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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ
DEPARTMENT 12

BEFORE THE HONORABLE MICHAEL BARTON, JUDGE

2006 JUN 19 PM 2:50
FILED
SUPERIOR COURT
CO. OF SANTA CRUZ
WATSONVILLE
YOLANDA ORTEGA

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

MOTION TO DISMISS

June 2, 2006

APPEARANCES:

For the People: DAVID GENOCHIO,
Deputy District Attorney

For the Defendant: IN PROPRIA PERSONA,
KATE WELLS
Attorney at Law

Official Court Reporter: OSCAR A. MORENO,
CSR 3441

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I N D E X

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WITNESSES:

For the Defense:

STEPHEN BIANCO 16

1 Watsonville, California

June 2, 2006

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P R O C E E D I N G S

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THE COURT: So let's go on the record then in the
Richard Quigley matters. Mr. Quigley is present.

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Mr. Genochio is present.

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This is a motion, Mr. Quigley, that you have filed
to have me dismiss all of these matters and apparently we
still have to figure out there is one outstanding ticket we
have to deal with that may not be in all these numbers, and
you filed paperwork that the District Attorney, not
Mr. Genochio, but the District Attorney's office through Joyce
Angell has filed a response. I'll let you start, Mr. Quigley.

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THE DEFENDANT: Well, Your, honor, if I may, it's
like this (indicating) I'm -- you know, my general thing is
that -- and I have been contending since way back when this
thing started when I got the ticket back here July 24th, 2003,
that the statute is being enforced -- the statute is
unenforceably vague, violates my constitutional rights having
to try to comply with it and I have been arguing that same
position as best I could.

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I would like to take this opportunity to point out
that way back in the beginning and I believe it was in
November, you've got all the -- you've got the little record
of events there, but way back in November 2003, I was in this

1 courtroom with Judge Morse and had a demurrer sustained that
2 contained basically all the arguments that I make today with
3 prejudice, incidentally. And then through some bizarre deal I
4 ended up being responsible for dealing with the city attorney.
5 If you remember I ultimately challenged him as an interloper
6 and asked what he was doing here and apparently he agreed he
7 didn't belong because I haven't seen him since.

8 But I managed to walk in and get Judge Morse in
9 February to change her mind on sustaining my demurrer.

10 THE COURT: 2004?

11 THE DEFENDANT: Yes, Your Honor, February 6th, 2004.

12 THE COURT: You know that my train is small so I got
13 to keep it on that track.

14 THE DEFENDANT: Yeah. I mean, I think there has
15 been 30 court appearances on this, but that was way back in
16 the beginning so I had -- at one point I had this thing pretty
17 much beat and had the avenue for finishing it off and then
18 this city attorney came in.

19 And then all of a sudden I was back in the loser's
20 position and have been fighting from there ever since, until
21 your ruling back in -- I'm going to guesstimate it was June
22 that you made the ruling on this case -- on these cases --

23 THE COURT: That was June of 2004.

24 MS. WELLS: About a year ago.

25 THE DEFENDANT: 2005, that was when you ruled -- you
26 didn't particularly like my headgear but that the violations

1 were a correctible offense. And we have been bogged down in
2 getting it gone ever since and none of this, I don't believe
3 any of this would be a problem, none of this would have
4 happened, none of this would have been necessary. You
5 wouldn't have a stack of paper on your desk -- what is it? A
6 foot?

7 THE COURT: A bucket, yes.

8 THE DEFENDANT: We wouldn't have any of that on your
9 paper -- I mean, on your desk in this file, any of it, if this
10 law wasn't vague. I mean, if there were an objective standard
11 that I could be called on to comply with and could be held to,
12 none of this would be possible.

13 So, you know, just the -- the thing is the fact of
14 itself in that regard, there clearly is no objective standard.
15 So what my motion was based on -- this last motion is based on
16 what the California Highway Patrol has done. And as I look
17 back at all of these things that have taken place, what I see
18 is that the arguments from the city attorney when they were
19 involved in this and then the District Attorney when they came
20 in have remained pretty much the same relative to
21 constitutionality and that is that the Buhl Court found that
22 the statute was constitutional and therefore you know, you
23 know, my arguments fail.

24 In fact, the District Attorney went so far and one
25 of these -- in one of these briefs -- give me just a
26 second any way, to rule -- the ruling was that Buhl had found

1 the statute constitutional both as written and as applied
2 which is ludicrous. The timetable doesn't allow for that.
3 There was no application of the helmet law prior to Buhl. All
4 the arguments of Buhl were based on the fact that it was
5 written so they had none of this to deal with.

6 And when the Buhl decision came out is when we first
7 saw the difference, that's when the first thing where we
8 discovered that there was a difference in how the statute was
9 written and how it was applied, that's when it became evident
10 to us, and, when I'm talking about me and these folks back
11 here, particularly one that I brought to you today because I
12 would like to put him on the stand to talk to you. Because,
13 when we first became aware of the problem with the helmet law,
14 it was because Mr. Steve Bianco had gotten a citation down in
15 San Diego for wearing a helmet and to comply with the helmet
16 law.

17 And as you will find out when we have a chance to
18 talk to him, this is not an unintelligent guy. He's very
19 bright. He figured out right away that there is something
20 wrong with complying with the law and getting the ticket any
21 way. And so he started are looking into this thing and
22 realizing what was going on and the Buhl Court came out with
23 their decision in the middle of this, and I'm not going to try
24 to do the time line because first of all, my memory doesn't
25 serve me that well but his does and so I -- at some point
26 soon, I would like to have him explain to you how we got into

1 this and how this became an issue but the bottom line is the
2 problem is that there are two helmet laws in California. One
3 that is unworkable and that's the one that is written and
4 interpreted by the California courts and one that is
5 unconstitutional and that is the one that is administered in
6 accordance with the design of the California High Patrol as
7 written and administered by the Highway Patrol.

8 THE COURT: Hold that thought.

9 (Off the record.)

