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1  
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA

3 COUNTY OF SANTA CRUZ

4 DEPARTMENT 12

5 BEFORE THE HONORABLE MICHAEL BARTON, JUDGE

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7  
8 THE PEOPLE OF THE  
9 STATE OF CALIFORNIA,  
10 Plaintiff,

11 vs.

12 RICHARD JAMES QUIGLEY,  
13 Defendant.

14 Case No.s  
15 5SM 085642  
16 5SM 096601

2006 AUG 29 PM 1:01  
FILED  
SUPERIOR COURT  
CO. OF SANTA CRUZ  
WATSONVILLE

17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18 COURT TRIAL

19 AUGUST 25, 2006

20 APPEARANCES:

21 For the People:

CHRISTOPHER LUSTIG,  
Deputy District Attorney

22 For the Defendant:

23 IN PROPRIA PERSONA,  
24 KATE WELLS  
Attorney at Law

25 Official Court Reporter:

OSCAR A. MORENO,  
26 CSR 3441

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I N D E X

Direct Cross Redirect Recross Court

WITNESSES:

For the People:

Gary Francis Brennan	5	8		
Scott Russell Zilge	19	24	37 39	38

For the Defense:

EXHIBITS:

People's

1-Photo (5SM085642)	23	
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Defendant's

A- Report (5SM096601)	Premarked
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A-Packet (5SM085642)	24
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B-Letter (5SM085642)	36
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1 Watsonville, California

August 25, 2006

2  
3 P R O C E E D I N G S  
4

5 THE COURT: All right. Mr. Quigley

6 THE DEFENDANT: Are we up, Your Honor.

7 THE COURT: I think so. Can I do a couple of  
8 pretrial FYI matters, Your Honor?

9 THE COURT: Sure. Let's go on the record then in  
10 the Quigley matters. Mr. Quigley is present representing  
11 himself. Mr. Lustig, I assume that since you are in that  
12 chair that you got volunteered?

13 MR. LUSTIG: Yes, Your Honor.

14 THE COURT: Welcome.

15 MR. LUSTIG: Thank you.

16 THE COURT: I won't make anymore comments than that,  
17 so, welcome.

18 Mr. Quigley.

19 THE DEFENDANT: Your Honor, I don't know if you got  
20 a copy, it says that you got a copy of the letter that was  
21 written by the Attorney General to the Sixth Appellate Court  
22 asking them to overturn your decision sight unseen and I got a  
23 copy of the response from my lawyer, Wendy Lasher.

24 THE COURT: I got those.

25 THE DEFENDANT: Oh, you have that. Okay. I won't  
26 give you that. I did give the District Attorney a copy. And

1 then I brought you -- as Mr. Blanscet wanted to you have a  
2 copy of this, Judge, I told him I'd give it to you but I don't  
3 think it has anything to do with the trial today necessarily.  
4 Don Blanscet, took this Court's order that was signed on the  
5 16th of August, threw it in his saddle bag and went for a ride  
6 sans helmet. He was stopped by the Highway Patrol and was  
7 issued a ticket and originally the officer wrote it as  
8 noncorrectible and then Mr. Blanscet and he had a discussion  
9 as it related to me and it's in evidence, and you know, I  
10 don't think the burden of proof is that heavy.

11           Anyway, it was -- he corrected it and made it a  
12 correctible violation, wrote right on the citation that it's a  
13 correctible violation, and then he went down to the CHP office  
14 and had it signed off so that -- like I said, he wanted me to  
15 be sure to point out to you that that's what had happened.

16           So, apparently he thinks it's important for you to  
17 know that.

18           THE COURT: Roseville?

19           THE DEFENDANT: It's up in Grass Valley somewhere,  
20 Nevada County, I think -- I don't know if it's county.

21           But, anyway, and along that line I got another story  
22 that came through about a gentleman up in Nevada city itself  
23 who was riding around again sans helmet, threw your order in  
24 the saddle bag, the officer from the Nevada City Police  
25 stopped him wanted to know where his helmet was, he said, "I  
26 don't have one", the officer said "why, "because the statuté

1 says its unconstitutional" and the officer says "How do you  
2 figure" and he broke out an 8 page order signed by yourself  
3 and handed it to the officer and the officer read through it  
4 and said, "Well, good it's about time. Can you bring one of  
5 these down to the police department so I can share it with my  
6 buddies" and this guy told him to go ahead and take that one.

7 Those are all the stories that I was supposed to  
8 relate -- from this trial.

9 And now I am ready to stand trial for two citations.

10 THE COURT: Mr. Lustig.

11 MR. LUSTIG: Your Honor.

12 THE COURT: These are older citations. One is from  
13 August of last year and one is from June of last year, I guess  
14 my first question being are you ready to proceed forward?

15 MR. LUSTIG: Yes, Your Honor.

16 THE COURT: All right.

17 Would you like to call your first witness?

18 THE DEFENDANT: Oh, Your Honor, could I request  
19 please that the witnesses that aren't testifying be excluded?

20 THE COURT: Well, I'm assuming -- is there one on  
21 each? Or I don't know.

22 MR. LUSTIG: Percipient witness wise, yes, Your  
23 Honor, Mr. Quigley also subpoenaed Mr. Vincent from State  
24 Parks who is not a percipient witness.

25 THE COURT: All right. Then I'll -- to that extent  
26 I'll deny the motion. Go ahead. Which one -- do you want to

1 go on the June one or the August one?

2 MR. LUSTIG: I'll go on the August one, the State  
3 Parks one, Your Honor.

4 THE COURT: So that's fine, that's 5SM096601.

5 MR. LUSTIG: Ranger Brennan is present to testify.

6 THE COURT: All right. Mr. Brennan, would you come  
7 forward please and raise your right hand to be sworn.

8

9

**GARY FRANCIS BRENNAN,**

10 called as a witness for the People, having been duly sworn,  
11 testified as follows:

12 THE COURT: Have a seat, sir.

13 Mr. Brennan, would you state your full name and  
14 spell your last name please?

15 THE WITNESS: Gary Francis Brennan, B-R-E-N-N-A-N.

16 THE COURT: Mr. Lustig.

17

**DIRECT EXAMINATION**

18 BY MR. LUSTIG: Q. Mr. Brennan with whom are you  
19 employed?

20 A. With California State Parks.

21 Q. And how long have you been employed by them?

22 A. A little over two years, about two and a half years.

23 Q. And what's your position there?

24 A. State Parks Peace Officer, Ranger.

25 Q. Did you receive any special training for that  
26 assignment?

1 A. Yes, I did.

2 Q. Could you describe that for us?

3 A. It was a six-month program, qualified basic POST for  
4 the State of California and then following having to do with  
5 State Parks Operations.

6 Q. I want to direct your attention to the afternoon of  
7 August 28th of 2005. Were you on duty at that time?

8 A. Yes, I was.

9 Q. As a State Parks Ranger?

10 A. Yes.

11 Q. And at about 4:30 p.m, where were you?

12 A. I was in a day use area adjacent to headquarters  
13 right behind where we park our patrol vehicles.

14 Q. And did something unusual happen at that point?

15 THE COURT: Which park?

16 THE WITNESS: Big Basin State Parks.

17 THE COURT: That's okay. There is just --

18 THE WITNESS: I understand.

19 THE COURT: Within our county there is a lot of  
20 State Parks and possible issues. I mean, I know, it's in our  
21 county. I just needed to know which one. Okay. I'm sorry.

22 BY MR. LUSTIG: Q. For the record that is in the  
23 County of Santa Cruz?

24 A. Yes, it is.

25 Q. And can you describe what you first observed?

26 A. I was out talking to another ranger or Ranger Banz

1 when we noticed a motorcycle come into the day use parking and  
2 park right in front of the headquarters building and the  
3 driver wasn't wearing a helmet at all.

