

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

DEPARTMENT 12

BEFORE THE HONORABLE MICHAEL BARTON, JUDGE

FILED
SUPERIOR COURT
CO. OF SANTA CRUZ
WATSONVILLE
05 MAR 11 AM 2:57
MOLINA ORTEGA

THE PEOPLE OF THE
STATE OF CALIFORNIA,
Plaintiff,

vs.
RICHARD JAMES QUIGLEY,
Defendant.

Case No.s
3WM018538
4SM011246
4SM021812
4SM023894
4SM028271
4SM044470
4WM021512
4WM023363
4WM034801

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SENTENCING

January 24, 2005

APPEARANCES:

For the People: GRETCHEN BROCK,
Deputy District Attorney

For the Defendant: IN PROPRIA PERSONA &
KATE WELLS,
Amicus Curae

Official Court Reporter: OSCAR A. MORENO,
CSR 3441

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Watsonville, California

January 24, 2005

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P R O C E E D I N G S

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THE COURT: Mr. Quigley.

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THE DEFENDANT: Are we getting a record on this,
Your Honor?

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THE COURT: Yes, you are. So let's go on the record
then on the Quigley matter. Mr. Quigley is present
representing himself, Ms. Brock is present representing the
People, there are motions for reconsideration issues about
whether or not this is an offense that can be signed off.
Mr. Quigley, you have something to hand me.

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THE DEFENDANT: Well, it wouldn't be court without
something to hand you, Judge.

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THE DEFENDANT: That was in that last brief I gave
you, that attached document, it wasn't exactly attached. I've
given Ms. Brock a copy as well just now.

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THE COURT: All right. Are you ready?

MS. BROCK: I am, Your Honor.

THE COURT: It's short, so -- have you read it?

MS. BROCK: I have, Your Honor.

THE COURT: Ladies first, Ms. Brock.

MS. BROCK: Actually, Your Honor, I'm just going to
submit on the moving papers. I don't have anything additional
to say.

1 THE COURT: Mr. Quigley.

2 THE DEFENDANT: Well, I'm sort of -- I'll submit on
3 it the papers. There's a couple of things I'd like to get the
4 Court put on the record if you would, if you feel inclined.

5 THE COURT: It depends on what you are asking for is
6 whether you get it, but go ahead.

7 THE DEFENDANT: I'm going to ask for a finding from
8 this Court that based on the evidence presented that you have
9 reached the determination that there is no such thing as a
10 DOT-helmet; DOT does not approve helmets.

11 Oh, yes, that -- and one other thing I'd like to get
12 clear, when I got this last brief from the District Attorney,
13 Your Honor, I just about -- I was disturbed -- I almost threw
14 up; it probably has bothered me by a brief as I have been in a
15 long time.

16 The first thing right off the bat is apparently the
17 prosecutor does not understand that you have found that I was
18 wearing headgear on Memorial Day. She still has me with two
19 helmets and no headgear, and it goes downhill from there.

20 The other thing that I don't know is what else to
21 ask because I don't know what you want to know today.

22 THE COURT: You wanted me to make some findings for
23 the record so that's what I'm listening for.

24 THE DEFENDANT: Yes, those two and -- yes and then
25 over and above that I'd like to get my helmet back today.

26 THE COURT: Okay.

1 THE DEFENDANT: Because I still don't understand the
2 authority for taking that and I've brought some stuff to show
3 you, if you are interested, not that you are a helmet tester
4 and not that you are qualified to test helmets or any of the
5 rest, but we got one each hard outer shell, it's in straps,
6 all moving, a little cutie.

7 I figured you can describe it, put in the record
8 whatever you'd like. I just as soon nobody stole it from me.
9 Identical in size, different retention system.

10 THE COURT: Okay.

11 THE DEFENDANT: Identical in size, no hard outer
12 shell.

13 The other point I'd like to make, Your Honor, is I
14 can stop a plumbob with a myriad of stuff that ain't hard. I
15 can stop a plumbob with bubble wrap if that's what we're
16 trying to do.

17 And other than that -- oh, I have -- well, I have
18 the lieutenant, the lieutenant showed up today. I asked him
19 if he'd come over and sort of back me up. I don't think my
20 credibility is a problem in your Court, I would hope not after
21 all these years but Lt. Jordan is back there.

