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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 25 PM 08:16
YOLANDA P. ORTIZ
FILED
SUPERIOR COURT
CO. OF SANTA CRUZ
WATSONVILLE

THE PEOPLE OF THE
STATE OF CALIFORNIA,
Plaintiff,

vs.
RICHARD JAMES QUIGLEY,
Defendant.

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DECISION ON MOTION

June 23, 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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1 Watsonville, California

June 23, 2006

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

3 THE COURT: Let's go on the record in the Quigley
4 matters. Mr. Quigley is present. The People are represented
5 by Mr. Genochio. I have looked at all of this and sort of
6 like with everything else for some reason today has been my
7 day of spending time thinking about a lot of stuff.

8 I have a question, Mr. Quigley, I may know the
9 answer, but I want to pose it to you for that reason. I think
10 that as the case is positioned at this point, I can probably
11 make a finding that as they were applied to you the helmet law
12 is -- was not constitutionally applied to you and dismiss your
13 tickets.

14 The question becomes then is it makes everything
15 we've done up to that date pretty moot. You are free from
16 those tickets and the Sixth has pretty much told us that they
17 don't think much of what I've done any way which is not
18 surprising but a little offending, not much.

19 THE DEFENDANT: You are pretty thick skinned, Judge.

20 THE COURT: That's what we're supposed to be.

21 So the question is, is before I throw it back to
22 Mr. Genochio for anything or to you, what's your thinking or
23 feeling about that? In other words, if I do that you walk out
24 today but then it's moot as far as -- I mean, you know, then I
25 don't think that the D.A. is going to take me up on that or
26 the AG or anybody else in the world, so it would start over if

1 in fact somebody decided to give you or someone else a ticket.
2 And I don't know, I'm actually asking it because I haven't
3 kind of gotten to that next step or what you want to do with
4 that next step so that's why I'm sort of throwing it in your
5 lap. If I say what you want me to say you walk out there,
6 done, piece of cake but then does that also end it right here?
7 And start it all over if somebody gets a ticket after today?

8 THE DEFENDANT: No, there's no benefit in that to
9 anybody, not to you, not to me, not to Mr. Genochio, not to
10 Bob Lee, not to the Attorney General, not to the government,
11 not to the legislature, not to 500,000 motorcyclists in
12 California. That doesn't -- this 15-year mission that I have
13 been on, Your Honor, and it's been 15 years this month since
14 it was called to my attention what an abomination this thing
15 was, has not been so that I could walk out of here with and I
16 didn't meet all those fine officers and get all those fine
17 tickets and get arrested and chained to a bench and have my
18 motorcycle stolen and all of that to have those tickets
19 dismissed. My plan was from the onset to get this in front of
20 a fair and impartial jurist which I believe I've succeeded in
21 doing.

22 THE COURT: Thank you.

23 THE DEFENDANT: That if I did my job right and I've
24 done, you know, I read those transcripts and I just think what
25 an idiot, you know, what an idiot. There is so many things I
26 want to say that I don't and they all come rushing in at the

1 same time and it's -- I don't know how you sort through all
2 that. You are a master, but the fact is, Your Honor, I need
3 you to put something down on a piece of paper with your name
4 on it that says that as far as you could tell there is no way
5 in the world that they can ever enforce this thing the way
6 it's messed up right now, and therefore they are not going to.
7 It's a violation of everybody's Fourth Amendment rights to
8 have to deal with it. The constitutional violations are on
9 their face, you know, a damage from which there is, in this
10 case, no recovery, and we've been -- we've all been living --
11 all these people in the back of this room particularly have
12 been living with this for all of these years, and I'm hard
13 pressed to believe that there is any appealable issues on my
14 motion if what we do is based on my motion and all the
15 evidence that I've brought forth in that motion from what you
16 have had to sit here and endure. I didn't see anything in
17 their pleadings that dealt with the issue of this, this
18 inundation of understanding of the helmet law to the law
19 enforcement agencies about approved helmets and all the
20 theories that have been built off of those which is the crux
21 of why it's unenforceable as applied.

22 It will never get better. It's not fixable. Any
23 reasonable person I think can conclude that and so I don't see
24 what kind of appeal could be launched by the District Attorney
25 since they didn't really address anything in my motion, not in
26 their pleadings and certainly not in the last appearance.

1 So, you write an order saying that the statute is
2 unconstitutional as applied from all could you see, you know,
3 period, statewide, and then the only thing I could see
4 happening besides the celebration that's bound to occur within
5 the community, is that if the Attorney General decides that
6 they think that your reasoning is somehow flawed and they want
7 to go through and look at that material and see where its
8 flawed, and I don't believe they that they can find a place,
9 then they can always move in and have some sort of writ to
10 override you.