4 Q. How many people were on the motorcycle?

5 A. There was two people.

6 Q. And were you in uniform?

7 A. Yes, I was.

8 Q. What did you do after you noticed the two people on  
9 the motorcycle?

10 A. I contacted the driver of the motorcycle and after a  
11 lengthy discussion I issued him a citation for not wearing a  
12 helmet, driving on a state highway.

13 Q. Did you see the person you cited here in the  
14 courtroom today?

15 A. Yes, I do.

16 Q. Could you identify him, please, for us?

17 A. Richard Quigley.

18 MR. LUSTIG: The record will reflect, Your Honor --

19 THE COURT: Yes, Mr. Quigley is present and it's the  
20 defendant.

21 BY MR. LUSTIG: Q. And you mentioned that he wasn't  
22 wearing a helmet. Was he wearing anything on his head?

23 A. No, he was not.

24 Q. Did you explain to him the reason for the contact?

25 A. Yes. I did. I told him --

26 Q. I'm sorry, what did you tell him?



1           A.    I just told him the reason for the contact was for  
2 not wearing a helmet and driving a motorcycle.

3           Q.    And you mentioned there was a passenger on the motor  
4 bike?

5           A.    Yes, there was.

6           Q.    Was that individual wearing a helmet?

7           A.    When they both came into the park the woman on the  
8 back of the bike was wearing a hooded sweatshirt with a hood  
9 up.  Couldn't tell whether she was wearing an actual helmet.  
10 However, during the conversation, they produced a beanie type  
11 looking helmet which I could neither confirm or deny was  
12 DOT-approved so I didn't cite her in this situation.

13                   MR. LUSTIG:  Just one moment, Your Honor.

14                   BY MR. LUSTIG:  Q.  Can you just describe for us the  
15 size of the helmet that the passenger had?

16           A.    It was approximately a disc that was -- I would say  
17 four to six inches.  I'm not really sure of the actual size.  
18 I didn't check it at the time.  It did have straps so it could  
19 be affixed underneath the chin.  It did have a DOT sticker on  
20 the top and the back of the helmet per se.

21           Q.    To be clear, you cited the driver but not the  
22 passenger?

23           A.    That's correct.

24                   MR. LUSTIG:  Thank you, Officer -- Ranger.  No  
25 further questions, Your Honor.

26                   THE COURT:  Mr. Quigley, questions?

CROSS-EXAMINATION

1  
2 BY THE DEFENDANT: Q. First of all, is it Ranger  
3 Brennan or Officer Brennan? Which do you prefer?

4 A. It does not matter.

5 Q. Okay. Officer Brennan, first of all, I'd like to  
6 congratulate you on your report. It's as thorough as a report  
7 as I've ever seen on one of these citations and I appreciate  
8 the time that you took to write that.

9 In my discovery request I asked for some items that  
10 you provided me, I assume are contained in the packet that you  
11 provided me today. One of the things I asked for was a copy  
12 of all training materials, directives, statutes, memos,  
13 bulletins, and other publications which serve as the standard  
14 by which you determine what constitutes A and in quotes I put  
15 "motorcycle safety helmet," for purposes of enforcing  
16 27803(b).

17 Am I given to understand that in response to that  
18 portion of the memo you provided this copy of FMVSS 218?

19 A. Yes, sir.

20 Q. Okay. I asked for a copy of Parks Department Policy  
21 relating to enforcement of vehicle section 27803(b).

22 A. We have none.

23 Q. You have no specific policy for that statute?

24 A. We have no specific policy for enforcing helmet  
25 rules.

26 Q. Thank you.

1           And then a copy of whatever reasonable regulations  
2 establish specifications and standards for safety helmets as  
3 the California Highway Patrol has adopted, pursuant to 27802,  
4 was that also included in this FVMSS 218, is that what this is  
5 supposed to indicate?

6           A.    Yes.

7           Q.    Now, a moment ago you mentioned that when you were  
8 looking at the headgear that was being worn by my passenger,  
9 that you could neither confirm nor deny that that headgear was  
10 DOT-approved. Is it your understanding that in order to be  
11 compliant with California helmet law that a helmet must be  
12 DOT-approved? Pardon me, let me rephrase. Was it your  
13 understanding at the time that you issued me the citation that  
14 in order to be compliant with the helmet law that a helmet had  
15 to be DOT-approved?

16          A.    What I gave you a citation for was not wearing a  
17 helmet at all.

18          Q.    That's correct.

19          A.    That was -- in fact, you had no headgear whatsoever  
20 when you came into the park.

21          Q.    Then let me come at that from a different angle  
22 then. In your report under the narrative paragraph two --

23                THE DEFENDANT: Does the Court have a copy of this  
24 discovery, Your Honor?

25                THE COURT: No.

26                THE DEFENDANT: Okay. I'd like to -- whatever

1 evidence it would be, I'd like to enter this into evidence as  
2 -- let's do this one because it's got all the words in it.

3 THE COURT: Defendants's A. Mr. Lustig, have you  
4 seen it? Or is that just the report, Mr. Quigley.

5 THE DEFENDANT: This is the report. I already  
6 checked with the District Attorney and they sent us a copy.

7 THE COURT: I'm just saying if it's just a report  
8 then he has a copy but --

9 THE DEFENDANT: It's a report and copy of the  
10 citation and a notification that he changed from  
11 noncorrectible to correctible -- from correctable to  
12 noncorrectible but I don't know that I need to go there but if  
13 I do I'll get there in a minute.

14 Anyway, referring to that report, you wrote, "I  
15 contacted Quigley and identified myself as a state park  
16 officer and asked him if he had a justified reason for not  
17 wearing a helmet."

18 THE COURT: Slow it down just a tad so -- I can  
19 listen that quickly, but it's really tough for Mr. Moreno to  
20 keep his fingers going.

21 THE DEFENDANT: I apologize, Your Honor, and I  
22 apologize, Oscar.

23 BY THE DEFENDANT: Q. The next sentence, Quigley  
24 stated quote, "If you can tell me what a helmet is, I would  
25 wear one."

26 At the time that I said that did you offer any

1 suggestion or recommendation or information as to how could I  
2 determine what a helmet is?

3 A. I don't believe so.

4 Q. Are you prepared to tell me now?

5 MR. LUSTIG: I would object on relevance, Your  
6 Honor, and argumentative.

7 THE COURT: I'll overrule it but you can answer it  
8 if you have an answer. If not, then that's fine.

9 THE WITNESS: The -- just from what I've done in  
10 researching this trial, I could say that -- not that it makes  
11 any difference now because this was back then, the  
12 certification process for a helmet that's in our CVC,  
13 California Vehicle Code, states that it needs to be Department  
14 of Transportation Certified. It has to meet the criteria of  
15 the testing for the helmet. So now that's what I would use.

16 BY THE DEFENDANT: Q. So it's your understanding  
17 that in order to be a legal helmet in compliance with the  
18 helmet law it has to be DOT certified?

19 MR. LUSTIG: I would object, it's outside the scope,  
20 it's irrelevant, and asks for a legal conclusion.

21 THE COURT: It's -- I don't think that's what he  
22 said, Mr. Quigley. What he said is that it has to meet the  
23 specifications that have been certified by DOT. He didn't say  
24 that the helmet had to be certified by DOT.

25 THE DEFENDANT: Your Honor, I'm sorry. That was  
26 going to be my next question.

1 THE COURT: That's okay.

2 BY THE DEFENDANT: Q. The certification that you  
3 mentioned -- oh, and to as to foundation issue, Your Honor,  
4 the reason that I'm asking these questions is that I'm going  
5 to be asking at the conclusion of this testimony that the  
6 Court find me not guilty on the basis that there is no  
7 objective standard that is in compliance with the statutes as  
8 written or interpreted by the courts that could be applied to  
9 me that would have avoided this citation and I will ask that  
10 it be dismissed on those grounds, so that the question as to  
11 what his state of mind was and what his understanding of the  
12 law is from that aspect, I believe is relevant.

