

NAPA SUPERIOR COURT
Certificate of Mailing

PEOPLE VS. MUNSON

CR149144

DOCUMENT: BRIEFING SCHEDULE
CD: 12/22/2009
REPORTER'S TRANSCRIPT, 3/8/2010
CHRONOLOGICAL INDEX

Napa County District Attorney
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Napa Ca 94559

Attorney for Respondent

Don Laughridge
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Napa CA 94559

Attorney for Appellant

****CERTIFICATION****

I hereby certify that I am not a party to this cause and that copies of the foregoing document were mailed first class postage pre-paid in sealed envelopes at Napa, California on this date and that this certificate is executed at Napa California this date.

RICHARD D. FELDSTEIN, Court Executive Officer

FAWN HUSS

7/22/2010

Date

Court Division Supervisor

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA**

Case Name: People vs. Munson, Rik Wayne
Case Number: CR151673

Amended Notice (If checked)

TO: DON LAUGHRIDGE

833 FRANKLIN ST.
NAPA, CA 94559

DATE: December 14, 2010 **TIME:** 4:00 pm

ROOM: Department C

LOCATION: 825 Brown Street, 2nd Floor, Napa

You are notified the Record on Appeal has been filed and the case is scheduled for hearing in the Appellate Division at the location and time shown above.

NOTE: Oral argument is not required. If any party desires oral argument, a written request must be submitted to the court and served on all sides no later than 10 days after the reply brief is due (see date noted below). There is no extension for mailing. If no request with proof of service is received, the court will deem oral argument waived and the case will be submitted on the briefs on the hearing date noted above.

BRIEFS SUBMITTED MUST BE IN COMPLIANCE WITH RULE 8.706 AND LOCAL RULE 11.3

- Filed timely in accordance with briefing schedule unless modified by Order of the Presiding Judge of the Appellate Division.
- Proof of Service must include and reflect service on the Clerk of the Superior Court for delivery to the Trial Judge.
- Original and (3) three copies of all briefs must be filed.

Due dates for filing of briefs:

- Appellant's Opening Brief Due 8/23/10 by 4:00 PM
- Respondent's Brief Due 9/10/10 by 4:00 PM
- Appellant's Reply Brief Due 10/10/10 by 4:00 PM
- Request for Oral Argument with proof of service on all parties due 10/22/10

Appellate Division files are located in Court Services, in the Historic Courthouse, 825 Brown Street, Napa, California, 94559.

Certificate of Mailing/Service

I hereby certify that I am not a party to this cause and that a copy of the foregoing document was

- mailed (first class postage pre-paid) in a sealed envelope
- personal service: personally delivered to the party listed above
- placed in attorney/agency folders in the Criminal Courthouse Historic Courthouse

at Napa, California on this date and that this certificate is executed at Napa, California this date.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing within the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 7/22/2010

Richard D. Feldstein, Court Executive Officer

FAWN HUSS

By: _____
Deputy Court Executive Officer

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IN THE APPELLATE COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE FIRST APPELLATE DISTRICT

--oOo--

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff/Respondent,)
)
vs.)
)
RIK WAYNE MUNSON,)
)
Defendant/Appellant.)

COPY

No. CR149144

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TRANSCRIPT ON APPEAL
REPORTERS TRANSCRIPT OF PROCEEDINGS
AT TIME OF COURT TRIAL

VOLUME 1

(Pages 1 - 98)

--oOo--

Napa, California
Monday, March 8, 2010
8:30 a.m.

ENDORSED

--oOo--

JUL 19 2010

Clerk of the Napa Superior Court
By: F. HUSS
Deputy

Reported by:
LINDA SHRYACK, CSR NO. 12104

Received
JUL 19 2010
Napa Superior Court

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NAPA
THE HONORABLE STEPHEN T. KROYER, JUDGE

--oOo--

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff,)
)
vs.) No. CR149144
)
RIK WAYNE MUNSON,)
)
Defendant.)
_____)

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REPORTER'S TRANSCRIPT OF TESTIMONY AND PROCEEDINGS
AT TIME OF COURT TRIAL

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Napa, California
Monday, March 8, 2010
8:30 a.m.

Reported by:
LINDA SHRYACK, CSR NO. 12104

--oOo--

A P P E A R A N C E S

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For the People: GARY LIEBERSTEIN
District Attorney
931 Parkway Mall
Napa, California 94559
BY: KATHRYN SUSEMIHL
Deputy District Attorney

For the Defendant: In Propria Persona

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Cross-Examination By Mr. Munson

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IDEN.

EVID.

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IDEN.

EVID.

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1 MARCH 8, 2010

8:30 a.m.

2 --oOo--

3 The above-entitled matter came on regularly
4 this day for hearing before the Honorable STEPHEN T.
5 KROYER, Judge.

6 GARY LIEBERSTEIN, District Attorney, County
7 of Napa, 931 Parkway Mall, Napa, California 94559,
8 represented by KATHRYN SUSEMIHL, Deputy District Attorney,
9 appeared as counsel on behalf of the People.

10 RIK WAYNE MUNSON, appeared In Propria
11 Persona.

12 The Honorable STEPHEN T. KROYER, Judge
13 presiding.

14 LINDA SHRYACK, CSR NO. 12104 Official
15 Shorthand Reporter for the County of Napa, was duly present
16 and acting.

17 The following proceedings were then and
18 there taken, to wit:

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

20 THE COURT: I guess this is the Rik Munson case,
21 CR149144. Are you Rik Munson?

22 MR. MUNSON: I am.

23 THE COURT: And are you representing yourself here
24 today?

25 MR. MUNSON: I am.

26 THE COURT: And then who's appearing for the People?

27 MS. SUSEMIHL: Katie Susemihl on behalf of the People.

28 THE COURT: Are the People ready to proceed with a

1 trial today?

2 MS. SUSEMIHL: Yes. We are, your Honor.

3 THE COURT: And are you, Mr. Munson?

4 MR. MUNSON: Well, yes, I am. But we have some
5 housekeeping that needs to be addressed this morning.

6 THE COURT: Okay. Let me just ask a couple questions
7 to get oriented, too. Ms. Susemihl, are we proceeding on a
8 citation?

9 MS. SUSEMIHL: Yes, your Honor.

10 THE COURT: And which of the three charges remains for
11 trial?

12 MS. SUSEMIHL: All three of them.

13 THE COURT: All three.

14 MS. SUSEMIHL: Yes.

15 THE COURT: Okay. And then what are your housekeeping
16 issues?

17 MR. MUNSON: Well, to begin with, I haven't entered a
18 plea in this action.

19 THE COURT: Would you like to plead not guilty today,
20 or guilty, or no contest?

21 MR. MUNSON: Is it appropriate to plead at the time of
22 trial?

23 THE COURT: If you want to.

24 MR. MUNSON: Well, I don't necessarily want to. I'm
25 not refusing to if it's, if it's appropriate to plead at
26 trial, as opposed to at arraignment. I'm not really sure
27 that that's what the rules are.

28 THE COURT: Are the People aware of any event where

1 the defendant entered a plea before now?

2 MS. SUSEMIHL: I am not, your Honor. I am -- this was
3 Ms. Belmore's matter. The notes don't indicate, but we
4 also weren't present at the arraignment.

5 THE COURT: Okay. Let's go.

6 MS. SUSEMIHL: I'm not sure what happened on February
7 2nd on the separate trial. I want to say that there was a
8 plea of not guilty entered, previously. But I couldn't
9 give a date to be certain of that.

10 THE COURT: Well, the defendant filed a written
11 statement on November 23rd, 2009 that says Notice of Entry
12 of Plea.

13 MR. MUNSON: I'm aware of that, and do you see one of
14 the pleas found at 1022 through 1032 of the Penal Code?

15 THE COURT: What's the code section numbers?

16 MR. MUNSON: In 1022 through 1032, it lists the six
17 pleas that are available. 1018 requires that the defendant
18 enter the plea in open court.

19 THE COURT: Are you sure that applies to a case like
20 this?

21 MR. MUNSON: Is it a criminal action?

22 THE COURT: Yeah. Is that what the statute says?

23 MR. MUNSON: That's what the Penal Code says. And the
24 Civil Code says that the Penal Code defines and prescribes
25 the procedures for criminal actions, and this leads, of
26 course, to other issues.

27 THE COURT: 1017, every plea must be made in open
28 court, and may be oral or in writing. How did this

1 document come into the court file?

2 MR. MUNSON: I mailed it in.

3 THE COURT: Okay.

4 MR. MUNSON: When I failed to appear on November 30th,
5 and that leads us to other sections of the code.

6 THE COURT: Which of the six pleas do you believe you
7 entered on November 23rd by filing this written document?

8 MR. MUNSON: Non of those six. I filed a plea under
9 40513(a) of the Vehicle Code, which reads identical to
10 853.9 of the Penal Code. And it's called a plea of
11 anything other than guilty or no contest. The citation is
12 only good for the entrance of a plea of guilty or no
13 contest. After that, a verified complaint is required. I
14 haven't waived my right to a verified complaint as required
15 by 853.9 and 939 of the Penal Code, and 40513(a) of the
16 Penal Code.

17 THE COURT: And tell me that Vehicle Code section you
18 just cited.

19 MR. MUNSON: It's on the bottom of the TR-130 document
20 that's in the court's file. That's the citation.

21 THE COURT: Why don't you tell me the Vehicle Code.

22 MR. MUNSON: 40513(a), and that reads identical to
23 853.9 of the Penal Code.

24 THE COURT: I'm just double checking all those
25 citations you're giving me right now.

26 MR. MUNSON: Okay.

27 THE COURT: 40513(a).

28 MR. MUNSON: Yes.

1 (Pause in the proceedings.)

2 THE COURT: So both 40513 of the Vehicle Code and
3 853.9 of the Penal Code, do say as you say, that the
4 general rule is that if you can demand that a complaint be
5 filed, and they both contain another provision in
6 subdivision (b), which says notwithstanding the provisions
7 of subdivision (a) -- I'm reading from 853.9 of the Penal
8 Code right now.

9 Notwithstanding the provisions of subdivision (a) of
10 this section, whenever the written notice to appear has
11 been prepared on a form, approved by the judicial counsel,
12 an exact and legible duplicate copy of the notice, when
13 filed with the magistrate, shall constitute a complaint to
14 which the defendant may enter a plea. It goes on to say if
15 the notice to appear is not verified, the defendant may at
16 the time of arraignment request that a verified complaint
17 be filed.

18 So in looking at the complaint -- I mean, looking at
19 the citation in this case, it appears to be on a judicial
20 counsel form, and it appears to be verified. So I think
21 this is a proper charging document. Next issue.

22 MR. MUNSON: Well, we have, we have the discovery
23 dysfunctions, and I only got the packet last Wednesday.

24 THE COURT: Let's go back to the plea issue. You
25 believe you've never entered a plea?

26 MR. MUNSON: I'm quite certain I've never entered a
27 plea.

28 THE COURT: What do you consider this document filed

1 November 23rd, Notice of Entry of Plea?

2 MR. MUNSON: Well, I explained it. It is an entry of
3 plea of anything other than guilty or no contest. I don't
4 know what a guy has to do to get a verified complaint filed
5 into a so-called traffic action.

6 THE COURT: You don't have a right to that in this
7 case.

8 MR. MUNSON: It says very clearly in the section you
9 just read, right where you stopped, it says it will serve
10 the function of entry of a plea for guilty and no contest.
11 And if the defendant fails to appear and enter any other
12 plea, they're required to file a verified complaint.

13 And so if your ruling is that it's not required, then
14 I'm going to -- I've absconded my objection on the record.
15 And I won't enter a plea to anything but a verified
16 complaint, and that document doesn't make it.

17 THE COURT: Okay. Now did you cite another code
18 section that I've just forgotten for the moment about this
19 plea of legal and factual innocence?

20 MR. MUNSON: 1018 of the Penal Code requires a plea,
21 oral plea by the defendant in open court.

22 THE COURT: Okay. But it doesn't list that, does it?

23 MR. MUNSON: I beg your pardon?

24 THE COURT: It doesn't list that.

25 MR. MUNSON: No, 1022 through 1032 of the Penal Code
26 lists the six pleas available in a criminal action.

27 THE COURT: And you said this is not one of them.

28 MR. MUNSON: That is not one of them.

1 THE COURT: What is this thing?

2 MR. MUNSON: That is trying everything I can to get a
3 verified complaint filed into a traffic action. I failed
4 to appear -- a plea of anything other than guilty or no
5 contest. I don't know what you have to do to get a
6 verified complaint, and I'm not going to sit here and argue
7 that that is or is not. I'm quite certain it does not
8 constitute a verified complaint.

9 THE COURT: Yeah, it's not a verified complaint, but
10 my reading of the two statutes that you cite is just a
11 little different than yours. That's all. And I think
12 that -- I think the legislature has allowed for the
13 prosecutor to save a little tree work here and not create
14 another piece of paper under certain circumstances, and
15 those circumstances are a citation on a judicial counsel
16 form, which has been verified.

17 And in looking at the document in this file, which I
18 think is the charging document, it just appears to me -- I
19 know you disagree, but it appears to me that this is a
20 proper charging document upon which they can proceed today.

21 MR. MUNSON: You've made your ruling. I'm not going
22 to debate it further.

23 THE COURT: And then so if I understand you correctly,
24 given that circumstance, you are not willing to enter one
25 of the six pleas to that charging document.

26 MR. MUNSON: That's correct.

27 THE COURT: Okay.

28 MR. MUNSON: And that leads us to 1024 of the Penal

1 equipment, in the automobile that the officer was using. I
2 don't know if there was any audio/video equipment that
3 would protect the rights of a citizen. There's a lot of
4 stuff I don't know. And they have an ongoing duty to
5 provide anything that may be exculpatory. I don't have a
6 witness list. They didn't mention -- I don't have a
7 statement of any of the people present. There were two
8 police officers present. There were two officials from the
9 City of American Canyon who appeared on scene and
10 confronted me while I was physically in police custody.
11 Apparently, the prosecution hasn't inquired as to the
12 facts, per se.

13 THE COURT: So what are you asking me to do right now?

14 MR. MUNSON: I'm making an objection to the failure of
15 the prosecution to obey the rules. And at this point,
16 there's not much we can do, except determine along the way
17 how disadvantaged I am as a result of this. So I'm lodging
18 my objection for the record.

19 THE COURT: Okay. Did you want to respond to that,
20 Ms. Susemihl?

21 MS. SUSEMIHL: Your Honor, for some reason the
22 discovery packet that we sent over with the citation or
23 complaint, that usually contains the police report, and
24 that information, for some reason that was left in the
25 court's file, and it was not given to the defendant until
26 Wednesday.

27 THE COURT: What Wednesday?

28 MS. SUSEMIHL: At the readiness conference last week.

1 Judge Boessenecker did ask, and mentioned that if, you
2 know, because of this discovery, since it was still in the
3 court file, if there was an issue, he could deal with that.
4 But the defendant stated that he was prepared for trial.

