

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

DEPARTMENT 12

BEFORE THE HONORABLE MICHAEL BARTON, JUDGE

2006 JAN 25 PM 2:37
YOLANDA ORTEGA
FILED
SUPERIOR COURT
CO. OF SANTA CRUZ
WATSONVILLE

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

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HEARING RE: CONTEMPT

January 20, 2006

APPEARANCES:

For the People: KAREN KIYO HUSTER,
Assistant District
Attorney General

For the Defendant: IN PROPRIA PERSONA &
KATE WELLS,
Amicus Curae

Official Court Reporter: OSCAR A. MORENO,
CSR 3441

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1 Watsonville, California

January 20, 2006

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

3 THE COURT: Let's go on the record in the Quigley
4 matters.

5 MS. WELLS: Good afternoon, Your Honor, Kate Wells
6 on behalf of Mr. Quigley.

7 THE DEFENDANT: Good afternoon, Judge.

8 MS. HUSTER: Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MS. HUSTER: Karen Huster, on behalf of the Highway
11 Patrol.

12 THE COURT: All right. And I don't know, whether,
13 Ms. Wells, and, Mr. Quigley, you have gotten the -- I guess
14 for lack of a better term declaration from Ms. Huster.

15 MS. WELLS: Yes, we did.

16 THE COURT: Okay. I'm going to put that on hold for
17 a little bit. Do you have any information, Ms. Huster, about
18 -- hang on.

19 All right. And I'm sorry for that interruption just
20 apparently from master calendar, I get to share it with Santa
21 Cruz.

22 Ms. Huster, by any chance do you have any other
23 information as to the status of where we're at with the
24 appellate court?

25 MS. HUSTER: Well, Your Honor, as of this morning I
26 have the information from the Court website.

1 THE COURT: That's a start.

2 MS. HUSTER: Well, may I approach?

3 THE COURT: Yes.

4 MS. HUSTER: I can hand you a copy of what I've
5 obtained.

6 It indicates that there are no calendars scheduled
7 which is no information at all unfortunately. After several
8 phone calls to the court or court clerk they directed me to
9 the website and I am afraid I've irritated the court staff at
10 the 6th District Court of Appeal, but this is the only
11 information that I'm able to obtain. I regret that I'm not
12 able to get through anymore information than this after
13 repeated efforts. I'm happy to keep trying if the Court would
14 like me to do so.

15 THE COURT: Let's go off the record a minute because
16 I just -- if it becomes important we'll put it back on.

17 (Off the record.)

18 THE COURT: Back on the record.

19 So, we did have a discussion off the record. The
20 matters are under submission to the Sixth and, Ms. Huster, as
21 you have indicated with what you have given the Court and I
22 appreciate that at this point you are just sitting at the feet
23 of the Sixth waiting for them to make some decision.

24 MS. HUSTER: That's correct.

25 THE COURT: Okay. Mr. Quigley, or Ms. Wells?

26 THE DEFENDANT: Yes, Your Honor, the decision that

1 we're waiting for is relative to a contempt proceeding against
2 the California Highway Patrol, Your Honor. I have a
3 suggestion in that regard.

4 I don't know, I don't know enough about how the law
5 works or anything, but I'm sure that you are aware, because of
6 our last -- the last hearing we had moved back, that we lost a
7 real fine California Highway Patrol officer. The tragedy of
8 that you know, is substantial, just relative to, you know, him
9 and his family and the position of the Highway Patrol, it is
10 also relatively speaking and within the confines of the case,
11 sort of tragic to this case and the reason I say that, judge,
12 is that the reason that I was -- I originally subpoenaed him
13 which is what brought the attorney general in in the first
14 place was that I had had a conversation with him about why it
15 was that he had refused to sign those tickets off in order to
16 do so.

17 Because I wanted to find out why it is, who directed
18 him to do that. And I wanted the Court to get his testimony
19 in that regard which is why I just as soon as I got the answer
20 I stopped talking to him, and then we moved this way because
21 his testimony I think would have made a lot of -- could have
22 made some difference. I don't know, maybe it doesn't make any
23 difference because I don't know how these things work. But
24 what he told me was --

25 MS. HUSTER: Objection; hearsay.

26 THE COURT: I'll offer that at this point. But go

1 ahead. It may or may not be something except as to what our
2 next step is -- go ahead.

