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

BEFORE THE HONORABLE ROBERT B. ATACK

FILED
FEB 16 2007

RICHARD QUIGLEY, et al.,)
Plaintiffs,)
vs.)
CALIFORNIA HIGHWAY PATROL,)
Defendant.)

ALEX CALVO CLERK,
BY: COREE MASTERS
DEPUTY, SANTA CRUZ COUNTY
Case No. CV155682

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SANTA CRUZ, CALIFORNIA
FEBRUARY 13, 2007
DEPARTMENT 9

APPEARANCES:

For the Plaintiffs: WENDY LASCHER
Attorney at Law
For the Defendant: LILLIAN TABE
Attorney at Law

Official Court Reporter
DENISE S. GALLAGHER, RPR, CSR #9444

1 February 13, 2007

Santa Cruz, California

2 P R O C E E D I N G S

3 THE COURT: Quigley versus California

00:00:08 4 Highway Patrol. Appearances, please.

00:00:08 5 MS. LASCHER: Good morning, Your Honor.

00:00:09 6 Wendy Lascher for the plaintiffs.

00:00:12 7 MS. TABE: Good morning, Your Honor.

00:00:16 8 Lillian Tabe from the Department of Justice on behalf

00:00:17 9 of California Highway Patrol, Commissioner Brown and

00:00:22 10 Commander Manriquez.

00:00:22 11 THE COURT: All right. This is a -- Mr.

00:00:24 12 Quigley is present as well. This matter is on for

00:00:27 13 demurrer today. The Court, in reviewing the

00:00:30 14 Complaint, for purposes of that only, feels that there

00:00:34 15 is a sufficient -- sufficient facts stated for both

00:00:39 16 the declaratory and injunctive relief sought at this

00:00:45 17 stage, and its tentative ruling is to overrule the

00:00:50 18 demurrer that was brought by the defendant at this

00:00:55 19 stage.

00:00:58 20 The Complaint alleges that the CHP

00:01:01 21 frequently arrests people whose helmets meet the

00:01:06 22 standards as set forth in Vehicle Code Section 27802

00:01:11 23 and 803. It states a cause of action for injunctive

00:01:18 24 relief to prohibit the California Highway Patrol from

00:01:22 25 citing someone for a violation of these sections,

00:01:26 26 specifically 27803, where a person is wearing a helmet

00:01:32 1 and the helmet bears a certificate of compliance,
00:01:37 2 which is the DOT designation. So I think that for
00:01:45 3 purposes, and since the Complaint alleges that people
00:01:51 4 are wearing helmets, not baseball caps but helmets,
00:01:55 5 that the demurrer should be overruled.

00:02:00 6 Further argument?

00:02:01 7 MS. TABE: Yes, Your Honor. Thank you.
00:02:03 8 What we argue is that they failed to state a claim
00:02:08 9 that the helmet law has been applied
00:02:12 10 unconstitutionally, and I say as applied. That's what
00:02:16 11 they're alleging. However, they failed to state that
00:02:17 12 in their Complaint, and thus we presented in our
00:02:19 13 argument that because of that it's actually a facial
00:02:21 14 attack.

00:02:23 15 They failed to put forth an as-applied
00:02:27 16 challenge because it lacks any specific facts. They
00:02:30 17 state that -- they allude to that the CHP has stopped
00:02:35 18 motorcyclists with helmets supposedly with a DOT
00:02:41 19 label. However, there's no specific facts to those
00:02:43 20 incidents.

00:02:43 21 THE COURT: Well, he alleges nine times he
00:02:47 22 has been stopped when he was allegedly wearing a
00:02:50 23 helmet with this designation. That's what I read.

00:02:55 24 MS. TABE: Respectfully, Your Honor,
00:02:56 25 though, there's no specific facts to those nine times.
00:02:59 26 There's no way for the Court to assess whether or not

00:03:03 1 the motorcyclist's constitutional rights have been
00:03:07 2 violated because we don't have any specific facts of
00:03:09 3 how the stops occurred.

00:03:10 4 THE COURT: He stated that he was wearing
00:03:12 5 a helmet, that it was designated with DOT. Isn't that
00:03:15 6 sufficient for purposes of a demurrer?

00:03:22 7 MS. TABE: Based on that, though, Your
00:03:24 8 Honor, they're putting forth a facial attack. And the
00:03:26 9 Courts have already decided that you can stop a
00:03:31 10 motorcyclist based on appearance and you can stop them
00:03:33 11 if they're wearing a helmet with a DOT label. The
00:03:39 12 Courts have recognized that an officer may stop to
00:03:42 13 conduct further investigation.

