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10 THE CITY OF WATSONVILLE

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SANTA CRUZ

13 PEOPLE OF THE STATE OF
14 CALIFORNIA,
15
16 Plaintiff,

17 vs.

18 RICHARD J. QUIGLEY,
19
20 Defendant.

No. 3WM018538

**PLAINTIFF'S RESPONSE TO MOTION TO
DISMISS**

DATE: June 11, 2004
TIME: 1:30 p.m.
LOCATION: Watsonville Branch, Dept. 12
JUDGE: HON. HEATHER D. MORSE

21 Come now the People in response to the Motion to Dismiss and Points and Authorities In
22 Support of Motion to Dismiss filed herein and says as follows:

23 Defendant's Motion is based on two grounds: (1) facial and as applied unconstitutionality and
24 (2) lack of probable cause for issuing the citation.

UNCONSTITUTIONALITY

25 The first ground has already been denied by this court in this case, by the Santa Cruz County
26 Superior Court in many other cases with this same defendant wearing the same headgear and
27 challenging this same statute and by State and Federal courts with other defendants on this same
28 statute. This court has already ruled in response to Defendant's Demurrer in this same case that
California and Federal Courts have already held in reported and published cases that CVC 27803 is

1 constitutionally sound. Defendant nevertheless again claims that the statute is unconstitutionally
2 vague both as written and applied.

3 *Buhl* specifically held that CVC 27803 was not impermissibly vague. *Buhl v. Hannigan*
4 (1998) 16 Cal.App. 4th 1113. *Buhl* said that standards of the type used in CVC 27803 are not
5 impermissibly vague so long as their meaning “can be ascertained by reference to common
6 experiences of mankind” Defendant argues that whether a baseball cap does or does not constitute a
7 helmet cannot be objectively ascertained “by the common experiences of mankind” It is expected that
8 the officers who stopped and then cited Mr. Quigley will testify that they were able to determine that
9 Mr. Quigley’s soft, felt baseball hat with brim but without chin strap was not a helmet under any
10 standard of objective experience. All this is well known to Mr. Quigley who has been found to have
11 violated CVC 27803 on many prior occasions. See for example the attached copy of the October 25th,
12 2001 Supplemental Written Decision in *People v. Quigley*, Santa Cruz County Superior Court cases
13 numbered 00284402, 0089880, 00127880, 00110366, 00173447, 90332665, 90207037, 90242520 and
14 90319433. And when challenging constitutionality for vagueness, the standard is that of the particular
15 defendant who is charged, in this case a defendant with more than nine prior citations under CVC
16 27803 in this very Superior Court. He also maintains several websites concerning helmet laws in
17 California and elsewhere. He has stated in open court that he knows which helmets are approved and
18 which are not approved by the National Highway Traffic Safety Administration and has filed that list
19 as Exhibit “Y” (43 pages) with this Court. The list identifies helmets which have been tested by the
20 Office of Vehicle Safety Compliance and found to be in compliance with Federal Motor Vehicle
21 Safety Standard #218.

22 **LACK OF PROBABLE CAUSE TO ISSUE THE CITATION**

23 Despite its title, this argument is “old hat” and essentially a “re-tread” of the
24 unconstitutionality argument discussed above. Defendant argues that the statute is “unconstitutional,
25 and from that unsupportable premise argues lack of probable cause. The evidence will show that there
26 was probable cause to believe either that (A) the cap worn by Mr. Quigley was not certified by the
27 manufacturer at the time of sale or (B) the helmet was certified by the manufacturer at the time of sale
28 and Mr. Quigley had actual knowledge of a determination of non-conformity with federal standards.

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Mr. Quigley has been cited and convicted on more than nine prior occasions for wearing a baseball cap. See "Supplemental Written Decision" above. So therefore there is credible evidence of non-compliance.

MOTION TO SUPPRESS NOT MADE

No effort was made by defendant to rely on Penal Code Section 1538.5. Proceedings under Penal Code Section 1538.5 are the sole and exclusive remedies prior to conviction to suppress evidence. Subdivision (m) of Penal Code Section 1538.5.

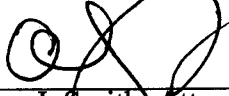
CONCLUSION

For all of the above reasons this Court should deny the Motion.

Respectfully submitted,

DATED: June 2, 2004

GRUNSKY, EBAY, FARRAR & HOWELL

By 
Alan J. Smith, Attorneys for THE CITY OF
WATSONVILLE

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CRUZ

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

RICHARD QUIGLEY,

Defendant.