13 THE COURT: I'll let him answer it.

14 BY THE DEFENDANT: Q. So, who -- on the  
15 certification, who is it that -- is it your understanding  
16 according to your training and understanding would it be that  
17 would certify that a helmet met the Federal standards?

18 A. Now or back there at the time that I wrote the  
19 ticket?

20 THE COURT: Back then.

21 THE WITNESS: Back then.

22 THE COURT: Because that's what --

23 THE WITNESS: Back then I just took it as the law  
24 states it. You have to wear a helmet when riding a motorcycle  
25 on a state highway. That was my reason for issuing you your  
26 ticket.

1 BY THE COURT: Q And how do you establish what was  
2 a helmet? Because what I'm saying is --

3 A. Well, it's the lack of helmet. You had no helmet on  
4 whatsoever.

5 Q. It's an arguable position since I was wearing  
6 nothing that it's pretty clear that I wasn't wearing a helmet  
7 since I wasn't wearing nothing save for the fact that we don't  
8 have an understanding of what a helmet is, so from my point of  
9 view as I think I expressed to you on that day, I wanted to  
10 know and I am wanting to know now, what your understanding is  
11 of what I could have been wearing to have complied with the  
12 law, with the legal certainty it would have taken to avoid a  
13 citation?

14 THE COURT: How about a less complicated question.  
15 Which is --

16 THE WITNESS: That would be great.

17 THE COURT: -- you didn't cite the passenger for the  
18 disc, right?

19 THE WITNESS: That's correct, sir.

20 THE COURT: Other than the disc which you saw and  
21 dealt with, what would you have expected Mr. Quigley to be  
22 wearing in order for him not to have gotten a ticket that day?

23 THE WITNESS: If he would have been wearing any form  
24 of helmet on his head at that period of time I probably  
25 wouldn't even have made contact with him.

26 THE COURT: Okay. Mr. Quigley.

1 BY THE DEFENDANT: Q. And again I'm not trying to  
2 make it difficult, but, I'm holding up what a lot of people  
3 have stated is a baseball cap, but that has the appearance of  
4 a baseball cap, had I been wearing this particular headgear  
5 and noting that on the back of it are the letters DOT, if I  
6 had been wearing this on that day would that have been  
7 adequate to prevent you from sighting me?

8 MR. LUSTIG: Objection; calls for speculation.

9 THE COURT: Probably but you can answer it, Ranger.

10 THE WITNESS: I probably would have contacted you,  
11 yes, sir or written a ticket probably.

12 BY THE DEFENDANT: Q. Okay. So essentially your  
13 understanding of the basis for determining whether or not a  
14 given piece of headgear is a helmet is relying on whether or  
15 not it's properly fabricated?

16 A. It's the testing requirements that have to be met by  
17 the manufacturer.

18 Q. Okay. So that -- so that it is your understanding  
19 that in order to meet the testing requirements the helmet  
20 would have to be properly fabricated so that again --

21 A. -- in order to pass the requirements set forth in  
22 that document that you have.

23 Q. So that I would be held responsible for whether or  
24 not my helmet would actually physically pass these tests?

25 A. Actually it's the manufacturers that are held  
26 responsible. It's up to the manufacturers to display or sell



1 helmets that are either certified DOT, certified DOT SNEL or  
2 certified as a novelty helmet.

3 Q. I know that you are answering the question and I'm  
4 probably asking the wrong ones, Officer Brennan, and don't get  
5 me wrong, I'm not trying to trick you, I'm not trying to hang  
6 you up. You are a straight up officer as far as I'm  
7 concerned. I'm simply trying to establish the Court's  
8 understanding what it is that you understand to be criteria  
9 for compliance with the law or understood at this time to be  
10 the criteria for compliance with the law. According to your  
11 understanding of the criteria for the law would the helmet --  
12 would the headgear that I was wearing have to have a hard  
13 surface such as a hard -- like in a table top or hard like in  
14 a -- yeah, hard. If you knock on it and get a noise?

15 A. Yes.

16 Q. Was it your understanding that in order to comply  
17 with the helmet law at the time that you wrote the ticket that  
18 there would have had to have been some sort of padding inside  
19 that hard material between that material and my head? .

20 A. Yes.

21 Q. So that the construction of the helmet is what makes  
22 it legal, how it is constructed is what makes it legal to your  
23 understanding of California's helmet law at the time that you  
24 issued the citation?

25 A. At the time.

26 Q. Only because my only defense is that the statute was

1 unconstitutional will I ask the question, is your  
2 understanding today that the helmet has to be constructed in a  
3 certain way in order to comply with California's helmet law?

4 MR. LUSTIG: Objection, it's irrelevant.

5 THE COURT: Yeah, I'll sustain that. His  
6 understanding today is not what was in issue a year ago.

7 THE DEFENDANT: I understand.

8 BY THE DEFENDANT: Q. Okay, when you did issue the  
9 citation, I recall a certain amount of solice that came with  
10 it and you were very polite through the whole thing. I found  
11 the encounter with you to be one of the more pleasant ones  
12 with anyone, but at the time that you issued the citation one  
13 of the things that sort of took away from the stress of the  
14 citation was you indicated to your knowledge it was a  
15 correctible violation. Do you remember making that?

16 A. It was based on the citation that we had, where you  
17 said that Judge Barton was making them a correctible violation  
18 that I initially made it correctible.

19 Q. I see. So it was based on information I gave you  
20 and then at a later time you did send out an amended citation  
21 that said it was not correctible?

22 A. That's correct.

23 Q. Did -- and in reaching that conclusion, did you go  
24 look at the statutes or were you directed by someone else that  
25 it should be listed as non-correctible?

26 A. I was directed by my supervising Park Ranger that it

1 was not an issue or it was issued incorrectly, that I should  
2 submit the correction, and make it noncorrectible.

3 Q. And what was his name?

4 A. Kevin Williams.

5 Q. That's not the man I subpoenaed here today?

6 A. No, it's not but you had talked to him.

7 Q. Wow. And that's why you ended up marking it  
8 noncorrectible?

9 Have you read the statutes relative to  
10 correctability?

11 A. Yes.

12 Q. And aside from -- well --

13 THE COURT: No.

14 THE DEFENDANT: Can't go there?

15 THE COURT: Can't go there.

16 THE DEFENDANT: Thank you.

17 THE COURT: That's okay.

18 THE DEFENDANT: Nicer than having them sustained.

19 BY THE DEFENDANT: Q. I'm going to conclude from  
20 your testimony that it is your belief -- it was your belief at  
21 the time that in order to comply with the helmet law I had to  
22 wear a helmet that was properly constructed and is that going  
23 to be an erroneous conclusion?

24 A. That could be the correct conclusion.

25 Q. That would be a correct conclusion. It's very  
26 important that I know that. One moment, please. Are you

1 aware of any lists of helmets that comply with California's  
2 helmet law?

3 A. Official lists or website lists or what are you  
4 asking?

5 Q. Yeah, any official list, anything that would come  
6 from the government that would tell you, aid you in -- any  
7 list that would aid you in enforcing the statute?

8 A. There is no list that I know of.

9 Q. So today, the criteria -- I can't talk about today,  
10 can I, Judge?

11 THE COURT: Nope.

12 THE DEFENDANT: Okay. All right. I at my own peril  
13 I'm going to thank you for your testimony officer. I think --  
14 oh --

15 BY THE DEFENDANT: Q. One more thing, did you read  
16 FMVSS 218?

17 A. Yes, I did.

18 Q. Had you read it at the time?

19 A. No.

20 Q. So you were expected to enforce the law without ever  
21 having read that, it never been presented to you?

22 A. That's correct.

23 THE DEFENDANT: Thank you, Officer Brennan. I  
24 appreciate your honest forthright testimony and the job that  
25 you did that day. You did do a fine job. I mean that.