00:03:46 14 Along those lines, the officer can assess
00:03:49 15 whether or not the DOT label has been falsely applied,
00:03:53 16 whether it was actually applied by the manufacturer at
00:03:56 17 the time of sale, whether or not the helmet that has a
00:03:59 18 DOT label has since been damaged and is no longer in
00:04:04 19 compliance as the manufacturer had certified at the
00:04:08 20 time of sale.

00:04:10 21 THE COURT: But it's also alleged that he
00:04:12 22 was arrested, doesn't it? It's not just stopping
00:04:17 23 we're talking about. We're talking about stopping
00:04:21 24 someone who allegedly is wearing a helmet that has the
00:04:26 25 designation that is required under the statute and
00:04:30 26 arresting them, not merely just stopping them. So

00:04:33 1 that's why I think that the demurrer should be
00:04:38 2 overruled.

00:04:39 3 MS. TABE: Your Honor, with respect to
00:04:41 4 arresting them, issuing a citation for a violation for
00:04:45 5 the helmet law, in order to cite someone for a
00:04:50 6 violation the Courts have decided that they can base
00:04:52 7 it on appearance as long as they have probable cause
00:04:56 8 that there has been a violation. And the Courts have
00:05:01 9 already decided that this would be satisfied if there
00:05:07 10 is no DOT label on the helmet or, if it does have a
00:05:12 11 DOT label, that -- if it does have a DOT label and it
00:05:19 12 does not comply, then they look to whether or not the
00:05:23 13 motorcyclist had knowledge of that noncompliance.

00:05:25 14 THE COURT: Right.

00:05:27 15 MS. TABE: And there's no specific facts
00:05:29 16 in the Complaint alleging that. There's nothing
00:05:33 17 speaking to the knowledge. There's nothing speaking
00:05:35 18 to --

00:05:36 19 THE COURT: I don't think he has to at
00:05:38 20 this stage. That's what I'm trying to say.

00:05:43 21 Counsel for the moving party.

00:05:46 22 MS. LASCHER: I agree with everything I've
00:05:47 23 heard the Court say this morning, Your Honor. I will
00:05:49 24 point out for the sake of defendant's counsel that not
00:05:55 25 only does the Complaint allege nine instances, it
00:05:58 26 incorporates by reference Judge Barton's order so that

00:06:02 1 if there were any lack of detail as to those nine
00:06:05 2 incidents, those specific dates and case numbers and
00:06:09 3 the citations are listed in Judge Barton's order.

00:06:12 4 THE COURT: Whatever happened to that?
00:06:13 5 Was it taken up by anybody or has it just been left,
00:06:15 6 Judge Barton's ruling?

00:06:16 7 MS. TABE: Well, Your Honor, Department of
00:06:20 8 Justice has filed a writ petition regarding that.

00:06:23 9 THE COURT: What's the status is what I
00:06:25 10 was asking?

00:06:25 11 MS. TABE: The status is we're still
00:06:27 12 waiting for oral arguments on that.

00:06:30 13 MS. LASCHER: In fact, Your Honor, our
00:06:31 14 return to the writ will be filed today. The Court
00:06:35 15 issued an order to show cause about a month ago.
00:06:38 16 We're filing a return today.

00:06:40 17 THE COURT: All right. I was just
00:06:42 18 curious.

00:06:42 19 MS. TABE: Your Honor, with respect to the
00:06:44 20 Complaint and the request for an injunction, the
00:06:48 21 Complaint also fails to meet the standard of stating
00:06:51 22 facts showing a pervasive pattern of arbitrary law
00:06:56 23 enforcement.

00:06:56 24 THE COURT: How many more than nine do you
00:06:59 25 need?

00:07:00 26 MS. TABE: But there -- Your Honor, the

00:07:03 1 Courts have also --

00:07:04 2 THE COURT: I have to accept the facts as
00:07:05 3 alleged in a Complaint as being true for purposes of
00:07:08 4 this hearing today, and that's the problem I'm having.

