

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Richard Quigley, Defendant/Appellant, pro se 2860 Porter Street, pmb #12 Soquel, CA 95073 TELEPHONE NO.: 831-685-3108 FAX NO.:</p>	<p style="text-align: center;">FOR COURT USE ONLY</p>
<p>ATTORNEY FOR (Name): NAME OF COURT: Superior Court of California, County of Santa Cruz STREET ADDRESS: 701 Ocean Street MAILING ADDRESS: 701 Ocean Street CITY AND ZIP CODE: Santa Cruz, CA 95062 BRANCH NAME:</p>	
<p style="text-align: center;">PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT/APPELLANT (Name): RICHARD QUIGLEY</p>	
<p style="text-align: center;">PROPOSED STATEMENT ON APPEAL (Infraction)</p>	<p>CASE NUMBER: Sup. Ct. #00284402</p>

Defendant/Appellant (Name): **QUIGLEY** submits the following *Proposed Statement on Appeal*.

GROUND FOR APPEAL

1. *Specify in detail your reason for why you feel the judge committed "error" regarding the law or procedure. Note that credibility of witnesses is generally **not** a basis for appeal):*
 - a. The court never had lawful jurisdiction – the court assumed jurisdiction without requiring the requisite filing of a verified complaint by the public prosecutor pursuant to CVC40610(b).
 - b. The court had allowed the prosecutor to amend the complaint without input from the (police) officer who filed the complaint, but would not amend the complaint on motion from the defendant with the officer present, and testifying to his mistake in filling out the citation.
 - c. The court denied the defendant’s fundamental rights to due process relative to notice and opportunity to defend in an impartial forum in front of an impartial Triar of Fact.
 - d. The court allowed, and accepted, inadmissible testimony (or himself testified as to matters of which he had not personal knowledge) and allowed, if not promoted, prosecutorial misconduct on the part of the public prosecutor, to the detriment of the defendant.
 - e. The court either didn’t understand, or refused to abide by, the plain language of the relevant statutes, or relevant binding precedent decisions from courts of higher jurisdiction – either or both mis-citing or rewriting each to make a case for the prosecutor where none otherwise existed.
 - f. The court denied the defendant a fair and impartial trial (in the context of a trial) and in all other ways, denied the defendant’s constitutionally protected rights as a Free and Natural Person as defined in Article I, Section 1, of the Constitution of California.

STATEMENT OF EVIDENCE

2. Theabove-entitled matter was reported by an official court reporter or electronically recorded and appellant intends to file a reporter’s transcript of the evidence and proceedings so reported and to make the transcript appellant’s statement on appeal.
3. Instead of a transcript the appellant is submitting the following statement on appeal:

TESTIMONY OF DEPUTY THURBER

Thurber was sworn and took the stand.

DIRECT:

Thurber testified that he stopped the defendant for riding a motorcycle without a helmet.

Defendant objected “no foundation” which the court said it would take under consideration, but that the court would take the deputy’s testimony subject to a motion to strike.

Thurber testified that at the time of the stop, the defendant was wearing a “black baseball cap.”

Defendant objected – “no foundation” – which the court overruled “subject to my final ruling here.”

Thurber reiterated that he conducted a “stop” of the defendant.

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3. a. (witness testimony continued):

Thurber testified as to the fabrication of the headgear defendant was wearing, indicating that it was not "hard."

CROSS:

Thurber testified that he is not an engineer.

The prosecution would not stipulate that FMVSS 218 is a testing procedure, sustained by the court. The prosecution stipulated, only, that FMVSS 218 was mentioned in CVC 27802.

Defendant attempted to challenge the witness pursuant to the Kelly-Frye doctrine, which the court found irrelevant.

Defendant asked if the testimony of the witness was being accepted as "expert" testimony as to fabrication of a baseball cap or helmet. The court ruled, "No. It's an opinion that's well within, as far as I'm concerned, the lay person's ability to conclude whether or not a baseball cap is any kind of protective headgear or helmet. His testimony is relevant to that standard and he may testify." The court ruled that I could raise the issue "at a later time" continuing "I want to get the testimony here and then proceed to other issues, so go ahead and ask questions relevant to his observations and testimony" . . . virtually admonishing the defendant for objecting, and ruling that ALL these objections would be dealt with "at a later time."

The defendant held up a helmet and asked the deputy if he would have cited the defendant for wearing that helmet. Rather than admit the helmet into evidence, the court described the helmet as "a piece of equipment, let's describe it as that, that would cover certainly a portion of the head with straps which would allow it to be affixed to the head."

The officer said that he would not recognize it as a helmet.

Defendant asked if the officer knew what a helmet is?

By clarification, the court rephrased the question, "What's your definition as you would apply it under 2-7-8-0-3-b of the Vehicle Code?"

Thurber responded, "As I would apply it, your honor, in my opinion, a helmet would be a device worn that is rigid, it's protective in nature, it covers a large portion of the head, the side of the head . . ."

Court: "Okay. It's a what? To do what?"

Thurber: "Protection from external impact, from impact with the ground, from something hitting you, depending on what you're wearing for . . . construction, fires, motorcycles, etc."

Defendant: "In your opinion, is there a helmet visible in this courtroom, from where you're sitting. Can you see a helmet in this courtroom, any helmet?"

Thurber: "There appear to be some helmets in the courtroom, yes."

Defendant: "Do you think you could point out which these devices on this table are helmets that would comply and which aren't?"

DA: "I think it's irrelevant in this context your honor."

Defendant: "In what context, your honor?"