3 THE DEFENDANT: I -- I don't know how to get the
4 testimony of the man on the record whose he's not here
5 anymore. And I have been thinking about how we moved this
6 from "hearsay" to "this is fact".

7 So, I'm going to tell you what he told me and then
8 I'm going to tell you what I suspect about what we can do
9 about evidence to support that if it needs to be supported and
10 then you will tell me you know what I assume goes from there.
11 In my conversation with him he made it abundantly clear that
12 his instruction also to disregard or disobey that court order
13 did not come from the CHP and they did not come from his
14 captain, it did not come from CHP legal. It came from the
15 Attorney General's office, Ms. Huster.

16 If she would be willing to verify that for this
17 Court, then we could make that apart of the record as to the
18 facts of what happened and his loss and that testimony is not
19 going to influence this case as substantially as it would
20 otherwise be.

21 Now, there is no reason for you to accept my word
22 for that except that you know that at least I'd like to
23 believe that you know that I have never lied nor would I lie
24 to this Court or any other.

25 I live square in the middle of the truth. If that
26 won't serve me then I don't need to be served but I believe

1 that during this period of time the California Highway Patrol
2 was being very careful about communications between myself and
3 them, and I believe that that care -- that caution probably
4 led to his recording those conversations. So I believe that
5 if Ms. Huster is unwilling or unable to confirm what he told
6 me, that we might be able to get the California Highway Patrol
7 to release any audio tapes of conversations that he and I had
8 to confirm that conversation.

9 Okay. And so, and that's where that is -- now, my
10 other sense of it is that once that is done, it may very well
11 be that contempt might well not be properly placed on the CHP.

12 THE COURT: Well, I think that it had to be placed
13 at somebody else's lap and I think they got to be the
14 scapegoat if in fact that's the situation, but be that as it
15 may -- so I guess kind of two issues that flow with that,
16 Ms. Huster, one, did you have such -- well --

17 MS. HUSTER: You know what, Your Honor? If you
18 think for one second that I'm going to discuss attorney/client
19 discussions --

20 THE COURT: That's why I stopped.

21 MS. HUSTER: -- that I had --

22 THE COURT: That's why I stopped, okay? Do you know
23 or can you find out whether or not there exists tape recorded
24 conversations between Mr. Quigley and Lieutenant Walker?

25 MS. HUSTER: I could find out if such conversations
26 exist, yes. I'm capable of finding out whether such

1 conversations were tape recorded. I can tell you right now
2 that the CHP would not tape record conversations between any
3 CHP officer and Mr. Quigley without Mr. Quigley's knowledge
4 and consent. I can tell that you that would not happen. So
5 --

6 THE COURT: Okay.

7 MS. HUSTER: If Mr. Quigley is saying that he was --
8 that he had conversations with CHP employees and he was not
9 informed, that he was being recorded then he was not being
10 recorded by the CHP.

11 THE DEFENDANT: And I can't say that, Your Honor, in
12 fact I can't tell you that we didn't have that conversation.

13 MS. HUSTER: We don't secretly record people.

14 THE DEFENDANT: I have no recollection of whether or
15 not he and I discussed whether or not I was being recorded.
16 If we did, it wasn't in the -- where he says, "Mr. Quigley,
17 you understand that this conversation is being recorded, is
18 that okay?" or words to that effect. It would have been more
19 along the lines of me saying to him, I assume because it would
20 make good sense that you are recording these conversations so
21 we won't be dealing with it that way while we're chatting and
22 he merely confirmed or denied it so that my recollection is
23 that at some point that conversation took place between he and
24 I and I do not know whether it was the date of this particular
25 conversation.

26 As far as I know, it is absolutely not inappropriate

1 at all for them to record me while calling their office while
2 I'm calling their office. It is only unlawful for them to do
3 that if in fact they want to use that tape recording for
4 anything except perjury. If they want to bring it into
5 impeach my testimony on something, then it would be admissible
6 anyway whether or not they had it, but I think to my knowledge
7 there was nothing unlawful about them making that
8 conversation, I certainly have been known in my history to
9 record conversations of both on and off telephones and it's
10 not something that I do with regularity anymore, but I
11 wouldn't be at all offended I don't think there is anything
12 wrong with it and one more point, and I hate to keep coming
13 back to it because I don't like to be passing over the subject
14 but I think attorney/client privilege pretty much goes out the
15 window when the client Your Honor, is deceased.