5 THE COURT: Why don't you show me what you got last
6 Wednesday. I'd like to see what we're talking about. I've
7 got a manila envelope which has the case number and the
8 defendant's name on the outside. It's the type of
9 discovery packet that I'm used to seeing in a file when a
10 citation or a complaint is filed by the DA. And inside are
11 four pieces of paper. Let's make a record of these things
12 for your benefit, sir, so we know what we're talking about.

13 MR. MUNSON: Thank you.

14 THE COURT: These exhibits will be Defense 1, 2 and 3,
15 and I'll take four exhibit stickers now, and I'll stick
16 them on and identify what they are. By the way, all
17 exhibits will be returned to the party owning them at the
18 end of this hearing. You're each required to keep them
19 until this case becomes final.

20 (Whereupon, Defendant's Exhibit Nos. 1
21 through 3 were marked for identification.)

22 THE COURT: Number one looks like a copy of a
23 citation. These are being marked for identification only
24 right now.

25 Number two looked like the notes on the back of the
26 citation. And I'll check the citation that I have in the
27 file, which looks like the original. And those two things
28 seem to match what I have.

1 Number three is a notice of correction to the
2 citation. That's a photocopy. And that original is also
3 with the court and was filed with the court.

4 And then number four looks like a DMV computer
5 printout of the defendant's driving record. And so are
6 there any other police reports or statements, or any other
7 discovery-type material generated in this case,
8 Ms. Susemihl?

9
10 (Whereupon, a Document was then marked
11 as Defendant's Exhibit No. 4 for
12 identification.)

13 MS. SUSEMIHL: The only other discovery was the
14 certified DMV document which was mailed to Mr. Munson
15 February 16th, and I believe he indicated that he received
16 that.

17 THE COURT: Mr. Bailiff. I'll return the defendant's
18 four exhibits in the envelope to him for safekeeping, and
19 then, Ms. Susemihl, show me your certified DMV record that
20 you want to use as evidence in this trial. We'll mark that
21 People's Number 5 for identification.

22 (Whereupon, a Document was then marked as
23 People's Exhibit No. 5 for
24 identification.)

25 THE COURT: And you say you mailed it to, you mailed a
26 copy of this to the defendant when you received it?

27 MS. SUSEMIHL: The copy of the memo that went with it
28 indicated February 16th.

29 MR. MUNSON: I did receive that in a timely fashion,
30 your Honor.

1 THE COURT: Okay. And so take a look at Exhibit
2 Number 5, and tell me if that's a copy of what you got,
3 sir. I want to make sure you got the same thing.

4 MR. MUNSON: This appears to be the same document.

5 THE COURT: Great. Are there any other written
6 documents generated as discovery material that you're in
7 possession of, or aware of, Ms. Susemihl?

8 MS. SUSEMIHL: No, your Honor.

9 THE COURT: And who are your witnesses in this case?

10 MS. SUSEMIHL: Sergeant Mike Hunter, who was the
11 officer who issued the citation.

12 THE COURT: Do you intend to call any other witnesses?

13 MS. SUSEMIHL: No, your Honor.

14 THE COURT: Okay. Are you aware of any Brady material
15 or exculpatory evidence-type material that might help the
16 defendant's case at all?

17 MS. SUSEMIHL: I am not aware of anything. And we'd
18 never received an informal request. The defendant listed a
19 laundry list of things, such as cameras. We never received
20 an informal request for anything. And I'm not aware of
21 the --

22 THE COURT: You mean before now?

23 MS. SUSEMIHL: Correct. Before today.

24 THE COURT: Have there been any discovery motions
25 heard in court that you're aware of?

26 MS. SUSEMIHL: Not to my knowledge, no.

27 THE COURT: Sir, once again, I looked at every single
28 piece of paper in the file. It's about an inch thick right

1 now. Did you file a formal discovery motion in court or
2 not?

3 MR. MUNSON: No, I accepted the one document I
4 received in a timely fashion, and simply asked. I raised
5 the issue of discovery because I didn't get a witness list.
6 I didn't really get anything but that one document. So we
7 did have a discussion about discovery at that time. I'm
8 just making an objection, as opposed to any formal motion.
9 It's a little bit late for materials to appear at this
10 time, let alone, you know, to be confronted with a choice
11 between getting this thing over and extending it who knows
12 how long.

13 THE COURT: Okay. Are there any other housekeeping
14 issues before trial?

15 MR. MUNSON: We do have the question of judicial
16 notices. I provided the prosecution with a -- copies of
17 the statutes with -- that begins with a list. I sent those
18 to the Court as well. I can submit them in their entirety
19 if the Court would want to label those.

20 THE COURT: You probably don't need to give those to
21 me right now. You say you filed a request for judicial
22 notice document in the file.

23 MR. MUNSON: I filed a motion, demand for a judicial
24 notice citing all equity sales which basically informs the
25 Court that it's bound by the decisions of higher courts and
26 higher authorities, etcetera. Then I cited -- I have a
27 list of cases and addendum, and a list of the statutes
28 themselves, and the actual photographs of the statutes

1 themselves from the assembly law library.

2 THE COURT: Okay. I've got that packet. That's, oh,
3 about three quarters-of-an-inch thick. And it appears to
4 be a document that begins with a title of demand for
5 judicial notice, auto equity sales. And it was filed
6 January 25th, 2010. And it has photocopies of lots of
7 different legal authorities attached to it. So I do have
8 that in the file. And I'll make reference to that as the
9 case progresses.

10 MR. MUNSON: The photo copies are only of the
11 statutes. I didn't bother to load the file with the case
12 from California.

13 I do have one other case now that I do have to submit.
14 Because it's a federal case, I have to give everybody a
15 copy of it. It came out on December the 9th.

16 THE COURT: Hold on just a second.

17 MR. MUNSON: I also have Brady cases here. All of
18 them, the Court to take judicial notice of them, as opposed
19 to submitting them.

20 THE COURT: Okay. We'll mark this 10th Circuit case,
21 number 082169, as Defense Exhibit Number 6.

22 (Whereupon, a Document was then marked as
23 Defendant's Exhibit No. 6 for
identification.)

24 THE COURT: And anything else before we get started,
25 about the trial itself?

26 MR. MUNSON: Well, I'm going to -- for the record of
27 the trial, I'm going to object to the denial of assistance
28 of counsel at a critical stage of the proceedings, and

1 that's basically based upon the fact that I have refused to
2 waive one to exercise another. And I will cite from the US
3 Supreme Court in the case of Simons v. United States at 390
4 U.S. 389, where the court says and we find it intolerable
5 that one constitutionally protected right should have to be
6 waived to exercise another.

7 I have a First Amendment right to manage the affairs
8 of my own life, and that's a protected political right, and
9 I also have a Sixth Amendment right to advice of the
10 assistance of counsel, as well as Article One, Section 115
11 of the California Constitution, right to advice and
12 assistance of counsel.

13 And although I've chosen to manage the affairs of my
14 own life, it does not include my right to the advice and
15 assistance of counsel. I didn't even need to have someone
16 sitting here, but I certainly could have used a sounding
17 board, and so I'm going to object to the denial of counsel
18 at the critical stage.

19 THE COURT: And are you referring to a prior ruling of
20 another judge?

21 MR. MUNSON: Yes, I am.

22 THE COURT: Okay. As you may know, one judge like me
23 does not have the right to change the ruling of another
24 judge of equal stature. So your objection is noted for the
25 record, but there's nothing I can do about that today.

26 MR. MUNSON: I'm aware of that. At this point, I'd
27 say it's a little too late for me to move this Court to
28 appoint assistant counsel.

1 THE COURT: Yes, it is.

2 MR. MUNSON: I'm not raising that, other than just to
3 note for the record, for the review, I'm of the, of the
4 opinion that my right to assistance of counsel was denied,
5 and it was denied twice by two other Courts.

6 THE COURT: I understand your position. Anything else
7 before we get started with the trial?

8 MR. MUNSON: Yeah, there are a couple of issues. And
9 they may seem unusual. One of the things I want to touch
10 on here is the verified statement of disqualification. I'm
11 going to object to the ruling of the judge pro tem. It's
12 void on its face. Page two of the verified answer from --

13 THE COURT: Let me interrupt and save a little time
14 here. There's no point in talking about that now, because
15 that is something that was done by other people --

16 MR. MUNSON: Yes.

17 THE COURT: -- earlier. As a matter of fact, a
18 visiting judge or an outside judge from another county was
19 appointed by the judicial counsel to rule on your statement
20 of disqualification of the commissioner. And, as you know,
21 that judge found the commissioner not to be disqualified.
22 But also, as you know, your case isn't being heard in front
23 of that commissioner at your request. We've honored that.

24 MR. MUNSON: I'm aware of that.

25 THE COURT: So there's no point in talking about that
26 now.

27 MR. MUNSON: If it please the Court, the ruling of the
28 judge pro tem stands for the proposition that the courts do

1 not on have to follow the rules. Rule 3.513 and 3.514 of
2 the California Rules of Court makes it very clear that the
3 only parties than can appear at a motion are those that
4 have filed an answer, an objection, a counter motion,
5 etcetera. Okay.

6 So my point is very simple. I expected everyone to
7 obey the rules. I'm here because I allegedly didn't obey
8 the rules, and I demand that my servants who are charged
9 with the preservation of public justice, obey the rules.
10 So that's just a notice to everyone. I've been complaining
11 about the rules disregards so far this morning. So I want
12 it on the record for review. There seems to be, also, some
13 confusion over the nature and cause of this action. You,
14 again, reenforce the commissioner's ruling that this is a
15 criminal action, but I have some questions about that in
16 joinder of civil and criminal, as well as things like
17 14607.4 of the Vehicle Code, where the legislature talks
18 about the constitutionality of an act based upon the case
19 of Calero-Toledo, which is a seizure of a yacht.

20 THE COURT: Spell that.

21 MR. MUNSON: Calero-Toledo.

22 THE COURT: She's writing all your words down
23 carefully, so...

24 MR. MUNSON: It's cited on 14607.4(g) of the Penal
25 Code.

26 THE COURT: Do you know how to spell that? And can
27 you spell the name of that case for her benefit.

28 MR. MUNSON: C-A-L-E-R-O --

1 THE COURT: You can just spell it out. We don't need
2 to see it.

3 MR. MUNSON: C-A-L-E-R-O, dash, T-O-L-E-D-O. Toledo
4 v. Pearson Yacht Leasing Corporation, and the joinder of
5 civil and criminal, and so-called traffic. I'm of the, of
6 the opinion that traffic matters are, are commercial
7 matters. They are confined to the realm of commerce, and
8 so I'm going to move to object -- to dismiss this morning
9 under Rule 9(h) of the Federal Rules of Civil Procedure,
10 because I believe the proper designation of this action.
11 On the criminal side, we only have two jurisdictions. One,
12 the common law, and the other one, admiralty. So I'm going
13 to object under Rule 9(h), that there's no pleading of
14 admiralty in this case. You might think I'm a little
15 whacked raising these kind of issues, but I have a reason
16 for it.

17 THE COURT: So the motion to dismiss is denied because
18 I think I'm obliged to follow California State law and not
19 Federal law. Of course, I'm bound by the constitution and
20 that sort of thing. But we are not bound by statutes and
21 cases that do not apply directly to California State law
22 and the California Vehicle Code. As I understand it, we're
23 proceeding under three sections of the California Vehicle
24 Code. Count One which charges you with Vehicle Code
25 section 4000(a), driving without the proper registration.
26 Count Two charges you with Vehicle Code section 12500 (a),
27 driving without a proper driver license. And Count Three
28 charges you with Vehicle Code section 16028(a), driving

1 without the proper insurance. Number one and number three
2 are defined under California law as infractions. And
3 number two is defined for purposes of this case. Now under
4 California law as a misdemeanor, all three of them are
5 criminal violations, so to speak, under California's
6 definition of that word. And so you're motion to dismiss,
7 based on the authorities you just cited is denied.

8 MR. MUNSON: Okay. I expected that. I just wanted it
9 on the record. And there is one more issue. You may think
10 this is a little bit odd, but from my study of the Central
11 Contractor's Registry for the United States, suggests that
12 the Superior Court of California is operating in an
13 instrumentality of the United States, and may not
14 necessarily be a de jure California republic office. So on
15 that basis, I'm going to dismiss under the foreign
16 sovereignty Communities Act -- ask you to dismiss that as
17 well.

18 THE COURT: That motion is denied, as well. I think
19 I'm a state court. I think I was a judge who was properly
20 appointed by the governor of the State of California. To
21 my knowledge, the federal government had nothing to do with
22 my being here today.

23 MR. MUNSON: I understand.

24 THE COURT: Are there any other pre-trial motions?

25 MR. MUNSON: No, ready to go.

26 THE COURT: Great. Let's begin the trial, which
27 normally begins with an opening statement from a
28 prosecutor. You can give one or not give one at a court

1 trial.

2 MS. SUSEMIHL: I will not give an opening statement,
3 your Honor.

4 THE COURT: Then it's your chance to give an opening
5 statement.

6 MR. MUNSON: I'll reserve.

7 THE COURT: I'll help you out just a little bit by
8 pointing out your options all along. Sounds like you know
9 this one, but I want to make sure we're on the same page.
10 You can give an opening statement now, or you can give an
11 opening statement at the beginning of the case, or not at
12 all, whatever you choose.

13 MR. MUNSON: I'll reserve.

14 THE COURT: Okay. So who is your one-and-only
15 witness, Ms. Susemihl?

16 MS. SUSEMIHL: The People call Sergeant Mike Hunter.

17 MR. MUNSON: I'll object on the basis of no witness
18 list.

19 THE COURT: Did you provide the defense with a witness
20 list?

21 MS. SUSEMIHL: Your Honor, I do not believe that one
22 was provided. He is the only individual listed in the
23 discovery that was provided. It is my recollection,
24 Wednesday -- I did not appear on this matter Wednesday, but
25 this issue was discussed, and the defendant was advised
26 that Sergeant Hunter would be the one-and-only witness
27 testifying.

28 THE COURT: Did you want to elaborate on your

1 objection, sir?

2 MR. MUNSON: Well, the Court on Wednesday asked me if
3 I wanted more time. But I'm not the one that needed more
4 time. The prosecution had a, had a duty to provide me with
5 exculpatory evidence, witness lists -- may be a record of
6 dispatch showing how long this incident lasted, things like
7 that, anything exculpatory. And a witness list is part of
8 notifying me of how much preparation I have to do. And the
9 reason we have these rules under 1054 of the Penal Code is
10 to prevent ambush at trial, and so the People don't have to
11 prepare for the world-of-all possibilities. I should be
12 able to narrow my focus to just those things being brought,
13 and I should be able to base me preparation on what I
14 received at discovery. And I don't have to ask in a
15 criminal --

16 (Interruption by the court reporter.)

