

1
COPY
FILED

2 SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 FOR THE COUNTY OF SANTA CRUZ
4 BEFORE THE HONORABLE MICHAEL E. BARTON, JUDGE
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DEC 14 2004
BARBARA J. FOX, CLERK
BY
DEPUTY, SANTA CRUZ COUNTY
LISA MEYER

THE PEOPLE OF THE)
STATE OF CALIFORNIA,)
)
Plaintiff,)
)
vs.)
)
RICHARD JAMES QUIGLEY,)
)
Defendant.)

Case No. 3WM018538,
4SM011246, 4SM021812
4SM023894, 4SM028271
4SM044470, 4WM021512
4WM023363, 4WM034801

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Cruz, California
Friday, November 19, 2004
Department 2

APPEARANCES

For the People:

GRETCHEN BROCK
Assistant District Attorney

For the Defendant:

RICHARD QUIGLEY
In Propria Persona

Official Court Reporter
TANIS J. O'CONNOR, CSR 7553

1 SANTA CRUZ, CA P R O C E E D I N G S NOVEMBER 19, 2004

2 --o0o--

3 THE COURT: All right. So let's go on the
4 record, then, on the Quigley matters. Mr. Quigley is
5 present. Ms. Brock is present.

6 I'm having the reporter take this down, because
7 I'm assuming that, no matter what, somebody is going to
8 take it somewhere, and it's easier than dealing with the
9 tape recordings. I realize that they've been working well,
10 and we may be, believe it or not, going back to those in
11 misdemeanor land.

12 All right. After reading and rereading all of
13 the information that was presented, first, that 27802 and
14 27803 were enacted with the goal of preventing injuries to
15 motorcyclists and passengers; such is the legislative
16 intent, and Buhl, at page 1619.

17 Second, that 27803 requires wearing a safety
18 helmet. Cyclists and passengers must wear a helmet meeting
19 requirements of 27802, which also then incorporates FMVSS
20 218.

21 That's "Federal Motor Vehicle Safety Standards,"
22 and I did that for the reporter.

23 Third, the requirement to decide fabrication is
24 not necessary and is absurd - again, quoting Buhl, at page
25 1622 - and there needs to be a helmet with certification of
26 compliance with Department of Transportation.

1 DOT - D-O-T - presents a rebuttable presumption,
2 which is discussed in Bianco, at page 1119.

3 The terms of legislative statutes may be
4 reasonably certain by reference to other definable sources,
5 which is MacMillen, at page 673 - and it's spelled
6 M-a-c-M-i-l-l-e-n - also quoting Buhl.

7 Sixth, standards of this kind are not
8 impermissibly vague and provide their -- provided their
9 meaning can be objectively ascertained by reference to
10 common experiences of mankind. Again, MacMillen, at 673,
11 and Buhl at 1623.

12 Seven, the DOT presumption can be rebutted if it
13 does not conform to the federal standards. It's a
14 self-certification, but it can be rebutted. Again, Bianco,
15 at 1123.

16 Reading 27803 and 27802, plus FMVSS 218, with the
17 common experiences of mankind, as related to in Buhl,
18 plaintiff -- People's 5 does not conform as a helmet, as
19 demonstrated with the evidence, in that it will not
20 withstand a strike, nor will it perform as discussed in
21 FMVSS 218.

22 Harmonizing 27802 and 27803 and FMVSS 218 and the
23 legislative intent, and that is, it is an additional safety
24 benefit - again, quoting Buhl - to motorcyclists and
25 passengers, a helmet used in this context must be a safety
26 benefit, something more than a deflector of rain and sun.

1 Notwithstanding the discussion of Defendant's K,
2 which is, I believe, the pilot's helmet that Mr. Quigley
3 produced as a -- an example, off the Internet, a
4 reasonable, definable source - again, Webster's, Black's -
5 common experience would lead a person to expect and have a
6 helmet having a hard shell or a surface to protect.
7 Otherwise, the discussion of anvils, strikers, and
8 penetration -- depth of penetration in FMVSS 218 is of no
9 value if the intent is to protect from other than a form of
10 impact.