Court: "What he means is that what you were wearing clearly in this officer's opinion, based on how he applies the law, was not a helmet. And so the fact that there are other helmets here would not be relevant to the particulars in your case. I understand that you want to argue about that. I'm going to give you a chance to do that later."

Defendant: "Not argue. I'm trying to understand where the line is, your honor. (Indicating to the headgear on the table in front of him) . . . Is the line here? Is it here? . . . I just want to know."

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3. a. (*witness testimony continued*):

Court: "Is there a line, deputy, that you would draw here with regard to what is or what is not a helmet?"

DA: "I don't know again that that's relevant to the deputy."

Court: "I understand. I said I'd give wide latitude, so is there any kind of line that you would draw?"

Thurber: "For my purposes, your honor, the black full-face-type helmet that's sitting there, the white helmet, the black shorty-style helmet, the bluish speckled one and then the red and white old-style helmets, those appear to be all helmets or protective devices that appear to be doing some type of protection."

Defendant: "Would they or would they not comply with the law? . . . just personal opinion."

Thurber: "Well they all appear to be . . ."

Court: "Personal opinion's not going to be of any relevance in terms of applying the law 2-7-8-0-3-b . . . go ahead, would they otherwise satisfy you in terms citations?"

Thurber: "I haven't seen the multi-colored red and gold one but the other four appear to be within the . . . it appears to be a helmet, a protective device. It looks pretty old but it appears to be a helmet."

Defendant: "Would you be surprised to find out that none of these helmets comply with the California helmet law?"

Thurber: "I said they appear to be helmets."

Defendant: "I understand. . . just your opinion, would you be surprised to find out that none of these comply with California's helmet law?"

DA: "Objection. Irrelevant."

Court: "Okay, that calls for a conclusion on his part. Alright . . . and it's sustained."

The defendant attempted to regroup, and then asked . . .

Defendant: "Do you remember whether you denoted this was a correctable or non-correctable violation, on the ticket?"

Thurber: "It appears on the citation, on which I have a copy here, I corrected (he meant "checked") the 'no' section."

Defendant: "And on what basis did you determine that it was not a correctable violation?"

Thurber: "That appears to be an error on my part. Instead of striking the 'yes' I hit the 'no' box."

Defendant: "So it's your opinion today that this is a correctable violation?"

Thurber: "Well it appears to be a correctable violation. Unfortunately, as I previously stated, during our contact, you were extremely distracting (garbled)."

Defendant: "I understand. . . So, can . . . can . . . can . . ."

Court: "So you made your point. He said that . . ."

Defendant: Your honor, if we could get the DA to stipulate, I would like to amend the citation to reflect that it is a correctable violation and we can . . . he has admitted to making a mistake and I'd like to get it set aside and move one . . .

Court: "Mr. Quigley, his opinions are his opinions. That doesn't necessarily comport with the law. He thinks it's a correctable violation so that's what he told you."

Defendant: "Do you remember back when we had a 2-7-8-0-3-a citation, your honor, and it was amended on the fly, with the district attorney, without the officer there to say it was a mistake? I am simply here with an officer who has admitted it was marked non-correctable as a mistake and I'm simply asking the court to allow that complaint to be amended to where it's marked correct-

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3. a. (witness testimony continued):

able. I will subsequently get it signed off and turned into the court and settle the correction fee and then justice will be served.”

Court: “Mr. Marigandi, do you want to do that or not?”

DA: “No.”

Court: “Mr. Quigley, here’s your problem. This officer’s opinion on the law doesn’t have anything to do with what the DA’s gonna do, okay. The DA’s gonna do what they think the law requires, alright? So at this point you got an opinion from him, that’s perfectly alright, let’s move on.”

Defendant: “Your honor, the complaint . . . the complaint, the complaint . . . the court adopted the citation as a complaint. The complaint has an error that the officer has admitted to.”

Court: “That he wants to check the other box?”

Defendant: “Yes.”

Court: “Okay, that’s fine. I’m not having a problem with that.”

Defendant: “Then we’ll amend the complaint. And then I’ll deal with it as a correctable violation.”

Court: “He indicates that he would have checked the other box, is that right? (asking the officer)”

Thurber: “Yes, your honor.”

Court: “Alright fine, then we’ll take it that way.”

Defendant: “Okay, then this one will be dismissed and we can get on to the rest of them? Because as soon as I get it corrected, it will be treated at correctable.”

Court: “Mr. Marigandi, if the officer is going to amend it, then he’s got a point. What do you want to do?”

DA: “I’ll submit it your honor. I mean, I’ve taken a position, and it’s my position that it’s not a correctable violation. I think that’s been upheld previously.”

Court: “His point is that regardless of what the officer checks, from the standpoint of whether it’s correctable or not, it’s a legal issue, alright. So I’ll accept the fact that the officer wanted to check the other box, would have checked the other box, if I find it’s correctable then you can correct it and go from there.”

Defendant: “As a matter of notice, your honor, I have to object to this because this notice is all out of whack here. This is just . . . we find out the day of trial that the complaint’s messed up. . . .”

The court did not rule on the objection, but defendant was admonished by the court for talking with Mr. Bianco.

Defendant asked a couple more questions about whether the officer had seen the defendant since the issuance of the at-issue citation (and two others in the ensuing two days) riding my motorcycle. He said he had not. Defendant had no further questions, nor did the DA

The next witness was called. (See other attached Proposed Statements on Appeal)

FINDINGS OF THE COURT

4. The court determined I was guilty and assessed a fine of: SEVENTY-SEVEN DOLLARS

5. Number of pages attached _____

Date November 26, 2001

Richard Quigley

(TYPE OF PRINT NAME)



(SIGNATURE OF DEFENDANT/APPELLANT OR ATTORNEY)