26 THE COURT: Mr. Lustig, any other questions --

1 MR. LUSTIG: No, Your Honor.

2 THE COURT: -- of the ranger?

3 Ranger, you may step down. Any objection to  
4 Mr. Brennan being excused if he chooses to go back to work?

5 THE DEFENDANT: No, Your Honor, or his boss. I  
6 guess I got the wrong boss today.

7 What a bummer. Thank you for coming, though.

8 THE COURT: Rest on that ticket?

9 MR. LUSTIG: Yes, Your Honor.

10 THE COURT: All right let's take -- I want the  
11 officers to be at least as reasonably as we can in and out, so  
12 the next ticket is 622.

13 MR. LUSTIG: Yes, Your Honor, Officer Zilge,  
14 California High Patrol.

15 THE COURT: Officer, would you raise your right hand  
16 please.

17 SCOTT RUSSELL ZILGE,

18 called as a witness for the People, having been duly sworn,  
19 testified as follows:

20

21 THE COURT: Officer, would you state your full name  
22 and spell your last name, please.

23 THE WITNESS: Scott Russell ZILGE.

24

DIRECT EXAMINATION

25 BY MR. LUSTIG: Q. Good afternoon, Officer, with  
26 whom are you employed?

1 A. Say again?

2 Q. With whom are you employed?

3 A. California High Patrol.

4 Q. How long have you been employed by them?

5 A. Six years.

6 Q. In what capacity?

7 A. Traffic officer, peace officer.

8 Q. Can you briefly describe for us your training and  
9 experience for that position?

10 A. I've had six months of POST-certified academy  
11 training and follow on motorcycle training and several types  
12 of follow on training.

13 Q. I want to turn your attention to the afternoon of  
14 June 22, 2005, roughly 3:20 p.m. Were you on duty at that  
15 time?

16 A. Yes, I was.

17 Q. And where were you on duty at? Did you have a  
18 specific area that you were covering?

19 A. I was leaving court that day so I was on my way  
20 home.

21 Q. Were you in uniform?

22 A. Yes, I was.

23 Q. On a patrol bike?

24 A. CHP motorcycle.

25 THE COURT: Santa Cruz or here?

26 THE WITNESS: Santa Cruz Court.

1 THE COURT: Again, it's sort of like we have two  
2 choices.

3 BY MR. LUSTIG: Q. At roughly that time did  
4 something attract your attention?

5 A. Yes, I was stopped in the left turn lane on Ocean  
6 Street for Plymouth Street, I observed Mr. Quigley in the  
7 Number Two lane coming off Highway 17 at the stop light --  
8 well, he had a disc on his head.

9 Q. So, he was traveling in the opposite direction?

10 A. He was stopped at the stop light.

11 Q. And how far were from you him when you initially  
12 observed him?

13 A. Approximately 40 feet.

14 Q. What did you do at that point?

15 A. I got the green light and pulled across the  
16 intersection and contacted Mr. Quigley, asked him if he  
17 thought that thing on his head was a helmet and he stated yes.

18 Q. Let me back up just briefly. This is in the County  
19 of Santa Cruz?

20 A. Yes.

21 Q. And do you see the person you contacted here in the  
22 courtroom today?

23 A. Yes, Mr. Quigley with the black vest on.

24 THE COURT: For the record, the defendant  
25 Mr. Quigley.

26 BY MR. LUSTIG: Q All right. So you made contact

1 with him?

2 A. Yes.

3 Q. And after you asked him if he thought that was a  
4 helmet what happened next?

5 A. I said, meet me at the gas station and we'll talk  
6 about it.

7 Q. Okay. Which specific gas station?

8 A. I believe it was a Valero on Ocean Street about a  
9 couple blocks off of Plymouth.

10 THE COURT: Is that the one over by the motel?

11 THE WITNESS: Yes, just on the outside of the motel.

12 Q. And so what happened then?

13 A. He drove over there, I followed him over there. I  
14 got off my bike, I asked him about the helmet, I took a  
15 picture of it and started to write him a citation for the  
16 helmet. At that time he informed me that he had paperwork  
17 from the CHP that stated that that was a legal helmet but he  
18 was he was unable to produce it for me.

19 Q. Okay. And did you bring a picture of the helmet  
20 with you?

21 A. Yes, I did. The dates are wrong, Your Honor.

22 MR. LUSTIG: Mark that as a Court's Exhibit.

23 THE COURT: People's 1. Mr. Quigley you have seen  
24 it?

25 THE DEFENDANT: No.

26 THE COURT: Mr. Lustig. Show that to the --



1 ( People's Exhibit 1, Photo marked for  
2 identification)

3 BY MR. LUSTIG: Q. Did he have anything else on his  
4 head besides what you described as the disc?

5 A. Black skull cap, cloth, I believe it was or cotton.

6 Q. And this picture was taken right there at the gas  
7 station?

8 A. Yes.

9 Q. Did he give you any kind of justification for why he  
10 wasn't wearing a traditional helmet?

11 A. Not that I recall. May I refer to my notes and  
12 double check?

13 THE COURT: Sure.

14 MR. LUSTIG: If that will refresh your recollection.

15 THE DEFENDANT: I don't know whether to object or  
16 not, Your Honor. We have a new term called traditional and I  
17 just accept that on face value.

18 THE COURT: Yeah.

19 THE WITNESS: No, I don't believe he did.

20 BY MR. LUSTIG: Q. And can you tell me why you  
21 cited him?

22 A. To me that was obviously not a motorcycle helmet.

23 Q. And what happened after you cited him?

24 A. He asked to be taken forthwith and I told him that  
25 we'd have to get a car and tow his bike and he asked if he  
26 could drive to Court and I told him, no, not with that thing

1 on your head. He signed the citation and that was the end of  
2 the contact.

3 MR. LUSTIG: Thank you, officer.

4 THE COURT: Mr. Quigley.

5 THE DEFENDANT: Your Honor, do you have a copy of  
6 the return on the discovery from the California Highway  
7 Patrol?

8 THE COURT: No.

9 THE DEFENDANT: Okay. I'd like to give you that.  
10 In this packet is a letter from, a letter from the captain of  
11 the local office, I believe it was done by the lieutenant and  
12 a copy of the subpoena duces tecum, and an informal discovery  
13 request -- pretty much the same statement that was given by  
14 the officer here, and low and behold a copy of CHP policy on  
15 helmet law enforcement.

16 THE COURT: Mr. Lustig, have you see seen those?

17 THE DEFENDANT: I gave him a copy.

18 MR. LUSTIG: Yes, I have, Your Honor.

19 THE COURT: Okay. That will be marked Defendants'

20 (Defendant's Exhibit A, document packet  
21 marked for identification)

22

23

CROSS-EXAMINATION

24

25 BY THE DEFENDANT: Q. Good afternoon, officer.

26 First off, as to this discovery request that I got from the

1 office of the CHP, are you familiar with this letter that  
2 accompanied that, have you seen it?

3 A. Is it this addressed to you (indicating).

4 Q. It looks exactly like that. Calling your attention  
5 to item D, it says a copy of all training materials  
6 directives, statutes and other publications which serve as the  
7 standard by which you determine what constitutes a quote, "  
8 motorcycle safety helmet," it says attached.

9 Going through this, the only documents that were  
10 provided to me besides that letter are your written report and  
11 CHP policy. So, when it says attached, would this document --  
12 would it translate into all the training materials,  
13 directives, statutes, and other publications which serves the  
14 standards by you which you determine is a motorcycle safety  
15 helmet?

16 A. I believe so.

17 Q. Item E, it says a copy of State of California  
18 Highway policy, relating to enforcement of Vehicle Section  
19 27803(b), it says attached. Does that in fact confirm that  
20 these last few pages here are CHP policy?

