

IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO - KEARNY MESA BRANCH

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

ANDREW WOOLLEY,
Defendant.

Case No. Y769289

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ANDREW LISKA
SUPERIOR COURT JUDGE PRO TEM
(Department KM3)
San Diego, California
August 6, 2009

APPEARANCES:

For Plaintiff:

OFFICER DAVID ROOT
San Diego Police Department

For Defendant:

ANDREW WOOLLEY
In Pro Per

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SAN DIEGO. CALIFORNIA THURSDAY, AUGUST 6, 2009

(Call to order of the Court.)

THE COURT: Okay, this is citation Y769289. It was issued on March 6th of this year at 12:05 p.m. on a Friday. It is for an alleged violation of Vehicle Code Section 21202.

Officer, could you state your name and spell your last name for the record, please?

OFFICER ROOT: Yes, my name is David Lincoln Root. The last name is spelled R-o-o-t.

THE COURT: Officer, how are you employed and for how long, please?

OFFICER ROOT: I'm a police officer for the City of San Diego, so employed for almost 22 years.

THE COURT: Officer Root, on the date and time of the citation, were you on duty in uniform in a marked patrol unit?

OFFICER ROOT: Yes, sir.

THE COURT: Would you please tell the Court what caused you to contact the Defendant?

OFFICER ROOT: Yes, sir, Your Honor. I was patrolling on my police motorcycle near the area of the 4300 block of El Cajon Boulevard, depicted by this diagram that I've drawn up here [not attached]. This is not to scale, but it's a fair, accurate representation of that particular roadway. El Cajon Boulevard is pretty much a main thoroughfare that travels east and west through East San Diego.

At this particular location, there's two lanes of travel in each direction. There are other areas where there's three lanes in each direction, but this particular location there's two. Traffic is usually very heavy along this roadway. I was in traffic traveling westbound on my marked San Diego Police motorcycle. I was in the number-1 lane or the lane closest to the center of the roadway. Traffic was pretty backed up. It was creeping in little stages forward because of the heaviness of the traffic. I was approaching 44th Street. I was a couple -- three or four car lengths back from the intersection of 44th Street that goes north off of El Cajon Boulevard. That road kind of splits, and the other half of 44th is here (indicating).

As I was creeping my way through traffic, traffic was backed up in both lanes. The Defendant pedaled by me on his bicycle between the number-1 and the number-2 lanes of traffic, between the cars in this lane and this lane (indicating). He pedaled right past me right here and was pedaling down the center of the roadway, right along the dotted line.

Knowing the Vehicle Code that I do and knowing that he's supposed to be over here to the right, I went ahead and worked my way through traffic. As we came up here, as he was passing the traffic, the traffic kind of surged forward a little bit, and there was a car here that was either changing lanes or had veered over here or something, and it had to stop because of the backup of traffic, and I saw the Defendant had to severely hit his brakes on his bicycle, almost coming to a stop.

He made -- you know; I don't know, a shaking head or something that looked like he was kind of annoyed at that guy, came around and continued on down, kept pedaling past all these cars, came down to the limit line here.

I went ahead and turned my emergency lights on, came down here, and as we crossed the intersection here at Fairmont, I pulled up behind him, and I just activated my PA system and said, "Hey, I need you to pull over to the side of the road."

He pulled over here (indicating). I pulled up behind him. I contacted the Defendant, who's sitting here at the Defendant's table that I recognize, not only now but also at that time (indiscernible) information, and I told him that the Vehicle Code required that he ride over here along the righthand side of the roadway.

Making that statement, he was immediately annoyed and agitated that I apparently was not using the terminology that he wanted me to use and, in fact, corrected me and told me no, the Vehicle Code says that he has to ride (indiscernible) practical. It does not say he has to ride to the right-hand

edges of the roadway.

I told him that was semantics; it was pretty much the same thing that the right-hand end of the roadway is as far to the right as is practical for a bicyclist to ride.