10 THE COURT: Sorry for that. We're getting a trial
11 from downtown because we finished ours.

12 Go ahead.

13 THE DEFENDANT: Okay. So from the onset -- we had
14 two helmet laws. The one -- I mean everybody looks at the
15 Buhl decision and realized well, that's ridiculous, because
16 there is -- the idea that you can't be held to any sort of a
17 standard except that the letters DOT on head gear as a means
18 of compliance is absurd because at the time everybody knew or
19 believed or talked about or the CHP promoted the idea that you
20 could get fake DOT stickers and put them on anything. And, in
21 fact, that's the reality of it that the only person that can
22 certify whether or not a helmet is in compliance with FMVSS
23 218 whether or not a motorcycle helmet is a motorcycle safety
24 helmet is the manufacturer and they do that through the
25 process that is set up by the Federal Government and FMVSS
26 218, and the manufacturer has the discretion to do whatever

1 they want, all the way up to and including a Dixie Cup and a
2 shoe string and who can unwind a certification? The only
3 people according, now this is according to the courts, this is
4 Bianco now and as best phrased in Easy Riders in explaining
5 Bianco, but the only people that could unwind that
6 certification once it's made is the manufacturer themselves.
7 They say "Oh, yeah, well, I was only kidding that dixie cup
8 and shoe string is not a helmet," and then it's no longer
9 certified and it no longer complies with California's law, or
10 B, NTSA can make a formal determination of noncompliance on a
11 helmet according to Bianco and the certification is no longer
12 any good against the manufacturer's complaint and to my
13 knowledge that's never happened, NTSA has never made a
14 determination of noncompliance on a helmet, and, three, it
15 would be from test results from an independent testing
16 laboratory and I'm not sure how those would de-certify the
17 helmet because it seems to me at that point those test results
18 would be turned over to someone like yourself if I understand
19 their scheme, and then would you make that determination which
20 you have no authority to do according to the federal law that
21 set it up in the first place, but that's what the Court has
22 ruled.

23 That's just like the Court has ruled that anything
24 that has a certification or compliance is a motorcycle safety
25 helmet, and that's Buhl. And if it's got DOT on it it's a
26 helmet and that's why it's constitutional because nobody has

1 to do deal with fabrication.

2 Now, California High Patrol on the other hand, has
3 two things that they do: One of them is they assert from the
4 very beginning as all the evidence that I presented to you at
5 this motion shows from it's inception, they started teaching
6 everyone that the criteria was that the helmet be Department
7 of Transportation Approved. But I think the evidence is clear
8 and at some point I would hope that we can get a stipulation
9 or a finding of fact that the Department of Transportation
10 does not approve helmets.

11 So that's the first theory by which they operate
12 which extends over to the second which is that you could
13 somehow tell by looking whether or not the Department of
14 Transportation would have approved a given helmet.

15 And which gets us back to the fabrication which Buhl
16 says you can't look at because that's absurd. So the whole
17 scheme set up by the Highway Patrol has rendered the statute
18 unconstitutionally vague because I don't know, nobody knows,
19 what the cop is going to say on any given day is going to
20 satisfy their understanding of what a properly fabricated
21 helmet is in a world where we're not allowed to talk about
22 that, or whether or not the helmet is DOT-approved, which of
23 course it can't be.

24 The language in explaining where these laws were,
25 again, just confirms the contention that the statute is
26 absolutely at this point beyond repair, unenforceable, and

1 unconstitutional, and when I say that, and when I say beyond
2 repair it's in the sure and certain knowledge, Your Honor,
3 that the belief in DOT-approved helmets and therefore an
4 approved helmet, is so permeated the consciousness of law
5 enforcement and society at large -- society at large.

6 I called the Lieutenant at the -- the new Lieutenant
7 here in town and talked to him and they came out with this
8 latest article, Motorcycle Safety Month. CHP comes out with
9 Motorcycle Safety Month in the name of Motorcycle Safety
10 Awareness.

11 The article is in the Sentinel, and beyond the fact
12 that it is not Motorcycle Safety Month, it's Motorcycle
13 Awareness, and beyond the fact that Motorcycle Awareness Month
14 is to make people -- the automobile drivers aware in May when
15 motorcycling starts picking up that there are motorcycles on
16 the road, be careful of us, that the CHP chose to point out to
17 motorcycles that we need to be more aware of the cars, like we
18 don't already understand that gun is loaded, in the middle of
19 this thing they write the CHP reminds motorcyclists to wear
20 approved helmets. I mean, all the way up to and including May
21 5th or 6th whenever this thing came out.

22 So I call down there and I talk to the Lieutenant,
23 this new lieutenant who replaced our friend, our deceased
24 friend and I asked him, I said, "Who approves helmets?" And
25 it's no surprise, Your Honor, "The United States Department of
26 Transportation approves helmets." The man is a lieutenant in

1 the California Highway Patrol, he's competent and qualified in
2 every aspect of law, no question to do his job, and doesn't
3 understand that DOT doesn't approve helmets. So how do you
4 scrub that ring out of the tub, you know? There ain't no
5 cleanser that strong.

6 So, the CHP policy has absolutely destroyed any
7 chance that this state had of enacting this helmet law.

8 Now if they want to write another one they are
9 welcome to take a shot at it, but I believe that this one is
10 terminally ill. I think it's in worse shape than I am and
11 hopefully you will agree, that way I'll live to see it's
12 demise.

13 And so that's kind of -- that's kind of what my
14 motion is about. It is that the California helmet law is not
15 the helmet law interpreted by the courts. It's not the helmet
16 law that was written by the legislature. It is the helmet law
17 that Maurice Hannigan and company put together in 1991 and has
18 run right alongside all this stuff that was going on in Court
19 with complete disregard for what the Court said all the way up
20 to and including beyond an injunction issued by a Federal
21 Court. They wish they had completely ignored like you
22 wouldn't understand how they could ignore a Court order.

23 And I don't see any way to break them out of it.
24 Good cops write tickets for this thing in violation of my
25 constitutional rights. Good judges find us guilty all the
26 time in violation of our constitutional rights. Good judges

1 make determinations of noncompliance on headgear, and are in
2 good faith reliance based on everything that comes from the
3 California High Patrol because if you cannot count on their
4 expertise, what can you count on?

5 But in this area, Judge, they are just sour, they
6 are sour. And there is -- I don't think there is any fixing
7 it. I would like -- I guess at this point I would like very
8 much to hear what Mr. Genochio has got to say about this. But
9 I don't want to give up talking to you because I want -- I do
10 want to introduce to you Mr. Bianco and I do want him to
11 explain to you his experience. I don't know how many times
12 you have had to actually meet a party, particularly a pro se
13 litigant in a published opinion that affects as many people as
14 this opinion has affected people, and how he got there, and
15 what that Court said and the conversations that took place
16 inside that courtroom and what Bianco said and why it was
17 there.