21 A. I believe it does.

22 Q. Okay. And the same question is true of F, it says a  
23 copy of whatever reasonable regulations establish in  
24 specifications and standards for safety helmets as a  
25 California Highway Patrol as adopted pursuant to Vehicle Code  
26 Section 27802, it says attached, does this constitute the

1 reasonable regulations to your knowledge, does it constitute  
2 the reasonable regulations adopted by the California Highway  
3 Patrol?

4 A. I believe it does.

5 Q. First, to your knowledge was there any way for a  
6 citizen to get a hold of one of these except to subpoena them  
7 in a matter like this? I mean would could we go by the CHP  
8 office where are they on a table somewhere where we could pick  
9 them up?

10 A. To be honest with you you might have to contact  
11 Sacramento and request a copy through them.

12 Q. The copy I have says revised April 2006. Do you  
13 know what revisions were made between the time that you wrote  
14 the citation and this revised copy in 2006?

15 A. No, I do not.

16 Q. Calling your attention to the policy, enforcement  
17 policy of the California Highway Patrol, Section One says  
18 purpose, Section Two says motorcycle helmet requirements,  
19 there is subsection a(1) and then subsection a(2). Would you  
20 please read that first sentence in subsection, subsub (2) to  
21 me, please, and to the Court?

22 A. A motorcycle safety helmet is any helmet certified  
23 by the manufacturer at the time of sale to meet FMVSS.

24 Q. Okay. To your knowledge was this a portion -- has  
25 this portion, was it part of the revision in 2006?

26 A. Once again I don't recall or don't know what the

1 revision was.

2 Q. Okay. It seems that that statement is fairly clear  
3 to me that a safety helmet is anything helmet certified by the  
4 manufacturer at the time of sale to meet FMVSS but how would  
5 you, Officer Zilge, determine and -- in trying to establish  
6 what a motorcycle safety is, whether or not it was certified  
7 by the manufacturer at the time of sale?

8 A. I'm not sure where you are trying to go. Rephrase  
9 the question or --

10 Q. Well, the statement is the policy says the  
11 motorcycle helmet is any helmet certified by the manufacturer  
12 at the time of sale to meet FMVSS. And it seems to me that if  
13 I was trying to cite someone for not wearing a motorcycle  
14 safety helmet that the first thing I would do is have to  
15 consider whether or not I had some evidence that the helmet  
16 had or had not been certified by the manufacturer at the time  
17 of sale?

18 MR. LUSTIG: I'm going to object. It's not a  
19 question. It's argumentative.

20 THE DEFENDANT: Well, I hadn't gotten to the  
21 question.

22 THE COURT: Probably. It's always easier to be  
23 direct.

24 Try it again or unless you want me to try.

25 BY THE DEFENDANT: Q. What attempt did you make to  
26 find out whether or not the helmet was certified at the time

1 that I acquired it?

2 A. None.

3 Q. Would you have known how to determine whether or not  
4 the helmet was certified at the time?

5 A. No, I've had no training in that.

6 Q. Was it your understanding at the time that you  
7 issued the citation that in order to be a motorcycle -- safety  
8 helmet, that a helmet had to be DOT-approved?

9 A. Yes.

10 Q. Calling your attention to page two of the policy,  
11 this would be -- strike that.

12 What does the term DOT-approved mean to you?

13 A. It has a DOT sticker on the back.

14 Q. Does any headgear bearing the DOT sticker on the  
15 back, is that approved by the department -- was it your  
16 understanding it was approved by the Department of  
17 Transportation at that time?

18 A. Not any headgear. Like your helmet and your ball  
19 cap, they don't meet DOT standards.

20 Q. So it's your understanding that the headgear that a  
21 rider is required to wear must meet those standards?

22 A. I believe so, yes.

23 Q. So that the statement that said that it has to be  
24 certified by the manufacturer, it does not have any bearing on  
25 that? Certification doesn't matter?

26 A. No, that matters too.

1 Q. Moving to subsub (C) under that section on page two,  
2 under Procedure, would you read that subsection starting at  
3 under "Procedure 27803(b) (b)VC should be used--" to the Court,  
4 please?

5 THE COURT: I'm sorry, the entire subsection?

6 THE DEFENDANT: Just one. Just under Procedure  
7 subsub 1 where it starts with "subsection 27803(b)VC should be  
8 used --"

9 THE COURT: Slow.

10 THE WITNESS: Section 27803(b)VC should be used to  
11 cite the operator of a motorcycle, a motor-driven cycle or a  
12 motorized bicycle for not wearing a safety helmet that meets  
13 federal standards or for allowing a passenger to ride without  
14 a motorcycle safety helmet.

15 Q. Okay. Relative to that statement how would you  
16 establish whether or not a safety helmet met the Federal  
17 standards?

18 A. I would look for the DOT sticker or a similar  
19 sticker.

20 Q. But you have indicated that the DOT symbol doesn't  
21 always indicate that a helmet is compliant with the law. Is  
22 there anything else you'd look for?

23 A. I believe if can I look back to this, there is three  
24 other things, the date of manufacturer, some other things that  
25 need to be in that helmet.

26 Q. Oh, okay. Let's go back to that then.

1           Now, you are talking about subsection 2 -- under  
2 2a(2) as I read this, right up to the sentence that you read a  
3 moment ago, it says the specific requirements are contained in  
4 FMVSS 218? Is this the area you are referring to and then it  
5 says, "This standard requires that each helmet be labeled  
6 permanently and legibly so that the label can be read  
7 showing"?

8           A.    Correct.

9           Q.    Okay. And then it says "manufacturer's name, model  
10 designation, size, month and year of manufacturer" and then it  
11 says "The symbol DOT should appear on the outer surface in a  
12 color that contrasts with the helmet color on the bottom edge  
13 of the posterior portion of the helmet," so that it's your  
14 understanding that in order to be -- in order to avoid  
15 citation that a person was required to wear a helmet bearing a  
16 sticker that has the manufacturer's name, model designation,  
17 size and all that stuff? I mean, that all has to be on the  
18 helmet?

19          A.    It should be.

20          Q.    Did you look to see if that information was on the  
21 headgear I was wearing?

22          A.    I didn't need to. I was -- that's not a helmet what  
23 you were wearing that day.

24          Q.    And you know that because it's not about labeling  
25 then, what is the criteria that you used to establish that?

26          A.    Well, knowing you and your beliefs and that thing on



1 your head, I just know it's not a helmet.

2 Q. So it's like pornography, you can't define it but  
3 you know it when you see it?

4 THE WITNESS: Do you want me to answer that?

5 THE COURT: Sure, if you want to.

6 THE WITNESS: No, not really.

7 THE COURT: That's fine.

8 BY THE DEFENDANT: Q. But a lot of it has to do  
9 with my state of mind, that's a -- that's an incredible  
10 criteria.

11 I'm going to -- okay. I'm going to go back over  
12 here, so, I'm going to go back to procedure again where we're  
13 talking about not wearing the safety helmet meets the Federal  
14 standards, your answer is that you know that this doesn't meet  
15 the federal standards just because you know me so well?

16 A. And that's obviously not a helmet as what I'm used  
17 to for riding a motorcycle for 34 years, dealing with  
18 motorcycle accidents on a daily basis, several times a year.

19 Q. Well, I would agree, officer, that it's not a  
20 commonly accepted helmet but your contention is that it's not  
21 a helmet at all as a matter of law and I'm trying to find  
22 something besides your subjective opinion to, you know, to  
23 draw out of you so I know what it is that I did wrong. I  
24 mean, I know now that whether or not it's properly labeled  
25 doesn't matter because you know me -- incidentally, didn't I  
26 tell you I was wearing two helmets that day?