17 MR. MUNSON: I'm sorry. The prosecution shall provide
18 the defense with, and there's a list A through F.

19 THE COURT: And are you talking about Penal Code
20 section 1054.1?

21 MR. MUNSON: I am.

22 THE COURT: In a sense, it sounds like the People have
23 made a mistake as you complain about. 1054.1 says that the
24 prosecutor shall disclose to the defendant all of the
25 following materials, and it includes the names and
26 addresses of persons the prosecutor intends to call as
27 witnesses at trial. Ordinarily, at a trial, there are more
28 witnesses than just the arresting officer, that you were

1 aware of on the day you were given your citation. And so
2 ordinarily a prosecutor would be obligated at least 30 days
3 before trial, to disclose the names of any witnesses they
4 intend to call at the trial so that you could know who they
5 were, and interview them if you wanted to, and that sort of
6 this thing.

7 In this particular case, I'm not going to impose a
8 discovery sanction. I will allow the citing officer to
9 testify, and that's because, in fact, you were aware that
10 that person was a witness who was probably going to testify
11 at trial when you were given the citation back on day
12 number one of this case, if you will. And then when you
13 were given the discovery packet, it didn't disclose the
14 names of any other witnesses. And so I don't think it's a
15 surprise to you that the citing officer is testifying here.

16 And so, although it's a technical violation of the
17 discovery statute, to spell that out to you 30 days or more
18 ago, I find there to be no harm to you because of that.
19 Especially since, apparently, Judge Boessenecker said last
20 week when this issue came up, Mr. Munson, do you want more
21 time to prepare for the trial, and you said, no, that's not
22 necessary. And you just lodged your objections on the
23 record, right?

24 MR. MUNSON: That's not necessarily so.

25 THE COURT: What happened?

26 MR. MUNSON: Well, I'm not the one who needs to be
27 counting their shoe laces and muttering excuses for why I
28 need an extension to give the defendant more time. I'm not

1 the one who -- I'm just the one complaining about the
2 dysfunction and the right to notice in a timely fashion.
3 That's all. And so I didn't make any decisions for the
4 Court.

5 THE COURT: Once you learned that this officer was the
6 one-and-only witness in this trial, at least last week, did
7 you do anything with that knowledge to prepare for this
8 trial, that you had not already done?

9 MR. MUNSON: Well, yeah, in fact, and I might be a
10 little naive, but it occurred to me when I did get the
11 discovery packet, and I saw the note on the back of officer
12 Hunter's ticket, a version of his copy, it occurred to me
13 that my perception of the facts may not really avail me,
14 when it's Officer Hunter's perception of the facts that
15 we'll be dealing with. I didn't give any kind of abstract
16 of his intended testimony. I'm sort of in the blind as far
17 as that goes. I know what happened in terms of my
18 recollection and my quality of the perception, but I have
19 no idea what Officer Hunter perceived, and I have no
20 suggestion of what the facts might be from his perspective.

21 THE COURT: Other than what he wrote on the front and
22 back of the citation?

23 MR. MUNSON: Pretty much.

24 THE COURT: Okay. Well, that, that is your typical
25 police report, so to speak, in a case like this. And I'll
26 find, based on everything I've heard so far from both
27 sides, that, that is the written document which informs
28 this witness' testimony, in addition to his memory. Of,

1 course, if you testify or produce witnesses, I'll be
2 considering all that, just as much as I consider the
3 testimony of the witnesses.

4 MR. MUNSON: My witness list is blank.

5 THE COURT: Couldn't quite hear that.

6 MR. MUNSON: My witness list is blank.

7 THE COURT: Okay. Come on up and be sworn, sir.

8 MICHAEL PAUL HUNTER,

9 a witness called by the People, who, being first duly
10 administered an oath to tell the truth, the whole truth,
11 and nothing but the truth, was examined and testified as
12 follows:

13 THE WITNESS: Yes, I do.

14 THE COURT: Can you begin by telling us your name and
15 spelling it, please.

16 THE WITNESS: Michael Paul Hunter, H-U-N-T-E-R.

17 THE COURT: Go ahead.

18 DIRECT EXAMINATION

19 BY MS. SUSEMIHL:

20 Q Thank you, your Honor. Good morning. What is
21 your current occupation?

22 A Deputy sheriff for the County of Napa.

23 Q And how long have you been deputy sheriff for
24 the County of Napa?

25 A Going on 15 years.

26 Q Were you working on October 29th of last year,
27 2009?

28 A Yes.

1 Q Where were you working?

2 A I was assigned as a patrol sergeant for the
3 contract City of American Canyon in the County of Napa.

4 Q At approximately 11:16 in the morning on that
5 day, the 29th, did you conduct a traffic stop?

6 A Yes, I did.

7 Q Why did you do that?

8 A For a vehicle that had expired registration.

9 Q How did you know the registration was expired?

10 A I ran the license plate through dispatch and
11 confirmed that the registration was expired.

12 Q Do you know when it was expired?

13 A It was, it expired on the 14th of November --
14 excuse me, October.

15 Q Of?

16 A 2009.

17 Q 2009, so what did you do once you observed the
18 vehicle registration was expired?

19 A I initiated a traffic stop.

20 Q Okay. What happened?

21 A I contacted the sole occupant of the vehicle,
22 which was Mr. Munson.

23 Q Do you see the individual you contacted in
24 court?

25 A Yes.

26 Q And could you, please, identify for the record
27 who you're referring to.

28 A Mr. Munson is sitting, was sitting next to me,

1 and is wearing a printed white shirt, wearing glasses and
2 dark jeans.

3 THE COURT: The witness is referring to the defendant
4 in this case.

5 BY MS. SUSEMIHL:

6 Q Where exactly did this traffic stop take place?

7 A On Donaldson Way.

8 Q And is that in the County of Napa?

9 A Yes.

10 Q What happened after you initiated the traffic
11 stop?

12 A I contacted the driver at his window.

13 MR. MUNSON: Objection. Assumes facts not in
14 evidence.

15 THE COURT: Overruled. Go ahead.

16 THE WITNESS: I contacted the driver at the driver's
17 window.

18 BY MS. SUSEMIHL:

19 Q Let me back up. When you observed this vehicle,
20 was it moving?

21 A Yes.

22 Q And for how long did you observe the vehicle?

23 A Couple of minutes.

24 Q Okay. So going back, you contacted the driver?

25 A Correct.

26 Q What if anything did you say?

27 A I asked him for his driver license,
28 registration, proof of insurance.

1 Q Was he able to provide any of those documents to
2 you?

3 A No.

4 MR. MUNSON: Objection. "Able" is suggestive.

5 THE COURT: That objection is sustained. The answer
6 is stricken. That calls for speculation.

7 BY MS. SUSEMIHL:

8 Q Did he provide any of those documents to you?

9 A No.

10 Q Did you ask him any further questions about
11 those documents?

12 A I asked him if he had a driver license, and he
13 provided a passport for identification, and I asked him for
14 proof of insurance, and he couldn't provide a proof of
15 insurance.

16 MR. MUNSON: Objection. Speculation, "couldn't."

17 THE COURT: I'm going to strike that answer as
18 nonresponsive, the "couldn't provide" insurance part. The
19 rest of it can stay in.

20 THE WITNESS: Didn't provide insurance when asked.

21 BY MS. SUSEMIHL:

22 Q Okay. And did you ask him -- did he -- you
23 asked him for a vehicle registration, correct?

24 A Correct.

25 Q Did he respond by saying anything?

26 A I --

27 MR. MUNSON: Objection.

28 THE WITNESS: He responded --

1 THE COURT: Hold on. Hold on.

2 MR. MUNSON: Calls for hearsay.

3 THE COURT: Wait for the argument. Pardon me?

4 MR. MUNSON: Calls for hearsay.

5 THE COURT: That objection is overruled. I think it's
6 admissible under Evidence Code section 1220, the admissions
7 exception to the hearsay rule. So go ahead. Did he say
8 anything?

9 THE WITNESS: When I asked for the documents, he
10 advised me that I did not have a legal right to stop him,
11 and did not provide anything other than the passport.

12 BY MS. SUSEMIHL:

13 Q Did you ask him if he had a driver's license?

14 A Yes.

15 Q Did he respond to you?

16 A Yes.

17 Q What did he say?

18 A He said he no longer had a valid driver license.

19 Q Did he say anything else?

20 A He said quite a bit. He said it expired, and he
21 didn't feel the need to renew it or something, and spoke a
22 lot about government rules and stuff. I didn't quite
23 understand everything.

24 MR. MUNSON: I'll object to that last statement as
25 vague, a lot of comments about government rules or
26 something like that.

27 THE COURT: Well, it's a little bit vague. And you
28 can cross-examine him if you want.

1 MR. MUNSON: I'm objecting to it as vague.

2 THE COURT: The question wasn't vague, the answer was
3 responsive, so that objection is overruled.

4 MR. MUNSON: Okay.

5 BY MS. SUSEMIHL:

6 Q When you asked him specifically for his vehicle
7 insurance, did he give you a response?

8 A Yes, he said he -- I don't recall exactly if he
9 said he didn't have one, or didn't have one with him. I
10 don't recall.

11 Q Okay. But he didn't provide you with a paper
12 document or any information?

13 A No, he did not.

14 MS. SUSEMIHL: Your Honor, I have no further questions
15 at this time.

16 THE COURT: Would you like to cross-examine this
17 witness?

18 MR. MUNSON: Yes, I will.

19 CROSS-EXAMINATION

20 BY MR. MUNSON:

21 Q Officer Hunter, you stated that you're a deputy
22 sheriff for the County of Napa?

23 A Correct.

24 Q And that you were under contract to the City of
25 American Canyon. So on that morning, were you operating
26 both as a deputy sheriff for the County of Napa, and as a
27 police officer for the City of American Canyon?

28 A I was acting as a peace officer for the City of

1 American Canyon.

2 Q Okay. So you're a sworn California peace
3 officer then?

4 A Yes.

5 Q And, okay. And as a sworn California peace
6 officer, are you authorized to enforce provisions of the
7 Vehicle Code?

8 A Yes.

9 Q And are there procedures required by the
10 legislature that are applicable to peace officers when
11 enforcing provisions of the Vehicle Code?

12 A Could you be more specific?

13 MS. SUSEMIHL: Objection.

14 THE COURT: What's the objection?

15 MS. SUSEMIHL: Relevance.

16 THE COURT: Relevance?

17 MS. SUSEMIHL: And vague.

18 BY MR. MUNSON:

19 Q Is it a fact that --

20 THE COURT: Are you rephrasing the question?

21 BY MR. MUNSON:

22 Q Yes, I am. Is it a fact that at 40300 of the
23 Vehicle Code, the legislature has provided procedures
24 applicable to all peace officers when enforcing provisions
25 of the Vehicle Code?

26 A I would have to have that in front of me.

27 Q Can we get it in front of him, or shall I just
28 read it into the record, your Honor?

1 THE COURT: Well --

2 MR. MUNSON: I want to know.

3 THE COURT: Well, the question calls for improper
4 legal-opinion testimony. So, please rephrase that. You
5 can certainly refer to the law when you're arguing the
6 case. But generally speaking, you don't argue about the
7 law with a witness.

8 BY MR. MUNSON:

9 Q Are there procedures prescribed by the
10 legislature that are applicable to peace officers when
11 enforcing provisions of the Vehicle Code?

12 THE COURT: Now that question calls for improper legal
13 opinion. So the Court will interpose its own objections.

14 BY MR. MUNSON:

15 Q Are you required to follow procedures, Officer
16 Hunter?

17 MS. SUSEMIHL: Objection. Vague as to "procedures."

18 THE COURT: Sustained.

19 MR. MUNSON: I would like to read 40300 of the Vehicle
20 Code into the record at this point, your Honor.

21 THE COURT: Okay.

22 BY MR. MUNSON:

23 Q Provisions of this chapter shall govern all
24 peace officers in making arrests for violations of this
25 Code without a warrant for offenses committed in their
26 presence. But the procedures prescribed, herein, shall not
27 otherwise be exclusive at any other method prescribed by
28 law for the arrest and prosecution of a person for an

1 offense of like great.

2 Now Officer Hunter, as a California -- as a
3 sworn California peace officer, does this provision bind
4 you to the procedures that the legislature has prescribed?

5 THE COURT: Sir, those are going to be valid points to
6 raise during your argument about whether you're guilty or
7 not, or what the evidence means. But I can't let you ask
8 this witness, or any other witness, about the law. It's my
9 job to interpret the law after listening to you. And the
10 prosecutor tell me what you think it is. But it's never a
11 witness' job to render opinions about the law that applies
12 to the case.

13 BY MR. MUNSON:

14 Q Okay. Officer Hunter, do you have personal
15 knowledge of the procedures that were prescribed by the
16 legislature that are applicable to peace officers when
17 enforcing provisions of the Vehicle Code?

18 A All of them? You mean, required? And still you
19 have to be a little more specific.

20 THE COURT: You guys need to take turns talking.

21 BY MR. MUNSON:

22 Q I'm sorry.

23 A Could you be more specific.

24 Q Well, when the legislature prescribes a
25 procedure that is applicable to a peace officer who
26 enforces a provision of the code, are you required to
27 follow those procedures?

28 A I believe so.

1 Q Okay. And do you have personal knowledge of the
2 procedures that you followed on the date in question on --
3 in this case, did you follow the procedures that are
4 prescribed by the legislature?

5 A I believe so.

6 Q Okay. Do you, do you have any exception from
7 those procedures?

8 A I'm not an attorney. I'm not sure what
9 exemptions I do and don't have.

10 Q Okay. Do you know where a peace officer's
11 authority comes from in the law?

12 THE COURT: I'm going to interpose an objection, since
13 the prosecutor is not saying anything here. That calls for
14 improper legal opinion.

15 BY MR. MUNSON:

16 Q Okay. We'll move on. Officer Hunter, on
17 October 29th of 2009, did you initiate contact with the
18 defendant?

19 A Yes.

20 Q And what time was that?

21 A At approximately 11:16 in the morning.

22 Q You said 11:16 a.m. okay. And what were you
23 doing just prior to your first observations of the subject
24 vehicle?

25 A I was patrolling.

26 Q You were patrolling?

27 A Driving, yes.

28 Q You were assigned to a traffic patrol?

1 A No, I'm actually a sergeant, and I was on
2 patrol.

3 Q Okay. Was the patrol car you were using that
4 day equipped with any kind of audio or video recording
5 systems?

6 A No.

7 Q And in order to initiate contact with me, did
8 you activate your patrol vehicle's overhead emergency
9 lights?

10 A Yes.

11 Q Okay. And at that time you initiated contact
12 with me, were you acting in your official capacity?

13 A Yes.

14 Q And was I traveling on a public right-of-way?

15 A Yes.

16 Q Okay. And when you activated your lights
17 initiating contact with me, was I free to go?

18 A No.

19 Q And was it your intention that I stop?

20 A Yes.

21 Q Did I comply with that command?

22 A Yes.

23 Q And at that time, that you initiated contact
24 with me, was it your intended purpose for that contact to
25 enforce a provision of the Vehicle Code?