11 And I got a little surprise for them next time they
12 move in not into the Sixth by writ. I've done a little
13 research called Rule 19. And we don't sit on stuff with me
14 and the Sixth anymore. Next time we go to the Sixth we'll
15 have Rule 19 and Rule 19 says because I'm dying that they
16 don't get to delay nothing. So we'll move that right along.

17 But, no, I -- to be honest with you, I fully
18 expected that you'd have something in writing today that said
19 that this sucker is no good. They probably meant well, they
20 might even have the right idea about what they are doing but
21 they went about it in a way that's unworkable. I've proven to
22 you I think certainly beyond a preponderance, I would think
23 beyond a reasonable doubt that the Attorney General has
24 already said in their arguments in Easy Riders, that if any
25 portion of that Easy Riders injunction were upheld it would
26 render the statute unenforceable. And if law enforcement were

1 to abide by it the conditions of Easy Riders it would have in
2 fact have yielded, it would have rendered the statute
3 unenforceable.

4 So that's the legal position. I don't see how they
5 could back off that, so I look at them coming into the Court
6 of Appeals with some sort of writ to override you, I'm
7 thinking, "Well, go ahead. Who are they working for?"

8 MR. GENOCHIO: Could I state because it's --

9 THE COURT: That's what I was going to throw it to
10 them and then throw it to you. Go ahead, Mr. Genochio.

11 MR. GENOCHIO: Well, I think just real topical, I
12 had this discussion with Ms. Angell today, you know, it's our
13 view if the Court grants the relief as requested by him and if
14 we take the position that we're not going to pursue an appeal,
15 the Court is -- has very limited powers. It affects only the
16 cases pending before the Court. It will be our position that
17 law enforcement officers can continue to cite Mr. Quigley and
18 can cite other people not only in Santa Cruz County but
19 throughout the state until a higher court, you know, rules on
20 this thing.

21 And I don't think he is grasping that.

22 THE COURT: That's why I sort of threw it out there.
23 And, Ms. Wells, you can jump in if you disagree, what my
24 belief and God knows I have been doing this long enough I know
25 that it doesn't always correct, but my belief is that assuming
26 sort of what Mr. Genochio has indicated, I dismiss them as

1 unconstitutional as applied. It takes care of those tickets.

2 His office isn't going to do anything, first of all,
3 because, A, they are infractions, B, I didn't expect that to
4 happen. So the only person -- the only entity that is going
5 to challenge my ruling is the AG, or they can ignore it and --

6 THE DEFENDANT: It's business as usual.

7 THE COURT: That's sort of what I'm saying.

8 THE DEFENDANT: Right, but, Your Honor, what I'm
9 saying is that I'm not asking you to do something that hasn't
10 already been done by other courts.

11 THE COURT: I understand that and I agree with that.
12 I just think and that's why I threw it out there, is the issue
13 of -- and I don't know what the note was -- you want to look
14 at it a minute?

15 THE DEFENDANT: I'm right there.

16 THE COURT: The issue is everybody can ignore me in
17 certain respects, the agencies will ignore me, the AG may
18 ignore me, the DA -- they are basically out of it any way. It
19 would have to be the AG.

20 But again, we've sort of been ignored by the Sixth
21 any way, so --

22 THE DEFENDANT: Your Honor, with great respect,
23 those fine jurists that sit on the Sixth, what a bunch of
24 lops, okay? They don't sit there to fix anything. I've
25 watched their behavior. I've experienced their behavior for
26 25 years. So, the Sixth is not a player in this game. I

1 don't care about them at all.

2 If anything, I'm anxious to get this in front of the
3 Chief Justice because I'm going to tell you what, he and you
4 from all I know of, both of you, are like minded. You both do
5 your jobs honorably without an eye to politic, you both do
6 your jobs with the intent of getting things working and fixing
7 and finished. Neither one of are you the kind that would put
8 things off to let somebody else deal with them. This is my
9 experience from both of you now, I maybe wrong in my reading
10 of Ron George, but I don't think I'm wrong in my reading of
11 you.

