SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

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| PEOPLE OF THE STATE OF CALIFORNIA, | CASE NOS. 00284402<br>00089830<br>00127880<br>00110366<br>00173447<br>90332665 |
| Plaintiff, | |
| vs. | |
| RICHARD QUIGLEY, | SUPPLEMENTAL WRITTEN OPINION |
| Defendant. | |

_____/

The Court now files this supplemental written opinion to augment the record in support of its announced decision.

The Court finds Defendant QUIGLEY guilty beyond a reasonable doubt based on the testimony heard, evidence submitted and the controlling legal authorities.

Defendant QUIGLEY has raised a number of legal arguments which the Court considers motions to dismiss, or in the alternative to allow corrective action on the citations given.

(1) Are the citations correctable?

The Court finds the citations are not correctable. Defendant contends that because of its location within Division 12 (commencing with Section 24000 of the Vehicle Code, a violation of Section 27803(b) constitutes an infraction involving equipment; and that under the "plain language" of CVC Section 40303.5(d), this constitutes a correctable equipment violation, for which he should have been issued a notice to correct violation (or "fix it ticket").

Section 40303.5 provides that a fix it ticket shall be issued "unless the arresting officer finds

that any of the disqualifying conditions specified in subdivision (b) of section 40610 exist. These disqualifying conditions include "(2) The violation presents an immediate safety hazard"; and "(3) The violator does not agree to or cannot promptly correct the violation." As both of these disqualifying conditions were present here, the provisions of Section 40303.5 requiring the issuance of a fix it ticket are inapplicable.

(2) Is the statute constitutional?

Defendant challenges the constitutionality of this statute "as applied" and as written. The Court concludes the statue is constitutional as applied and as written. This conclusion is based on *Buhl v. Hannigan* (1998) 16 Cal. App. 4th 1612; *Bianco v. California Highway Patrol* (1994) 24 Cal. App. 4th 1113 and *Easyriders v. Hannigan*, 9th Circuit Court of Appeal (1996) 92 F.3d 1486.

Defendant's argument that the statute is unconstitutional is based on his position that it is impermissibly vague. Thus, defendant's challenge appears in actuality to be a challenge to the language used in the statute, i.e. a challenge to the statute as written. This Court's decision is based on precedent from higher courts. The *Buhl* case specifically held that the statute was not impermissibly vague, holding that standards of the type used in this statute are not impermissibly vague, provided that their meaning "can be objectively ascertained by reference to common experiences of mankind."

Defendant is arguing that the statute is vague as to what constitutes a helmet. Specifically the defendant argues that whether a baseball cap does or does not constitute a helmet is something that can not be objectively ascertained "by reference to common experiences of mankind." The testimony of the officers was clear and consistent that a baseball cap did not constitute a helmet.

*Buhl* held that consumers and law enforcement officers are not required to determine whether a helmet complies with federal safety standards; rather, the law only requires that the motorcyclist wear a helmet bearing a certification of compliance with the standards. Under *Buhl*, the Court is expressly allowed to rely on common objective experiences to determine what constitutes a helmet. Presumably the arresting officer is also entitled to do so. The testimony of the officers was clear that a baseball cap did not constitute a helmet under any standard of objective experience.

In *Bianco v. California Highway Patrol* (1994 Cal. App. 4th 1113, the Court modified this

ruling somewhat, stating "[W]e conclude that the statement in *Buhl* that consumer compliance with the state law only requires the consumer to wear a helmet bearing the DOT self certification sticker does not apply when a helmet has been shown not to conform with the federal standards, and the consumer has actual knowledge of that fact."

Defendant relies on language from *Buhl*, that "the proposition that the statute would require the consumer or enforcement officer to determine if a helmet is properly fabricated ... is absurd," to argue that no evidence as to the fabrication of his "helmet"/baseball cap should have been admissible, and that he could not be required to determine if his baseball cap met the applicable standards. Despite defendant's creative arguments, the Court relies on common sense, as authorized in *Buhl*, in inferring that both defendant and the arresting officer were aware that his baseball cap was not a "helmet," that defendant had actual knowledge that despite the DOT symbol (if present), his cap did not meet compliance with federal safety standards, and that therefore defendant did not meet the requirements set forth the consumer under either *Buhl* or *Bianco*.

*Easyriders v. Hannigan*, 9th Circuit Court of Appeal (1996) 92 F.3d 1486, addressed the issues of probable cause to believe that a motorcycle has actual knowledge that his helmet does not meet federal standards. The Court states that an officer may have a "reasonable suspicion, based on reasonable inferences drawn from the helmet's appearance" that the motorcyclist was violating the law. These "reasonable inferences, drawn from the helmet's appearance" would also support a finding that the defendant himself was aware that his cap was not a helmet. *Easyriders* goes on to suggest that an officer who discovers that a helmet does not comply with the DOT standards, could give a written warning to the motorcyclist, which would provide probable cause to believe actual knowledge of noncompliance if the motorcyclist was stopped again.

Here, defendant was cited six times for wearing his baseball cap. Even if defendant's argument were to be accepted, certainly the second, third, forth, fifth and sixth citations are supported by actual knowledge of noncompliance. Defendant has also had prior citations, (the Court takes judicial notice of docket numbers *90207037, 90242520 and 90319433* which supports a finding of actual knowledge on the first citation as well, in addition to the "reasonable inferences to be drawn" from the appearance of the "helmet" itself.

**Exhibit H - 3 of 6**

For these reasons the Court denies any and all motions to dismiss and finds the the defendant guilty beyond a reasonable doubt of the above noted citations

DATED: 10-25-01

ARTHUR DANNER III
Judge of the Superior Court

**Exhibit H - 4 of 6**

This is a copy of the text of Danner's *sagacious* opinion (for easier reading):

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