18 Mr. Bianco can bring that to the table and I think
19 that his explanation will make it absolutely clear you to
20 beyond a shadow of a doubt, Judge, that there are the two
21 helmet laws I described.

22 THE COURT: I'll consider that. Let me ask you a
23 question before I go to Mr. Genochio, and you probably don't
24 have the answer to this and I'll ask Mr. Genochio, I'm not
25 sure he has the answer to this: What if anything have you
26 heard or if anything is happening in relation to the Sixth?

1 They are ignoring you?

2 THE DEFENDANT: In the case -- the California High
3 Patrol vs. you with me as the real party in interest, that has
4 gone the way of all things that the Sixth doesn't want to deal
5 with. It is in permanent lock down.

6 The cases that were started after that case, case
7 numbers that are lower than that case have already been
8 decided and on their way, unpublished, of course, you know,
9 opinions of all kinds.

10 Now, I can't say, Judge, with any degree of
11 certainty that they are not sitting there this afternoon
12 getting ready to publish an opinion but there is absolutely
13 nothing that I can get out of those clerks that would indicate
14 that that has done anything except sit in a file forever gone.

15 But the argument that the District Attorney made is
16 that somehow or other the Sixth has prevented you from ruling
17 on this motion is absurd on it's face. Because that case is
18 not People vs. Quigley. You have been restricted in what you
19 could do in a case entitled -- in a case entitled CHP versus
20 Superior Court and they tell you -- they have held you up on
21 doing anything about the contempt action against California
22 High Patrol. They have not told you that you cannot act to
23 find this statute unconstitutional as applied. And so there
24 is no answer as far as I know from the Sixth. I can't speak
25 for Mr. Genochio -- to what Mr. Genochio knows.

26 THE COURT: I doubt if he does, I just thought if he

1 does he'll throw it in simply because he gets to sit and
2 occupy that seat more than anything else since as the saying
3 goes, he's not the main player in this, but I'm assuming you
4 got tagged by your office, Mr. Genochio?

5 MR. GENOCHIO: Yes.

6 THE DEFENDANT: You ever hear about the short straw,
7 sir?

8 THE COURT: He didn't get a straw.

9 THE DEFENDANT: Not only -- he got a straw and it
10 was dipped in, you know --

11 MR. GENOCHIO: I think I'm going to watch, was it
12 Jimmy Stewart and Mr. Smith Goes to Washington?

13 THE COURT: Giving you the opportunity and I know
14 that again, since we've -- the words that have preceded all
15 this, do you have anything to add besides what is in Ms.
16 Angell's paperwork?

17 MR. GENOCHIO: No, I do recognize the fact that
18 there has been -- Mr. Quigley says 30, but I bet there has
19 been far more than 30 court appearances on this.

20 THE COURT: Yeah, and again -- you are sort of
21 literally at the wrong place at the wrong time, but, obviously
22 and as you are because you have worked with me in Court for a
23 long period of time and Mr. Quigley is aware that, I'm giving
24 everybody a chance to be heard before I do things. You
25 know, and obviously I wanted to literally dot the I's and cross
26 the T's so --

1 THE DEFENDANT: In a matter of this import, Your
2 Honor, in the direction I want you to go, yeah, me too.

3 THE COURT: I know.

4 MR. GENOCHIO: Can I ask one question?

5 THE COURT: Sure.

6 MR. GENOCHIO: So briefs have been filed, I mean the
7 appeal has been accepted by the Sixth, briefs have been filed
8 and they waived formal argument?

9 THE DEFENDANT: It's not an appeal.

10 MR. GENOCHIO: A writ? Is it a writ?

11 THE DEFENDANT: It's a writ.

12 THE COURT: And we can go off the record for a
13 minute. Just cause I want to save his hands more than
14 anything else. I mean you all know, and --

15 (Off the record.)

16 THE COURT: All right. So let's go back on the
17 record. I've at least updated Mr. Genochio as to what has
18 previously transpired since as I indicated he wasn't the
19 originating lawyer out of his office and actually it's gone
20 through -- I think you are the third or the fourth.

21 In relation to Mr. Bianco about how long do you
22 think that will take? I'm not trying to push you, but --

23 THE DEFENDANT: It will not get beyond the point of
24 being entertaining to you, Your Honor, I can assure you of
25 that. Entertaining or informative.

26 THE COURT: All right. Informative, I don't mind.

1 Entertaining I'm always interested in; informative is always
2 better.

3 THE DEFENDANT: I meant -- well, the combination.

4 THE COURT: I understand.

5 THE DEFENDANT: Can't have one without the other.

6 THE COURT: I guess the bigger question is -- and as
7 I indicated at one point I'm trying to save Mr. Moreno,
8 because of his hands, he's good, but do you want that
9 testimony on the record or --

10 THE DEFENDANT: Oh, absolutely.

11 THE COURT: -- as information for me?

12 THE DEFENDANT: Yes, please. And --

13 THE COURT: I'm listening.

14 THE DEFENDANT: We will pay you handsomely.

15 THE COURT: No, no, you guys can work out the
16 payment, I'm not worried about that, it's just -- all right.
17 So, do you want to call Mr. Bianco?

18 THE DEFENDANT: Yes. One thing to do first and that
19 is -- just to let you know, Judge, I'm not asking to you do
20 something that haven't been considered and thought and done
21 elsewhere.

22 THE COURT: Okay.

23 THE DEFENDANT: This very same issue came up in
24 Michigan, the same standard, different state, the Honorable
25 Cynthia Hathaway dealt with a guy that was wearing no helmet.
26 On August 2nd he was wearing a rubber band and a small bottle

1 cap. On August 10th he was wearing no headgear. On
2 August 19th he was wearing a bandana. And having reviewed all
3 the elements of -- that I've tried to explain and believe me
4 if I'm not getting through, I credit myself, my failures, not
5 you, but, having considered all the same arguments, she came
6 down and found that the statute -- there is no way that it can
7 work off of this thing.

8 So this is the one that Mr. Genochio has seen and I
9 don't need a copy of it, but I would like you to have it so
10 that you have it. See, I'm not asking to you do something
11 that's unprecedented.