11 It is then the Court's judgment that there is, as
12 indicated, a rebuttable presumption, and that, Mr. Quigley,
13 you're now on notice that that presumption has been
14 rebutted by reasonable common definitions, and that the
15 statute requires more than a soft covering for your head
16 and more than a Dixie cup with string and a DOT sticker.

17 My concern is that, with that notice and reading
18 Bianco and reading Buhl, that what I will indicate -- and I
19 need clarification from either of you -- or, Mr. Quigley,
20 I'll take it from you: There's the one ticket that you
21 indicated you had no headgear at all that you pled to.

22 MR. QUIGLEY: I had -- I entered no contest to
23 that one in June. I believe it was the 11th -- either 6th
24 or the 11th, in Watsonville.

25 THE COURT: All right. So, obviously, that one
26 you've admitted.

1 The others, what I'm finding is that, in relation
2 to the statute, that your helmet does not comply and that
3 you are now on notice that that helmet, nor any other soft
4 item as a covering, complies, but I will find, then, that
5 it is at this point, in relation to Bianco and in relation
6 to that rebuttal presumption, that they are then, the
7 remainders, as fix-it tickets.

8 In that the presumption has now been rebutted,
9 you are on notice, and you now have to comply with 27802
10 and 27803 in a manner other than wearing a soft covering.

11 In relation to the one ticket that you pled no
12 contest to, with no helmet -- no head covering, I -- and I
13 want to make it clear on that.

14 It's \$161 fine?

15 THE CLERK: Should be right in there, Your
16 Honor.

17 (The Court and the clerk confer momentarily.)

18 THE COURT: Well, I guess it's two questions:
19 Because you pled no contest to both of those charges in
20 that case --

21 MR. QUIGLEY: No, I pled no contest to --

22 THE COURT: The turn signals.

23 MR. QUIGLEY: -- the turn signals. That's
24 correct, Your Honor.

25 THE COURT: And have you corrected that?

26 MR. QUIGLEY: Your Honor, I've been -- I've been

1 working, since I got the first ticket on July 24th, 2003,
2 to take care of that, and I have been absolutely swamped
3 with distractions and the shutdown of my business in
4 Watsonville ever since. So I haven't had the money, but,
5 yes, I'm working on that and fully intend to take care of
6 it. It's not something I'm ignoring. It's something I'm
7 trying to fix.

8 THE COURT: I'm just -- because it makes a
9 difference in the fine amount. If it's corrected, it's a
10 lesser fine than if it isn't. You understand that? So all
11 I'm asking --

12 MR. QUIGLEY: I think I understand a couple
13 things that you don't, Your Honor.

14 THE COURT: Okay.

15 MR. QUIGLEY: One of them is that unless you know
16 a buyer for it, I'm going to have to go find a buyer for my
17 bike, 'cause I can't ride my motorcycle anymore, at least
18 in Santa Cruz. I can't climb over a common objective
19 experience standard. I cannot do that, and they will
20 charge it as a misdemeanor and I'm done. I -- I would hope
21 that the Court will give me some sort of paperwork to get
22 me home, but I'm done riding until this case is settled.

23 I would hesitate to point out, Your Honor, that
24 we didn't talk about 40303.5 relative to the no-helmet
25 ticket. I have not had an opportunity to face those
26 arguments, or argue that position at all, relative to the

1 no -- the not guilty plea on that one ticket.

2 THE COURT: You mean the --

3 MR. QUIGLEY: It was my understanding that
4 sentencing was going to be separate as to one or all of
5 them.

6 THE COURT: I'll do that.

7 MR. QUIGLEY: Well, I think I'm entitled to that,
8 just as a matter of -- as a matter of law. The 403 --
9 40303.5 has enough shells in it that it's pretty much
10 unavoidable.

11 I -- you're not through ruling. I've got a
12 couple of things I'd like to ask you when you're done.

13 MS. BROCK: Your Honor, Judge Danner, in a
14 previous appeal, ruled that it is not a fix-it ticket,
15 failure to wear a helmet, because it's an equipment
16 violation that you cannot go back and fix at a later date
17 in time. He cannot go back to May 30th and wear a helmet
18 and then be absolved of the charges.