16 MS. WELLS: Your Honor, I also have a tangential
17 issue that maybe we ought to talk about at the same time and
18 that is that I think that it would be helpful to gain a
19 stipulation on the record now that Lieutenant Walker is dead
20 and God rest his soul, that there was in fact a meeting with
21 Lieutenant Walker at which he examined several helmets and
22 refused to sign off the tickets.

23 I don't know if that's something that the Attorney
24 General would be willing to stipulate to or what, but --
25 obviously we aren't going to be able to have him present at a
26 hearing. If it should happen.

1 THE COURT: Well, I guess, Ms. Huster, are you
2 willing to stipulate to that?

3 MS. HUSTER: No, I wasn't present for that. I'll
4 check my records and I'll find out what the Lieutenant Walker
5 told me.

6 THE COURT: That was sort of the second issue was
7 that I have and it may be that Mr. Moreno has -- a specific
8 transcript of it, but I have a recollection of a discussion
9 similar to that that is in fact that Mr. Quigley went into the
10 CHP office with a helmet or helmets and Lieutenant Walker was
11 the officer there and did not sign off on any or all of those
12 helmets.

13 Again, I think we're all getting to the point where
14 sometimes memories for some of us fade a little more quickly
15 than others but I do have that recollection of that
16 conversation occurring in this courtroom at some point in time
17 which means it's got to be within the last 12 months because
18 I've only be down here since January of 2005.

19 But I recall a reference to that being made. Again
20 I'm just saying that's for your information I recall that
21 being discussed.

22 I don't know whether in fact that was specifically
23 put on the record, but I know that's probably what started a
24 lot of this in relation to how do we get to the next step if
25 the CHP is not willing to sign off on any helmet or helmets.

26 So we can check and see.

1 THE DEFENDANT: Well, it was certainly in Ms. Wells'
2 declaration in the motion for the contempt hearing, that I
3 recall.

4 MS. HUSTER: That's already in the record then. I'm
5 not sure why we're revisiting it now.

6 THE COURT: I think part of it unfortunately is
7 Lieutenant Walker is no longer with us but we'll deal with
8 that. Now --

9 THE DEFENDANT: And unfortunately it doesn't cover
10 it.

11 THE COURT: Now, in relation to the -- there was a
12 future date that I set with the District Attorney's office for
13 motions and other things and that's a March date; is that
14 correct?

15 THE CLERK: Seventeenth?

16 THE DEFENDANT: March -- Saint Patrick's Day, Your
17 Honor.

18 THE COURT: Seventeenth.

19 THE DEFENDANT: Seventeenth. My briefing
20 schedule -- is due in February, that's on the 3rd of March and
21 the hearing on the 17th and I think I have ten days after they
22 filed their response for me to throw another one in there
23 before the 17th. That's the schedule I'm working on.

24 THE COURT: All right. I think in relation at least
25 to that schedule and if other things that are available and
26 the somewhat cloudy information about the 90 days, it makes

1 sense at least at this point to leave or to put all of these
2 matters on the 17th for the motions which, Ms. Huster, you are
3 not specifically involved in unless you -- the DA somehow
4 clocks you into that but also to see what, if any, action
5 comes from the Sixth at that point.

6 In relation to the declaration, Ms. Huster, you also
7 need to understand that at one point the last time we were in
8 court, the issue was is that the number that you had given to
9 the Court on the record through the voice communication was
10 the exact same number that Ms. Hermosillo called on the 19th.
11 She was hung up on twice and the third time was -- I'm sorry,
12 she hung up on that number twice because she received a male
13 and thought she was misunderstood. The third time there was
14 no indication that you were at that number.