1 A. I believe you did.

2 Q. Didn't I indicate that what you called a -- what did  
3 you call it?

4 A. Skull cap.

5 THE COURT: Skull cap.

6 BY THE DEFENDANT: Q. Yeah, skull cap, didn't I  
7 indicate to you that that was a helmet?

8 A. I believe you did.

9 Q. The reason you knew that wasn't a helmet as well is  
10 because you knew me?

11 A. It's just obviously not a helmet. I mean, what more  
12 do you want?

13 Q. I had a guy tell me one time --

14 MR. LUSTIG: I'd object, Your Honor.

15 THE COURT: Yeah, I'll sustain that. Questions,  
16 Mr. Quigley.

17 THE DEFENDANT: Well, that was a question. I was  
18 getting there, Your Honor.

19 THE COURT: Okay.

20 BY THE DEFENDANT: Q. I broke out "obviously" in a  
21 middle of a conversation one time and somebody told me that  
22 "obviously" was a subjective term sort of like "stupid" and it  
23 all depends on the point of view of the viewer.

24 And so what I'm trying to find out is is this  
25 opinion that my helmet is not a helmet is looking closer and  
26 closer like a determination that you made separate from the

1 criteria set out here and so I'm -- I'm just wondering if I'm  
2 unclear about that, is there something besides the criteria  
3 set out here that you applied? I mean, it's unclear to me.  
4 Strike that. That didn't even make sense to me. I'll get  
5 back to that in just a minute.

6 Your Honor, when do I explain to you the difference  
7 in that procedure change?

8 THE COURT: When we finish with the officer.

9 THE DEFENDANT: Okay. Got it.

10 THE COURT: I mean, and the officer can correct me  
11 if I'm wrong, I've had him on the stand before on other cases  
12 I think, so, and I mean, I think he's dead honest when he  
13 says, he doesn't know when the changes were made, so he can't  
14 -- it's not going to be any help asking him those questions.  
15 I mean, I think that looking at the procedure that's in front  
16 of me and dealing with the tickets over the years I've done,  
17 it's probably after the last time I've ruled, but this officer  
18 can't testify to that, so there is no need to go back to that  
19 dead horse.

20 THE DEFENDANT: Okay. And I'm going to read this  
21 one and I was going let you do it but I've just decided it's  
22 going to be much more fun if I do.

23 BY THE DEFENDANT: Q. Under Procedure, subsub(3),  
24 it says, "As a result of several court decisions and the terms  
25 of a partially vacated injunction placed upon the Department,  
26 it is extremely difficult to cite motorcyclists for wearing'

1 helmets not in compliance with FMVSS 218." You didn't find  
2 this difficult at all?

3 THE COURT: You need to answer him. I mean, I can  
4 see your head.

5 THE WITNESS: Sorry.

6 THE COURT: It's okay, we do have a reporter so.

7 THE WITNESS: Under Procedure, subsection (4) about  
8 motorcyclists wearing helmets which are obviously not  
9 motorcycle helmets such as styrofoam bicycle helmets or  
10 football helmets, that's what I went by and to me that's  
11 obviously not a motorcycle helmet.

12 Q. Let's go back to subsub (3) again because there is  
13 other line in there that I find really crucial to policy and  
14 to this case, it says therefore -- we go back through as a  
15 result of several court decisions it's extremely difficult to  
16 cite motorcyclists for wearing helmets not in compliance with.  
17 FMVSS 218, therefore, officers shall not attempt to make this  
18 determination prior to or during an enforcement stop.

19 When did you make the determinations that my helmet  
20 was not in compliance with 218 if not before or during the  
21 enforcement stop?

22 A. When I pulled across the intersection and contacted  
23 you in person.

24 Q. Wasn't that before -- before the enforcement stop?  
25 Wasn't that prior to the enforcement stop?

26 A. Yes. I just asked you if you thought that was a

1 helmet and you said yes.

2 Q. It says "Officers shall not attempt to make this  
3 determination prior to or during an enforcement stop." And  
4 I'm asking you if you made it prior to or during the stop.  
5 You made it prior to the stop?

6 THE COURT: That's what he said.

7 BY THE DEFENDANT: Q So what your argument is that  
8 it's obviously not a helmet?

9 A. Yes.

10 THE COURT: I think he said that at least three  
11 times.

12 BY THE DEFENDANT: Q Do you have any training in  
13 the manufacturer of helmets?

14 A. No.

15 Q. So you applied no other criteria than your -- your  
16 obviously it's not a helmet criteria, to salvage that my  
17 helmet was not in compliance?

18 A. Basically, yes.

19 THE DEFENDANT: Your Honor, I got one more document  
20 I'd like to give the Court and -- in case somebody wants to  
21 object to it as hearsay through a third party or whatever this  
22 is to clear my good name.

23 THE COURT: Are you through with the officer?

24 THE DEFENDANT: No, this is just one more thing. In  
25 his report the officer indicated here that I had some  
26 paperwork that I was able to produce that stated that what I

1 was wearing was a legal helmet?

2 THE COURT: Right, that's what he said.

3 THE DEFENDANT: I think what it said was it could be  
4 a legal helmet and I failed to produce that, and so I'd like  
5 to give that to him at this time if I may, Your Honor.

6 THE COURT: Did you show to it Mr. Lustig?

7 THE DEFENDANT: He already has a copy.

8 MR. LUSTIG: Which one is this.

9 THE DEFENDANT: A letter from Follett.

10 MR. LUSTIG: The 1994 letter.

11 THE DEFENDANT: Yup. And this was written to a guy  
12 named Mark Temple, from the Office of Special Projects.

13 THE COURT: B.

14 (Defense Exhibit B Letter marked for  
15 identification)

16

17 THE DEFENDANT: And in case you need some validation  
18 that that is an authentic letter and the background on that  
19 letter it just so happens that today, Mr. Temple, is in this  
20 courtroom so if the Court needs any testimony or the D.A.  
21 needs any testimony as to the validity of that.

22 THE COURT: I'm not worried about that yet.

23 MR. LUSTIG: I'm going to object, Your Honor,  
24 relevance.

25 THE COURT: We'll get there, I want to know what  
26 he's asking first of all.

1 THE DEFENDANT: I'm not going to ask him anything,  
2 Your Honor.

3 THE COURT: Oh.

4 THE DEFENDANT: I told him I had something. I  
5 wanted him to have it that's all. I just wanted him to have a  
6 copy of it. I was going to hand him one, the D.A. one and I  
7 wanted to give you one.

8 THE COURT: So any other questions of the officer?

9 THE DEFENDANT: I think anything I ask you about how  
10 you decided to write that ticket would be just asked and  
11 answered.

12 THE COURT: Yeah, he's testified a lot.

13 THE DEFENDANT: I think I got everything I needed  
14 from the officer and thank you very much.

15 THE COURT: Mr. Lustig, anything else?

16 MR. LUSTIG: Just one question, Your Honor.

17

18 REDIRECT EXAMINATION

19

20 BY MR. LUSTIG: Q. Officer Zilge, can you cite the  
21 section of the enforcement guidelines that you used in this  
22 case that you referred to? I think it's been asked and  
23 answered but I don't know if that it's been specifically  
24 identified?

25 A. Under Procedure, subsection (4), sub subsection (b).

26 Q. And what does that say?

1           A.    "Motorcyclists wearing helmets which are obviously  
2 not motorcycle helmets such as styrofoam bicycle helmets or  
3 football helmets."

4           Q.    What's the preface language, the preparatory  
5 language of that?

6           A.    "Officers shall focus enforcement action on the  
7 following:"

8           MR. LUSTIG: Thank you. No further questions, Your  
9 Honor.

10          THE DEFENDANT: Your Honor, if I'm allowed to  
11 recross, the only thing I'd ask him is how did he make that  
12 determination that it's obviously not a helmet?

13          THE COURT: That's where I was going to head so let  
14 me try a couple of questions. If you bear with me, officer.

