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Superior Court of California
County of Shasta
1500 Court Street Room 319
Redding, Ca. 96001

THE PEOPLE OF THE STATE)	Appellate Division # 07 CRI 1402
OF CALIFORNIA,)	
Plaintiff/Respondent)	APPELLANT'S
)	OPENING BRIEF
vs.)	ON APPEAL
)	Dept. 11
)	March 19, 2007
RUTH CAMILLE HUNTLEY,)	8:00 a.m.
<u>Appellant</u>)	

APPELLANT'S OPENING BRIEF ON APPEAL

Now comes the appellant, with this opening Brief on Appeal, appealing the conviction obtained by commissioner Molly Bigelow, acting as prosecutor, the decisions of the court which led to the conviction, and the violation of due Process rights of the Appellant, as defendant, in the case underpinning this appeal.

BACKGROUND

On August 8, 2007 Commissioner Molly Bigelow presided over the trial wherein defendant was refused appropriate Judicial Propriety and Judicial Un-bias. The court found the defendant guilty of the violation and assessed a fine of \$111.50, which has been paid.

GROUND FOR APPEAL

A. IMPROPRIETY AND JUDICIAL BIAS

When defendant entered the court room and the proceeding commenced, Commissioner Bigelow stated that, “I just found your husband guilty of the same charge as you, but go ahead anyway”. It is clear that Commissioner Bigelow had already determined that the defendant guilty before hearing defendant’s case. This is contrary to the law that states, “Innocent until proven guilty”. Commission Bigelow stated that making defendants helmet violation a correctable offense, would be the same as a man that rapes his wife, and at his hearing asks the judge to reduce the charge to simple assault”.

Defendant testified with documentation that a violation of CVC 27803, Calif. Mandatory Helmet Law for motorcyclists, was a correctable offense subject to the provisions of CVC 40303.5 which states, “Whenever any person is arrested for any of the following offenses, the arresting officer shall permit the person to execute a notice containing a promise to correct the violation in accordance with the provisions of CVC 40610 unless the arresting officer finds that any of the following disqualifying conditions specified in subdivision (b) of Section 40610 exist...(d) any infraction involving equipment set forth in Division 12 (commencing with Section 24000)...(Note: which includes sections 27802 and 27803) The helmet law, CVC 27802 and 27803 are listed in the California Vehicle Code under Division 12, Equipment of Vehicles, Chapter 5, Other Equipment, Article 7 Motorcycles. There were no disqualifying conditions that CHP Officer Luntley could give at the time of the citation nor in the court room. CVC 40610 states the disqualifying conditions as follows: (a) Evidence of fraud or persistent neglect, (b) the violation presents an immediate safety hazard, © the violator does not agree or can not promptly correct the violation. In his testimony, Officer Luntley could not (a)find evidence of fraud or neglect, (b) did not feel that I posed a safety hazard since he let me go wearing the same headgear/helmet that he thought was “illegal”, © defendant offered to call her mother-in-law to bring her different headgear, but Officer Luntley said not to

worry about it and let me go on my way. Because of Officer Luntley's statements, he did not determine that there were any disqualifying conditions, but still did not issue the citation as correctable.

When defendant testified that a plain reading of CVC 40303.5 and 40610 leads on to conclude that (a) the courts duty in this case is of a ministerial nature, and (b) that this Ministerial Duty restricts the court to dismissing the citation as correctable and collecting the appropriate transaction fee. Nothing more, nothing less. Blacks Law, (abridged 6th edition) defines Ministerial Duty as follows:

“Ministerial Duty is one regarding which nothing is left to discretion. A simple and definite duty, imposed by the law and arising under the conditions admitted or proved to exist”. The Judicial Council’s argument states: “To offer forth the proposition that the Bail and Penalty Schedule promulgated by the California Judicial Council indicated the offense in question as non correctable and is therefore lawful, own must ignore the Separation of Powers Doctrine expressed in both the U.S. Constitution and the California state Constitution, one must specifically ignore the limitation of the Judicial Council powers set forth in Article 6 Section 6 of the California Constitution, which reads in pertinent part: [Judicial Council-Membership & Powers], “adapt rules for court administration, practice and procedure, not inconsistent with statute and performs other functions prescribed by statute”. Moreover, one must ignore well settled case law that the Judicial Council is prohibited from wielding the power reserved the People and the Legislature, that power being to write or re-write statutes. “Having reviewed California cases, we conclude that when evaluating whether a rule of court is “not consistent with statute”, within the meaning of California State Constitution, a court must determine the legislative intent behind the statutory scheme the rule was intended to implement and measure the rules consistency with that intent”... California Court Reporter Association v Judicial Council of California (39 Cal. App. 4th 15) citing People v Hall (supra. 8 Cal 4th app. 953. Last but not least, in

construing statutes, a courts duty is to “simply ascertain what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted”...California Code of Procedure Section 1858. When defendant testified, quoting CVC 4040303.5 and 40610, the statutes written by the Legislature, Commission Bigelow continually stated, “It doesn’t mean that’. In her own words, Commissioner Bigelow violated Civil Code of Procedure Section 1858.

