

January 12, 2000

California Highway Patrol
10395 Soquel Drive
Aptos, California

re: your discovery response - Case#90260235/Citation number KV50993

Captain Stuflick:

Thank you for your timely response to my informal discovery request.

However, referencing your letter, section "c)", I would like to take this opportunity to agree that the question is "very vague in scope" — which I also believe to be true of the helmet law statute itself. But, with regard to your (reasonable) contention "an infraction as you have been charged with under the California Vehicle Code does not require specific intent or knowledge," I believe you are mistaken on two counts:

1. The helmet law statute is located in Division 12 of the Vehicle Code, and is therefore not an infraction, but an equipment violation subject to correction. Unless your officer is prepared to make a case for charging me with one of the disqualifying conditions under VC 40610 (a), (b) or (c), there has been no crime.

Regarding "specific intent" requirements;

2. According to the 9th Circuit Court of Appeals (US), "The helmet law, as interpreted by the California courts . . . requires specific intent as one of its elements. . . . because a violation of the helmet law requires specific intent on the part of a motorcyclist wearing a helmet that was certified at the time of purchase, the ticketing officer must have probable cause to believe that the specific intent, caused by the motorcyclist's actual knowledge of non-conformity, exists." (In this light, my request makes more sense?)

(NOTE: Although there is virtually no chance I will move into the courts for monetary damages or relief over the citation for Officer Messing, the above-referenced statement by the Ninth was made in the context of describing how issuance of a citation, without the evidence of specific intent specified, constitutes a violation of a motorcyclist's Constitutional Rights under the 4th Amendment.)

I hope we can again agree that such a requirement of your officers effectively makes the statute unenforceable under virtually all circumstances where a rider has something on his or her head. (I have a ruling from a Southern California Municipal court where the biker was found "not guilty" of violating the helmet law because the coconut shell helmet he was wearing was not shown to be noncompliant by competent objective

evidence from an independent testing laboratory, in spite of the prosecutor's repeated objection, "but your honor, it's a coconut!" In that case, the issue of actual knowledge never entered the picture.)

The legislature made an unfortunate error when they wrote the helmet law without providing adequate means of compliance or enforcement. So far, bikers have not been able to get the problem corrected on our own. We could use some help.

Perhaps, instead of furthering the distrust between the California Highway Patrol and the motorcycling community at large, brought about by the rabid enforcement of the helmet law in 1992 (up to issuance of the only injunction ever issued against CHP enforcement of any statute), we could work together, with the legislature, to see what can be done to either fix the problem, or make a joint recommendation for repeal.

The figures are in, and it is well established that the number of deaths per 100 accidents has not changed significantly since the helmet law was enacted in 1992. In fact, as in most helmet law states, the chances of being killed in an accident increased slightly with enactment of mandatory helmet use. The purported goal of the statute, that of providing an additional safety benefit to motorcyclists, has not been achieved.

Moreover, if wearing virtually anything (that has been self-certified as compliant with FMVSS 218) serves to comply with the statute, then it appears that the statute constitutes nothing more than a mandatory fashion statement, and there's no place in a Free society for such laws; and certainly, one would think, no interest by the California Highway Patrol to devoting their resources to enforcing it.

During the eight years since the law was enacted, the CHP and the biker community have never made a concentrated effort to work together to solve the continuing, common problems with the helmet law; e.g.: "What's a helmet?" Maybe, in the spirit of entering a new century, we could strike up an effective alliance that will heal the wounds, and lead to a safer and more reasonable outcome for both sides . . . perhaps even eliminating the notion of "sides."

Thank you for your cooperation. I look forward to hearing from you.

Sincerely,

Richard Quigley
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