12 THE COURT: I'm not worried about that as much as --
13 let me ask a couple on other issues. So do you have the
14 ability to get another copy of this?

15 THE DEFENDANT: Yes.

16 THE COURT: So Mr. Genochio, I'll get your office a
17 copy of this.

18 MR. GENOCHIO: I didn't see it. I just briefly
19 looked at it, I mean the statute, does it mirror what we have
20 here?

21 THE COURT: I don't know I have not read this.

22 THE DEFENDANT: Yes, it does and it has to and the
23 reason it has to because of the supremacy clause which he
24 discusses in there, it has to be Federal. It has to be
25 Federal.

26 THE COURT: As I said I will take this and,

1 Mr. Genochio, and I'll get you a copy at some point or for
2 your offices because I know that you are not planning on
3 holding on to this any longer than you have to. Mr. Bianco.

4 THE DEFENDANT: I'd like to call Steve Bianco
5 please.

6 STEPHEN BIANCO,

7 called as a witness for the Defense, having been duly sworn,
8 testified as follows:

9 THE COURT: The microphones aren't working right now
10 so you are going to have to keep your voice up, please.

11 THE DEFENDANT: I'll try. I'm fighting a toothache
12 and a swollen jaw here --

13 THE COURT: We'll try and work it out. Would you
14 state your full name and spell your last name.

15 THE DEFENDANT: Steven Wright, BIANCO.

16 THE COURT: Stephen, P-H-E-N?

17 THE DEFENDANT: V.

18 THE COURT: Mr. Quigley.

19 DIRECT EXAMINATION

20 BY THE DEFENDANT: Q. Would you please tell the
21 Judge Barton about Bianco versus CHP and in as condensed a
22 form as possible please because of Oscar's hands and his busy
23 schedule?

24 MS. WELLS: And your tooth.

25 THE DEFENDANT: -- and your tooth.

26 THE COURT: Two things -- three things. One is try

1 and keep your voice up; two, if you have been in court enough,
2 you understand the speed that you and the reporter can go at,
3 so keep it at a moderate speed please.

4 THE WITNESS: I'll try. Before I get into Bianco
5 vs. CHP I wanted to reiterate that I pretty much agree with
6 everything he said. There is two things that I think he
7 missed just on time line: One was the fact that the Buhl
8 arguments were actually made in '91 before the helmet law was
9 commenced to be enforced in January of '92. and the other one
10 is Maurice Hanagan restructured the law in '92 and not '91
11 with the issuance of a bulletin from the CHP.

12 Other than that, Bianco vs. CHP was a case that
13 stemmed away from the trial court, an infraction trial court
14 for violation of the helmet law.

15 I was wearing a helmet that I had purchased from a
16 manufacturer that had gone to great lengths I found out later
17 to establish by testing, that the helmet would in fact passed;
18 he tried everything to try to certify it properly and he was
19 selling them and he had sold thousands of them.

20 And I was riding down the highway, a CHP officer
21 pulled me over, and stated that I was in violation of the
22 helmet law for wearing a helmet manufactured by this company
23 and he showed me a memo from the CHP -- promulgated from the
24 CHP that stated that these helmets were no longer legal for
25 use because a testing facility, a private testing facility in
26 Texas had found them to be deficient in some manner about a

1 week before.

2 Well, within just a matter of weeks not having
3 another helmet, I got two more tickets. Any way, the tickets,
4 the tickets were thrown out of Court for any number of things,
5 lack of notice -- how was I supposed to know? What I did was
6 I went across in the Superior Court by writ of mandamus saying
7 to the CHP that they were applying a standard that was
8 different than the law as written and that they had decided to
9 take a private testing lab with a test result that had not
10 been adopted by the Department of Transportation, NHTSA and
11 they had decided to apply it to the consumers pretty much
12 after the fact and so my mandamus was an attack on Bulletin 34
13 which was -- we have reason to believe this helmet may have
14 failed and therefore we're going to start issuing tickets.
15 There was a couple other little things. One is only one model
16 and one size of the helmet was purported to have failed. I
17 wasn't wearing that model nor that size but it didn't matter
18 to them.

19 Any way, what happened was they came back and said,
20 we're not, we're not trying to change the law, it, Bulletin 34
21 has no effect on the law, it's just merely an informational
22 bulletin. But it resulted in thousands of tickets including
23 my own. Any way, we tried to go back and say no, this is how
24 you are applying the law because if you were applying the law
25 as written it would be completely different.

26 Well, right in the middle of the arguments in the

1 Superior Court for the mandamus, the Buhl decision came out
2 finally working it's way from -- the helmet law had only been
3 in effect for six months. And it had finally worked it's way
4 up through the Appellate Court to where they made a written
5 decision holding that the helmet law was in fact
6 constitutional. Well, one of the arguments that had been made
7 by Buhl was you -- unless you have some objective standard,
8 unless you have some list of helmets, unless you have criteria
9 that anybody can figure out, you are going to have a mess on
10 your hands, you are going to have the cop on the street
11 deciding what is and what isn't a helmet.

12 And the Buhl Court reacted by saying the concept
13 that an officer on the street or a judge in any given
14 courtroom would ever be able to decide what fabrication was
15 correct and not correct at a later time is absurd. The
16 application of the helmet law has to be on some objective
17 standard and they said we hold it constitutional because the
18 mere certification of compliance is all you need.

19 They may not have clearly understood that the
20 certification of compliance was the manufacturer making a
21 written statement that he believes the helmets he's
22 manufacturing would pass some test if tested at a later time
23 after the sale.

24 Well, the more we got into it the more we realized
25 it really was a mess. It's an unworkable situation to have
26 that and the way other states including the one he just gave

1 you from Michigan, the way other states have tried to hold
2 this in other than California is they tried to establish --
3 well, somebody has got to give a list, or somebody else
4 approves it. Even California has something in their own -- in
5 the Vehicle Code that says, the California Highway Patrol, the
6 Department in that particular instance, is the one that will
7 do the approving.

8 Well --

9 MR. GENOCHIO: Your Honor, could I interject just so
10 the record is clear, I'm not quite sure where this is going to
11 end up, any hearsay the People object, just kind of a running
12 objection throughout?

13 THE COURT: Sure. Yes.

14 THE WITNESS: Everything I'm telling you has been
15 asked and answered and written down.

16 THE COURT: No, he's just covering his base, and
17 that's why you are continuing and I'm not -- he's fine, I'm
18 fine, it's okay.