19 THE COURT: I understand that, but what I'm
20 indicating, at least in my reading of Bianco, especially in
21 discussion of Bianco where it is, or was, event specific to
22 an item, that the presumption -- the rebuttable presumption
23 had been rebutted, that then the issue is notice to Mr.
24 Quigley.

25 MS. BROCK: Well, he was put on notice when he
26 was convicted by Judge Danner.

1 MR. QUIGLEY: With great respect, Your Honor, no
2 more notice than I received here today. I don't mean to
3 sound rude, and I'm certainly not challenging the Court in
4 its greater scheme, but I do not believe that this Court --
5 I do not believe that this Court can make a determination
6 of noncompliance, in any provision I know of law, on any --
7 any piece of equipment with federal standards. That is a
8 function reserved for the federal courts, and I'm at a loss
9 to understand how I failed to convey that.

10 But back to the correctability --

11 THE COURT: Right.

12 MR. QUIGLEY: -- I will rely, Your Honor, on the
13 statutes and the language of the statutes.

14 Judge Danner, unfortunately, did not rely on the
15 statutes or the language of the statutes, and if I'm given
16 an opportunity to discuss that, I'll be more than happy to
17 walk through it.

18 I have already -- in the documents in front of
19 you, you already have a nod from the chief justice of the
20 Supreme Court of this state, who was then associate
21 justice. You already have a nod from the attorney general
22 of this state, who was at the time a senator of this state,
23 that 40303.5 does in fact make helmet tickets correctable
24 offenses.

25 THE COURT: And I haven't said it wasn't.

26 MR. QUIGLEY: Okay. I'm --

1 THE COURT: I mean, that was the first thing I
2 said.

3 MR. QUIGLEY: Well, relative to the tickets that
4 I -- that I've been --

5 THE COURT: That --

6 MR. QUIGLEY: The ones I received a notice on,
7 I'm assuming that I'm being found not guilty of those
8 'cause I didn't have notice there was anything wrong with
9 my headgear.

10 Am I misreading your decision?

11 THE COURT: Somewhat.

12 MR. QUIGLEY: Well, okay. Could I ask you, Your
13 Honor, to cut to the chase?

14 THE COURT: And that's what I'm doing.

15 MR. QUIGLEY: Okay.

16 THE COURT: Because you said there was nothing
17 wrong with your headgear, and what I'm saying is that,
18 based upon everything that's presented to me, I'm finding
19 it doesn't comply with 27802 and 27803.

20 MR. QUIGLEY: But that is because you found it
21 doesn't comply with 218.

22 THE COURT: And that it doesn't comply with 218,
23 based upon what I've indicated.

24 Now, what I've also said, in relation to those,
25 is that I'm finding that they're fixable.

26 MR. QUIGLEY: Yes, Your Honor. Understood.

1 THE COURT: The only issue was -- then, was the
2 one where you had no helmet -- had no headgear, so I don't
3 confuse those terms --

4 MR. QUIGLEY: Yes.

5 THE COURT: -- you had no headgear and you pled
6 no contest to, that I'm --

7 MR. QUIGLEY: Yes, Your Honor.

8 THE COURT: -- finding, because of the -- because
9 you know what the statute is, and that is that you have to
10 have a helmet, that that isn't, in and of itself, fixable.
11 That's why I went to that one case number.

12 MR. QUIGLEY: Okay. To argue the sentencing
13 portion of that ruling, I would argue, Your Honor, that I
14 had no more idea how to comply with the helmet law when I
15 was riding bareheaded than when I was wearing the headgear
16 that you just made a determination of noncompliance on.

17 My question has been and remains the same, and
18 absent an answer to that question, I leave here absolutely
19 open prey to anybody, for any reason, that wants to put
20 their common sense against mine, which is pretty easy to
21 do, 'cause I think I've demonstrated in a period of 13
22 years and six months that I have an absence of common
23 sense. Just don't have any.