B. INSUFFICIENT EVIDENCE TO SUPPORT THE VERDICT

The arresting officer, according to his own testimony, had a clear and vivid recollection of events that transpired on May 8, 2007, but when asked specific questions regarding the detainment, he could not remember what occurred and would only answer with, “I don’t remember” or “I don’t recall”. Also by his own testimony stated that he had training in what a motorcycle helmet was. But when asked how one was fabricated, he didn’t recall. Officer had no idea what was specifically required by the statute nor how that statute related to FMVSS 218. The officer’s training guide was to use the Quik Code Pamphlet, that states that there is an “approved DOT helmet” that motorcyclists are to wear when riding a motorcycle. Defendant produced correspondence with the Department of Transportation (DOT), stating that they DO Not approve motorcycle helmets and that there is NO LIST of “Approved Helmets”; that the DOT certification is done by the helmet manufacturer, not DOT”. The CHP department states that it relies on CVC 27802 and 27803 for determining if a motorcycle helmet is “approved” or not and that it must bear the manufacture’s self-certification or DOT symbol. Officer Luntey’s own testimony stated that defendants helmet/headgear did have the DOT certification on it, but that he stood by his decision that it was not a helmet. If, as the CHP’s official stance is spelled out, the standard is the DOT symbol, then how are riders whose headgear bears the symbol DOT being stopped and arrested for violations of CVC 27803? It is clear that the officer is out on the

street enforcing, not CVC 27803, but a pamphlet used as a shopping guide. The court seemed to imply CVC 27803 authorizes each individual officer, in this case officer Luntey, to establish standards for safety helmets. The CHP itself does not purport to allow this free-for-all to occur in the state. In the most recent helmet case where the CHP has had to rely on the Attorney General to argue for it, they stated, “Requiring the [aforementioned] DOT label is an objective criteria by which law enforcement officers, motorcycle drivers and motorcycle passengers can tell that a helmet complies with the helmet law, as the Ninth Circuit and California courts have recognized. In *Easyriders freedom F.I.G.H.T. v Hannigan* (9th Cir. 1996) 92 F.3d 1485, the Ninth Circuit noted that while the helmet law does have some ambiguity on its face regarding the exact specifications for a helmet that complies with the law, the helmet law does define generally what conduct is prohibited, and does establish guidelines, (*Easyriders*, at p. 1494 [consumers comply with the helmet law as long as they are wearing a helmet that bore the DOT self-certification sticker at the time of the purchase, unless the helmet has been shown not to conform with federal standards and the consumer has actual knowledge of this fact].”

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ CV 155682, Hearing on February 13, 2007/ Richard Quigley, Steve Blanco, Don Blanscet, Steve Barron, Patrick Holmes vs. CHP Memorandum of Points and Authorities in support of Demurrer to Complaint. There is no simpler way to explain the outcome and verdict in relation to the officer’s testimony, than the officer had no idea what he was talking about, was completely wrong and the court ruled based on the assumption that the officer is right and the defendant had a motive to lie. My hope is that Officer Luntey is severely untrained in this area, because the alternative would suggest the officer is the lying party. The outcome of this is that the trial court knew the officer did not carry the burden of proof to show the court, but decided it was in the court’s interest to take the defendant’s money.

The original charge should have been changed or dismissed on the defendant’s

motion that the violation is correctable based on the clear language of the law, and the court ruled incorrectly against the defendant. The officer, as clearly worded in CVC 40303.5, *shall* write the citation as correctable, and clearly dose not have an option in this case. The trial court denied this motion for dismissal or a change to a correctable offense in error, since the officer wrote the citation as not correctable, and the clear language of the law mandates the citation be written as correctable.

C. THE DECISION IS INCONSISTANT WITH BIANCO V CHP

The Bianco decision cleared up an area previously unclear to officers and courts. If the defendant's headgear had once complied with FMVSS 218 previously, but was since declared to be not in compliance with 218, then the CHP was instructed, in Bianco, to be sure the rider had "actual knowledge" the compliance certification had been pulled by the manufacturer, or by the NHTSA. The rider should not be cited if his headgear bears the symbol "DOT." Not only was the defendant arrested for violating CVC 27803 while her headgear bore the manufacturer' certification symbol DOT, the court misused the Bianco language, which should have been used to find the defendant "not guilty."

The *Buhl* court had founded its decision that the statute is constitutional purely on the basis of the plain language of the statute; and that underpinning their decision was the assertion that the statute did not require either the consumer (the Appellant) or an enforcement officer to determine if a helmet is/was properly fabricated - an opinion they held so strongly that they called even the proposition otherwise, "absurd." The *Buhl* court did not spell out every Traffic Commissioner that could possible misread the decision and do the absurd, by attempting to determine if the Appellant's headgear was fabricated correctly. Likely it was thought that the lowers courts would not need the explicit directive, as it has proven some arresting officers needed. Certainly the courts would automatically follow the higher courts decisions. Not so in this case.

The officer under cross examination repeatedly admitted that he did not know what an “approved “ helmet really was, but that he did know which ones were illegal...meaning that he cited the defendant without using the clear language of the law.

THE APPELLANT WAS DENIED DUE PROCESS BY THE COURT’S REPEATED REFUSAL TO REVIEW EVIDENCE.

It was clear at the trial that the Commissioner did not care to invest time in a trial for violation of CVC 27803. From the first line to the last, it was clear that Commissioner Bigelow had already made a guilty decision, and that the court had no interest in hearing the information that proves:

- 1) the headgear the defendant was wearing at the time of arrest was completely legal.**
- 2) the governing body that oversees FMVSS is the sole arbiter of whether the headgear complies with NHTSA standards.**
- 3) Determination that headgear does not comply with legal standards can only be made by an Independent Testing Laboratory. A Traffic Commissioner making the Determination of Non compliance with Federal Standards is taking jurisdiction of that determination away from the NHTSA, where it belongs.**

The court’s job was to give the defendant the opportunity to show her innocence, not necessarily rush for the purpose of getting through a certain number of cases. If it takes an hour to show the court everything it needs to see, then so be it. If the court’s mind is made up before hand, or does not want the facts, because they will conflict with the court’s preconceived notions, that is not justice, it is a denial of Due Process.