He told me no. He said that, due to the traffic backup and the potential for people turning right along here (indicating), that he felt that part of the right of practical was to ride between the lanes of traffic. I told him I'm sorry he felt that way. I certainly don't have a problem that, if he's coming along the right-hand edge of the curb line and there's a car turning right here, that he certainly has the right to go out around that car, he certainly can do that. If there was some construction or something was broken down, for whatever reason, he certainly has the right to (indiscernible) go around that traffic, but he certainly can't ride just right down the center of a two-lane roadway between lanes of traffic for well over a block as he passed me back here prior to 44th Street and went all the way through this block here (indicating), between Fairmont and 44th Street before coming out down here.

I told him -- I explained to him that -- my feeling of the Vehicle Code and how it explained -- and I tried to explain to him some examples and why we have such a problem up here with bicyclists getting involved in automobile accidents, that vehicles have a hard enough time seeing them as it is without them being someplace that they're not expected to be.

I issued him a citation for failing to ride on the right-hand side of the road, which he did sign with his written promise to appear. We had some additional contact down the road that's irrelevant to this particular violation, but I -- he signed his ticket and I released him from there.

THE COURT: Officer, was there anything along that right-hand curb area that prevented a bicycle from riding there? Was there --

OFFICER ROOT: No, sir, just the traffic. In fact, I have an aerial photograph here [not attached] of that particular intersection, which I'll show to you. I'll pass this over to him as well.

MR. WOOLLEY: I've got photos [not attached].

OFFICER ROOT: This here is the street I'm talking about. This is Fairmont.

This is 44th, so this street here is this one here next to the big building (indicating), and we were here. You can obviously see the street there.

Parking is permitted back here in front of this building but not here, so obviously coming out around these parked cars would be fine -- no problem with that.

But I was -- I was just about where this last parked car -- there's a white car parked there. I was just about there when he went past me, past 44th Street, all the way through this block here, and then was stopped over here by these palm trees here.

THE COURT: Okay.

(Pause.)

Anything further?

OFFICER ROOT: No, sir, Your Honor.

THE COURT: Sir, do you have any questions for Officer Root?

MR. WOOLLEY: I'm still not clear he's ever actually read this Vehicle Code --

THE COURT: Well --

MR. WOOLLEY: -- so at this time, can I have him actually read it out loud to the Court and --

THE COURT: Well, I have it right in front of me

OFFICER ROOT: And I have read it, Your Honor.

THE COURT: I've read it.

MR. WOOLLEY: Okay. Well, he's still demonstrating a clear misunderstanding of the law, and I completely agree with his assessment of what happened to one -- one degree of conflict with what his interpretation was. I was not riding down the dotted line. I was in the right-hand lane on the left-hand side of the right-hand side, staying on the righthand side of the dotted line, riding on the left-hand side of cars that were backed up.

So I was cited for a violation of Vehicle Code 21202. The very first line of that sentence says,

"Any person operating a bicycle upon a roadway at the speed less than the normal speed of traffic, moving in the same direction at that time, shall ride as close as practical to the right-hand curb or edge of the roadway except under the following situations."

Before I even go into "following situations," he says I was passing vehicle, so clearly I was riding at the -- not less than the normal speed of traffic at that time. We can get to that later if you want to worry about what the normal speed of traffic is at any given time.

THE COURT: What is the speed limit on that -- posted on the street?

OFFICER ROOT: Thirty-five, Your Honor.

MR. WOOLLEY: The normal speed of traffic was not 35 as he stated. It was --

THE COURT: No, I asked --

MR. WOOLLEY: It was speed --

THE COURT: I asked --

MR. WOOLLEY: -- the speed limit --

THE COURT: I asked him what the posted speed limit is.

OFFICER ROOT: Yes.

MR. WOOLLEY: So under the following situations -- so the exceptions to this rule are:

"(1) When overtaking and passing another bicycle or vehicle proceeding in the same direction ... "

The officer has already identified that I was passing vehicles proceeding in the same direction. Exception to the rule meaning that I'm not in violation of this rule by his own testimony.

Section (2) doesn't really apply.

Section (3) talks about things in the -- along the curb line making it unsafe for travel. I don't [think.it](#) was unsafe there due to impediments in the curb line, so I'm not going to talk to that one.

Number (4), "Approaching a place where a right-hand turn is authorized." Right-hand turns are authorized at every turn along that way. He said I was (indiscernible) 44th -- or 43rd there, when he saw me pass. A right-hand turn is authorized there.