15

16

EXAMINATION BY THE COURT

17

18          BY THE COURT: Q. Officer, at one point, I think it  
19 was when you were answering Mr. Quigley, you indicated you had  
20 been on motorcycles about 34 years; is that right?

21          A.    Yes, sir.

22          Q.    And just for my edification, the gold blue and black  
23 helmet you wear when you ride motorcycles, there is -- and  
24 from my distance and from your distance although you are  
25 younger than I am you so probably have better eyes than I do,  
26 I can tell that there is printing on the back of that helmet



1 from this distance in the back, that it's gold printing?

2 A. That's right.

3 Q. Do you know what it says?

4 A. One is an emblem -- and there is a DOT and there is  
5 a SNEL.

6 Q. Did you, if you recall, examine other than -- I mean  
7 it's pretty -- it's a quick read on that size of a disc on  
8 Mr. Quigley's head, but did you look at it other than just as  
9 it sat on Mr. Quigley's head?

10 A. Yes, I never took it off his head. I looked at  
11 it --

12 THE COURT: Okay. Anything on that, Mr. Lustig?

13 MR. LUSTIG: Yes. Just one thing, Your Honor.

14

15 REDIRECT EXAMINATION

16

17 BY MR. LUSTIG: Q. Officer Zilge, do you have some  
18 familiarity with that particular device he had on his head  
19 prior to encountering him that day?

20 A. That was the first time I had ever seen it.

21 MR. LUSTIG: Thank you.

22 THE COURT: Mr. Quigley, anything on anything else?

23 THE DEFENDANT: I want to say obviously not, Your  
24 Honor.

25 THE COURT: Okay. I have one other and I think you  
26 answered this, I at least even said something about it, but'

1 the procedure that you brought today that indicates it's April  
2 of -- I think it's April of 2006 I got -- I know the years, is  
3 that the right one?

4 A. Yes, 2006.

5 Q. So that revised procedure you did not have when you  
6 wrote this ticket back in June, right?

7 A. Correct.

8 Q. Of 2005?

9 A. Correct.

10 Q. And you -- and I think again I said this, but just  
11 so we're absolutely clear, you had nothing to do with either  
12 writing the original procedure that you were trained under or  
13 changing the procedure that you brought to court today?

14 A. Correct.

15 MR. LUSTIG: Nothing, Your Honor.

16 THE COURT: Mr. Quigley?

17 MR. LUSTIG: Nothing, Your Honor.

18 THE COURT: Mr. Quigley?

19 THE DEFENDANT: (Shaking head from side to side.)

20 THE COURT: Thank you, Officer, you may step down.

21 (Witness excused.)

22 THE COURT: Anything else on behalf of the People  
23 at this point other than argument?

24 MR. LUSTIG: No, Your Honor.

25 THE COURT: And again, if the officer chooses he can  
26 be excused.

1 MR. LUSTIG: Yes, Your Honor.

2 THE COURT: Mr. Quigley?

3 THE DEFENDANT: Sure. Yeah.

4 THE COURT: Mr. Zilge, you can go.

5 (Witness excused.)

6 THE DEFENDANT: Yeah, get out there and get the bad  
7 guys.

8 THE COURT: All right. So, I assume that Mr.  
9 Lustig, and the assumptions usually get me in trouble but, you  
10 want to respond to Mr. Quigley or do you want to start?

11 MR. LUSTIG: I'm probably going to submit it but  
12 I'll respond to Mr. Quigley.

13 THE COURT: Okay. Mr. Quigley, your record on your  
14 motions to dismiss?

15 THE DEFENDANT: For all the reasons that I've argued  
16 in court before on this issue, I think the failure of officer  
17 Brennan to be able to define in objective terms what I could  
18 have done on the date that he cited me to avoid that citation  
19 render the statute unconstitutional, that is what I was  
20 betting on that day or void as under Constitution or  
21 unconstitutionally vague although they have not been so found  
22 by any Court yet, it was clear to me from my experience that  
23 it was in fact the absence of objective standards, would  
24 render it so on the day that I finally got into Court to hear  
25 the matter thoroughly.

26 And I would move to have that citation dismissed on

1 the grounds that it was unconstitutional as it applied because  
2 of the absence of an objective standard, not on anything that  
3 that ranger did wrong because like I told him, he's a fine  
4 officer, he did his job as best he could with what he didn't  
5 have for directions.

6 So I would ask that it be -- that it be found  
7 unconstitutional and dismissed on those grounds.

8 As to Officer Zilge, I think he has reaffirmed  
9 again, once again my point about the lack of guidelines or  
10 clear guidelines by the California Highway Patrol, with due  
11 respect to the officer, he not only did not accept the portion  
12 that says -- he doesn't even know how to determine whether or  
13 not a helmet was certified by his own testimony, by the  
14 manufacturer at the time of sale, and by the way, Your Honor,  
15 that part was not changed in April and I would refer you to --  
16 I would refer to you one of the exhibits in that other package  
17 that you have, that stack of paperwork but there is an old --  
18 there is a letter in there to Mike Nevins of the California  
19 Highway Patrol that has a copy of the text of the -- of their  
20 guidelines as it was in -- at the time that this citation was  
21 written prior to the modification.

22 The modification that I know of, that came in this  
23 policy, came and -- there is two -- one of them is irrelevant  
24 to this issue the other one is under procedure.

25 Section 1 where it says 27803 should be used to cite  
26 the operator of a motorcycle, motor driven cycle or motorized

1 bicycle for not wearing a safety helmet that meets Federal  
2 standards, previously said that it should be used to cite  
3 operators for wearing a helmet that were not approved. So  
4 that was the change that was made and I hesitate to point out  
5 that April is a month after March which is when I filed my  
6 motion to have those other tickets dismissed as  
7 unconstitutional and made that brief available to the Highway  
8 Patrol. So that change came through at that time.

9 My letter to the Highway Patrol and my question to  
10 the Highway Patrol has always been the same, it remains the  
11 same now in light of the fact that this officer in particular  
12 has run to the obviously subjective standard of obviously not  
13 a motorcycle helmet as his criteria for determining what does  
14 and does not comply with the helmet law in view of the Court  
15 decisions in Buhl, that says it would be absurd that the  
16 officer/consumer could be held liable for whether or not a  
17 helmet was properly fabricated and in light of Easy Riders  
18 that said -- that anything outside the criteria of  
19 certification of the helmet by the manufacturer, any --  
20 applying any other criteria violated the constitutional rights  
21 of motorcyclists and I would ask the Court to dismiss this  
22 citation on the grounds that it violated Buhl, Bianco, and  
23 Easy Riders cases as they had been set out in the appellate  
24 courts, and in particular that they violated the Easy Riders  
25 injunction as to what it was that was required before they  
26 cite. That criteria was not met as I understand it and let

1 me -- no, I don't have that with me.

2 But specifically the Easy Riders did point out that  
3 there is only two situations where an officer could issue an a  
4 citation without violating a constitutional rights of bikers  
5 and they enjoined it, when there was evidence the helmet had  
6 never been certified and, secondly, when it was proven by  
7 competent objective evidence that that certification had been  
8 unwound. Only then could the CHP issue a citation without  
9 violating the rights of the bikers or the injunction from Easy  
10 Riders.

11 Yes, and the other thing is the CHP's own policy by  
12 the way, if I didn't point it out to you in all the years we  
13 dealt with those other nine tickets in their policy they point  
14 out and I believe even in that -- maybe not in that letter but  
15 CHP policy has never required that the rider maintain the  
16 stickers on a helmet. It's not required at all. In fact,  
17 it's specifically not required in their own documents dating  
18 back 15 years, so we're not required to maintain the DOT  
19 sticker.