15 MS. HUSTER: Your Honor, I don't follow you. When I
16 placed my court call that day, I called from my residence.

17 THE COURT: Right.

18 MS. HUSTER: And I gave my residence phone number.

19 THE COURT: Right. And she called that number back.

20 MS. HUSTER: No, the number that she called back was
21 my office number.

22 THE COURT: No, the number you gave was the
23 residence number.

24 MS. HUSTER: Yes.

25 THE COURT: She called that twice, got a male answer
26 she did not understand so she hung up and called it a third

1 time, that same male answered and she asked for you and there
2 was no indication you were there.

3 Because she was trying then to connect with you with
4 that home phone number which was the exact same number that
5 you had given the Court the last time which I believe was on
6 the 30th.

7 MS. HUSTER: Okay. Your Honor, the number that she
8 reported calling and the voice mail message that she left is
9 my office telephone number.

10 THE COURT: Right. Because when she got nothing
11 with the home number she then called your office trying to
12 figure out if she had the wrong number or if there was another
13 way to get a hold of you.

14 MS. HUSTER: I can't explain how that happened
15 because I was sitting at my home number waiting for the call
16 and it didn't arrive.

17 I don't know who that number was -- I don't know
18 what the number was being called at that point. I cannot
19 explain what happened.

20 THE COURT: She had -- and unfortunately I can't
21 find it but she had the number that was written down which was
22 the number she was calling to try to set up the court call.
23 That was the exact same number that was given to this Court by
24 yourself on the 30th.

25 MS. HUSTER: By phone?

26 THE COURT: Yes. So we were unable to contact you

1 on that date, don't know why, that's why she started calling
2 your office because the number didn't work, the only other
3 number she had was your office now and we got nothing out of
4 that.

5 That was the concern I had and the problems I had
6 with trying to set up a phone conversation simply because it
7 wasn't working and then your office wasn't cooperating by
8 either taking a message or relaying a message to you.

9 That was my problem. I don't know what the
10 breakdown was from our end, why you were left on hold, calling
11 back, not being told that we were in session.

12 Because you had -- I believe you actually called
13 Ms. Hermosillo's number directly.

14 MS. HUSTER: Yes.

15 THE COURT: So, I don't know where the breakdown
16 was. The problem is is that the -- and we called that number
17 -- is that the 30th was the last time we were in court.

18 MS. HUSTER: The 30th was the last time we were in
19 court.

20 And, Your Honor, clearly, there was an error. It
21 caused a lot of confusion and a lot of extra effort on behalf
22 of your staff and clearly when calls were placed to my office
23 the ball was dropped and someone was treated very rudely by
24 people in my office and for that I do apologize. There was a
25 meeting held and everyone was reminded that it is of the
26 utmost importantly to treat everyone who calls our office with

1 much more courtesy than was shown that day and that was
2 reiterated over and over again and again. I do apologize for
3 that, so that certainly won't happen again.

4 MS. WELLS: Your Honor, may I be heard on this
5 matter?

6 THE COURT: Yes.

7 MS. WELLS: You know, if I were in that situation
8 and I was sitting by the phone waiting for a call from the
9 Court and had gone on 20 minutes, 30 minutes, I would have
10 picked up the phone and called the Court.

11 That never happened, we waited here for almost an
12 hour, I believe waiting for the -- for some contact. But I
13 might be willing to give her the benefit of the doubt in this
14 situation if it were a single isolated incident but it seems
15 to me that the behavior has been such that it is offensive to
16 the Court, disrespectful, there have been consistent delays
17 which given the physical condition of Mr. Quigley and given
18 their knowledge of that, I mean they waited until the last
19 minute to file every document possible. You know, when the
20 Appellate Court found out that -- when they found out that the
21 Appellate Court was going to consider the writ to not be a
22 stay on contempt there was, you know, the phone call at the
23 last minute and, you know, I just think that there has been a
24 pattern of behavior that has been offensive at best and
25 contemptuous at worse both to the Court and to Mr. Quigley.

26 MS. HUSTER: Your Honor, I'd like to reply to that.

1 THE COURT: Hold on.

2 MS. HUSTER: Your Honor, Ms. Wells is totally
3 disingenuous.

4 First of all, as my letter that she admits receiving
5 indicates I tried repeatedly to contact the Court when it
6 became clear that there was a problem in reaching the Court on
7 the 19th, so her argument that I did not make repeated efforts
8 to contact the Court when I was clear that there was a problem
9 is really a bad faith argument on her part.