Obviously, this law does not apply in that situation. That's fairly.. clear. And those are the -- two of the four exceptions clearly are accepted in this case, and then the fact that this law probably doesn't even apply based on the fact I was traveling greater than the normal speed of traffic at that time.

Now I don't really know if I need to say anything else. I've got other things I can say.

THE COURT: Well, anything you want to tell me, you should tell me now.

MR. WOOLLEY: Okay.

THE COURT: Let me just explain. He gets the last word --

MR. WOOLLEY: Okay.

THE COURT: -- because the People have the burden of proof.

MR. WOOLLEY: Exactly.

THE COURT: So tell me everything you want to tell me --

MR. WOOLLEY: Okay.

THE COURT: sometimes what happens is I start talking, and then people want to tell me additional factors, so just -- anything --

MR. WOOLLEY: So --

THE COURT: -- you think is relevant.

MR. WOOLLEY: My recollection of the situation -- I was traveling westbound on EI Cajon Boulevard. Traffic was getting heavy due to cars making a right-hand turn along that way. I was on the right-hand side, saw the cars backing up, and knowing where the safest place for a bicycle to ride is to the left of

cars making a right-hand turn.

I can't think of a more unsafe thing for a bicyclist to do than pullout around a car making a right-hand turn with other cars behind them. That is clearly what this law is intending bicyclists not to have to do.

His interpretation of safe bicycle operation is very incorrect there.

I was to the left of those cars that were stopped. Some of them were stopped; some were making a turn, but traffic was proceeding slowly with several cars making right-hand turns.

So operating in conjunction with the law, I was to the left of those cars, passing them down the left-hand side of that right-hand lane, passed the officer on his motorcycle, saw him. Obviously knowing I was following the law, I didn't think anything of the fact that I was riding past an officer on a motorcycle -- continued along.

He mentioned a car doing something that caused me to hit my brakes fairly hard. That is true. Traffic was starting to pick up as cars were making their right-hand turn on the next block down, and I saw that traffic was kind of opening up, so I moved back into the right-hand lane away from the -- I was in the right-hand lane, but I moved back towards the center of the right-hand lane so that I wouldn't be between the cars anymore, and the car in front of me stopped, didn't make a lane change at that -- he stopped hard -- or just didn't proceed with the rest of the traffic, so I did have to swerve around him, and it was because -- I didn't swerve around him. I had to hit my brakes to avoid running into him, and then I came around because I was at that point proceeding faster than he was. He was reading a map in his lap at that point.

Instead of, you know, taking care of this individual who's stopping a car in the middle of traffic to read a map in his lap, the officer decides to pull me over for having to -- I'm not going to say take evasive action but having to respond to his -- the other driver's inappropriate behavior.

When we were pulled over -- or when I was pulled over by the officer, he said he had pulled me over for not riding where I was supposed to be. I said, "Where am I supposed to be riding?" And he said, "Along the curb line." And I said, "That's not what the law says." And he said, "Oh, really? What does the law say?" I said, "It says you're supposed to be close" --

THE COURT: I can just tell you -- all the Court considers is what happens.

MR. WOOLLEY: Okay.

THE COURT: Once there's contact made, hopefully that contact is friendly and peaceful, but whether it's shouting at each other

MR. WOOLLEY: Well --

THE COURT: -- or shaking hands, it's just not relevant to the --

MR. WOOLLEY: Well --

THE COURT: -- case.

MR. WOOLLEY: -- one thing that I think is irrelevant -- is relevant -- is that, when I said, "No, it's not the law; here's the law," at that point he said, "I was going to give you a warning, but now I'm giving you a ticket 'cause you can't take a warning."

So if my offense was not worthy of a ticket, he wrote me a ticket because I was trying to educate him, that's a whole 'nother issue, okay -- that needs to be dealt with.

But that's my -- that's what happened.

THE COURT: Okay.

MR. WOOLLEY: It's fairly clear that there wasn't a violation of this law, and his understanding is still lacking. I called his supervisor that day to ensure that he actually read the law as it's written so he doesn't pullover cyclists in the future for operating safely on roadways and avoiding dangerous situations like passing to the right of right-hand turning cars, and his supervisor told me that he did talk to him about it, but clearly given his talk up here, he doesn't understand safe operation of a bicycle on a roadway.

THE COURT: Okay. Anything further?