22 THE COURT: As to what? Because you made --

23 THE DEFENDANT: My credibility. That I have been
24 trying to get those tickets signed off.

25 THE COURT: That's not an issue.

26 THE DEFENDANT: Okay.

1 THE COURT: I understand that issue.

2 That's not where we're at at this point, and that's
3 not sort of what I've set up.

4 Anything else?

5 THE DEFENDANT: No, sir.

6 THE COURT: Any further comment?

7 MS. BROCK: Your Honor, in response to the release
8 of his helmet -- excuse me, of his headgear that's evidence
9 that is part of this case and this case is not over. It
10 cannot be released. We do not stipulate to it's release
11 especially if we go on to appeal any of the Court's rulings.
12 It needs to stay in evidence.

13 THE COURT: Which I have no doubt that both sides
14 are going to do.

15 Mr. Quigley.

16 THE DEFENDANT: I don't know that I'm going to
17 appeal anything, Your Honor. I would like to see the law that
18 says it's okay to take something like that and put it into
19 evidence.

20 You might as well go ahead and take my motorcycle
21 and put that in evidence and then I don't have that. Take my
22 driver's license and put it in evidence and I don't have it.
23 Take my boots, my belt buckle you know, it's no -- no, you
24 just --

25 THE COURT: I'll have you standing naked in front of
26 the bar.

1 THE DEFENDANT: Your Honor, I thought it was
2 inappropriate when it happened, I was stunned when it
3 happened, and I have been to the degree that I explained
4 earlier in peril as a result of not having my particular lucky
5 helmet. So I'm not sure how you want to rule on that, but I
6 just don't understand --

7 THE COURT: I don't have a problem.

8 THE DEFENDANT: -- why that has to be in evidence.

9 THE COURT: All right. Here's what I'll do:

10 I'll indicate that I'll release the exhibits back to
11 both sides, you will photograph it, and you will preserve it
12 so you aren't going to -- I realize it's your lucky hat.

13 THE DEFENDANT: Helmet.

14 THE COURT: But, what that means is that, you know,
15 you can't lose it, you got to photograph it and keep it so if
16 there is an appeal and there is a question about how it feels,
17 what it looks like, all those other things and someone needs
18 to see it, you'll be able to produce it for that appellate
19 level for them to see it. But I'll release the exhibits back
20 including your clamps.

21 THE DEFENDANT: Those clamps, I told Commissioner
22 Joseph that that was sort of a gift to the Court. I didn't
23 really have a use for them beyond that.

24 You guys spent a lot more attention taking care of
25 that than you needed to.

26 THE COURT: Now --

1 THE DEFENDANT: Would you like pictures of these
2 also so that when the protective order comes around --

3 THE COURT: Sure.

4 THE DEFENDANT: -- because I could take photographs
5 of these, no problem.

6 Okay. I'll photograph my other helmet.

7 THE COURT: And you will -- you will give copies of
8 those to the Court so that we have copies.

9 THE DEFENDANT: To the Court and to the Prosecution
10 and it will be in digital form on CD if that's okay.

11 THE COURT: I don't have a problem with that.

12 Now, as to the issues of the ability to sign off, I
13 think that I am on proper grounds doing that, I think also
14 that it sets up issues which I wish to set up which is: One,
15 hopefully to get Mr. Quigley, yourself, with a helmet that is
16 in compliance with the law as it is written and as I have
17 indicated which is a hard shell outer helmet that has the
18 significance the design as anticipated by FM VS218. It also
19 then does two things: One, if you have said helmet and the
20 CHP doesn't sign it off then you have recourse by taking it
21 through the courts; Two, then the District Attorney has some
22 recourse if they don't believe that I'm appropriate in that
23 and we'll do deal with it that way. But I think it sets the
24 issues where I believe they should be which is hopefully to
25 get compliance ultimately or a decision as to what the helmet
26 law is anticipating which is why I'm doing it this way.

1 In relation to the one ticket that I indicated
2 because you were wearing -- you were riding bare headed, that
3 I indicated to you that that was not fixable in this Court's
4 opinion simply because of the knowledge that you had and the
5 fact that you chose to ignore the law on that date and ride
6 bare headed versus with your helmet, that is a 161-dollar
7 fine.

8 THE DEFENDANT: Whoa. I don't think so, Your Honor.
9 Who told you -- where did that come from? Where did that
10 number come from?

11 THE COURT: I believe that's what's anticipated in
12 the code.

13 THE DEFENDANT: I think that that number that you
14 are looking at -- there was a combination of two citations,
15 there were two tickets on there. One of them I also didn't
16 know I had turn signals.