10 Secondly, the people who receive bad treatment
11 occasioned by miscommunication by the staff was not Ms. Wells.

12 Thirdly, Ms. Wells was not prejudiced in any way
13 because she did not receive any inconvenience or hardship as a
14 result of the miscommunication, because there was no
15 information that I had to provide at the hearing that day.

16 The purpose of the hearing was for me to provide any
17 information on an update on the status of the appeal, and I
18 had no information to provide, so Ms. Wells and her client was
19 not prejudiced in any way in my failure to make an appearance
20 that day.

21 In addition, I'd like to add that I have not sought
22 a single examination from the Court of Appeal in the filing of
23 the -- of any papers in the petition. I sought one extension
24 from this court because I had a pre-planned prepaid vacation
25 which the Court granted. But the Court of Appeal effort I
26 have the right to seek an extension. I've not sought an

1 extension. I believe all of your arguments are totally
2 disingenuous and brought in bad faith.

3 THE COURT: All right.

4 THE DEFENDANT: Please may I be heard?

5 THE COURT: Real briefly, Mr. Quigley.

6 THE DEFENDANT: Do you remember when you signed that
7 order, Judge?

8 THE COURT: Specifically, no.

9 THE DEFENDANT: June?

10 THE COURT: Okay.

11 MS. WELLS: Six months.

12 THE DEFENDANT: And I'm really curious, I'm really
13 serious if -- I'm really serious as to why it is the Attorney
14 General is -- seems satisfied that they are doing that right
15 job of protecting both me and the law when it's been six
16 months that I have been unable to get this one thing resolved.

17 I don't know why it is that we have to be in the
18 Court of Appeals. I don't know why it is that we aren't able
19 to sit down the Attorney General and myself and talk about
20 what the law says and what they genuinely support with reason,
21 would be the cause for them not to agree with and I will go
22 along with your decision.

23 I'm curious, Your Honor, why it is that they haven't
24 sat out and dealt with courts in other jurisdictions that have
25 ruled right along side you that these are correctible
26 violations, time after time. It is the Attorney General's job

1 to see to it that the laws are enforced, the same throughout
2 the state. That is their job.

3 It is not their job to take a case that was moving
4 to the point of a resolution as this one was and stop it dead
5 in it's tracks and then sit there and shrug your shoulders and
6 say oh, well, it's the Sixth, it's the Sixth. Not us, there's
7 nothing we can do about it. It's the Sixth.

8 I don't understand, Your Honor, why we haven't seen
9 an Attorney General's opinion, I don't know why nobody has
10 offered it to me. I don't know why a myriad of the solution
11 also that they have for this problem have not been addressed,
12 sought out, recommended or suggested. And it is very
13 frustrating to me. It's very frustrating to me to come back
14 here again and again and again. It's frustrating to have to
15 watch you to deal with something you that you want off your
16 calendar, that you want to get a higher decision from the
17 higher court up or down on.

18 And to say, that this woman here, that it is no skin
19 off her nose to have to come down here and sit here and wait
20 for somebody that ain't going to show up or not show up, I'm
21 sorry, this whole thing is a little bit to haughty on one end
22 and a little too inconsiderate on the other.

23 MS. HUSTER: Your Honor, I can under that
24 Mr. Quigley is frustrated and I regret that he's frustrated.

25 He's not an attorney, his Counsel should advise him
26 that as a matter of procedure the Attorney General's office

1 and the CHP are not to blame for delays in the resolution of
2 this matter.

3 That is his placed blame on his part.

4 THE WITNESS: All right, I'm going to take all of
5 the issues under submission and we'll see where we're at on
6 the 17th of March.

7 MS. HUSTER: March 17th.

8 THE COURT: March 17th here at 1:30.

9 MS. HUSTER: I understand at this time, Your Honor,
10 unless otherwise advised, the CHP is not ordered to appear on
11 that date.

12 THE COURT: That's correct.

13 MS. HUSTER: Thank you.

14 THE COURT: All right. We're done.

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16 (End of proceedings.)

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