19 THE WITNESS: I lost my train of thought now.

20 THE COURT: You indicated that in the Vehicle Code
21 it lists the CHP has doing the certification --

22 THE WITNESS: Well, the CHP is operating some sort
23 of an approval system.

24 Well, the Federal Courts in North Carolina had
25 pretty much stopped any state agencies from anything other
26 than the application of the Federal Motor Vehicle Standard

1 wherein it would apply, so that the Federal Motor Vehicle
2 safety standards of which there is many that apply to the
3 windshield in your car, for instance, you could not have a
4 state stepping in and saying, Well, we're going to make
5 another standard.

6 Well, because there was a Federal Motor Vehicle
7 Safety Standard for helmets, you have a situation where the
8 state can't do anything but operate on that standard.

9 And there is -- the standard has a very basic flaw
10 in the fact that it's not an objective standard. In fact,
11 they go out of their way to not have any requirements that the
12 helmet even be tested, and there is no end product, even the
13 ones that are tested are tested in a private lab and the test
14 results are not adopted by NTSA so you don't have a -- it's
15 like you can't get ahold of anything.

16 Well, as we found all this, we're working up through
17 the mandamus saying, me, saying to the CHP, the Bulletin 34 is
18 saying you think this helmet, one model and one size of this
19 helmet failed so therefore you want to ticket everybody that's
20 wearing these helmets regardless of whether they are wearing
21 that model, that helmet, and regardless of notice.

22 The backside of my argument was I found over 2,000
23 failures or alleged failures of Federal Motorcycle Safety
24 Standards that were less than five years old concerning even
25 the Oldsmobile that Judge Murphy, he was the judge in the
26 case, his Oldsmobile was of a particular model that had failed

1 Federal Motor Vehicle Safety Standard testing as to the seat
2 belt bolts that were in the bottom anchoring the seat belts in
3 his car.

4 And I said to the CHP, either take back Bulletin 34
5 or issue a bulletin for everyone of these failures on Federal
6 Motor Vehicle Safety Standards and just if you go to the last
7 five years, you are going to need probably about 2300 forums,
8 including most of the helmets, it was failures from everything
9 from just having an improper label massive failures for any
10 number of things.

11 Well, the whole argument was kind of in the middle
12 of where Mr. Quigley is. If you look at it from the biggest
13 full faced helmet you could possibly see in the motorcycle
14 store to his dixie cup and shoe string, we were in the middle
15 arguing a fine line on whether or not this helmet had tested
16 or passed or whether it was supposed to pass or with me as a
17 consumer could be held liable. Any way, they had themselves a
18 mess on their hands and they wanted to -- the CHP through the
19 Attorney General's Office, wanted to get away from issuing
20 bulletins but they didn't want to have me win the case by
21 saying, well, he made us take back the bulletin. History has
22 shown out that they have never ever issued another one of
23 those bulletins, not on anything.

24 Any way, my case was, it's been mis-cited virtually
25 every time I've ever seen it including the paperwork that's in
26 Mr. Genochio's hands where they cite the fact that the

1 mandamus had something to do with my tickets or the fact that
2 I was found guilty of the tickets and everything. It didn't
3 happen. The mandamus was strictly me trying to say, you need
4 to quit enforcing the helmet law concerning -- using that
5 bulletin on the one helmet.

6 Any way it started an odyssey that has gone on to
7 this day, that you have a helmet law that Buhl has held is
8 constitutional if you enforce it this way, and you have a
9 policing agencies that have never enforced it that way, and
10 that's where the situation where you have a helmet law that is
11 either unconstitutional -- and/or it's unconstitutionally
12 enforced, that issue was concealed in the 9th, in the Federal
13 Case Easy Riders wherein the Attorney General said, if you
14 uphold any portion of this injunction, it renders the helmet
15 law unconstitutionally -- we can't enforce it. It's
16 unconstitutionally enforceable and they conceded that. And
17 then they just kept doing the same -- business as usual, just
18 keep writing the tickets.

19 BY THE DEFENDANT: Q Okay. Mr. Bianco, because we
20 got past there in the Easy Riders, you were around the during
21 the Easy Riders depositions, were you not?

22 A. Yes, I was.

23 Q. And you had an opportunity to sit in the room when
24 the attorney Skip Raring, was talking to Commissioner Hanagan?

25 A. Yes, sir.

26 Q. Did you have -- did you have any sense whatsoever

1 that Commissioner Hannigan had ever heard of or understood --
2 I mean, was the question ever put to him, Have you ever seen
3 this Buhl case? Was he asked about whether he knew what the
4 criteria was set out by the Buhl case?

5 A. It actually -- I believe was presented to him that
6 the -- the decision was -- I think he had it in his
7 possession. I don't remember the exact questioning or what
8 you are after.

9 Q. Okay.

10 A. But did he know about it? Yeah, especially Jill
11 Armor (phonetic) who was the Attorney General, she was
12 extremely familiar with the case and she was advising him
13 during that.

14 Q. But you did sit through those depositions?

15 A. Yes.

16 Q. With both Maurice Hannigan and --

17 A. All of them.

18 Q. -- and Sergeant Nivens, Michael Nivens?

19 A. He was sergeant then, yes.

20 Q. Who was -- I believe he was head of Special
21 Projects?

22 A. That's correct.

23 Q. And was the one responsible according to the
24 information obtained at the deposition, he was the guy that
25 was responsible for developing all of this enforcement policy
26 for the California High Patrol?

1 A. He was offered up as not only being responsible for
2 the application and enforcement but he was offered up as their
3 expert in application and enforcement.

4 Q. And I think it's in the Easy Riders decision so it's
5 almost redundant to get your opinion on that, but, Your Honor,
6 what I'll do is I'll reference Easy Riders, because in the
7 Easy Riders case they talk about how is it that Mike Nivens
8 had absolutely no regard for whether or not the helmet had
9 ever been certified, whether or not the consumer had knowledge
10 of whether or not the helmet had found to be noncompliant,
11 none of those elements were in any way involved in their
12 process of stopping and citing motorcyclists?