17 THE COURT: No, we dealt with the turn signal.

18 THE DEFENDANT: I know, that's what I'm saying.

19 THE COURT: Do you remember which case number that
20 is? Which ticket?

21 THE DEFENDANT: Do I know the number, Your Honor?
22 No, I don't.

23 It was written in April -- I think April something
24 but I don't know the number.

25 THE CLERK: He was cited in April?

26 THE COURT: Could it have been March? I have one

1 for turn signals and helmet which is 4SM011246.

2 THE DEFENDANT: Is that a Watsonville ticket?

3 THE COURT: Yes.

4 THE DEFENDANT: That could be last time I had a
5 helmet ticket it was a 25-dollar fine. And then they have
6 their ups and extras and all that stuff. The last time they
7 assessed me they were like \$77.

8 THE COURT: I have \$137 for a correction. Because
9 of the ups and extras it's 137.

10 Now, you have indicated you're going to do that --
11 you are asking to do that in community service?

12 THE DEFENDANT: Okay.

13 THE COURT: Or not? Do you want to pay or it or --
14 or do you want to do it --

15 THE DEFENDANT: Your Honor, not -- I don't know how
16 to do this: How to challenge your -- I mean, how to challenge
17 that ruling or ask you about that ruling without challenging
18 you. I don't want to be confrontational here. But the
19 disqualifying conditions from correctability, Your Honor,
20 don't have to do whether or not I knew the stuff wasn't there.
21 And that's not in the disqualifying conditions in 40610. So
22 I'm trying to figure out, yeah, it probably makes good sense
23 and it probably would make good law for the legislature to
24 have written that it way, Your Honor, but the problem we have
25 with this whole thing is that the District Attorney and the
26 police are trying to get the courts to rewrite these statutes

1 so that they'll work. It's just like when they went to the
2 Judicial Counsel, the Highway Patrol went to the Judicial
3 Counsel to have them declare that they were not correctible
4 violations.

5 That was because the statute was written in such a
6 way that Maurice Hanagan and company didn't like it. So they
7 went up there and asked the Judicial Counsel to change it.

8 And the other thing that I'd like to point to Your
9 Honor, is that, remember, I knew I didn't have turn signals on
10 my motorcycle the day that I got that ticket. I knew they
11 weren't there and when I talked to the CHP about this, they
12 said the difference is -- for them the difference is that one
13 of them is attached to the motorcycle and one of them is not.

14 Well, okay, I put the turn signals on the motorcycle
15 much later than the 30 days I knew about. No one has ever
16 thrown 30 days at me for that before, by the way, I got turn
17 signals on the motorcycle, got that signed off and that went
18 away, but I knew they weren't on there at the time. I knew
19 they weren't. I was trying to arrange to get them put on
20 there. So, same thing. I knew I wasn't wearing anything on
21 my head but that -- there is nothing in there that says that
22 because of that -- I mean except for you and I'm not saying
23 you know that you can't do that, I'm just saying that the
24 legislature usually is charged with changing statutes when
25 they don't work.

26 Have I told you the mirror story?

1 THE COURT: I don't remember.

2 THE DEFENDANT: Let me do the mirror story for you,
3 Judge, it might help you understand where I'm coming from.

4 Wisconsin 30 years ago decided that they had to have
5 two mirrors on every motorcycle. These guys were running
6 around, a bunch of them had one, some of them real tough boys
7 didn't have any, you know, just nuts as far as I'm concerned,
8 but anyways so the statute comes out and they had to have two
9 mirrors on the motorcycle, so these guys back there are a
10 little bit tougher on freedom than in California. They are
11 not so willing to roll over, so what a bunch of them did is
12 they went out and got dental mirrors and stuck them on their
13 motorcycles and here they go to court. Time after time, one
14 judge do this, the other one do that, and the other one do
15 this. Eventually what happened is it all came together the
16 one judge says, "Look the statute says mirror. It don't say
17 it's got to have so many square inches of surface. It's a
18 mirror and a dental mirror is a mirror," and so the Court
19 ruled that notwithstanding its size that the bikes had two
20 mirrors on them. End of story.

21 It wasn't their job to get involved in writing
22 legislation, changing legislation. And that's exactly what's
23 happening with this helmet law is that the legislature didn't
24 give us anything to work with for guidelines.