24 So given that, I don't know who would sign off
25 the other tickets, Your Honor. I would ask you to, but I
26 would -- I would venture to say that you didn't spend your

1 entire life accumulating what you've accumulated to put it
2 on the line to sign off -- I mean to certify what the
3 government has so carefully avoided certifying. So I don't
4 know who would sign those off.

5 THE COURT: Well, and that may be the next issue
6 that we're going to deal with, and that's why I'm sort of
7 framing it as is, but, at least in my view of the entirety
8 of this, even at this point assuming that People's 5 was a
9 helmet, because that was your argument, that the item that
10 was marked 5 was a helmet, you knew how to comply, because
11 you could wear that helmet, which then would put you in a
12 rebuttable presumption.

13 MR. QUIGLEY: Understood.

14 THE COURT: So that's why I'm saying that you had
15 at least information and knowledge, in relation to your
16 bareheaded riding, to try to comply.

17 MR. QUIGLEY: Okay. I don't --

18 THE COURT: That's why I'm saying --

19 MR. QUIGLEY: I don't think I understand, but
20 that's why God made time. I'll have time to work that out.

21 THE COURT: That's why I'm saying it wasn't --
22 that one isn't a fixable ticket, in that you had knowledge
23 of how, at least in -- even in your frame of reference, how
24 to comply with 27802 and 27803. You could have worn that
25 helmet with the "DOT" on the back.

26 MR. QUIGLEY: But, you see, except for the

1 arrest, there was little difference in how they responded,
2 is my point.

3 THE COURT: I understand.

4 MR. QUIGLEY: If they respond with a citation for
5 wearing a helmet, respond with a citation for not wearing a
6 helmet, then, you know, I'm -- it's six of one and half a
7 dozen of the other.

8 I did that to make a point.

9 THE COURT: I understand.

10 MR. QUIGLEY: And the point is that it is a
11 correctable violation, and it would be pretty much like,
12 did I know my taillight was burnt out on my way to fix it?
13 And, sure, I knew it was burnt out on my way to fix it, but
14 there's no harm to my fellow roadway users, and as long as
15 there's no harm to my fellow roadway users, I'm out
16 searching for that DOT-approved helmet, and I will probably
17 spend the rest of my whole life looking for that
18 DOT-approved helmet.

19 Now, I've been told that it's in the chicken feed
20 file in the elephant's graveyard, but that just complicates
21 it more.

22 THE COURT: When do you want to deal with
23 sentencing, then, in relation to that one?

24 MS. BROCK: Your Honor, what about the May 30th
25 incident, where the officers testified he did not have a
26 helmet on? The Memorial Day incident.

1 THE COURT: I think it was the 31st.

2 MS. BROCK: The 31st.

3 THE COURT: I'll get to it in a minute.

4 So in relation to the bareheaded ride, so that we
5 can segregate them, when do you want to deal with
6 sentencing on that?

7 MR. QUIGLEY: Your pick, Your Honor.

8 THE COURT: When do you think you can fix your
9 turn signals? I mean, I realize you've said it's been a
10 while.

11 MR. QUIGLEY: You know, I'm trying to get it done
12 by -- actually, at this point there's no need, except for
13 getting that ticket signed off. I'm serious. I'm parking
14 my dream machine, Judge. I don't see how I could possibly
15 leave the house facing jail time over a subjective opinion
16 of what my helmet is. That was the reason for that federal
17 injunction. That's the reason that I'll be going back to
18 the federal court to seek relief. I've got no choice in
19 that.

20 So, you know, as soon as I can, which has been my
21 mission from day one.

22 I also would hesitate to point out, Judge, that
23 my other motorcycle doesn't have any.

24 THE COURT: No turn signals?

25 MR. QUIGLEY: That's correct.

26 THE COURT: Okay. What year is -- what's the

1 vintage of that motorcycle?