13 A. In fact, on your point I think what was very telling
14 during those depositions which took days, they were days, what
15 was very telling is we had -- we had established a selection
16 of a dozen motorcycle helmets that everything from -- full
17 face down to -- well, we didn't have a dixie cup and a shoe
18 string but we had something pretty small, and we had asked had
19 asked not only Maurice Hannigan but also Sergeant Nivens would
20 he please explain individually why one helmet was legal -- was
21 or wasn't legal and why?

22 And Nivens was extremely evasive. It went hours and
23 hours as -- to the point where it was very frustrating.

24 He finally, Nivens, being their expert, finally
25 conceded that there was no way to tell. He finally conceded.
26 It took a long time for to us circle down to that that there

1 was no objective standard, there was no -- nothing legal,
2 nothing in writing, nothing -- no matter where he went. He
3 had a copy of 218 in front of him, he had a copy of all
4 decisions that were available at the time.

5 Mr. Hanagan was extremely less forthcoming I would
6 say, he was -- I left the room. As Mr. Quigley knows, I
7 really do not like that man. His attitude was, I and
8 everybody that I came in on the subject --

9 Q. We're moving a little off point. The point of the
10 testimony I wanted to just -- the judge to get from you, not
11 that I don't appreciate what you are saying that, I just -- I
12 want to keep everything focused here because I want -- I'm
13 trying to make the point, I'm really trying to make the point
14 that it is the enforcement policy of the CHP.

15 Your understanding of the Buhl and Bianco decision,
16 according to your understanding of the Buhl and Bianco
17 decision as a motorcyclist, as a guy involved in Bianco as a
18 guy with all this experience and in all these depositions and
19 everything else, can you think of any reason in law why this
20 would not be considered legal headgear in the State of
21 California in complying with 27803(b)? And I'm holding up a
22 helmet that looks very much like a baseball cap. It's been
23 referred to as a baseball cap even though I don't play
24 baseball, don't even like baseball, but, do you know of any
25 reason with your experience in and an around this statute why
26 this would be considered, I'm asking for a legal opinion, but

1 it's as an informed opinion.

2 A. I want to answer your question in a couple of
3 different ways: One is that it violates common sense which
4 blocks out most people, the other thing that is the answer you
5 are after is legally you can't get there from here. And
6 sometimes things are brought up best or best example is to
7 take something that is absurd or does violate common sense and
8 say the same thing that I saw when the equivalent was handed
9 to Maurice Hannigan or Sergeant Nivens or anybody else that
10 has come forward where you say stack the law over here and
11 just hand them a pen and say circle the portion where it
12 fails. You circle the portion where it fails.

13 And what you have is 27803 doesn't tell you
14 anything; 27802 is meant for application on sellers but it
15 doesn't tell you anything either, and it refers to you know
16 CFR49 dash whatever to 218, and you take -- open up 218 which
17 is just a couple of pages, and it doesn't tell you anything
18 either.

19 In fact, something that is absurd is 218 has only
20 one requirement in it, just one. It doesn't require testing,
21 it doesn't require passing, it has one requirement that says
22 something about labeling. That's the only requirement. There
23 is no require to test, there is no require to pass and we've
24 long since figured out that was because everybody was trying
25 to stay away from liability while they were trying to tell
26 what you to wear.

1 Q. By the way, in your neighborhood, your neck of the
2 woods where things are little bit tighter than I think you'll
3 agree they are in this neck of the woods, how long would I
4 ride with this in San Diego without being shot?

5 A. Six to eight minutes. A person in my -- I live in
6 north San Diego County in the city of Vista and a young man
7 got a ticket for wearing a helmet, a half shell helmet, he got
8 a ticket for wearing an unapproved helmet as recently as a
9 week ago and the officer that -- the kid is saying but there
10 is an injunction, there is this, I've never been bothered
11 before, all the arguments that everybody on the street would
12 make and the officer is saying in no uncertain terms, I don't
13 care, take it up with the judge.

14 And of course that's kind of a circle that you can
15 continue to go in because there is a couple of people in the
16 audience here that have taken it up with the Judge more than I
17 have and I have been up there seven times myself, and they
18 don't care what the last decision is. I said -- it was this
19 helmet, I got it -- I was found not guilty, I'm in compliance
20 and the judge is ruling like it's a brand new case. Every
21 time.

22 Well, I'm -- we all can figure out that if the cop
23 is allowed to cite you for, you know, the fact that he doesn't
24 like your rear door handle, and he cites you every day and it
25 doesn't matter how many times you win, that it's kind of an
26 abuse of process and it's something that you can't fight. How

1 do you prove a negative that your helmet does comply when
2 there is really no compliance? There is nobody that puts
3 their stamp on it.

4 Q. Except the manufacturer?

5 A. Except the manufacturers. We've already looked at
6 every conceivable way that it could work. If you would allow
7 a judge, say, okay, a Superior Court judge can make a decision
8 on whether it is or whether it isn't. Well, I'm under the
9 impression that you have looked at this with Mr. Quigley
10 enough to where you could see 700 different opinions coming
11 and only 600 helmets.

12 MS. WELLS: Yeah.

13 THE WITNESS: And that is the very essence, the
14 basis, the foundation of something that is unworkable. If you
15 were to put anything -- if you were to change the wording of
16 any portion of the law or any portion of the standard, if you
17 allow me to go in there with a pencil and I could make a thing
18 where you'd just say just put anything in there, put one inch,
19 three eighths of an inch, put the color black, put anything
20 that you could describe in there that you could get your teeth
21 into and you have yourself a helmet law. Or as we've said,
22 you give me a list of helmets and I'll just go down there and
23 pick one.

24 And you have the proverbial cop on the other side
25 saying, Well, just go get another one and I'll tell you later
26 whether it's all right.

1 And so you end up with something like Mr. Quigley
2 and he has taken it out to the extreme or the absurd and
3 challenged common sense to where you say well, let me take my
4 cell phone out and put it on my head and say that's a helmet.
5 When in reality there is a valid legal argument that will
6 follow that all the way down the road.