CASE NOS. 00284402
00089880
00127880
00110366
00173447
90332665

SUPPLEMENTAL WRITTEN OPINION

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

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

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

(1) Are the citations correctable?

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

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

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

6 (2) Is the statute constitutional?

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

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

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

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

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

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


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

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

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

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

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5 DATED: 10-25-01



6 ARTHUR DANNER III
7 Judge of the Superior Court
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PROOF OF SERVICE
[CCP §§ 1013a, 2015.5]

I am over the age of eighteen (18) years and not a party to the within action. I am employed by the law firm of GRUNSKY, EBEL, FARRAR & HOWELL (the "firm"), and my business address is 240 Westgate Drive, Watsonville, California 95076.

On June 2, 2004 I caused to be served the within

PLAINTIFF'S RESPONSE TO MOTION TO DISMISS

on the parties to this action, by placing a true copy thereof enclosed in a sealed envelope, addressed as follows and delivered in the manner indicated:

Richard J. Quigley, In Pro Per
2860 Porter Street, pmb 12
Soquel, CA 95073
Tel: (831) 685-3108
E-mail: quigg@usff.com

XXX

[By Mail]: I caused each envelope, with postage prepaid to be placed in the United States mail at Watsonville, California. I am readily familiar with the business practices of the firm regarding the collection and processing of correspondence for mailing with the United States Postal Service. Pursuant to such business practices, and in the ordinary course of business, all correspondence is deposited with the United States Postal Service on the same day it is placed for collection and mailing.

[By Federal Express]: I caused each envelope to be delivered to Federal Express for overnight courier to the office(s) of the addressee(s).

[By Hand Delivery]: I caused each envelope to be delivered by hand on the office(s) of the addressee(s).

[By Fax]: On June __, 2004, I served the within document on the parties in said action by facsimile transmission, pursuant to Rule 2008 of the California Rules of Court. A transmission report was properly issued by the sending facsimile machine and the transmission was reported as complete and without error.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed on **June 2, 2004** at Watsonville, California.



Sylvia A. Nazario

1 Alan J. Smith, Esq. #87770
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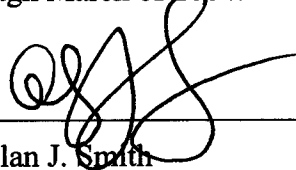
No. 3WM018538

DECLARATION OF ALAN J. SMITH

17 I, ALAN J. SMITH declare:

18 1. I am the attorney of record for THE CITY OF WATSONVILLE, and have personal
19 knowledge of the above-entitled case.

20 2. I attended the demurrer hearings that started on February 20, 2004 and continued
21 through March 19, 2004. The attached partial transcript is a true and correct partial transcript of the
22 demurrer hearings that took place February 2004 through March of 2004.
23

24
25 
26 Alan J. Smith
27
28

February 21, 2004 – March 19, 2004

Re: *People of the State of California v. Richard J. Quigley*
Case No.: 3WM018538

**PARTIAL TRANSCRIPTION OF DEMURRER HEARINGS
TESTIMONY OF RICHARD J. QUIGLEY
Tape 2**

JUDGE HEATHER D. MORSE

- A. ...the criminal thing is a whole lot different than that. It can't be ad hoc and arbitrary. Where is...where is it? Where is it? I...if...if the law requires that a person wear a helmet that complies with the standard, how do you enforce that statute when two out of three helmets that have been tested, certified and tested to see whether or not they comply, have failed, your honor. Two out of three of 'em have failed. I will now...I will direct you to a place on the Internet where you can find all 800 helmets that they tested and show you that 500 and some odd of 'em failed. So, my...my point is, even if I went out and bought some...
- Q. But 300 and some passed. You know, some of 'em passed.
- A. No, (unintelligible) they wrote "passed" but they didn't mean it, 'cause if you ask 'em whether or not it passed, but they'll tell you when they said "passed" it was it didn't fail.
- Al Smith And the defendant knows which ones they are, because he just said so.
- A. That's...that's correct, and I found every single one that passed unsuitable, dangerous. I won't put 'em on.
- Al Smith There's the heart of the problem.
- Q. Right.
- A. What's that?
- Al Smith That you won't put 'em on.
- A. I'm not going to do anything that's dangerous. I'll tell you what, if you'll drive your car with a blindfold, I'll go looking at the 3-pound helmets, you know? I...there's...

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Sylvia A. Nazario