26 A Yes.

27 Q Was it a suspected violation of section
28 4000(a)(1) of the Vehicle Code the only reason you

1 initiated that contact?

2 A You use the word "suspected," I already
3 confirmed it through dispatch.

4 Q I would object to the answer as non-responsive.
5 This is a yes or no question.

6 Was 4000(a)(1) of the Vehicle Code the only
7 reason why you initiated that contact?

8 THE COURT: That's a different question. And is that
9 the reason you initiated the contact?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: Both this answer and the prior answer can
12 stay in. The prior answer was, in fact, responsive to the
13 slightly different question.

14 BY MR. MUNSON:

15 Q I did rephrase it to make it easier for him.

16 Let me ask you this, Officer Hunter: Did you
17 issue a notice to appear alleging violation of section
18 4000(a)(1) of the Vehicle Code?

19 A Yes.

20 Q Did you inform the defendant at any time that he
21 was under arrest?

22 A No.

23 Q When you ran the -- did you run the defendant's
24 passport through dispatch, his name and all that?

25 A I ran the subject's name and date of birth
26 through dispatch.

27 Q What time was that?

28 A Within a few minutes after the stop.

1 Q A few minutes, so without the record from
2 dispatch, we don't know what time that was, do we?

3 A I'm not sure what we know, because you're having
4 me answer what the -- you know.

5 Q -- dispatch, and you can't seem to affix the
6 time. Is that the best you can do "within a few minutes"?

7 A Yes.

8 Q Thank you. That goes to discovery, your Honor.
9 Was there any other officer who arrived on
10 scene?

11 A Yes, later in the stop there was.

12 Q Later in the stop, who arrived on scene?

13 MS. SUSEMIHL: Objection. Relevance.

14 THE COURT: Overruled.

15 BY MR. MUNSON:

16 Q Who else arrived on scene?

17 A I don't recall.

18 Q You don't recall who the other officer was who
19 arrived on scene?

20 A That is correct.

21 Q Did another officer arrive on scene?

22 A I already answered that. Yes.

23 Q Well, I'm going to object to the failure of
24 discovery to divulge that very important information.

25 Officer Hunter, I just -- I've already lodged
26 the objection. I'm just going do --

27 THE COURT: Yeah, you don't need to repeat what we've
28 already put on the record, as far as I'm concerned. So

1 next question.

2 BY MR. MUNSON:

3 Q Okay. So another officer arrived on scene. You
4 don't know who it was. No, okay.

5 While I was in your custody; while you were
6 doing your police work, did anyone else appear on scene to
7 your knowledge?

8 A Yes.

9 Q Do you remember who? Do you know who they were?

10 A Some people from the City of American Canyon.

11 Q But you don't know their names.

12 A I think -- I believe one of their names is
13 Lastiv Cannon (phonetic) which is a code enforcement
14 person.

15 Q And the other?

16 A I don't know.

17 Q Did they attempt to confront the defendant while
18 he was in your custody?

19 MS. SUSEMIHL: Objection. Relevance.

20 THE WITNESS: No.

21 THE COURT: Overruled. And the answer is --

22 THE WITNESS: No.

23 BY MR. MUNSON:

24 Q There are how many of them?

25 MS. SUSEMIHL: Objection. Asked and answered.

26 MR. MUNSON: Well, I believe he said two. I just want
27 to be sure for the record that there were two other,
28 besides the police officer. So there were three others.

1 THE COURT: Now you're entitled to clarify that. Now
2 are you talking about the total number of other people who
3 stopped at the scene?

4 MR. MUNSON: Other than Officer Hunter, yes.

5 THE COURT: Do you recall that number?

6 THE WITNESS: I recall two, two other people, other
7 than the covering police officer.

8 BY MR. MUNSON:

9 Q Okay. So, thank you. Do you know what time it
10 was that the City officials showed up on scene?

11 A No, it was before I was done issuing the ticket.
12 I don't have the exact time.

13 Q "Before -- done issuing the ticket." Okay. Did
14 you at any time order me to exit my automobile?

15 A Yes.

16 Q You did. And did you frisk me for weapons?

17 A I don't recall.

18 Q Did you open my car door and order me to exit
19 the automobile?

20 A I recall requesting you to step out. I don't
21 recall whether I opened the door, or you opened the door.

22 Q At that point in time, do you recall if I asked
23 you if I was under arrest?

24 A Yes.

25 Q Okay. And your answer was?

26 A No.

27 Q Okay. And did I then ask if I was free to go?

28 A That is correct.

1 Q And do you recall what you said?

2 A Yes.

3 Q What did you say?

4 A I said you're not free to go until you sign this
5 citation, or request me to take you in front of a
6 magistrate.

7 Q That's not what I remembered, but that's okay.

8 THE COURT: You're chance to testify is going to come.

9 BY MR. MUNSON:

10 Q I understand. That's close enough.

11 You said you patted me down for weapons. Did
12 you instruct me to remove myself to the front of your
13 patrol car?

14 A Can I clarify? I didn't say I patted you down
15 for weapons. I said I didn't recall whether I patted you
16 down for weapons.

17 Q Did you ask me to remove myself to the front of
18 your patrol car?

19 A I don't recall.

20 Q Did you search my automobile?

21 MS. SUSEMIHL: Objection. Relevance.

22 THE COURT: Overruled.

23 THE WITNESS: I believe I did search the glove box for
24 your registration and insurance.

25 BY MR. MUNSON:

26 Q Okay. Did you ask me for permission to search
27 my automobile?

28 A I don't believe so.

1 MR. MUNSON: Okay. Your Honor, I'd like to show
2 officer Hunter the TR-130, the citation. And I believe the
3 Best Evidence Rule would require that the complaint in this
4 action be showed to the officer, the original complaint?

5 THE COURT: You want him to look at the original one
6 in the file?

7 MR. MUNSON: Yes, I do.

8 THE COURT: That's fine. I'll show it to the witness.

9 THE WITNESS: May I approach, your Honor.

10 THE COURT: Go ahead and take it down.

11 THE WITNESS: Okay. Thank you.

12 BY MR. MUNSON:

13 Q Officer Hunter, do you recognize that
14 instrument?

15 A Yes.

16 Q Is that your handwriting?

17 A Yes.

18 Q And is that your signature?

19 A Yes.

20 Q Is everything you wrote on that instrument true
21 and correct?

22 A Yes.

23 Q Okay.

24 Your Honor, I'd like the TR-130 introduced into
25 evidence and have it marked as a defense exhibit.

26 THE COURT: Any objection?

27 MS. SUSEMIHL: No, your Honor.

28 THE COURT: Okay. It will have to stay in the file --

1 MR. MUNSON: That's fine.

2 THE COURT: -- but go ahead and put a defense exhibit
3 sticker on it. Exhibit Number 7 is the citation in the
4 file. I believe it's the original. And it is received
5 into evidence.

6 (Whereupon, a Citation was then marked as
7 Defendant's Exhibit No. 7 for
8 identification.)

9 (Whereupon, Defendant's Exhibit No. 7,
10 previously marked for identification, was
received in evidence.)

11 BY MR. MUNSON:

12 Q Thank you. Officer Hunter, prior to, or at the
13 time that you activated your lights initiating contact with
14 me, was it your belief that you were the witness to a
15 public crime or offense?

16 A I believe, I believe you violated a infraction
17 of the California Vehicle Code. If that's what you're
18 saying, yes.

19 Q Okay. Is it your belief that an infraction of
20 the Vehicle Code is a criminal offense?

21 MS. SUSEMIHL: Objection.

22 THE WITNESS: Yes. I'm sorry. She objected.

23 THE COURT: What did you say?

24 MS. SUSEMIHL: Objection. Calls for legal conclusion.

25 THE COURT: Sustained. The answer is stricken.

26 MR. MUNSON: Well, I would say it goes more to the
27 question of mistake of fact, or mistake of law. And I
28 think that's relevant.

1 THE COURT: I don't think his opinion about the answer
2 to that question is relevant. As far as the testimony
3 goes, it's certainly a relevant issue in this trial, but
4 not right now.

5 MR. MUNSON: Okay. I pressed it. You passed on it.
6 We can move on. I'm trying to slow down, because I
7 generally move very quickly.

8 THE COURT: That's okay.

9 BY MR. MUNSON:

10 Q Officer Hunter, at the time you initiated
11 contact with me and throughout the duration of that
12 encounter, did you observe anything that would lead you to
13 believe that the automobile was being used for the
14 transportation of passengers or freight?

15 A Yes.

16 Q Was there a passenger on board?

17 A Yes, you.

18 Q Okay. I was a passenger. I thought you said
19 earlier that I was the driver.

20 A The driver is still a passenger of the vehicle.

21 Q And where do you derive that a passenger and the
22 driver are the same thing?

23 A I believe you're a human being, so you are.

24 Q In other words --

25 A An occupant is still a passenger.

26 Q In other words, your opinion is not based upon
27 any legal authority?

28 A I believe you were a passenger, which gives me a

1 right to stop to the vehicle.

2 Q You "believe." In other words, it's your
3 opinion?

4 MS. SUSEMIHL: Objection. Argumentative.

5 THE COURT: Sustained. Why don't you ask another
6 question.

7 BY MR. MUNSON:

8 Q Okay. I'm fine. I think we've established that
9 Officer Hunter doesn't have a foundation for his opinion in
10 the law, so we can move on.

11 At the time you initiated contact with me,
12 Officer Hunter, were you in possession of responding to a
13 warrant for the search and seizure of my person?

14 A No.

15 Q And at that time you activated your lights
16 initiating contact with me, were you in possession of, or
17 responding to a warrant for the search and seizure of my
18 car?

19 A No.

20 Q Okay. And you previously testified that at the
21 time you activated your overhead lights initiating contact
22 with me, that I was not free to go. At what point was I
23 free to go?

24 A When you were done signing the citation.

25 Q Okay. What time was that?

26 A I don't have the exact time.

27 Q Okay. So when I signed the promise-to-appear
28 portion of the notice to appear that you issued, that's

1 when I was free to go?

2 A Correct.

3 Q And after I signed that promise to appear to
4 secure my release from your custody, was I free to get back
5 in my car and continue on my way?

6 A No.

7 Q What would have been your reaction?

8 A Excuse me?

9 Q What would you have done if I wasn't free to get
10 back in my car and leave? What would you have done if I
11 got back in my car and went on my merry way?

12 MS. SUSEMIHL: Objection. Calls for speculation.

13 THE COURT: Sustained.

14 BY MR. MUNSON:

15 Q Is there -- did you tell me I couldn't get back
16 in my car, Officer Hunter?

17 A No, I told you you could not drive your car.

18 Q I see. Did you tell me what you would do if I
19 left the scene in my automobile?

20 A Yes.

21 Q What did you tell me you would do?

22 A I would attempt to stop you again.

23 Q Did you tell me that you would arrest me and
24 impound my car?

25 A Probably.

26 Q As a sworn California peace officer, Officer
27 Hunter, are you required to enforce provisions of the
28 Vehicle Code?

1 A No.

2 Q Okay. So then we can agree that discretionary
3 and mandatory do not mean the same thing?

4 A Correct.

5 Q Okay. Do you have personal knowledge that the
6 Vehicle Code defines my passenger automobile as a vehicle
7 of a type required to be registered under this code?

8 A I believe so.

9 Q You believe so. Do you have personal knowledge
10 or not?

11 A I don't have the legal knowledge.

12 Q Okay. Would you happen to know where in the
13 Vehicle Code the legislature has defined the type of
14 vehicle that is a vehicle of the type required to be
15 registered under the code?

16 A No.

17 MS. SUSEMIHL: Objection. Calls for legal conclusion.

18 MR. MUNSON: I'm asking if he has personal knowledge.

19 THE COURT: That does not call for legal conclusion.

20 The answer will remain. The objection is overruled.

21 BY MR. MUNSON:

22 Q Officer Hunter, would you please identify for
23 the record the particular section of the Vehicle Code that
24 contains the procedures you followed when you issued a
25 notice to appear for suspected violation of 4000(a)(1) of
26 the Vehicle Code?

27 A I don't know it off the top of my head.

28 MR. MUNSON: At this point, your Honor, I'd like to

1 read the relevant portions of 40500, and 405 --

2 (Interruption by the court reporter.)

3 MR. MUNSON: I would like to read the relevant
4 portions of 40500 and 40504 of the Vehicle Code into the
5 record.

6 THE COURT: Is that because you want to ask him some
7 questions about them?

8 MR. MUNSON: Yes. Basically, yeah, I do.

9 THE COURT: Okay.

10 MR. MUNSON: Because I've already --

11 THE COURT: Read them out slowly, please.

12 MR. MUNSON: Okay. Get my glasses.

13 THE COURT: I'm letting you read this, because you
14 want to ask him a question about the law. That's okay.
15 But if you're just reading the law into the record, you
16 don't need to do that now. You can do that at the end of
17 the trial instead.

18 BY MR. MUNSON:

19 Q I'll wait on this one. Let's just wait on this
20 one. I'll return to that.

21 At the time you initiated contact with me, is it
22 a fact that you were authorized to make a warrantless
23 arrest for suspected violation of Vehicle Code section
24 4000(a)(1)?

25 MS. SUSEMIHL: Objection. Calls for legal conclusion.

26 THE COURT: Sustained.

27 MR. MUNSON: Well, I'm asking if he has personal
28 knowledge of his authority and the limit on that authority.

1 THE COURT: I understand.

2 MR. MUNSON: And --

3 THE COURT: But that's asking him to give an opinion
4 about the law. Even police officers don't do that. He's
5 just a witness here. Not an authority on the law.

6 MR. MUNSON: Okay. But the question is whether or not
7 he is aware of what the law is that authorizes him to act
8 and that limits his actions. Does he know?

9 THE COURT: It may sound funny -- it may sound funny
10 for me to say this, but that doesn't matter.

11 MR. MUNSON: I see.

12 THE COURT: It matters that he followed the law.

13 MR. MUNSON: Well, and that's kind of what I'm asking
14 him.

15 THE COURT: It matters that I understand the law, but
16 it doesn't matter what he thinks the law is.

17 MR. MUNSON: Well, he testified that he, that he
18 thinks he followed the procedures. Apparently, he's not
19 really sure what the procedures are.

20 THE COURT: Right.

21 MR. MUNSON: And so he's out there. He's got a gun, a
22 badge and other weaponry, and he's what he thinks is
23 enforcing the law. Police officers are not omnipotent.
24 They're delegated with authority. And my question to
25 Officer Hunter, does he know the delegation of authority?
26 Does he know the rules? Did he follow the rules?

27 THE COURT: And my prior ruling on that question
28 stands.

1 MR. MUNSON: Okay.

2 THE COURT: Next question, please.

3 BY MR. MUNSON:

4 Q Can you identify for the record the particular
5 section of the Vehicle Code that contains the procedures
6 you followed when you executed a warrantless arrest for a
7 violation of section 4000(a)(1) of the Vehicle Code?