7 THE COURT: All right.

8 THE WITNESS: And that's what he's made.

9 THE DEFENDANT: Thank you, Mr. Bianco.

10 THE COURT: Again, I offer the option of any
11 questions.

12 MR. GENOCHIO: No, sir.

13 THE COURT: Okay. Thank you, sir, you may step
14 down.

15 Mr. Quigley.

16 THE DEFENDANT: Your Honor, a couple of things: One
17 of them is that the only thing that I brought -- I didn't
18 bring Ms. Angell's brief because I'll be honest with you, I
19 didn't take it seriously, maybe I should have. But I did Ms.
20 Brock's because you know she worked real hard, did a lot of
21 arguments. But when you look at Ms. Brock's, the District
22 Attorney's arguments and this is from -- you have it as
23 October 22, 2004, this was prior to your -- some ruling that
24 you made that they wanted you to reconsider in January, but
25 the lead page, we're talking about that I was -- that I was
26 accused of not wearing anything and that it was the Boulder

1 Creek ticket that you decided I was wearing something, wearing
2 a baseball cap or a knit watch cap, and then it says, the
3 baseball cap has been described as being a typical baseball
4 cap, that's in quotes, constructed of a soft -- as soon as she
5 hits constructed we're into fabrication: Absurd, gone, you
6 know. And again, page two of that, there is testimony that
7 due to a lack of hard protective outer shell, the argument was
8 we wanted to prevent a plumbob from hitting a head form. I
9 could do that without the hard shell. I could do that with
10 bubble wrap, I could do that with a block of foam.

11 I mean, we've -- Mr. Bianco who happens to have a
12 little experience in engineering and stuff figured out a
13 helmet design that will zero out all those tests but it's
14 about a foot thick and about yay big around, a pretty big
15 bubble and no hard surface whatsoever, it's strictly foam.
16 But it will zero out every single test in 218.

17 Well, pardon me, I understand that the retention
18 system had a little trouble sticking together through all of
19 that, but, any way -- but -- no, it's fabrication, it's all
20 fabrication, that's all.

21 The FMVSS 218, the standard to which I'm being held
22 is a testing standard, it is not a design standard which is
23 what Mr. Bianco was alluding to awhile ago. It doesn't say
24 anything about what a helmet is. It only talks about what
25 happens to this thing when it's tested that makes it a helmet.

26 You think wearing this and calling a helmet is

1 absurd, where I come from that's absurd that I'm being held to
2 something that we'll know what it is right after we test but
3 well, maybe, but it doesn't really say that. And then, of
4 course, the references from the DA's office indicate their
5 clear understanding or belief in DOT-approved, because they
6 got in that in here a couple places how it is that when do you
7 everything right you can put the label on it which indicates
8 that your helmet is DOT-approved. And I believe that's on
9 page five of that October 22d brief, the exact word is a
10 baseball cap cannot possibly do this, talking about protecting
11 the rider's head and cannot pass the stringent testing
12 procedures required to certify a helmet as Department of
13 Transportation approved.

14 And nobody ever -- nobody -- the words have no
15 meaning in fact or in law. That's from the people that made
16 the standard. And then on page -- well, they are talking
17 about Bianco but I gave you that. Oh, they talked about what
18 Mr. Womack was talking about in a letter that's on my website
19 this is on page six, Acting Chief Counsel Womack saying that
20 it should have a polystyrene foam liner that is at least one
21 inch thick and other elements of fabrication again. But, he's
22 a lawyer. I mean, not an engineer. He's trying to tell
23 people what a standard testing requires. He's a lawyer.

24 You know, it's a ridiculous proposition that I'm
25 being held to this. And it's not by state law, it is not by
26 the helmet law, it is by CHP's enforcement policies and that's

1 the thing that I'm trying to get everybody to understand. I
2 don't want nobody else writing something down to me that this
3 statute has been found to be constitutional as applied, Your
4 Honor, because to my knowledge, swear to God on my life there
5 ain't nobody ever made that determination. You are going to
6 be -- this is a case of -- what do they call it? Virgin
7 experience?

8 MS. WELLS: First impression.

9 THE DEFENDANT: A case of first impression as to
10 whether or not this statute is constitutional as applied to my
11 knowledge.

12 Kate points out to me and it's absolutely correct
13 that all the other enforcement agencies throughout the state
14 do follow the CHP and, in fact, it is so bad that the state of
15 Nevada follows the enforcement policies of the CHP. So at
16 least in Las Vegas they do.

17 There is other references in there to approved and
18 nonapproved helmets. I don't blame -- you know, I don't blame
19 Bob Lee for not understanding this, and I don't blame
20 Ms. Brock for not understanding this. First of all, they are
21 not motivated because it's not their life on the line. I'm
22 motivated because it is my life on the line. I'm being asked
23 to bet my life that all of these things make sense and that
24 I'm supposed to go out there and pick something off of what
25 that will satisfy every cop that I'll ever meet and without
26 regard to what's going to be safe for me.

1 And I think 50 years of riding experience earns me
2 the right to have some say in what it is I end up putting on
3 my head.

4 And while I'm at it, I'm glad I got there because
5 the other thing that I've never hammered, and I mean to hammer
6 every time I come in here, is that I don't come to you as a
7 motorcyclist that rides as matter of privilege. I'm not going
8 to argue it unless it's required of me, but, Your Honor, I use
9 the roadways in the manner to which they have adapted and
10 devoted as a right not a privilege so I feel no obligation and
11 it's never been taken from me as far as I know, my right to
12 use the roadways in the manner to which they have been adapted
13 and devoted in a manner that does not threaten my fellow
14 roadway users.

15 So when somebody wants to get around to saying it's
16 a privilege therefore they can put my life at risk, I say no,
17 it ain't for me not yet nobody has taken that right a way from
18 me. And in CALJUR -- if you need it I'll get you, the CALJUR
19 number that talks about my right to use the roadways and they
20 are not an inalienable right to an unobstructed use of the
21 roadways and if you don't think this helmet law has obstructed
22 my use of the roadways -- well, then you understand that.
23 Some other folks may not.

24 And then in the brief that came down in January, and
25 I alluded to this, I think that in that Erratum that I brought
26 you, again, the District Attorney hinges all of their

1 arguments on -- it says in there he's made -- referring to me,
2 I made it abundantly clear he has no intention of wearing the
3 hard shell DOT-approved safety helmet. That's correct, that
4 is absolutely correct, and if that's what I'm being charged
5 with, I'm dead meat. So I absolutely refuse to wear a
6 DOT-approved helmet because there is no such thing.

