generate this brief.

Dated: _____

Appellate Counsel