8 MS. SUSEMIHL: Objection. One, I believe it's been
9 asked and already dealt with. But also, calls for legal
10 conclusion.

11 THE COURT: It calls for improper legal opinion
12 testimony once again. Sustained.

13 BY MR. MUNSON:

14 Q Well, he either followed the procedures that are
15 prescribed by the legislature or he didn't. He thinks he
16 did, but how can you follow procedure if you don't know
17 what the -- he either knows what it is and followed it, or
18 he doesn't know what it is, and therefore, he couldn't have
19 followed it, other than --

20 THE COURT: I'll hear your arguments on the effect of
21 his not following the law of the State of California at the
22 proper time in this trial. Right now, you're just creating
23 evidence, so to speak. And his opinion about the law
24 doesn't matter.

25 MR. MUNSON: Okay.

26 THE COURT: Whether he followed it, does. But his
27 opinion about it doesn't matter. So you should ask him
28 what happened out there, not to render opinions about the

1 law.

2 MR. MUNSON: Well, I think we've established what
3 happens to some degree. But let me go ahead and finish up
4 here. I do appreciate your explanation, your Honor. I do.
5 And since we're going to skip over that section, we'll talk
6 about it in the future. I think that, I think we have
7 enough.

8 THE COURT: Is there any re-direct?

9 MS. SUSEMIHL: No, your Honor.

10 THE COURT: Thank you very much.

11 THE WITNESS: Thank you, your Honor.

12 THE COURT: And did you say you have some more
13 evidence?

14 MS. SUSEMIHL: Yes, your Honor. I believe People's
15 Exhibit 5 that's been previously marked, is a certified --

16 MR. MUNSON: I'm going to object.

17 THE COURT: Let her finish talking first.

18 MS. SUSEMIHL: A certified document from the
19 California Department of Motor Vehicle.

20 THE COURT: And you're offering it into evidence?

21 MS. SUSEMIHL: Yes, your Honor.

22 THE COURT: And your objection is what?

23 MR. MUNSON: My objection is under 1271. I think it's
24 C or D of the Evidence Code. That document requires the
25 custodian of record to be present to answer four different
26 types of information about it. And the Sixth Amendment
27 right to confront the witness also comes into play. That's
28 all listed under -- well, I found it in Atkins, Volume 10

1 on California practice -- enter objections in the case
2 cited by Atkins is Huber Hunt (phonetic) and Nickels
3 Incorporated v. Moore.

4 THE COURT: Can I see the document. Exhibit 5, is it?
5 I can't really read that number.

6 MS. SUSEMIHL: Yes, it is five.

7 THE COURT: Is it five? I'm going to cross off this
8 five and put a different five on there. It's a two-page
9 document. I'm not going to receive page one of Exhibit 5,
10 the cover sheet, but I will receive into evidence over the
11 defendant's objection, the front and the back of page two,
12 which is a properly certified DMV document that I think
13 comes within the official record exception to the hearsay
14 rule.

15 (Whereupon, People's Exhibit No. 5, previously
16 marked for identification, was received in
evidence.)

17 THE COURT: So I'll repeat. I'm not receiving into
18 evidence the cover sheet, which appears to be the piece of
19 paper with an exhibit 5 sticker attached to it. Do you
20 have any other evidence?

21 MS. SUSEMIHL: No, your Honor.

22 THE COURT: Would the People rest?

23 MS. SUSEMIHL: The People rest.

24 THE COURT: And Mr. Munson, would you like to give an
25 opening statement now, or waive an opening statement?

26 MR. MUNSON: I'm going to waive an opening statement.

27 THE COURT: Would you like to present any additional
28 evidence today?

1 MR. MUNSON: Well, I have exculpatory evidence of that
2 document you just accepted into evidence. The problem is
3 we don't have anyone to exam in regards to that document.
4 But I have an original letter here. I would like to have
5 it admitted into evidence. It was a document received from
6 the Department of Motor Vehicles in response to a
7 communication which I initiated.

8 MS. SUSEMIHL: Your Honor --

9 THE COURT: What's the next exhibit number?

10 THE JUDICIAL ASSISTANT: Number eight.

11 THE COURT: Okay. That letter from DMV will be
12 Defense Exhibit Number 8.

13
14 (Whereupon, a Letter was then marked as
15 Defendant's Exhibit No. 8 for
16 identification.)

16 MS. SUSEMIHL: Your Honor, I'm going to object, based
17 on discovery.

18 MR. MUNSON: I believe impeachment evidence is --
19 doesn't come under that ambit.

20 THE COURT: I'll just let her look at it as long as
21 she wants, and then we'll -- is it a two-page document?

22 MS. SUSEMIHL: It is.

23 THE COURT: We'll staple it together and mark it as an
24 exhibit for identification right now, and then I'll hear
25 argument on admissibility. You're offering it for evidence
26 right now, sir?

27 MR. MUNSON: Yes, to impeach the document which the
28 Court just accepted from the prosecution. And if I may,

1 that document was mailed immediately after I received the
2 discovery packet on Wednesday.

3 THE COURT: You sent a copy of it to the DA. Okay.

4 MR. MUNSON: On Friday it was mailed, but that's --
5 you know, I didn't have much time.

6 THE COURT: I'll have to see what we're talking about
7 before I hear argument on its admissibility. This two-page
8 letter is Exhibit Number 8 by the defendant. And you don't
9 want me to admit Exhibit 8, because?

10 MS. SUSEMIHL: Well.

11 THE COURT: What's the legal basis for your objection
12 to it?

13 MS. SUSEMIHL: I'm not sure what the relevance is.

14 THE COURT: Well, if you're not worried about the
15 relevance, why not just be nice to the defendant and let
16 consider --

17 MS. SUSEMIHL: I'll submit the matter to the Court.

18 THE COURT: There are various reasons why it's
19 inadmissible, but if you agree to let me consider it as
20 evidence in the case, I'd be happy to do that.

21 MS. SUSEMIHL: That's fine, your Honor.

22 THE COURT: Okay. Exhibit 8 is in evidence now.

23 (Whereupon, Defendant's Exhibit No. 8,
24 previously marked for identification, was
received in evidence.)

25 MR. MUNSON: And the first thing I want to say about
26 Exhibit 8 is patently unreliable.

27 THE COURT: We're not arguing.

28 MR. MUNSON: I understand its relevance. Its

1 relevance has to do with the other patently unreliable
2 document.

3 THE COURT: Hold on a second. I just admitted it into
4 evidence at your request. That's what you wanted me to do.

5 MR. MUNSON: Yes, I'm aware of that.

6 THE COURT: So right now then, rather than talking
7 about its significance, which is premature --

8 MR. MUNSON: I understand.

9 THE COURT: Are there any other items of evidence you
10 want to present?

11 MR. MUNSON: No, I think that's going to do it.

12 THE COURT: Okay. Is there any rebuttal evidence by
13 the People?

14 MS. SUSEMIHL: No, your Honor.

15 THE COURT: All right. Then the way we finish a trial
16 as you probably know, as you seem to be doing very well,
17 sir, it will begin with the closing argument of the
18 prosecutor. She can give one, or not give one. Then it's
19 your one-and-only chance to argue the case, and that's when
20 I expect you to persuade me why you're not guilty, and
21 argue all the law you want to argue at this point, that you
22 think is relevant for me to know about. And then, of
23 course, the prosecutor under California law has a chance to
24 respond to what you have to say, and get the final closing
25 argument, and then it's my turn to talk.

26 So does the DA want to give an opening/closing
27 argument?

28 MS. SUSEMIHL: Your Honor, just very briefly. To

1 summarize, Sergeant Hunter testified that he was on patrol,
2 observed the defendant driving a vehicle with expired
3 registration. He verified that he initiated a traffic
4 stop, asked for license, registration, proof of insurance,
5 was not given any of those documents, and the defendant
6 indicated that he no longer had his license. It was
7 expired, and he didn't feel that he had a need for it, I
8 believe, was the testimony. And I believe that that meets
9 all of the requirements that are set forth in the three
10 counts of the citation.

11 THE COURT: Mr. Munson, your chance for your closing
12 argument.

13 MR. MUNSON: Okay. Your Honor. The officer testified
14 that he made a warrantless seizure for a suspected
15 violation of 4000(a)(1) of the Vehicle Code. I would
16 object to this as hearsay, that he ran it through dispatch
17 and that they confirmed. The question I'm going to raise,
18 first of all, is the Fourth Amendment.

19 THE COURT: Let me just rule on that objection right
20 now. It's a little untimely.

21 MR. MUNSON: It is. And I agree with that. It just
22 occurred to me as I looked at my notes here, that you did
23 make that statement. And it is not, not -- wasn't a proper
24 answer. I believe I should have objected to it while we
25 were arguing on this.

26 THE COURT: Do you want to be heard on that
27 evidentiary-objection part of your case right now,
28 Ms. Susemihl?

1 MS. SUSEMIHL: What the --

2 THE COURT: That he ran the plate and found out
3 through dispatch that it was expired.

4 MS. SUSEMIHL: Yes.

5 THE COURT: What do you want to say about that?

6 MS. SUSEMIHL: Regarding the hearsay objection?

7 THE COURT: Yeah.

8 MS. SUSEMIHL: Goes to the officer's state of mind.
9 It would explain. It's not hearsay.

10 THE COURT: Okay. Well, even though it's late and
11 because you don't have a lawyer sitting next to you, I'm
12 going to cut you a little bit of slack, Mr. Munson, and I'm
13 not going to accept that answer to prove that the
14 registration was expired, because that is hearsay. I was
15 kind of surprised you didn't object at that time.

16 MR. MUNSON: Well --

17 THE COURT: Hold on. Hold on. Let me talk. So I'm
18 not going to admit that portion of Sergeant Hunter's
19 testimony to prove that the registration was expired. But
20 I'm going to leave the answer in only to show what he was
21 aware of. In other words, his state of mind which in his
22 mind justified the right to stop your car, okay.

23 MR. MUNSON: Yes, as long as it's not being used to
24 prove the thing asserted.

25 THE COURT: It's not. Now before we go on any
26 further, do you want to reopen your case to present any
27 additional evidence on that subject or not? Because you
28 thought there was evidence that the registration was

1 expired when you presented your case. There doesn't appear
2 to be right now.

3 MS. SUSEMIHL: Correct, your Honor. That, I will
4 leave it the way it is.

5 THE COURT: Great. All right.

6 MR. MUNSON: Yeah, I would move the Court to take
7 judicial notice of 40300 of the Vehicle Code.

8 THE COURT: I will do that.

9 MR. MUNSON: 4300 et sec of the Vehicle Code
10 prescribes the procedures that are applicable to all peace
11 officers when enforcing provisions of the Vehicle Code.
12 There is no authority under 4300 for a peace officer to
13 make a warrantless arrest for conduct not rising to a level
14 of the crime.

15 Vehicle Code, a violation of 4000(a)(1), suspected
16 violation of 4000(a)(1), is a Vehicle Code infraction,
17 according to the court of appeals, the Fourth District
18 Court of Appeals at People v. Sava at 190 Cal.App.3rd 438.

19 THE COURT: Can you spell Sava?

20 MR. MUNSON: S-A-V-A, it clearly states that
21 infractions are not crimes. They rely on two patently
22 defensible opinions out of LA Superior Court Division, and,
23 and, nonetheless, come to the conclusion that the
24 legislature never intended to classify infractions as
25 crimes.

26 The initial police contact in this instance was a
27 warrantless seizure for a civil infraction. Now the Fourth
28 Amendment is pretty clear on that, but before we get there,

1 I'm going to move the Court to take judicial notice of
2 40500 and 40504.

3 THE COURT: The Vehicle Code?

4 MR. MUNSON: Yes, of the Vehicle Code.

5 THE COURT: I will do so.

6 MR. MUNSON: And those are the sections that prescribe
7 the procedures for release from custody on a promise to
8 appear. These two sections of law, together, prescribe the
9 procedures, identify the procedures that the peace officer
10 must follow. They authorize the officer to act, and they
11 limit that action at 40300.5. And I would move the Court
12 take judicial notice of that statute.

13 THE COURT: I will.

14 MR. MUNSON: The authorization provided to a peace
15 officer under the Vehicle Code is that found at 836(a)(1)
16 of the Penal Code, which authorizes a peace officer to make
17 a warrantless arrest, an arrest without a warrant, when
18 they observe conduct that rises to the level of a crime.
19 The rules are different for misdemeanors than they are for
20 for felonies. None the less, there is no authorization
21 provided by the legislature for a peace officer to make a
22 warrantless arrest for a non-criminal violation of the
23 Vehicle Code. It's a simple question of delegation of
24 authority. The notice to appear that the Court has
25 accepted in evidence, describes that relationship as an
26 arresting officer, arrested person. The arresting officer
27 will fill out a notice to appear in triplicate and offer it
28 to the arrested person, so that the arrested person can

1 sign the promise to appear in order to secure his release
2 from custody. Now that custodial relationship is very
3 clearly defined by the statute itself. There is no
4 authority provided by the legislature for a warrantless
5 seizure, for conduct not rising to the level of a crime.

6 All of the Fourth Amendment cases are very consistent,
7 that in order for a peace officer to make a warrantless
8 seizure, he must observe something that would lead him to
9 have a reasonable suspicion that a crime is in the --
10 and that brings me to the case that I asked the Court to
11 take judicial notice of, the Jose Luis Pena Montez out of
12 the 10th Circuit. Just happened to be published on
13 December 7th, the date that I appeared for arraignment. On
14 page seven of that decision, they make a very, very simple
15 and concise statement of the Fourth Amendment, consistent
16 throughout the Ninth Circuit and all of the rest of them.
17 They state, paragraph two, a routine traffic stop is
18 indisputably a seizure within the meaning of the Fourth
19 Amendment. And they go on to give a dissertation regarding
20 the relationship of crime as the reasonable basis for that
21 seizure.

22 When the legislature decriminalized traffic
23 infractions, it was to avoid the cost of doing business for
24 such minor themes as non-criminal conduct. I mean, when we
25 look at the Vehicle Code and -- we realize that the
26 application of the Vehicle Code as being improperly
27 applied, based upon the assumptions that don't take into
28 consideration the meaning of the words we're using.

1 "Traffic," for example, under Black's Law Dictionary, is a
2 strictly commercial term, and yet Officer Hunter testified
3 that he made a traffic stop. And the more we look at the
4 language we're dealing with, the harder it is to get away
5 from those conclusions.

6 We also have -- so I mean, that's the, that's the
7 Fourth Amendment issue, is the police power of the State
8 does not apply to the conduct not rising to a level of the
9 crime. I don't find anywhere in California's statutes
10 where police can apply the State's police power to civil
11 conduct without warrant, *capias*, or process of a court or
12 competent jurisdiction.