12 If nothing else, Your Honor, if I haven't proved
13 that I'm entitled, that the motorcycle community is entitled
14 to one more injunction, one more injunction, if all you did
15 was adopt the language that Judge Napoleon Jones adopted in
16 Easy Riders versus Hanagan and adopted the precise language
17 that he adopted, and add something in there about, you know, a
18 couple of points that he didn't make clear and that is, you
19 know, findings of facts, conclusions of law, findings of fact,
20 there is no such thing as approval system by the Department of
21 Transportation or the Highway Patrol or the Santa Cruz County
22 District Attorney or the State of California judiciary,
23 nobody, you know, there is no approval system, an injunction
24 from this bench based on these cases, is absolutely
25 appropriate and maybe this one, you know, we could do
26 something with.

1 They just ignored the Federal injunction, but if
2 they try to ignore your injunction they are going to have some
3 rips because I got some people standing back there waiting,
4 you know, to jump up there if they want to ignore an
5 injunction from this bench.

6 The way that Federal case was set up and the problem
7 that I've had with it and the motorcycle community has is we
8 have not been able to hold law enforcement to that injunction
9 because of something to do with the names of the plaintiffs in
10 that case. And they were -- the theory is that they were the
11 only ones that were supposed to be protected by it, this is
12 what I'm told, which is why nobody has ever moved back in for
13 this ongoing violation.

14 But, the -- with the exception of the helmet tickets
15 that I got for riding bear headed, every other citation that I
16 got, Your Honor, with anything on my head that I claimed to be
17 a helmet, irrespective of whether or not it had the letters
18 DOT, as long as at some point I had a good faith belief that
19 they was certified by a manufacturer who was the person taking
20 the product liability, there is your manufacturer, that's how
21 you find them, that every one of those was written in
22 violation of that Federal injunction. If you issued an
23 injunction ordering them to follow the Federal injunction, you
24 know, any -- something. Something so they got to step back.
25 They ain't going to step back, Judge. I mean, if you look at
26 the Easy Riders injunction and you look at California High

1 Patrol policy side-by-side, it is contempt right there. Why
2 Napoleon Jones doesn't get up in the back, I don't know. You
3 think you have been through a grind on this, there are boxes
4 of depositions of stuff -- I mean it would stack up to feet
5 where you got inches. And he reached the conclusion that if
6 they enforce the law the way he set out that injunction it
7 wasn't going to violate anybody's Fourth Amendment rights and
8 the California said -- "Well, that's all well and good we
9 never cared about that in the first place. We're just going
10 to do what we want to do."

11 You know, so -- no, I'm pleading with you, I'm
12 pleading with you. You have got -- I think that you have got
13 enough information in front of you to back your act and I know
14 I've got enough backing behind me to back your act, and if you
15 will issue an injunction the troops will be there to back you
16 up. The troops will be there.

17 THE COURT: Well, all right. Having reviewed what
18 I've reviewed, having looked again at the most recent issue
19 that you gave me which was the People of the City of Wayne
20 versus Ernest Frank and I believe it's Berthet, B-E-R-T-H-E-T,
21 and I think that based upon the information and testimony that
22 was taken the last time we were in court, I will find that as
23 they are applied -- these tickets have been issued and the
24 enforcement of the helmet law applied to you is in fact
25 unconstitutional. So, let's see where we get to from there.

26 So these are dismissed.

1 THE DEFENDANT: I cannot get an injunction?

2 THE COURT: I will indicate that especially based
3 upon -- and I have to admit a lack of knowledge in that I
4 don't know what types of notice has to be given, if any, but I
5 will indicate that obviously at least my reading of Easy Rider
6 that there hasn't been -- there has been a violation of that
7 injunction and there hasn't been enforcement as anticipated by
8 Easy Rider. I don't know if that covers that base and, Ms.
9 Wells, you may be in a better position to do that.

10 MS. WELLS: Yeah, it seems to me that it's within
11 your inherent powers at this point to sui sponte go ahead and
12 issue an injunction.

13 MR. GENOCHIO: Well, we would object to that -- our
14 view is it's a narrow decision by the Court that deals with
15 the matters before the Court, only the matters before the
16 Court which are the tickets.

17 THE COURT: That's where I'm not sure. Go ahead,
18 Mr. Quigley.

19 THE DEFENDANT: Your Honor, I with great respect for
20 the District Attorney --

21 THE COURT: I understand.

22 THE DEFENDANT: -- until Bob Lee answers the
23 question that I've put in that letter to him when he was first
24 elected, how could a motorcyclist comply with certainty with
25 the Provisions of 27803(b) until they are prepared to answer
26 that question, these kinds of arguments are bad faith straight

1 up and have no standing, none. He has never responded with an
2 answer to that question. The California High Patrol has
3 dodged the bullet on answering that question by refusing to
4 sign those tickets off.

