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Asking to be absent from day in court

Lawyer tests Vista judge's order for client to appear

By **Jose Luis Jiménez**
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A bedrock principle of the justice system is a defendant's right to face the accuser at trial.

A Carlsbad lawyer has launched a legal fight in Superior Court on behalf of a woman who wants to be spared from doing just that.

The lawyer argues that California law grants his client the right to be absent from her upcoming trial on a misdemeanor charge of driving under the influence of alcohol.

Attorney Richard Duquette is seeking to defend Christina Harris, a senior at Arizona State University, without her ever seeing the inside of the courtroom. Making Harris travel to the Vista courthouse for a trial expected to last three days would be a financial hardship on her, Duquette said.

Aside from travel, food and lodging costs, Harris, 22, also would lose income from her job as a pet sitter in the Phoenix area.

Under California law, defendants can be ordered to appear in misdemeanor cases only if the judge finds a "proper purpose" exists for their presence, said Shaun Martin, a law professor at the University of San Diego. An example would be a defendant with a history of not showing up in court, Martin said.

Duquette argues that judges at the Vista courthouse enforce a "blanket policy" of ordering all misdemeanor defendants to appear at trial, which he claims is a violation of their constitutional rights.

A ruling in Harris' favor could impact the estimated 22,000 misdemeanor defendants who request a trial in San Diego County annually. Misdemeanor cases are crimes with a maximum punishment of one year in county jail. If convicted, most first-time offenders, such as Harris, are spared jail time.

The appellate division of the Superior Court has ordered court officials to respond to Duquette's



Christina Harris, an Arizona college student, was vacationing in San Diego County in July when she was arrested and charged with a DUI offense.

challenge by tomorrow, and has scheduled oral arguments for Friday. Court officials would not discuss any details of the case.

"The court is currently reviewing this case," Michael Roddy, executive officer of the court, said in a written statement. "However, because this is a pending case, the court cannot comment on the issues raised by the defendant."

Duquette said in an interview that he was preserving his client's rights.

"This is not about convenience. This is about violations of the law," he said. "You can confront your accuser through your attorney."

Martin, the USD law professor, says the issue has merit.

"You can appear through counsel unless the judge tells you otherwise," Martin said about the current state of the law. "Whether or not it's the right policy call, that's another question."

Harris was vacationing in San Diego County on July 2 when she was stopped by a California Highway Patrol officer about 2 a.m. on Carlsbad Boulevard near Carlsbad Village Drive.

She was arrested and charged with driving under the influence, and is accused of driving with a blood-alcohol level of .10 percent, above California's legal limit of .08, according to court records.

Harris, a chemistry major who wants to pursue a career as a crime scene technician, hired Duquette to fight the charge. She says she is not guilty, and is concerned a conviction would hurt her career aspirations, Duquette said.

The issue came to a head Nov. 9 when Duquette appeared before Judge K. Michael Kirkman and said he was ready to go to trial without his client present.

Court papers from a Sept. 8 hearing show that Judge Richard E. Mills ordered Harris to appear for her trial, but Duquette argued that the judge did not make that order and cited a tape recording of the hearing as proof.

Deputy District Attorney Matthew Tag said it was Mills' "practice" to order misdemeanor defendants present for trial, according to court records. Tag also said he had to prove Harris was the person behind the wheel and she needed to be present to do that.

"If jurors are taking time out of their lives to . . . stand in judgment of the defendant, I believe it's only appropriate . . . that the defendant be present and participate in the process," Tag told the judge, according to court records.

Tag did not return phone messages last week seeking comment.

Kirkman issued a warrant for Harris' arrest for violating a court order, but held it to allow Duquette to pursue his challenge.

Duquette argues in court papers that identity is not an issue because he is willing to admit his client was driving.

Further, Duquette wrote, it is clear Mills did not order Harris to appear for her trial and it would be illegal to enforce a policy requiring all misdemeanor defendants to be present at their trials.

Such a policy may discourage defendants from fighting the charges, the lawyer said in an interview.

“It is an oppressive tactic to force people to plead guilty,” Duquette said. “She has the choice. It’s her case. It’s her right to give up.”

If Harris is convicted, she may have to appear in court. Effective Jan. 1, a new law gives judges the option of ordering a defendant convicted of driving under the influence to appear for sentencing.

That law appears to support Duquette’s challenge, said Martin, the USD professor.

“Some judges do have unwritten rules like that because if it was a written rule, then it would be improper,” Martin said. “The (challenge) takes a very reasonable position, given the wording of the statute.”

Experts say being convicted of drunken driving can cost tens of thousands of dollars in legal fees, court costs and fines.

Duquette said Harris paid for his initial appearances on the case, but has run out of money. Duquette said he agreed to continue working for free because he believes strongly in her case, but he is asking the court to award him attorney fees for his work on the challenge.

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