13 Now the officer applied the state police power to
14 non-criminal conduct, and, and that's my objection, that he
15 admitted he didn't have a warrant. And so he's basing his
16 authority to seize on his own perception that someone
17 violated a rule. But I don't find where the legislature
18 has delegated him with that authority. And I'd like to go
19 on down through the cases. First of all, I'd move on the
20 Court to take judicial notice of Vehicle Code section 260.
21 Vehicle of type required to be registered under this code
22 is a phrase that appears numerous times throughout the
23 Vehicle Code, but the only section that describes the type
24 vehicle, that is a vehicle of a type to be required to be
25 registered under the code, is section 260. Section 260
26 then excludes passenger automobiles, etcetera, from the
27 ambit of commercial motor vehicle.

28 THE COURT: And I'll take judicial notice of section

1 260.

2 MR. MUNSON: Okay. And now I'd like to move the Court
3 to take judicial notice to section 1201.5(e).

4 THE COURT: I'll do that also.

5 MR. MUNSON: At 1201.5 (e), the legislature has
6 strictly forbidden a peace officer to make a warrantless
7 arrest under the mere suspicion that --

8 (Interruption by the court reporter.)

9 MR. MUNSON: The legislature has specifically
10 forbidden a peace officer from making a warrantless seizure
11 for a suspected violation of 12500(a) of the Vehicle Code.
12 And which I don't think we'll ever get to, because -- and I
13 believe that the exclusionary rule after Proposition Eight
14 is, is strictly construed to the federal standard. The
15 federal standard is very clear that police conduct cannot
16 be applied to any kind of -- the police power of the state
17 can't just be applied to any kind of conduct. It has to be
18 authorized, and the only authorization in the Vehicle Code
19 is under the sections that I've quoted, 4300, 4500, et sec.

20 And that leads us to People v. Wohlleben, a California
21 case, 261 Cal. App. 2d at 461. Wohlleben, basically, is a
22 case from 1968 where they state a number of things. First
23 of all, they talk about the authority of a peace officer to
24 make an arrest, and they very clearly state that the
25 procedures that a peace officer is required to follow are
26 those prescribed by the Vehicle Code, not those contained
27 within the Penal Code.

28 And so the case of Wohlleben pretty much confines the

1 officer to the procedures contained in the Vehicle Code.
2 That brings us to People v. Horvath. People v. Horvath is
3 found, and I happen to have a couple copies of those if
4 you'd like. People v. Horvath is a very wanting case,
5 because it addresses the issues I'm raising, but it does so
6 using the Vehicle Code. It does a comparative analysis,
7 and I have a copy for the Court, convenient. Horvath
8 involves a warrantless arrest under the public utility code
9 for a DUI aircraft taxiing down the runway. Officer
10 showed up, and even though she didn't observe the conduct,
11 she listened to a witness statement, and observed that the,
12 that the individual was intoxicated and made a warrantless
13 arrest under the public utilities code. That would have
14 been a lawful arrest had the legislature -- or according to
15 a legislature, had the authority been vested with that
16 authority. But because the -- was it the commissioner,
17 whoever it was, that had the authority to designate the
18 El Monte peace officer, and failed to do so. Therefore,
19 without the authorization, the seizure is not justified.

20 So we have Horvath, and then we go to Halwin,
21 (phonetic). People v. Halwin, stands for the simple
22 proposition that once it has been established that a
23 seizure is without a warrant, the burden of showing that
24 the seizure was reasonable shifts to government. I don't
25 think there's been any effort to show that the seizure was
26 reasonable. In fact, Ms. Halwin failed to ask the simple
27 question, did you have a warrant? And so the Halwin case
28 is pretty interesting, based upon the simple fact that the

1 officers are presumed to act lawfully, and so if you do not
2 absconce upon the record the evidence of a warrant, it will
3 be presumed that they act lawfully.

4 That brings us to a lot of California caselaw that is
5 generated based upon presumption. The case, Supreme Court
6 case of McKay, and I have it somewhere. McKay was seized
7 riding a bicycle on the wrong side of the street; however,
8 McKay's counsel never challenged the initial seizure.
9 They, they -- the officer stopped McKay and asked him if he
10 had identification. McKay then in response to that search
11 inquiry, responded with an admission that he did not. The
12 officer took McKay before a magistrate under 40502, as
13 opposed to releasing him under 40504. It was that decision
14 that was challenged by the Court in McKay. McKay never
15 challenged the initial contact. In fact, the Court says
16 that at the time McKay admitted they he didn't have
17 identification when the officer made the arrest, but that's
18 a presumption based upon the fact that, that counsel for
19 the defense never, never challenged the initial contact.
20 And there are numerous cases like this, where it implies a
21 warrantless seizure for an infraction of the Vehicle Code
22 is legitimate, but those questions were never before any of
23 those courts. And I don't think you can find a case on the
24 books where a warrantless seizure for a non-criminal
25 conduct has been directly addressed and ruled upon and held
26 to be valid. All of the Fourth Amendment cases in the
27 federal courts are very clear. They're limited to, they're
28 limited to the application of the police power of the state

1 to crime. The civil case says we need a capias or other
2 process of the jurisdiction.

3 And so I think that's going to conclude my discussion
4 on the Fourth Amendment. I think it's a question that
5 needs to be ruled on. Either non criminal civil infraction
6 of the Vehicle Code is conduct which rises to the level of
7 crime, justifying a warrantless seizure under the Fourth
8 Amendment and entitling one to Sixth Amendment appointed
9 counsel, at the public expense, if one is indigent, and a
10 Seventh Amendment jury trial. 689 of the Penal Code also
11 requires a jury trial for any form of crime or public
12 offense. Infractions are not crimes. It's not only the
13 judicial counsel report to the governor in 1967 that
14 continually refers to them as non criminal, but the statute
15 of 1968 specifically excludes infractions from the ambit of
16 crimes of public offenses. And I didn't submit that one,
17 because it's -- my research is ongoing, but the statute of
18 1968, I think it's A, B 1662, chapter 220, the statute of
19 2003, and that completes my Fourth Amendment argument. And
20 now I'd like to move to the first, which -- and I do have
21 the Brady cases here.

22 THE COURT: We probably need to give staff a little
23 bit of a break.

24 MR. MUNSON: Let's do that.

25 THE COURT: Let's take our break right now, and resume
26 at five minutes after 11:00.

27 (Recess taken.)

28 MR. MUNSON: Thank you, your Honor.

1 THE COURT: So go ahead, Mr. Munson.

2 MR. MUNSON: Thank you, your Honor. There was one
3 more case on the procedures, and that's People v. Superior
4 Court, Simon, S-I-M-O-N, from 7 Cal.3d 186, where on page
5 14 they state that sections 40300 through 40604 of the
6 Vehicle Code provide the exclusive procedure to be followed
7 after making a warrantless arrest for a traffic violation
8 not amounting to a felony. So I just want to include that,
9 since I came across it in closing.

10 I wanted to address the evidence. I'm not sure which
11 exhibit it was, but there was a document introduced by the
12 prosecution, which I objected to. And then I asked to have
13 a rebutting document introduced.

14 THE COURT: Exhibit 5, the DMV document?

15 MR. MUNSON: Yes, that one. And I introduced the
16 document with the intention of impeaching that record as
17 unreliable. The problem I have with the letter I received
18 from the DMV, is it is rubber stamped BB Jones. BB Jones,
19 I can tell you, doesn't exist, and that's why I say the
20 document itself is patently unreliable. The reason I asked
21 to have it introduced into evidence, is that it makes
22 reference to DL-142 document having been submitted to the
23 Department of Motor Vehicles. That submission does not
24 show up anywhere on the document introduced by the
25 prosecution, which, I mean, basically, it's evidence that
26 that document is not reliable. But I can't ask anyone
27 about that document, because we don't have a custodian of
28 records here. So I'm going to reiterate my objection to

1 introduce -- the introduction of that document.

2 And now I'm going to move onto definitions.

3 Officer Hunter made a formal legal opinion when he
4 testified that the defendant was a driver. That's a legal
5 conclusion. I objected to that. It was overruled. And at
6 the same time, when I asked Officer Hunter questions about
7 the law, the objections were sustained, because he's
8 apparently not qualified to form a legal opinion. So
9 there's a little tit for tat there.

10 Officer Hunter testified the defendant was both a
11 driver and a passenger. All of these things can't be true.
12 The definition of passenger -- I move the Court to take
13 judicial notice of definition of passenger. In Black's Law
14 Dictionary, passenger is a very narrowly defined legal
15 term. Basically a passenger in general is a person that
16 gives compensation to another to be transported. And all
17 through the entire definition of passenger, it's
18 consistent. It has to do with payment to be transported.
19 A carrier transports a passenger who pays him a
20 compensation. The proper term for someone who is riding in
21 an automobile who's not paying to be transported is the
22 term "guest" or "friend," but not "passenger."

23 And driver, of course, is any person who operates a
24 commercial motor vehicle, and 15210(p)(7) of the Vehicle
25 Code states that in the absence of a federal definition,
26 existing definitions under the code shall apply. Even
27 though it qualifies the statement with for purposes of this
28 chapter, chapter entitled "headings" are not official, and

1 do not expand or limit the scope of provisions within them.

2 Also, I would move the Court to take judicial notice
3 of the legal definition of "traffic." Traffic is trade,
4 commerce, the transportations of goods, services for hire.
5 And Officer Hunter testified that he made a traffic stop.
6 I happen to -- the Romans called law, Lex. And Lex in
7 Latin means language. And I'm a stickler on the language
8 for particular reasons. If we don't understand the
9 language we're using, we can't possibly understand the
10 concepts surrounding them. So when we talk about traffic
11 and transportation, we talk about routine traffic stops.
12 We're talking about commerce. The arteries of interstate
13 commerce are reserved to commerce under the congress.

14 (Interruption by the court reporter.)

15 MR. MUNSON: Arteries of interstate commerce are
16 reserved to congress under the commerce clause which is
17 Article One, clause three, of the federal state
18 constitution.

19 The street and the highways also belong to the people
20 as rights of way. And so that alone should indicate that
21 it is not the streets and the highways themselves, but the
22 manner in which they are used to determine whether or not
23 one exercises a right or a privilege. I'm going to move
24 now from the Fourth Amendment to the First Amendment
25 discussion.

26 We the People ordained and established the
27 constitutions of government. We were very clear in the
28 California constitution, that we the People of California,

1 grateful to all mighty God for our freedom to ordain and
2 establish this constitution for the State of California.
3 That's the de jure constitution of 1849. I don't think
4 that the de facto constitution of 1879 mentions anything
5 about God. But it does say in Article One, section one,
6 that all men by nature are free and independent. If the
7 mode of, the present mode of enforcement is -- can be said
8 to be legitimate, what it, in fact, does, is it reduces the
9 right to be free and independent, and the right to liberty,
10 to freely associate, to move about, and even to petition
11 for re address of grievance is reduced to a licensed
12 privilege.

13 Now as we start looking at that fact, we realize that
14 in practical application, the license to drive, not merely
15 in correct legal context, a license to engage in the use of
16 the highways as a place of business for personal gain or
17 profit to the transportation of persons or passengers.
18 It's a little bit of a complex discussion. So I think what
19 we should do now is start by going through the statutes of
20 California I've submitted, because they're very clear.
21 According to the DMV's own website, and I disagree with
22 some of the things on there, but they have a time line
23 showing the history of the motor vehicle department. They
24 didn't come in until later on. The first licensing statute
25 became law in 1914, based upon the statute of 1913.

26 Prior to that, the first indication that we had of
27 regulatory control, was the California Road Laws of 1911,
28 published by the A. Carlisle Company out of San Francisco.

1 They make numerous references to driver, but in the context
2 of everything from the horseless carriage to a, to a, an
3 oxcart. Driver is a traditional term, integrity related to
4 commerce. We can go to Bouvier 1856. I have a
5 leather-bound set of Bouvier's, original. Drivers, when
6 employed, even the dictionaries we have today say "drivers
7 when employed." Now we use the layperson context of
8 driver, but the layperson context of driver is not the same
9 as the legal definition of driver. One is an ordinary
10 word, and the other one is a very narrowly defined legal
11 term in related to commerce. I would move the Court to
12 take judicial notice of the California statutes of 1925.
13 And I chose the certain -- because of the clarity, at pages
14 833 to 838. Basically at page 833, chapter 412, section
15 one, paragraph B state that the word --

16 THE COURT: Slow down.

17 MR. MUNSON: I'm sorry. Shall include all persons,
18 firms, associations and corporations, but shall not include
19 persons who transport his or her own property, or who
20 transports not persons or property for hire. You know,
21 that's an abbreviated extract, but I did submit the
22 photocopy of the actual statute and those pages.

23 The statute then goes on to talk about the revenues
24 generated by these operations, making it ultimately clear
25 that what they're licensing is operators who transport
26 freight for hire. The other reference in those codes have
27 to do with the term chauffeur. Chauffeurs and operators
28 were required to be licensed because of their

1 extra-ordinary use of the highways. I move the Court to
2 take judicial notice of section four to the Vehicle Code,
3 which, in essence, states that accrued rights are not
4 effected by the provisions of the code.

5 THE COURT: Section what?

6 MR. MUNSON: Section four.

7 THE COURT: I'll take judicial notice of section four.

8 MR. MUNSON: It was originally section two, and, you
9 know, things get moved around. But even the original
10 Vehicle Code of 1935 contained that section. I have a
11 collection of older vehicle books, going back to 1917.
12 Because of the freedom to move about unmolested,
13 unrestrained, limited only by your obligation to observe
14 the rights of others, is, I think, one of the most basic of
15 all of our freedoms, without which no liberty interest can
16 be fully realized.

17 And it's unfortunate, because I'm pretty much appalled
18 at what I'm seeing everyday in this society. And I travel
19 the world as an entertainer, so I see a number of different
20 kinds of societies. And I was raised with the particular
21 type of ideal, thinking that America, land of the free,
22 home of the brave, greatest country on earth, and I grew up
23 to realize that that's never really quite manifested.

24 And so the driver license as it's being, the
25 requirement is being enforced to date, contrary to what the
26 statutes say, and they're all consistent. I provided all
27 of them in the way of judicial notice, and they're all
28 consistent. What I want to say before moving beyond the

1 statutes is that the statute of 1957 -- first 1955 and
2 Revenue of Taxation Code, they exchanged definition without
3 a substantive change. They stated identically the same
4 language that I presented here from the statutes of 1957,
5 from the Vehicle Code. They state that the, the term
6 operator's license, and chauffeur's license to be called a
7 driver license. So it was 1957 that the Vehicle Code first
8 introduced the term "driver." It has subsequently been
9 redefined in the codes without any substantive change to
10 the meaning. The fact is, I would like the Court at this
11 point to take judicial notice of 22 through 22.2 of the
12 Civil Code.

13 THE COURT: I'll do that.

14 MR. MUNSON: 22 through 22.2 states very clearly that
15 the law is the solemn expression of the will of the People,
16 the will of the People as expressed in our constitution and
17 in our statutes.

