

THE CALIFORNIA SUPREME COURT HAS GRANTED REVIEW OF THIS CASE. IT IS NO LONGER CITABLE AUTHORITY.

Lugtu v. California Highway Patrol

(March 24, 2000) __ Cal.App.4th __ [D032518]

ISSUE

When an officer makes a traffic stop, does he have a duty of reasonable care to the occupants of the car?

FACTS

In August 1996 just before 5 P.M., a CHP motor officer in San Diego County spotted a Camry on the freeway traveling about 85 miles per hour in the number-one lane. The officer pulled to the right of the Camry and motioned the driver to stop in center divider median area. This area was 10 feet wide, bordered on one side by the freeway's number-one lane, and on the other side by a concrete median concrete barrier. The driver stopped in the median, about two feet from the barrier. The officer stopped about 10 to 15 feet behind him and turned off the motorcycle's lights.

After writing the speeding citation, the officer noticed that two of the four passengers in the car were not wearing seat belts. So he started writing two more citations. At this point, the traffic stop had taken six to eight minutes.

Just then, the officer spotted a pickup truck drifting into the median area, heading for the Camry. He "waved and jumped up and down, trying to attract the attention of the truck's driver," but the truck crashed into the Camry. The occupants of the Camry were injured.

The occupants of the Camry filed a personal injury lawsuit against the CHP and the officer who stopped their car. During pre-trial proceedings, the trial judge dismissed the case by granting the CHP's motion for summary judgment against the occupants of the Camry. The primary reason for the ruling was the judge's determination that, as a matter of law, an officer who makes a traffic stop does not owe a duty of reasonable care to the occupants of the vehicle.

DISCUSSION

The Court of Appeal ruled the trial judge should not have dismissed the case because, contrary to the trial judge's determination, officers do, in fact, owe the occupants of cars they stop a "legal duty of reasonable care." The primary reasons for the court's ruling were as follows:⁽¹⁾

(1) **The accident was foreseeable:** Said the court, "In this era of high-volume and high-speed highway traffic, it is reasonably foreseeable that a car in the fast lane may veer off the marked traffic lane and into an adjacent area, striking another car that is stopped in that area."

(2) **The officer should have been aware of the foreseeable risk:** In the court's opinion, the officer should have known he was placing the occupants of the Camry in a dangerous position when he motioned the driver to stop in the center divider. Said the court, "[The officer], as a CHP officer who

regularly patrolled the highway in question, may be deemed to have had constructive, if not actual, knowledge of the substantial risk and potential harmful consequences of his conduct in directing the driver of the Camry to stop in the median area." Consequently, said the court, if a jury finds the officer acted without reasonable care, he should bear some of the "moral blame" for placing the occupants of the car in such a "vulnerable position."

(3) **Officers should be encouraged to exercise reasonable care:** The court noted that officers, knowing they owe a duty to motorists they stop, will be encouraged to "to exercise reasonable care when stopping traffic violators. Imposition of a duty of care furthers the policy of preventing future harm to drivers and passengers of cars that are stopped for traffic violations."

(4) **The community would ultimately benefit if such a duty were imposed:** The court acknowledged that imposition of a duty of reasonable care may result in some financial loss to CHP and indirectly the community. But the court added, "[T]hat financial loss may ultimately encourage [the CHP] to act in the future to avoid the type of injuries suffered by Plaintiffs in this case. Therefore, the community, which includes occupants of cars stopped for traffic violations, will presumably benefit from the anticipated reduction in the number and severity of injuries suffered by its members who travel in vehicles on highways."

(5) **Exercising reasonable care would not be burdensome:** The court concluded that in this particular case the officer who stopped the Camry had options beside directing the car to stop in the median. Said the court, "It would not necessarily have consumed undue time or expense for [the officer] to direct the Camry's driver to cross two lanes and stop on the right shoulder or to leave the highway at the next off-ramp."

Finally, the court pointed out that "[w]hen a CHP officer directs a driver to stop because of a traffic violation, that driver is obliged to comply. The law should encourage the agency and its officers to stop traffic violators in a location that is as safe as is reasonably practicable for the officers, occupants of stopped vehicles and other vehicles. . . . The CHP and its officers are generally charged with the protection of the public. To impose a duty of reasonable care and potential liability in this case should serve to further that general goal."

Consequently, the court ruled the case should go to trial on the issue, among others, of whether the officer exercised reasonable care in directing the Camry to stop in the median.

(1) **NOTE:** The court's ruling was based mainly on the following: Gov. Code § 820; *Whitton v. State of California* (1979) 98 Cal.App.3d 235; *Grudt v. City of Los Angeles* (1970) 2 Cal.3d 575; *Kaisner v. Kolb* (Fla. 1989) 543 So.2d 732; *Adams v. City of Fremont* (1998) 68 Cal.App.4th 243; *Bigbee v. Pacific Tel. & Tel. Co.* (1983) 34 Cal.3d 49.