

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

**DC
RTING**

Lakes Road
5
a, CA 91915

36-9325

Reporting
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THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff,)

v.)

TONY E. DIAZ,)

Defendant.)

Case No. 1701164

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN BLAIR
SUPERIOR COURT COMMISSIONER
(Department KM-B)

San Diego, California
Friday, June 3, 2016

AD HOC REPORTING
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1 won't go towards evidence to prove any of the elements beyond a
2 reasonable doubt but, Officer, go ahead and get to the contact
3 -- the date itself of this alleged violation.

4 OFFICER GOVERNSKI: So I've had multiple -- on this
5 date, 8/25/2015, I contacted Tony in the back of his camper. He
6 was sleeping. I do have pictures of his camper, what it looks
7 like inside.

8 THE COURT: How many photos do you have?

9 OFFICER GOVERNSKI: Let me count them for you.

10 THE COURT: Are they 4 x 6 color photos, four per
11 page?

12 OFFICER GOVERNSKI: Yes.

13 THE COURT: All right.

14 OFFICER GOVERNSKI: Yes, ten photos.

15 THE COURT: We'll refer to them as 1 through 10. And
16 when did you take those?

17 OFFICER GOVERNSKI: And on this specific date -- this
18 is another complaint, not on the date of the citation. This is
19 another date, 3/14/16, that we got on him that he was actually
20 cited for. I did not write -- but these are the pictures of his
21 vehicle and what it looks like -- and it looks exactly the same
22 as when I contacted him on that day.

23 THE COURT: So it looks exactly the same as when you
24 contacted him on August 25th, 2015, and the other pictures are
25 from March 14th, 2016; is that accurate?

26 OFFICER GOVERNSKI: Yes. That is accurate.

27 THE COURT: All right. Anything else on the photos?

28 OFFICER GOVERNSKI: What you'll see is you'll see a

1 ticket, 8/25/2015, he was sleeping in the back. That's when I
2 wrote him the -- the vehicle habitation citation. On this date,
3 3/14/2016 when we were addressing the complaints, he was not
4 back there. He was nowhere there, so didn't leave a parking
5 site of vehicle habitation and there was no -- obviously, he
6 wasn't there to write an infraction of the vehicle habitation
7 and he was already ticketed for violation of signs.

8 BY MS. CUSACK:

9 Q On the -- okay. Now, directing your attention to Exhibit
10 -- to People's Exhibit 4, the exhibit -- the toiletries that you
11 described in Exhibit 2 are depicted in 4 in the middle of what
12 appears to be the bedroom area.

13 A Correct.

14 Q And that was located in that place at that time on August
15 25th of 2015?

16 A Oh, I don't recall.

17 Q You previously testified that everything in this picture
18 was exact --

19 A Yeah, it looks exactly the same --

20 Q -- as at August -- so it was there when you stopped --

21 A Yep, for the items. It might have been moved over maybe an
22 inch or so.

23 Q So it might not have been exact.

24 A Yeah. I mean --

25 Q So your testimony about these photos exactly -- being
26 exactly the same is not correct?

27 THE COURT: Argumentative. I'll let you rephrase.

28 //

1 A Coming out of the bathroom.

2 Q And what did he say to you when he contacted you?

3 A He said that they had already talked to me before and that
4 I was gonna get a ticket for habitation. And if I didn't like
5 it, that he was gonna give me a -- he was gonna give me a ticket
6 every time he saw me. And if he didn't see me, he was gonna
7 give my truck a ticket.

8 Q Okay. And were you sleeping in your car on the date that
9 you were given the citation?

10 A No, I was not.

11 Q And at the time --

12 A No. I had just barely got there from the place I come at
13 night and I would -- I'd use the bathroom. And the reason I get
14 there so early is because that is the best fishing point in the
15 city and if I don't get there early enough, then the poles --
16 the guys with poles beat me and I'm a free diver. So the reason
17 there's so much stuff in the back of my truck is because most of
18 it covers my free diving equipment. So, I mean, you know, a lot
19 of times the water's cold. When I get out, I need to warm up,
20 so I go to the shower. I have -- I have -- I mean, I don't
21 think it's --

22 Q Okay. Let me ask you another question.

23 A Okay.

24 Q The -- so you were not sleeping in the car at that time?

25 A No.

26 Q You weren't in the vehicle -- and you were not in the
27 vehicle when you were contacted by the officer?

28 A No.

1 up or was it down?

2 A Yeah. I always put it down.

3 Q Okay. And --

4 A Those pictures weren't taken on the day of --

5 Q No.

6 A Sorry.

7 MS. CUSACK: I have nothing further.

8 THE COURT: All right. Any other evidence to present?

9 MS. CUSACK: No. Argument.

10 THE COURT: Any rebuttal, Officer, evidentiary
11 rebuttal?

12 OFFICER GOVERNSKI: No, Your Honor.

13 COLIN GOVERNSKI, PLAINTIFF'S WITNESS, RECALLED

14 THE COURT: I want to clarify. Officer, I have in my
15 notes that you said that when you first made contact with Mr.
16 Diaz, he was sleeping in the back of the vehicle on the date of
17 the violation. Is that correct?

18 DIRECT TESTIMONY

19 OFFICER GOVERNSKI: Yes.

20 THE COURT: All right. Any other questions in light
21 of mine on that issue? I wanted to clarify that. That's what
22 I'd written earlier.

23 CROSS EXAMINATION

24 BY MS. CUSACK:

25 Q How many times have you come in contact with my client?

26 A Probably five or six times.

27 Q So are you sure you are getting all of the incidents
28 correct, or you might be remembering a different incident and

1 start relating it to that date?

2 A No. I very remember this. I remember this date very well
3 and I have contact with Diaz sleeping in the back multiple
4 times, so this wasn't the first time. But I remember this very
5 well. Yes.

6 THE COURT: So you have a clear and independent
7 recollection --

8 THE WITNESS: Yes.

9 THE COURT: -- of the events from August --

10 THE WITNESS: Yes.

11 THE COURT: -- 25th, 2015? Anything else on that, Ms.
12 Cusack? Otherwise, we'll go to argument.

13 MS. CUSACK: No, Your Honor.

14 (Pause.)

15 Nothing further, Your Honor.

16 THE COURT: All right. I understand that you have
17 argument.

18 MS. CUSACK: Yes.

19 THE COURT: Please, when you're ready.

20 MS. CUSACK: Your Honor, this is the problem that was
21 raised with the motion to declare this unconstitutional. The
22 statute itself, in terms of what it prohibits, is very vague and
23 can include and encompass any number of the officer's
24 interpretation of the statute, including -- can encompass any
25 number of scenarios.

26 I would hesitate to guess -- I have bedding in my car
27 right now. I have toiletries in my car. I'm a mom. I drive my
28 14-year-old son. Things accumulate and if someone were to look