18 And then 22.2 states that the common law of England
19 insofar as it is not repugnant to our constitution of the
20 United States of America, is the rule of decision through
21 the courts of this state. There is no mention of the code,
22 and there is a reason for that. The codes are a glorified
23 resource locator. Somehow they have found their way into
24 being treated as if they contain the law, as opposed to
25 restatements of the law, and that's why I've gone through
26 the statutes themselves for clarification. And it's too
27 broad of a subject for me to address all of it here today.

28 But as I previously stated, I look at the Vehicle Code

1 in prior material. I look at it from its inception to
2 where we are today, and I have to say I'm appalled that you
3 can't go anywhere in this society without policeman wailing
4 passersby for every conceivable human imperfection. I
5 mean, a civil infraction, for example, the one that leads
6 me to a warrantless arrest, is an administrative,
7 non-criminal act. And to apply the State's police power,
8 you know, when, when anyone falsely arrests another, the
9 description that we provide for that in the Penal Code is
10 assault and battery.

11 Now assault and battery are both very egregious
12 criminal acts. And yet under the auspice of lawful
13 authority, which I can't seem to find a delegation for,
14 this very serious conduct by armed uniformed employees and
15 municipal corporations generally is being applied to benign
16 civil conduct not rising to a level of crime for which no
17 one is even injured. I think the more egregious behavior
18 is that you can't go down the street without being
19 concerned that you're going to be stopped. And I watch
20 legal dissertations all the time. In fact, there's one on
21 YouTube by a professor James Dwayne (phonetic) out of the
22 Regent University Law School in Virginia Beach, Virginia,
23 where he does a dissertation called "I don't talk to Cops."
24 Immediately after that, he has a police officer from the
25 same city, from the police department, talk on the same
26 subject, where he says very clearly that if I can follow
27 you long enough, you will make a mistake that I can
28 justifiably stop you for.

1 Now I've heard these kind of comments in court where
2 the judge just said, well, I realize that it's almost
3 impossible if you live in this society not to get a traffic
4 ticket. The truth is, is that the laws, the way they're
5 enforced, if applied only to benign or non-commercial
6 conduct, people exercising their right to obtain the basic
7 necessities of life, to secure their, their freedom and
8 their happiness, if it's applied to just passersby, I'm
9 afraid that the conduct is quite egregious. And the
10 license to, quote, drive, then becomes a tool for social
11 engineering, and that the -- that under the principle of
12 enforcement of the statutory regulatory scheme, the license
13 to drive is, in fact, converted to license or permission
14 for basic survival. And it's permission for living life
15 itself.

16 In order to obtain the license, one must waive a
17 myriad of rights, which it's unconscionable that one right
18 should have to be waived in order to exercise another. But
19 the license, and all the law and licensing is very clear.
20 License can't be held out against the waiver of a
21 constitutional right, and yet it apparently is, because in
22 order to get the license for autonomous use on streets and
23 highways, you have to surrender your right to privacy. We
24 know that from the case of Reno v. Conlin, where the
25 attorney general for South Carolina sued to get an
26 injunction to halt the transfer of his state's citizens'
27 private information from the DMV to the federal government.
28 That went all the way to the supreme court, where the

1 supreme court ruled in the context of a transaction, that
2 that information was commercial information.

3 So in order to get the driver license, you have to
4 waive your right to privacy in that context. Under the
5 Real ID Act, I think it's 482 USC 666, under the real ID
6 act, one must -- the states have been required to have it
7 complied, per se, that I'm aware of, but they were required
8 to put a radio frequency ID chip in the wallet of every
9 American citizen with a driver license. This is clearly a
10 totalitarian surveillance system under the auspice of
11 tracking down dead-beat parents, but one must accept the
12 tracking device if one is to apply for and receive a
13 license.

14 Then one has to, apparently, as a condition of the
15 application, one must surrender their right not to be a
16 victim of a warrantless search and seizure on the street
17 for non-criminal conduct. I mean, that's a judgment I make
18 based upon what I'm observing occurring in society. So
19 people can't even move about unmolested in the land of the
20 free, and the home of the brave, but they seem to be able
21 to do it in countries where they have no political freedom.
22 They seem to have more personal freedom where they don't
23 have any political freedom. I find that an odd thing to
24 observe. But, you know, the right to be secure in your
25 person and possession should not be sacrificed, based upon
26 ones use of the street and highways as a necessity.

27 50,000 years of recorded history, people have used the
28 streets and highways as a matter of right. There are,

1 there are some exceptions, such as under the English common
2 law. There were many private roads through private
3 property, and that's where we end up with the concept of a
4 turnpike. People who opened that land would charge a toll
5 in order to maintain those roads. The worst road was the
6 King's road, because the King didn't spend much money on
7 it. So there was a lot of usage of the private roads. But
8 in looking through history, you know, a private landowner
9 has the right to charge a fee or a fair to allow someone
10 ingress or egress on their property.

11 The streets and highways in this country belong to the
12 people. They were designed for the traveling public, and
13 to hold their use hostage to a license is patently
14 un-American in my view. You have to surrender your right
15 not to be a witness against yourself or to produce evidence
16 on command, and Officer Hunter very clearly testified that
17 he demanded that the defendant in this case produce
18 evidence, evidence of this, evidence of that. And that may
19 be a condition of the driver's acquisition of the driver's
20 privilege, but beyond that, I don't think it has any
21 application that's not covered by the Fifth Amendment. And
22 then, of course, one has to surrender the right not to
23 associate with, for example, unethical corporations who,
24 who use the traffic laws as a device for maximizing
25 corporate profits. And I can give you an example of that
26 soon. But before I do, I'd like to talk about the use of
27 one's property, one's private automobile for mere ingress
28 and egress for the necessities of life.

1 One has to surrender the right to absolute ownership
2 of that vehicle, because in paying the fees for the
3 registration to the DMV, one grants a lien right to that
4 automobile. And then we have the right to be secure in
5 one's person and possessions against warrantless seizures
6 of one's property. And Officer Hunter testified that he
7 did inform me that if I was to exercise my right to travel
8 freely and unregulated on the streets and highways, that he
9 would have arrested me and impounded my automobile. I look
10 at the section of the law governing the seizure of
11 property. The Vehicle Code is very clear that the taking
12 of an automobile without lawful authority, whatever legal
13 license one requires from the owner, is, is a serious
14 criminal offense, and yet there are only two sections of
15 the Vehicle Code that authorize such a seizure, and they
16 are the Safe Streets and Highways Act of the Community
17 Caretaking Doctrine. I already mentioned the Safe Street
18 and Highways Act involving the seizure, and the
19 constitutionality of that seizure is based upon a federal
20 case occurring in the territorial waters off the Costa
21 Rica. I mean, if that doesn't smack of admiralty, I don't
22 know what is. And under Porta Rican statutes. Porta Rico
23 is a non, self governing -- not officially self governing.
24 It's a territorial possession of the United States. The
25 insular cases make it quite clear that the constitutional
26 protection does not necessarily extend to all areas under
27 US control, which lead me to wonder which federal
28 jurisdiction at the legislature using to justify a

1 warrantless seizure on the streets and highways of
2 California. And, I mean, are they arteries of interstate
3 commerce in that context? There's a lot of questions. I
4 won't go there. I just want to raise them.

5 But as we start looking at the actual application
6 of the license and scheme in contrast to what it was
7 supposed to be, what it should be, and what it reasonably
8 would be, because otherwise it just conflicts with the
9 whole notion of liberty. But in order to use your car, and
10 I don't know how many traffic courts you've been to. I've
11 been to a few of them, and I find them to be reprehensible
12 little places where the only thing of any interest is
13 filthy lucre, and I hate to put it that way, but I find it
14 that abhorrent. And there, none of the rules are followed.
15 They don't even talk to you respectfully. There are few
16 courts that are an exception to that. I find Napa to be
17 one of them, but Napa's an exception.

18 So I think the whole due-process thing, it becomes
19 topsy-turvey. Either an infraction is a crime justifying
20 warrantless seizure, or it is not, and it does not, and the
21 Sixth and Seventh Amendment go along. It can be a crime
22 for purposes of warrantless seizure, but not a crime for
23 purposes of due process. It has to be consistent all the
24 way across the board. California seems to have been taking
25 from both ends for the last 42 years, and I'm surprised
26 that none of the lawyers -- I guess I'm not. You get that
27 much business as the residue of the warrantless search and
28 seizures, you may have a vested interest in not raising it.

1 But I am a person effected directly by the
2 misapplication of the law. I put myself in this position
3 with the specific intent of raising these issues, because I
4 find them intolerable. And I've also read enough caselaw.
5 If I'm not a person effected by this law enforcement
6 scheme, then I really have no standing to raise these
7 issues. And so I'm not here by accident, but with a
8 specific intent of doing something for the People of the
9 State of California and this entire country.

10 And this look to see if there's an alternative to
11 obtaining the license, to use the streets and highways as
12 if one were the proper object of the licensing, and I don't
13 concede that one is. But the alternative to securing the
14 government-created privilege is to walk, and we all know
15 how limiting that is in terms of basic society, in a
16 society that is global, and a world where everything is, is
17 sort of remote. You have might live in San Francisco and
18 be able to ride public transportation, but nowhere is it
19 available outside the metropolitan areas. And for someone
20 like me, who might perform in Monterey one night and Reno
21 the next, there's no possible way for me to survive in this
22 world if my rights to use the streets and the highways for
23 ingress and egress is held hostage to a license, or a leave
24 to be granted or withheld at the leisure of government
25 actors, according to the terms of their own proclamation.

26 Public transportation as an option to autonomy, means
27 that I'm confined to someone else's limitation on
28 schedules, that I'm confined to purchasing transportation

1 of the services and customers from a commercial carrier who
2 has a driver with a chauffeur's license. I can get a ride
3 from a benevolent friend or benevolent stranger, each of
4 which would have to hold license or permission. I can even
5 purchase private transportation services from a private
6 carrier, a taxicab, a limousine, but non of those options
7 really provides one with an ability to survive outside the
8 inner cities, or to exercise the right to survive without
9 permission.

10 So riding a bicycle, walking, those things are not
11 going to take your children to church. They're not going
12 to get you -- my dentist is in Cloverdale. I don't know
13 how I would get there without permission, and the whole
14 notion that I can't live life without permission, is, in my
15 view, very un-American. And so there might be some
16 incentive every time the, the municipal corporations
17 investment portfolios in their retirement take a hit
18 because the stockmarket drops. I see a bigger sharks
19 frenzy out there on the street. And I've got to say that
20 if this is a free society, how it is that we are subjected
21 to this army of gunmen, who are seizing people right and
22 left for benign, non-criminal conduct, where no one is
23 injured. I don't know even what right is being exercised
24 by the State in that regard. There's only two kinds of
25 rights. And there's only two kinds --

26 (Interruption by the court reporter.)

27 MR. MUNSON: There are only two types of rights, and
28 two types of wrongs under the English common law.

1 According to Blackstone's commentaries on the law of
2 England, book one, page 56, rights are of two kinds. They
3 are those annexed to the persons of men, rights of men or
4 de jura personarum. And there are, secondly, the right to
5 control external objects over which man may intend a
6 dominion. A comment on the side of that, is the property
7 is not the thing itself, but the interest one has in
8 controlling it. Wrongs on the other hand, are of two
9 kinds, equally of two kinds. And they are either public or
10 private, which raises me to bring in the question of
11 admiralty again. On the public side, we have only two
12 jurisdictions, and public is what we call criminal. And
13 they are the common law and admiralty. That's the
14 constitution limits that -- and on the private side, we
15 have trespass and breach. I don't know what else we have,
16 except maybe of parents patria, and matters of equity. And
17 I just don't know what else there is on that side. And to
18 suggest that Vehicle Code infractions are the non criminal,
19 is to suggest that they're civil. There isn't anything
20 else. And to join civil and criminal together is a little
21 confusing when the Code of Civil Procedure is very clear,
22 that there's only two kinds of actions, and the elements of
23 one are not motives in another.

24 So what we have, in essence, in the present mode of
25 enforcement of the Vehicle Code, is a legal Frankenstein.
26 W we have parts that were never intended to be put
27 together. We don't join civil and criminal actions,
28 because they are fundamentally converse. One is private.

1 One is public. So what we have is a mess.

2 If I have the right to liberty, it doesn't rest upon
3 leave or license for its execution, yet that would appear
4 to be the present mode. So that's my brief dissertation on
5 the First Amendment issues involved. I don't think there's
6 much left of our Bill of Rights the way the courts are
7 headed. In fact, my opinion is that the only ones that are
8 really being given any credit or effected at all, are the
9 First and Fourth, and they're slowly being eroded. I think
10 it's important for people like me who have the type of
11 understanding that I have to do what I'm doing. I think
12 it's the right thing for me. I think it's the right thing
13 for the People of California. I think it's the right thing
14 for this country, because if we don't get our feet back
15 under us and start looking at the world around us a little
16 more appropriately, this whole system is having the wheels
17 come off. We can see that by the massive redistribution of
18 wealth. I mean, if people like me don't stand up for the
19 rule of law and demand it from our servants, I don't know
20 how long it's going to be before we collapse into total
21 anarchy. Rome, they all did it. And we've just about run
22 our course. So I think it is very important for the courts
23 to take a very close look at the statute I've submitted,
24 and the caselaw I've submitted, and to the wary of those
25 cases which appear to stand for a proposition. That is, in
26 fact, the basis of a presumption the courts are compelled
27 to make on review when the record does not provide the
28 contrary.

1 So I don't know how much more can be said. The
2 language of the Fourth Amendment is clear, and I've read
3 all the cases. I don't care if it's Benford (phonetic). I
4 don't know if it's the case of Miller, the DMV letter
5 referred to. None of those cases even remotely address the
6 questions that I'm raising.

7 Miller, for example, the case they sent me in
8 response, Miller was trying to get a driver license, and he
9 didn't want to submit a Social Security number, and he used
10 religious grounds. I don't think I'm even remotely similar
11 to that case. I think on every element it's
12 distinguishable. And I don't care if we use Utah v -- I
13 don't remember all the names at this point, but I remember
14 the cases. Many of these seizures in other states involve
15 misdemeanors, Atwater v. City of Loma Vista (phonetic),
16 just came out with the Fourth District Court of Appeal in
17 California, using it for a completely wrong proposition
18 based upon a similar Fourth Amendment argument. The
19 problem is in California, just like in Texas, a child un
20 restrained in an automobile is a misdemeanor, not an
21 infraction. So I don't care what case they want to argue.
22 They can bring up any case they want to, and the facts are
23 real simple. None of those cases stand for the proposition
24 that they appear to, based upon simple presumption. I'm
25 challenging the initial contact as a warrantless seizure.
26 The 10th Circuit on December 7th came out with a very clear
27 statement that it was a warrantless seizure, within the
28 meaning of the Fourth Amendment. And the People haven't

1 offered anything to suggest that such a seizure was
2 reasonable, no public safety concerns, simply an
3 administrative issue.