MR. WOOLLEY: That's all I have.

THE COURT: Okay. Thank you. Officer, anything further?

OFFICER ROOT: Well, I think the Vehicle Code section is crystal-clear, Your Honor. The gentleman has no clue how to predict what the traffic is going to do in front of him.

According to his theory, El Cajon Boulevard is 15 miles long from downtown to La Mesa.

According to his theory, he can ride down the center of this road that entire roadway because there's hundreds of side streets with the potential of a right-hand turn.

Any road he rides down is going to have right-hand turns; therefore, according to his theory, he can ride down the middle of this roadway on any road, anywhere he wants to at any time because there is always the potential for a right-hand turn.

Those are hazards that every bicycle faces. It's crystal-clear that he is required to ride along the right-hand edge of that roadway. I'm well aware of the law; I've been enforcing it for 12 years. I'm well aware of it.

There was no need for me to review it. Yeah, I sometimes use lay terms like "the red signal". Well, California law doesn't say "red signal", but it says "circular, round, signal light."

There's a lot of lay terms that we use. Telling him the right-hand edge is just a very layman's term (indiscernible) as far to the right as practical.

It's -- I think that this certainly shows the hazards that are out here in the roadway, even though this section doesn't say "hazardous" or anything about it. you've got to ride to the right. It just says you've got to ride to the right.

As I said, I'm very receptive -- the bicyclists come out here around a car that's turning, around a --

MR. WOOLLEY: (Indiscernible) practice.

OFFICER ROOT: -- (indiscernible) very receptive to that. I don't have any problem with it, and in fact, yes, I do that a lot unless I did say that he -- you know -- I do have the potential and the tendency to give a lot of warnings. I do that a lot unless I feel that a warning is not going to be an effective enforcement tool in a particular situation, so it was obvious, based on his immediate criticism of my stop and here I'm trying to bring this to his attention, and he's immediately telling me I don't know what I'm doing; I don't know what the Vehicle Code says.

I really didn't think that a warning was going to be an applicable enforcement tool in this particular case, so I did issue a citation.

As I said, he has no way of knowing what those cars are going to do, and in his case, if he's riding out here, and all of a sudden the traffic changes and this is now going faster, now he has to jump back over here, and now if it slows down, now he has to jump back over here, and now if it speeds up, now he has to jump back over here.

He has no way to predict what that traffic's going to do. His obligation on the bicycle is to ride down this right-hand side of the road and to avoid things.

If, in fact, somebody makes a right turn, then he certainly has a right to come around that. It does not give him the right to ride blocks down the center of the roadway to avoid that traffic. I don't believe that's what that section is even intended to say.

THE COURT: Okay. Thank you. Sir, I agree with the officer. I think the law requires you to be on the right-hand side. I don't find that the exceptions that you cited are applicable to the facts that are before the Court.

MR. WOOLLEY: Excuse me, Your Honor -- how --

THE COURT: I'm not going to argue with you.

MR. WOOLLEY: Okay, well --

THE COURT: I've found you -- I've listened to the facts. You've told me that you told me everything you want to tell me.

MR. WOOLLEY: Can you explain to me --

THE COURT: My interpretation --

MR. WOOLLEY: -- how they don't apply? Can you explain to me how they don't apply?

THE COURT: I don't think it's appropriate. I agree that there are continual right turns, and I don't think that that -- that would negate the entire purpose of the statute, and then --

MR. WOOLLEY: You know, on that one -- there's two other exceptions here. The right turn is only one

of three.

THE COURT: Yeah, but the speed limit on that street is 35, so I --

MR. WOOLLEY: Okay, there's still --

THE COURT: I'm not going to argue --

MR. WOOLLEY: -- one more --

THE COURT: Sir --

MR. WOOLLEY: -- which --

THE COURT: Sir, I am not going to argue with you. I have made a ruling.

MR. WOOLLEY: I'm not going to pay a fine for something I didn't do, and I will --

THE COURT: You proceed to do whatever you feel you need to do, but I will find you guilty. The fine is \$165. Can you pay that today or --

MR. WOOLLEY: I'm not going to pay that today.

THE COURT: Okay, well, I'll give you 90 days to pay it.

OFFICER ROOT: Thank you, Your Honor.
(Proceedings concluded.)