20 And as to whether or not one is required to maintain  
21 the inside labels, Your Honor, a vehicle, a new vehicle that  
22 you go down and buy on a car dealer's lot, has in a window,  
23 a DOT certification sticker that as all the goodies and the  
24 price but that is the certification by the manufacturer. And  
25 we all know what happens to that, it's removed immediately.  
26 The DOT sticker, the inside labeling on the helmet, is the

1 equivalent of the mattress tag, it's the manufacturer and the  
2 retail salespeople that cannot remove that tag. Consumers can  
3 remove them until hell freezes over.

4 So that's my defense and my case.

5 THE COURT: Mr. Lustig.

6 MR. LUSTIG: Briefly, Your Honor, as Ranger Brennan  
7 testified Mr. Quigley had absolutely nothing on his head at  
8 the time the DMB argued as a helmet. I don't think the  
9 argument that the law is unconstitutional as applied, even  
10 applies in that type of situation. It wasn't anything to  
11 apply; he wasn't wearing anything at all.

12 With respect to Officer Zilge he has applied  
13 policies that he followed. It was obvious that Mr. Quigley's  
14 headgear was not a motorcycle helmet and I think he testified  
15 that he understood well what the policies of his department  
16 were and he was following those policies on the day that he  
17 ran into Mr. Quigley. Submitted.

18 THE COURT: All right. Basically, in relation to  
19 both Ranger Brennan and Officer Zilge, they were doing what  
20 they believed to be their job under the Vehicle Code and I  
21 don't think that I've ever indicated that I disagree with  
22 that, and I'm not sure that Mr. Quigley has indicated that he  
23 disagrees with that.

24 THE DEFENDANT: I absolutely agree.

25 THE COURT: The issue more is -- and it's been an  
26 issue in this Court for God knows how many years now, what in

1 fact is a helmet, and that's the problem with the statute.  
2 Mr. Lustig, you are coming sort of at the tail end -- well, it  
3 depends, it could be going on for the rest of all of our  
4 careers, but you are coming in at the tail end and I had this  
5 discussion with Ms. Brock which is that based upon a logical  
6 reading of -- I can't find the number, 27803(b), it does not  
7 put the rider on notice what he or she could do to comply with  
8 the law. And it gives the officer or puts the officer in the  
9 untenable position of having to make a decision as to whether  
10 or not, in the case of Officer Zilge, whether or not the item  
11 met the criteria set out by the Department of Transportation,  
12 which would be issues of manufacture or in the case of Ranger  
13 Brennan, whether or not the rider, Mr. Quigley, would have the  
14 ability to know how to conform his actions to bring him within  
15 the protection of that Vehicle Code Section, and not run afoul  
16 of that Vehicle Code Section. So I think based upon my prior  
17 rulings I'm not going to change them at this point and I'll  
18 dismiss both of these at this time as unconstitutional as  
19 applied.

20 THE DEFENDANT: Thank you, Your Honor. May I ask  
21 for an order after a hearing?

22 THE COURT: Sure. I think basically I'll just  
23 reaffirm what I previously did is the easiest thing.

24 THE DEFENDANT: Your Honor, I'd also like to ask  
25 that somehow we get this thing res judicata, these issues have  
26 been asked and answered, they've been adjudicated, there's no



1 reason for people in this county to be writing tickets.

2 THE COURT: Well, I think that the issue becomes --  
3 and again I could be extremely wrong, but that's why I've  
4 tried to do it early on in the hope that the AG would take up  
5 the factor to begin with so that both the CHP, the local  
6 agencies and yourself and all the riders would have an idea of  
7 where and how not to come afoul of the law, but as I've said I  
8 think earlier I have been ignored which is sort of not good  
9 because I'm not -- not that it affects me as much as it  
10 affects the both sides in this issue which is the riders don't  
11 know how to comply and the officers don't know what to do to  
12 avoid being into court all the time because of their tickets.  
13 So hopefully the Attorney General will decide what the next  
14 appropriate step is since I have made this declaration but it  
15 does not mean, I don't think, that it would stop the local law  
16 enforcement from writing citations.

17 THE DEFENDANT: No, they have already told you  
18 pretty much to pound sand, Your Honor. That article in the  
19 paper made that pretty clear and I don't know how annoyed you  
20 were but I blistered over that one for a day or two. Are you  
21 going to be having all helmet tickets transferred to your  
22 court, Your Honor?

23 THE COURT: They won't do that. The DA will not  
24 allow that to be happening at this point.

25 THE DEFENDANT: The DA can prevent the presiding  
26 judge from moving all tickets to your court?

1           THE COURT: They can move them and they they'll  
2 paper them and move them right back out. The District  
3 Attorney papered me on these two, but it was not timely.  
4 Anything from here on is timely so they have the ability to  
5 say that I won't hear these tickets.

6           THE DEFENDANT: Oh, they do?

7           THE COURT: Yeah.

8           THE DEFENDANT: When I submit the order after  
9 hearing, Your Honor, can I include in that a statement from  
10 this Court that continued issuance of citations on this matter  
11 until such time as it's been cleared up by a higher court or a  
12 higher authority than yourself to constitute a violation of  
13 the constitutional rights of the biker so that we can get some  
14 protection maybe perhaps from the Federal Court?

15           THE COURT: You can submit it. I'll have to verify  
16 what authority I would have to sign that before I'd sign it.  
17 I don't know that I have it so I need to know what I'm doing.  
18 As you all know I won't sign something that I don't know that  
19 I can do.

20           THE DEFENDANT: Oh, no, I understand that, Your  
21 Honor. And one more thing and that is I've spoken with the  
22 attorney that's dealing with this issue that's been bogged  
23 down in the Sixth, bogged down in there for months, the one  
24 that will be bringing the declaratory relief action to this  
25 Court, and I'm really curious as to what to tell her about the  
26 DA and their stubbornness to hold themselves in the position

1 to maintain an atmosphere where they can continue to violate  
2 the rights of motorcyclists in this county, if they are going  
3 to be able to effectively move you off of hearing a  
4 declaratory and injunctive relief action that is filed by next  
5 weekend.

6 THE COURT: There is a difference in that than just  
7 hearing -- they always -- either side always has the right not  
8 to have a judge hear any specific hearing. Now, if there is  
9 things that I'm already involved in such as these tickets  
10 today, I can deny that motion. But if it's a new issue I  
11 don't have the ability to deny their 170.6.

12 THE DEFENDANT: It's not going to be a new issue,  
13 then these won't be final -- this decision will not be final  
14 until you sign the order after hearing?

15 THE COURT: I understand that but what I'm saying to  
16 you --

17 THE DEFENDANT: No, I'm asking you. That was a  
18 question. There is a question mark there. This will not be  
19 final until you sign the order after a hearing so that you  
20 still hold jurisdiction on these two matters?

21 THE COURT: Well, yes.

22 THE DEFENDANT: Okay. Then I will -- we'll get  
23 that paperwork filed as soon as I'm possible. I'm told it  
24 could be as early as next week. And I want to pass something  
25 else along to you while the District Attorney is here because  
26 I wouldn't want anybody to accuse us of having an ex parte

1 communication again, and that is I've talked to the assistant  
2 -- the Chief Deputy Attorney General of the State of  
3 California about this matter, and they are now looking at  
4 what's going on in the Sixth with that matter where you are  
5 being, you know, sued by the California Highway Patrol and  
6 they should have some sort of an answer, they indicated to me  
7 they will have some sort of an answer on that within the next  
8 week or so. And as soon as I hear from them I will get a hold  
9 of you unless they get ahold of you. I don't know how that  
10 works.

11 THE COURT: Okay.

12 MR. LUSTIG: Your Honor, the People would object to  
13 anything in the order after the hearing that exceeds the scope  
14 of what's been talked about.

15 THE COURT: I understand. Thank you all. We're in  
16 recess.

17 And I'll return the exhibits back to both sides.

18

19 (End of proceedings.)

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