4 And so here we have two problems. We have a First
5 amendment right to travel being reduced to a statutory
6 regulatory scheme. And then we have the associated
7 warrantless seizure concerns. And lucky you, as far as I
8 know, your Honor gets to be the first to rule on that
9 question.

10 THE COURT: Okay. Does that conclude your closing
11 arguments.

12 MR. MUNSON: Let me just make sure I didn't miss
13 anything. I think that's all the statutory references. I
14 did mention the Code of Civil Procedure. It's basically
15 section 22 -- well, let's see what is it.

16 THE COURT: There's no need to repeat yourself because
17 I have been listening.

18 MR. MUNSON: I'm a little obsessive/compulsive, so I
19 appreciate it when you stop me, because I do this a lot
20 myself.

21 THE COURT: I have that tendency myself.

22 MR. MUNSON: Most good juris do. Blackstone and Cooke
23 C-O-O-K-E, and that's what interested me to begin with when
24 I recognized myself in the description of someone with that
25 prowess. I said, wow, maybe this is good for something.

26 But I have nothing but more cases. It would just be
27 cumulative at this point, your Honor. And so, yeah, I'm
28 going to rest now.

1 THE COURT: Okay. Do the People wish to give a
2 rebuttal argument?

3 MS. SUSEMIHL: Your Honor, I'll try to be very brief.
4 It appears that the defendant is making a 1538 motion based
5 on unlawful detention. There was not one filed, or before
6 this Court, but it's well settled caselaw that any Vehicle
7 Code law violation in California is to stop a vehicle. And
8 in this case, Sergeant Hunter testified that he had reason
9 to believe that the registration was expired, so he
10 initiated a traffic stop. While conducting that traffic
11 stop he learned that the driver was unlicensed, which is a
12 misdemeanor in California. So I think any 1538, Fourth
13 Amendment issue -- there isn't one.

14 And then secondly, it's clear that the defendant
15 doesn't agree with the law, that you have to have a driver
16 license in California. But that's not -- the issue before
17 us today is whether or not he violated the law in
18 California. I'll submit.

19 THE COURT: Okay. It's my turn to talk. It does feel
20 like the defendant is moving to suppress the evidence
21 seized as a result of an alleged unlawful detention. And
22 it seems that he is doing that under Penal Code section
23 1538.5, subdivisions (g) and (h). So I'll first address
24 that issue that's being raised by the defendant.
25 Subdivision (g) says if the property or evidence relates to
26 a misdemeanor complaint, the motion shall be made before
27 trial, and heard prior to trial at a special hearing
28 relating to the validity of the search or seizure if the

1 property or evidence relates to a misdemeanor, filed
2 together with a felony. And it goes on to say some things
3 that don't really apply. And then subdivision (h) says, if
4 prior to the trial of a felony or misdemeanor opportunity
5 for this motion did not exist, or the defendant was not
6 aware of the grounds for the motion, the defendant shall
7 have the right to make this motion during the course of
8 trial.

9 In this case, the things that the defendant complains
10 of were well known to him long before trial, and so a
11 motion to suppress under this statute, anyway, should have
12 been made before trial. And one reason I'm going to deny
13 his motion to suppress is that, in fact, it is untimely.
14 But as an accomodation to the defendant, I'll also note
15 that if I were ruling on this motion at the trial, on its
16 merits, in a sense I'm doing that right now for the record,
17 I would still deny the motion to suppress.

18 As both of you know, a judge at my level, which is a
19 trial court judge, is in fact bound by the law as it
20 exists, and as it is defined by higher courts. I am the
21 lowest court there is in California, the trial court. They
22 call it a superior court, but they might as well call it
23 the inferior Court, because this is where discussions like
24 this begin, not where they're actually decided at the
25 policy level. And I understand what the defendant says
26 about statutes being different than common law and
27 centuries of, of law established by other means, according
28 to the authorities. But in fact, I don't like activist

1 judges, and activist judges, I think, are people who do
2 what they think is right, regardless of what the law is.
3 Whether you're Republic, Democrat or Libertarian, it
4 doesn't matter. So I try not to be an activist judge. I
5 try to simply follow the law that's laid down to me by the
6 executive branch, the legislative branch, and then the
7 higher courts within my branch, the judicial branch.

8 And the fact of the matter is, Sergeant Hunter had
9 probable cause under the law of the State of California, as
10 also interpreted by the Supreme Court of California, and
11 the Supreme Court of the United States, to stop the motor
12 vehicle that the defendant was driving, and very
13 temporarily detain that driver to conduct an investigation.
14 And the reason for that is that he had confirmed through
15 dispatch that the registration on the car was expired while
16 it was being driven down a public roadway by the defendant.
17 And that, like it or not, is defined as a violation of law
18 in California Vehicle Code section 4000.

19 And so the law is very clear, also, that once a car
20 stop like that is made, the officer making that car stop
21 has the right to ask the driver for his driver license, his
22 or her evidence of registration, and his or her evidence of
23 insurance, or other proper financial coverage. And so when
24 Sergeant Hunter did that, he was not doing anything wrong
25 under the law, as I understand it anyway.

26 There are lots and lots of people in this Country who
27 subscribe to the philosophy of the defendant. And I just
28 want to take a moment to thank you for presenting your

1 position so articulately, and intelligently, and politely.
2 I appreciate that.

3 MR. MUNSON: Thank you.

4 THE COURT: I'm obviously disagreeing with some of
5 what you said, but we both got different jobs to do here, I
6 guess. So I will deny the defendant's motion to suppress
7 the evidence obtained against him. I do not think as the
8 defendant does that it violates the Fourth Amendment of the
9 United States Constitution, or any other laws of a similar
10 nature in the California Constitution, or in the State of
11 California.

12 And so the question then becomes, is he guilty or not
13 guilty of the crimes he's charged with. Penal Code section
14 15 defines a crime or public offense, and it says, a crime
15 or public offense is an act committed or omitted in
16 violation of a law, forbidding or commanding it into which
17 is annexed upon conviction, either of the following
18 punishment: One, death, two, imprisonment, three, fine,
19 four, removal from office, or five, disqualification to
20 hold and enjoy any office of honor, of trust or profit in
21 this State.

22 Penal Code section 16 says, crimes and public offenses
23 include one, felonies, two, misdemeanors, and three,
24 infractions, and Penal Code 19.7 says, accept as otherwise
25 provided by law. All provisions of law relating to
26 misdemeanors shall apply to infractions, including, but not
27 limited to powers of peace officers, jurisdiction of
28 courts, periods for commencing action, and for bringing a

1 case to trial, and burden of proof. In fact, once the
2 officer, once Sergeant Hunter finished his preliminary
3 investigation after stopping the vehicle, he was presented
4 with, with probable cause to believe that the defendant was
5 in violation of Vehicle Code section 4000, an infraction,
6 for expired registration, Vehicle Code section 12500, being
7 an unlicensed driver, a misdemeanor, and Vehicle Code
8 section 1602(a), driving without proper proof of financial
9 ability to respond to damages or insurance the as People
10 phrase it in a summary fashion. And I believe he followed
11 all the statutory procedures properly, and I believe the
12 defendant is properly before the Court for this trial and
13 subject to its jurisdiction.

14 I am not convinced beyond a reasonable doubt that the
15 defendant is guilty of Count One, Vehicle Code section
16 4000, and so he will be found not guilty of that, because
17 there is no proof before the Court -- once we ruled on the
18 evidentiary objections towards the end of the trial. There
19 is no proof before the Court that he was driving an
20 unregistered vehicle, so I find him not guilty of that
21 offense.

22 On the other hand, I am convinced beyond a reasonable
23 doubt that he was driving without a license in violation of
24 Vehicle Code section 12500 subdivision (a), as charged.
25 And so he will be found guilty of that offense. And I am
26 convinced beyond a reasonable doubt that he committed the
27 crime charged in Count Three, an infraction, Vehicle Code
28 section 16028, subdivision (a), and so I'll find him guilty

1 of that offense.

2 Would you like to be sentenced today, sir, or at
3 another time?

4 MR. MUNSON: Well, I would move the Court for a stay
5 pending appeal.

6 THE COURT: I haven't sentenced you yet, so would you
7 like me to finish the trial and tell you what the
8 punishment is before we get to that issue?

9 MR. MUNSON: All right. If you like.

10 THE COURT: Do the People want to be heard on that?

11 MS. SUSEMIHL: No, your Honor.

12 THE COURT: Okay. And do you want to be heard on the
13 subject of sentencing?

14 MR. MUNSON: Nope.

15 THE COURT: Okay. Can I have a probation order,
16 please. I can't find page two in there yet. I've got page
17 two here.

18 THE JUDICIAL ASSISTANT: Thank you. I found it.

19 THE COURT: You found it. All right. As you may
20 know, the 12500 is punishable for up to six months in jail.
21 I certainly don't intend to do that. Instead, I'll put you
22 on probation for three years, suspend imposition of
23 sentence, and then grant you the fines of \$206 for the
24 12500, and 825 for the 16028 violation. And I'll just give
25 you the minimum restitution fine of \$100. It could be as
26 high as 1,000.

27 I'd like you to take a look at this probation order,
28 and see if you agree to the terms of it, and just fill out

1 the highlighted portion of that if you agree to abide by
2 those terms of probation. I understand you may want to
3 file a notice of appeal and challenge everything, but this
4 is just what we need to do for this portion.

5 MR. MUNSON: I understand. And I'm going to reject
6 the probation offer.

7 THE COURT: You realize you can go to jail if you --

8 MR. MUNSON: Yes, I'm quite aware of it. Thank you.

9 THE COURT: Okay. All right. Then on Count Two, let
10 me just say that I thought it was valuable in this case to
11 put you on probation, because it's just another way of
12 encouraging you, until -- until the issue is decided by the
13 supreme court someday, it's another way of encouraging you
14 to abide by the law -- and a little bit worried about you
15 continuing to violate the law. So we need to make a
16 statement here that this is a violation of the law as I
17 understand it, and you can't continue to violate that law.

18 So I'll give you a chance to change your mind if you
19 wish. I'm still going to impose those two fines, but I'm
20 going to put you in jail for 10 days on 12500 violation.
21 You won't go to jail now. I'll give you a date to report
22 in the future, and if you file a notice of appeal, then
23 under law, that 10-day period would be stayed pending that
24 appeal. But that's what I intend to do. On the other
25 hand, if you want to agree to be on probation, I won't
26 impose the 10 days jail.

27 MR. MUNSON: No, thank you.

28 THE COURT: You still don't want to do that?

1 MR. MUNSON: I'm not going to agree to anything.

2 THE COURT: Gotcha. Okay. Well, then, because the
3 defendant does not want to be on probation, and that's your
4 privilege and right as I understand it, not to be placed on
5 probation, then on Count Two, the VC 12500, I will sentence
6 you to 10 days in jail. You'll begin serving that time by
7 going to the jail at 8:00 in the morning on April the 8th,
8 and follow their directions about exactly when and exactly
9 how to serve that time.

10 MR. MUNSON: If it please the Court --

11 THE COURT: Hold on just a second. Let me finish
12 this. The fine on Count Two is \$206, and then probation is
13 denied on Count Three as well. And the fine on that charge
14 is simply \$825. And then I need to impose the minimum \$100
15 restitution fine on Count Two, as well.

16 So we're going to give you some paperwork. You'll
17 need to take it down to the big counter on the first floor,
18 and they will tell you what to do next in terms of setting
19 up a payment schedule, or delaying that until you file a
20 notice of appeal, or whatever is appropriate. I can't stay
21 any portion of this sentence right now, because I'm
22 powerless to do that. You'll have to file an appeal of the
23 judgment of the Court within 30 days of today to --

24 MR. MUNSON: I understand that.

25 THE COURT: -- appeal that. Otherwise, you might lose
26 your right to appeal if you wait beyond that 30 days.

27 MR. MUNSON: Right. I understand.

28 THE COURT: Did you want to say something else?

1 MR. MUNSON: Well, yeah. I do intend to appeal. And
2 a number of reasons, but you, you use 19.7 of the Penal
3 Code to, to extrapolate the authority of the Penal Code to
4 apply to the Vehicle Code. The original 19.7 stated,
5 absent the law to the contrary. The procedures that apply
6 to misdemeanors also apply to infractions, including the
7 power of police officers, etcetera. The current one that
8 you just read into the record basically says except as
9 otherwise provided by law. And I believe that the, that
10 the holding Wohlleben, and in People v. Superior Court,
11 Simon, are both very clear. The procedures applicable to
12 the Vehicle Code are those contained in the Vehicle Code
13 and not the Penal Code, so we do have a lot to the
14 contrary.

15 THE COURT: I understand that principle.

16 MR. MUNSON: And I want to thank you. I think that
17 you've been very diligent. You've been very reasonable,
18 and I've never seen you before, but you have gained my
19 respect. And I want to thank you, because not very many of
20 them do.

21 THE COURT: Thank you.

22 One more thing on the record that -- I neglected to
23 say this, because you probably already know this, but I
24 have to say this out loud. I told you how you appeal this
25 thing by filing a notice of appeal within 30 days. Because
26 one of the charges is a misdemeanor, you're entitled to a
27 lawyer on appeal. And if you can't afford a lawyer, you're
28 entitled to a free lawyer on appeal, and a free copy of the

1 transcript if the proper documents are filed, and the Court
2 becomes convinced you're entitled to those things. I just
3 needed to tell you that on the record.

4 MR. MUNSON: I appreciate that. And there was, I
5 think, one issue, and I think the date was conflicted with
6 another appearance that I have. But I can -- we can deal
7 with that with the State. And so I don't need to address
8 it now. Thank you very much. I appreciate that.

9 THE COURT: All right.

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11 (Whereupon the proceedings were concluded.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF NAPA) ss.
3)
4)

5 CERTIFICATE OF OFFICIAL REPORTER

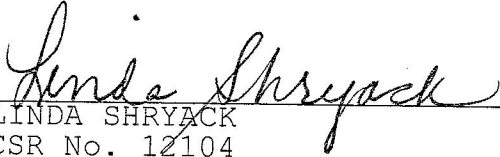
6 I, LINDA SHRYACK, CSR No. 12104 a duly qualified
7 and acting Official Shorthand Reporter of the Superior
8 Court of the State of California, in and for the County of
9 Napa, do hereby certify:

10 That on Monday, March 8, 2010 I acted as the
11 Official Shorthand Reporter on the proceedings of the case
12 THE PEOPLE OF THE STATE OF CALIFORNIA versus RIK WAYNE
13 MUNSON, No. CR149144.

14 That I took down in shorthand the testimony and
15 proceedings had therein.

16 That thereafter I transcribed the same into
17 longhand typewriting, and that the foregoing pages 1
18 through 97, inclusive, comprise a full, true and correct
19 transcript of proceedings had, as requested by Appellant
20 and as required by the First Appellate District Court of
21 Appeal.

22 Dated this 19th day of July, 2010.

23
24 
25 LINDA SHRYACK
26 CSR No. 12104
27 Official Shorthand Reporter
28 Napa, California