

IN THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, APPELLATE DIVISION

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff/Respondent,

v.

ANDREW WOOLLEY,

Defendant/Appellant.

Appellate Division No. CA221322
Superior Court No. Y769289
City Attorney No.

RESPONDENT'S BRIEF

Appeal from the Judgment of the Superior Court
San Diego Judicial District
The Honorable Andrew J. Liska, Judge Pro Tem of the Superior Court

JAN I. GOLDSMITH, City Attorney
ANDREW JONES, Assistant City Attorney
STEVEN K. HANSEN, Deputy City Attorney
California State Bar No. 134774

Office of the City Attorney
Appellate Unit
1200 Third Avenue, Suite 700
San Diego, California 92101-4103
Telephone: (619) 533-5500

Attorneys for Plaintiff/Respondent

TOPICAL INDEX

	<u>Page</u>
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS	1
ARGUMENT.....	2
I THERE WAS INSUFFICIENT EVIDENCE TO ESTABLISH APPELLANT’S GUILT	2
CONCLUSION.....	3

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Statutes</u>	
Vehicle Code Section 21202.....	2
Vehicle Code Section 21202(a)	1, 2
Vehicle Code Section 22350.....	2

1 The posted speed limit in that section of the road is 35 miles per hour. (TP at 7.) The
2 officer pursued Appellant and cited him for failing to ride along the right edge of the road
3 pursuant to Vehicle Code section 21202.

4 **Testimony of Appellant:**

5 Appellant testified he was riding his bicycle in the number two lane, to the left of
6 cars that were backed up. (TP at 7.) At one point near the intersection Appellant moved to
7 the middle of the lane and had to brake hard when a car stopped suddenly. (TP at 10.)

8 Appellant made several arguments regarding the application of the statute to his
9 bicycle riding. (TP at 7-14.)

10 **Ruling:**

11 Appellant was found guilty and fined \$165.

12 **ARGUMENT**

13 **I**

14 **THERE WAS INSUFFICIENT EVIDENCE TO**
15 **ESTABLISH APPELLANT’S GUILT**

16 The evidence at trial established that at the time of the citation traffic was moving
17 very slowly, creeping along, and that Appellant was riding to the left of the traffic in the
18 number two lane, passing the slow-moving cars. The officer cited Appellant for failing to
19 ride along the right edge of the roadway in violation of Vehicle Code section 21202(a).
20 However, that section applies only to a person operating a bicycle “at a speed less than the
21 normal speed of traffic moving in the same direction *at that time*” (emphasis added). At
22 the time of the citation, traffic was creeping along and Appellant was riding at a speed
23 greater than the speed of traffic at that time.

24 Appellant may have violated other statutes (e.g., Vehicle Code section 22350), but
25 does not appear to have violated Section 21202(a). Accordingly, Respondent concedes the
26 conviction should be reversed.

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Based on the foregoing, the judgment below should be reversed.

Dated: 12-9, 2009

JAN I. GOLDSMITH, City Attorney

By  _____

Steven K. Hansen
Deputy City Attorney


Attorneys for Plaintiff/Respondent

**CERTIFICATE OF COMPLIANCE
[CRC 8.928]**

Pursuant to California Rules of Court, Rule 8.928, I, Steven K. Hansen, certify that based on the word processing program used to prepare this brief, that the word count for this document is 633 words.

Dated: 12-9, 2009

JAN I. GOLDSMITH, City Attorney

By  _____

Steven K. Hansen
Deputy City Attorney

Attorneys for Plaintiff/Respondent

JAN I. GOLDSMITH, City Attorney
DAVID P. GREENBERG, Assistant City Attorney
STEVEN K. HANSEN, Deputy City Attorney

Office of the City Attorney
Criminal Division
1200 Third Avenue, Suite 700
San Diego, California 92101-4103
Telephone (619) 533-5500

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

DECLARATION OF
SERVICE BY MAIL

Case No. CA221322
People v. Andrew Woolley

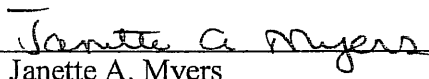
I, Janette A. Myers, declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned mailing occurred. My business address is 1200 Third Avenue, Suite 700, San Diego, California, 92101-4103. I served the following document(s): **RESPONDENT'S BRIEF**, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Andrew Woolley
4631 Mississippi Street, Unit 1
San Diego, CA 92116

The Honorable Andrew J. Liska
Judge Pro Tem of the Superior Court
8950 Clairemont Mesa Blvd.
San Diego, CA 92123

I then sealed each envelope and with the postage thereon fully prepaid, deposited each in the United States mail at San Diego, California on Dec 9, 2009.

I declare under penalty of perjury that the foregoing is true and correct. Executed on Dec. 9, 2009, at San Diego, California.



Janette A. Myers

PROOF OF SERVICE BY MAIL
C.C.P. §§ 1013(a); 2015.5