7 And they use -- and they use this -- legitimate
8 DOT-approved safety helmet. And the most amazing part to me,
9 Your Honor, and I feel like I'm summing up way early, but you
10 probably think it's way late, but the most amazing thing of
11 all this to me, Your Honor, is the Excel (sic) Helmet Company
12 right here in Watsonville, California, and I'm here to tell
13 that you the amount of energy that has been put into
14 prosecuting me for riding my motorcycle with the headgear that
15 I have chosen to protect myself with, all the while ignoring
16 the fact that these people advertise on their website that
17 they have sold tense of thousands of motorcycle helmets all
18 around the world, they've been recalled by the manufacturer --
19 I mean by NHTSA on most models of the helmets they sold, they
20 advertised them as DOT-approved for years with nobody ever
21 doing anything about it, and at the same time their helmets
22 are failing testing and they are violating 27802 by selling
23 helmets that do not comply with 218, they are not being
24 prosecuted, tens of thousands of violations of that. I mean,
25 my 30 little tickets don't mean nothing against tens of
26 thousands, can't get a complaint, but now, if you go to their

1 website --

2 THE COURT: Deep breath.

3 THE DEFENDANT: -- what you find is they no longer
4 offer DOT-approved helmets, Your Honor; they are now DOT
5 certified helmets.

6 And you know -- and by the way, they are DOT model
7 helmets. It will be the DOT Big Boy helmet or the DOT Slim
8 Jim helmet, they got DOT written on everything, everywhere.
9 It's a complete fraud. And it's the kind of fraud that kills
10 people, other people; not me, not themselves, other people.
11 But we can't get them prosecuted. We're going to make
12 Mr. Quigley's life miserable because he's out there trying to
13 ride his motorcycle safe and comfortably.

14 So, after that little tirade --

15 MS. WELLS: Can I add something?

16 THE DEFENDANT: Please.

17 MS. WELLS: When we went to the CHP to Lieutenant
18 Walker and gave him some examples of helmets asking him to
19 certify he did pick out one that he said, Now, Richard, if
20 you'd wear this we wouldn't cite you.

21 THE DEFENDANT: Probably.

22 MS. WELLS: Probably wouldn't cite you. That's
23 right. Guess what? It was the model that had been recalled.
24 So Lieutenant Walker picked one of the helmets that was
25 absolutely not certified as being safe in any way.

26 THE DEFENDANT: Because the proposition that the

1 statute would require a consumer or enforcement officer to
2 decide if a helmet is properly fabricated is absurd. When the
3 statutes are harmonized as they must be, the only requirement
4 is that the helmet bear the certification of compliance. And
5 by the way, Your Honor --

6 THE COURT: Have I seen that before?

7 THE DEFENDANT: -- I don't believe I brought this in
8 I don't believe I've had it before. I finally got it big
9 enough that they can see it before they stop me.

10 THE COURT: All right. Here's what I want to do,
11 obviously you have given me a new case that I want to read.
12 I'll review a few things and I'm getting a trial, I'm
13 obviously not going to do it today, but I'm getting a trial.

14 What is your availability on the 16th?

15 THE DEFENDANT: To do what, Your Honor?

16 THE COURT: For my decision. You have given me a
17 new case. I want to read a new things, I want to formulate my
18 decision, I want to do that on the 16th if you are available.

19 THE DEFENDANT: Trust with me is still not going to
20 type of work with you, is it, Judge? You're going to make
21 wait.

22 THE COURT: I got to at least dot those eyes and
23 cross those T's.

24 (Off the record.)

25 THE COURT: The 23d?

26 THE DEFENDANT: Is there anything else I could offer

1 you? And I'll -- I want to leave this thing, I want to be a
2 free man when this is over, I want to be able to go ride my
3 motorcycle and subject to only reasonable regulations.

4 These guys come up today because they don't believe
5 you, they didn't believe you existed, they thought you were in
6 that Santa Clause column.

7 THE COURT: A figment of your imagination?

8 THE DEFENDANT: Yeah.

9 MR. BIANCO: Your Honor, I don't mean to interrupt.
10 There's one thing I forgot that's very important. The
11 Department of Transportation has never ever made a
12 determination of noncompliance about any of their -- they have
13 never made this determination of noncompliance probably for
14 the reason if they ever did it would set a bottom which makes
15 the top.

16 THE COURT: So, the 23d at 1:30 again?

17 THE DEFENDANT: Yeah, can I give you some FYI
18 reading?

19 THE COURT: Sure.

20 THE DEFENDANT: I'm not trying to hide anything from
21 Mr. Genochio. This is just a police report. And the only
22 thing that is important about it is the fact that the
23 references were made to DOT-approved helmets, or approved
24 helmets and in this report, and that follows the evidence I
25 gave with that newspaper article elsewhere. And this is an
26 order granting the Defense Motion to Dismiss this lawsuit I

1 have against Watsonville over in Federal Court. And this is
2 FYI only as to how the Federal Court feels about Judge
3 Barton's ruling on that 2800 charge.

4 MR. GENOCHIO: Am I right? This only deals with the
5 infractions, the tickets he's got, so it only deals with
6 what's happened before. There is no action sought to prohibit
7 the enforcement of the statute, correct?

8 THE DEFENDANT: No, that's what I'm seeking.

9 THE COURT: Well, eventually it may be but right now
10 that's where we're at. So --

11 MR. GENOCHIO: Okay.

12 THE WITNESS: Whoa, whoa, whoa!

13 THE COURT: Well, if I dump the statute then there's
14 no enforcement. I haven't dumped it yet, so I can't tell them
15 they can't enforce it yet.

16 THE DEFENDANT: Right.

17 THE COURT: That's his question.

18 THE DEFENDANT: But you can on the 23d.

19 THE COURT: Right. But his question is what is
20 happening between now and then? Nothing is happening between
21 now and then.

22 THE DEFENDANT: No, I'll continue to wear this
23 little thing when I come to Watsonville. I respect you. My
24 guys looked at my when I hit the city line there and thought I
25 was a little bit whacko.

26 MS. WELLS: But they did sign off on that.

1 THE DEFENDANT: They did sign off on that one, yeah.
2 Watsonville did.

3 THE COURT: Watsonville PD did?

4 MS. WELLS: Yes.

5 THE DEFENDANT: Well, yeah.

6 THE COURT: Cool.

7 THE WITNESS: It was one of the many that they saw.
8 He didn't really say this one is good and that's that ones
9 that but he didn't say that one is not. He just kind of
10 looked at it. But he kind of hugged the three quarters, I got
11 to give him that.

12

13 (End of proceedings.)

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