5 The refusal of the chief law enforcement agency in
6 this state, the biggest law enforcement agency in this state
7 relative to the Vehicle Code to comply with the provisions of
8 40303.5 has just exacerbated the situation that we have from
9 the beginning and that is not knowing how to comply.

10 And, Your Honor, we have and I think you will admit
11 that we have a consensus that Watsonville signed off my little
12 5-inch diameter beanie, it's called Ill Eagle Itsy Bitsy Teeny
13 Weeny Baby Beanie and I contend, I contend, Your Honor, that
14 we're going to throw in common sense anywhere it comes in
15 here, that that illegal helmet company, Itsy Bitsy Teeny Weeny
16 Baby Beanie will afford me no more protection in a crash than
17 this illegal trucker style, made out of fabric, not relative
18 because we can't do anything about fabrication, baseball cap-
19 looking, to most people that want to write tickets for it,
20 helmet.

21 So if and I think it's fair to assume it's a big if,
22 if that little thing complies with the California helmet law
23 then it truly, the law itself does not do -- it does not meet
24 it's obligation to provide for the additional safety benefit
25 which underpins the whole thing, which means that they haven't
26 met their burden relative to meeting their intent with what

1 they have in the language of the statute as applied by the
2 California High Patrol. And I like that sui sponte stuff.

3 MR. GENOCHIO: I think apples and oranges at this
4 point --

5 THE COURT: That's okay, hang on. I'll hedge my
6 bet. It's a tentative ruling, okay? Because if I dismiss
7 them then we're out.

8 THE DEFENDANT: Thank you.

9 THE COURT: So I'll -- this is my tentative ruling,
10 I'll give you some time, Mr. Quigley, and, Ms. Wells, to
11 determine and I'll do some work too obviously, but I don't
12 know, you know, what steps need to be done for me to do an
13 injunction or whether I can at this point.

14 So I will -- it's a tentative ruling so that then I
15 have a vehicle to deal with because if I dismiss them, we're
16 done.

17 THE DEFENDANT: If I can show you that you are
18 empowered by the State of California to find this sucker
19 unconstitutional to protect me and my friends from any further
20 enforcement of this until they have fixed it, that you will
21 sign that order?

22 THE COURT: Well, the issue is you are asking me for
23 an injunction.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And I'm saying that I don't know what
26 legal hoops we all have to go through. So I'm telling you

1 that I'm willing to indicate now that I'll find it
2 unconstitutional as applied, I will not dismiss them so that
3 you can deal with the issues of the injunction and then the
4 District Attorney knows and the AG knows and I know.

5 MR. GENOCHIO: And, I would ask the Court just go
6 ahead and dismiss it based upon your finding and put this
7 thing to rest.

8 THE COURT: I understand.

9 THE DEFENDANT: And I'm gonna reiterate one more
10 time just so we don't have bad faith, until they answer that
11 question I don't think they got standing to argue nothing
12 about what you do.

13 THE COURT: How much time? I realize that time is
14 an issue, but how much time?

15 THE DEFENDANT: I'm going to unleash the wolves down
16 there in Los Angeles, I'm gonna put some bit shot attorneys on
17 this. We're going to get you some authorization, Judge.

18 THE COURT: You need 30 days?

19 THE DEFENDANT: Oh, no. Two weeks.

20 THE COURT: Okay. I'm just asking, you know --

21 MS. WELLS: Yes. And it kind of depends on whether
22 or not we have to actually move for an injunction.

23 THE COURT: Right. That's what I'm saying, I
24 don't --

25 MS. WELLS: And if you want points and authorities
26 and the whole ball of wax and if --

1 THE COURT: How about an appropriate day?

2 MR. GENOCHIO: Some time in the first three weeks of
3 July?

4 THE COURT: Bastille Day, July 14th.

5 THE DEFENDANT: How about the 7th because that's two
6 weeks, ain't it?

7 THE COURT: But I'm just listening to Ms. Wells and
8 I don't know whether or not --

9 THE DEFENDANT: You like Bastille Day?

10 MS. WELLS: We may have to do some points and
11 authorities on this.

12 THE DEFENDANT: Okay. We got some legal help out
13 there.

14 MS. WELLS: Okay.

15 THE COURT: Bastille Day, July 14th.

16 THE DEFENDANT: Your Honor, thank you very much.

17 THE COURT: You are welcome.

18 THE DEFENDANT: I wish I could ride out of here
19 bare headed. I'm going to anyway, but I'm not going to feel
20 comfortable about it.

21

22 (End of proceedings.)

23

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