2 MR. QUIGLEY: '72.

3 THE COURT: Okay.

4 MR. QUIGLEY: So it wasn't required till '74.

5 THE COURT: Okay.

6 MR. QUIGLEY: My point being that it's not one of
7 those things that's a necessity for safety, or they'd be
8 making me put it on my '72, and I use my hand signals when
9 I turn and in all other ways, you know, try to let
10 everybody know what it is that I'm going to do, so that,
11 unless they're really dedicated to do that, they're not
12 going to kill me. So I'm not an idiot, and if I thought
13 turn signals would in any way become a factor on whether or
14 not I was going to make it home, I would have already, you
15 know, stolen some off of a truck, or something, and slapped
16 them on there and have them hanging off everywhere, but I'm
17 trying to get something that will look decent with a
18 motorcycle.

19 Can you give me till the end of the year to have
20 somebody -- I guess somebody will have to come up to the
21 property and look at it, 'cause I'm not going to be able to
22 bring it down here.

23 THE COURT: All right. How about the 27th of
24 December?

25 MR. QUIGLEY: Sure. I'll be 61 and two days that
26 day, Your Honor. Let's do it.

1 THE COURT: Now, what I'm doing, then, is,
2 notwithstanding the prior ticket, my narrow reading of Buhl
3 and, specifically, of Bianco, is that in relation to these
4 tickets, I'm finding them correctable to the extent that
5 Mr. Quigley is now on notice that that helmet -- or that
6 headgear does not qualify, and he will not ride without a
7 hard-shell, qualifying helmet.

8 In relation to the other judgment of Judge
9 Danner, I'll certify that at this point, because it's gone
10 through appeal and we're at it. So that's where we're at.

11 MS. BROCK: And can those convictions from Judge
12 Danner's case be certified to DMV?

13 THE COURT: I guess we'll do that.

14 MS. BROCK: Thank you.

15 MR. QUIGLEY: What would be the point in
16 certifying tickets to the DMV?

17 THE COURT: Don't know. That's between, I guess,
18 DMV and the court, and I'll figure out what I'm going to do
19 with that before --

20 MR. QUIGLEY: Well, what does --

21 THE COURT: Hang on.

22 MR. QUIGLEY: What does it mean, Judge?

23 THE COURT: Well, wait. Hang on. I'll find out
24 exactly what the import and the meaning of that is, and
25 before I certify them, we'll deal with it on the 27th,
26 'cause I'm not sure exactly the meaning, so I'll wait till

1 the 27th, but that's my intent.

2 All right. So we're in recess on this matter.

3 MR. QUIGLEY: I'm sorry, Judge?

4 THE COURT: So before they get certified, I'll
5 listen to you, but I also will give you the information of
6 what it means on the 27th.

7 MR. QUIGLEY: Oh, okay.

8 THE COURT: So we're in recess now.

9 (Momentary discussion off the record.)

10 THE COURT: Okay. We're going back to Quigley
11 again.

12 MR. QUIGLEY: You said you were going to deal
13 with that May 31 --

14 THE COURT: I'll find, based upon the testimony,
15 that you had People's 5, or an equivalent of People's 5,
16 and I'll lump it in with the others, which is fixable.

17 MR. QUIGLEY: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 MR. QUIGLEY: And who's going to sign these off?

20 THE COURT: We'll deal with that by the 27th too,
21 'cause I'm assuming somebody is going to take me up, and
22 so it won't be a judgment. So we'll see you on the 27th.

23 MR. QUIGLEY: Okay. Thank you very much, Judge.

24 THE COURT: You're welcome.

25 (Proceedings adjourned.)

26 --o0o--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CRUZ)

I, TANIS J. O'CONNOR, a Certified Shorthand Reporter, License No. 7553, in and for the State of California; do hereby certify:

That the foregoing proceedings were taken down by me in shorthand at the time and place therein named and was thereafter transcribed by means of computer-aided transcription; and the same is a true, correct and complete transcript of the said proceedings.

I further certify that I am not of counsel or attorney for any of the parties hereto, or in any way interested in the events of this case, and that I am not related to any party hereto.

Dated, this 14th day of December, 2004.



TANIS J. O'CONNOR, CSR 7553
Official Reporter