00:07:13 5 MS. TABE: I understand, Your Honor. But
00:07:15 6 aside from a number of incidents, they're alleging
00:07:22 7 that it was arbitrary law enforcement, and it was not
00:07:25 8 arbitrary based on the fact that they're using a DOT
00:07:29 9 label as a standard --

00:07:30 10 THE COURT: This is all -- you're going
00:07:32 11 into facts. All I'm looking at is the pleadings at
00:07:35 12 this point. That's the problem. Looking at the
00:07:40 13 pleadings, I think that the plaintiff has set forth --
00:07:46 14 or plaintiffs in this case -- sufficient facts to
00:07:54 15 overcome your demurrer. That's all I'm saying at this
00:07:57 16 stage. Anything further?

00:08:07 17 MS. TABE: Your Honor, looking to the
00:08:09 18 Complaint then, they do allege that their injunction
00:08:17 19 is based on that the CHP lacks a standard by which to
00:08:22 20 assess or determine compliance or noncompliance.

00:08:25 21 THE COURT: I read that.

00:08:26 22 MS. TABE: They attach to that the Federal
00:08:28 23 standard to their Complaint. In there, in itself, on
00:08:32 24 that which is included as the Complaint is the
00:08:34 25 standard. For that basis, their claim fails.

00:08:41 26 THE COURT: Doesn't the statute also say

00:08:44 1 or any other basis which California is to deal with
00:08:52 2 but doesn't list what those requirements are? It
00:08:56 3 states the Federal standard and then it goes on
00:08:59 4 further, doesn't it? I read this a couple days ago
00:09:02 5 and I could be wrong, but I thought that's what it
00:09:05 6 said.

00:09:05 7 MS. LASCHER: May I address that, Your
00:09:06 8 Honor?

00:09:06 9 THE COURT: Please.

00:09:07 10 MS. LASCHER: The problem with the
00:09:09 11 California statute is that it incorporates -- the
00:09:11 12 California statute incorporates the Federal standard.
00:09:14 13 Our injunction and our declaratory relief claim are
00:09:17 14 challenging the manner in which the Highway Patrol
00:09:20 15 has chosen to enforce that statute, which is to train
00:09:24 16 its officers that there are approved helmets when
00:09:26 17 there is no such thing as an approved helmet, which
00:09:30 18 violates Buhl which says as long as it has a
00:09:33 19 manufacturer-applied DOT symbol it does comply, and
00:09:38 20 it allows -- and the Highway Patrol is yet letting
00:09:43 21 officers' subjective beliefs lead to citations rather
00:09:47 22 than any kind of objective standard. The problem is
00:09:50 23 not --

00:09:50 24 THE COURT: Well, I think there are
00:09:51 25 objective standards, but we don't have to get into
00:09:53 26 that today. That's not the issue.

00:09:58 1 MS. LASCHER: May I also point out one
00:10:00 2 other thing, Your Honor? And that's that the
00:10:02 3 challenge that's the subject of the writ petition in
00:10:07 4 Judge Barton's order that citations for violations of
00:10:09 5 27803 are correctable, there has been no appeal of his
00:10:15 6 void for vagueness finding, per se.

00:10:19 7 THE COURT: Anyhow, anything further? The
00:10:21 8 Court adopts its tentative ruling, overrules the
00:10:24 9 demurrer. And if counsel will prepare an order to
00:10:29 10 that effect pursuant to the Rules of Court --

00:10:31 11 MS. LASCHER: I will, Your Honor.

00:10:32 12 THE COURT: -- if you can find them under
00:10:35 13 the new numbering.

00:10:35 14 MS. LASCHER: I use a conversion table,
00:10:37 15 Your Honor. Thank you.

00:10:37 16 THE COURT: Right. That's in the code.

00:10:41 17 MR. QUIGLEY: Thank you, Your Honor.

00:10:43 18 MS. TABE: Thank you, Your Honor.

00:10:43 19 THE COURT: All right.

20 (Whereupon the proceedings were concluded.)

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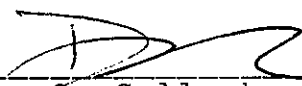
1 STATE OF CALIFORNIA)
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 2 COUNTY OF SANTA CRUZ)

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I, DENISE S. GALLAGHER, Certified Shorthand Reporter, do hereby certify:

That I am the Reporter, duly appointed and sworn, who reported the above and foregoing proceedings at the time and place therein stated;

That I reported the said proceedings; and that the foregoing pages are a full, true, complete and correct transcript of my shorthand notes taken at said time and place to the best of my ability.



 Denise S. Gallagher, RPR, CSR #9444
 Official Court Reporter