25 And we would have never known about it if the CHP
26 hadn't decided before the statute was enacted to come out with

1 this whole big declaration of you got to have one inch of foam
2 and you got to have, you know -- a helmet has got to weigh so
3 much and it's got to have this and it's got to have that and
4 they did all this, and that ran all the way up until the
5 Federal Court stepped in and said no, you can't do that.
6 That's contrary to Buhl, it's contrary to Bianco. If that's
7 going to be done the legislature needs to do that. But we
8 would have never been aware that there was no standard for
9 helmets if the CHP hadn't started writing people tickets
10 wearing helmets back in 1992. And they wrote, by our accounts
11 -- by their accounts in a deposition over 40,000 of them
12 before the Easy Riders injunction.

13 Now, they've probably only written 4,000 since
14 because as I have experienced they don't even recognize that
15 there is an injunction in place today.

16 So they just go ahead and apply their own common
17 sense, whatever they think the proper standard is.

18 Your Honor, in talking with this Dunnigan guy up in
19 Sacramento, the Assistant Chief Counsel, whatever he is up
20 there, he really does believe that they are some day going to
21 adopt those reasonable regulations laid out in 27802. I wish
22 they would because as soon they do it calls the meeting to
23 order.

24 But the fact is the statute is unconstitutional as
25 it's enforced. No way to enforce it. It's not workable. Go
26 ahead and call it constitutional because all the courts have

1 but it's not workable.

2 So I have asked the District Attorney, go to the
3 Attorney General and get a ruling from the Attorney General,
4 the Attorney General's opinion is absolute -- this case is
5 ripe for that all the way along the line.

6 Even with your ruling for the correctability, let
7 the Attorney General rule on that. That's exactly what they
8 did in Nevada, Your Honor, when it became a problem for them
9 they were straight forward about it. The head of the Highway
10 Patrol there says, "We don't know what a helmet is. You are
11 right, Mr. Quigley, 218 doesn't tell us anything. We don't
12 know what to do."

13 So he went to the Attorney General.

14 I've asked Bob Lee to do that. I've asked -- I've
15 asked them to file a concession brief. That's what they did
16 down in Los Angeles when they ran into it but Bob Lee says
17 he's a better lawyer than Gil Garcetti. Well, maybe he is but
18 I don't think he's a better District Attorney. Because they
19 don't seem to care one wit about how I'm protected in this
20 whole thing. My rights are out the window. This thing is so
21 ad hoc and arbitrary as applied to me, and I realize I'm
22 pushing the edge of the envelope with this stuff. I know I'm
23 going there but it's to make the point that there is none.
24 And if I do that it keeps them from doing it.

25 If I do that it keeps them -- I don't know where
26 they would be right now if I wasn't pushing back on them.

1 But the thing that's most amazing to me is that in
2 this town in Watsonville, they got a manufacturer out there at
3 the end of town that has sold tens of thousands of helmets
4 that have been recalled and they continue to sell tens of
5 thousands of helmets, and I'm in court because I'm wearing
6 something they don't like while, this guy is over there
7 selling stuff that people think is DOT approved. And they
8 have failed testing, they weren't DOT approved to start with
9 and they don't even meet the standard. And if that's not
10 selective prosecution I don't get the point of that. If I
11 went over and bought one of his so called DOT-approved failed
12 testing helmets I would not be in compliance with the law
13 because I know that those helmets have been recalled by NTSA.
14 But, I wouldn't be getting no tickets. Everything would be
15 honkeydory so it's like, what are we doing? I mean, come on.

16 If we stick with what the law says, if we stick with
17 what the courts have said it becomes evident right away that
18 this thing is not workable and once those admissions are made,
19 I mean, there is no reason.

20 An order to show cause, Your Honor, to the Attorney
21 General's -- an order to show cause against the CHP for not
22 adopting reasonable regulations, an order to show cause why
23 you shouldn't suspend enforcement until such time as they do
24 anything, an order to show cause why they haven't already
25 signed these things off, an order to show cause why they
26 wouldn't tell me what to do to get them signed off, any of

1 those, will immediately bring in the Attorney General of the
2 State of California.

3 Now, do I happen to know what Bill Lockyear is going
4 to do when he gets there -- well, assuming he's not a liar,
5 yeah, I think it's pretty clear what he's going to do.

6 We already have a letter in your evidence package
7 that says he knows they are correctible violations. He agrees
8 with our point of view. Do I know what the Chief Justice of
9 the Supreme Court is going to do? Of course, you got a letter
10 in your file.

11 I think he's a man of his word. He said it and he's
12 not going to change his mind just because he moved from
13 Associate to Chief Justice.

14 So you are right on the correctible violation but
15 what we're doing here is my life is dwindling away while these
16 guys sit around and refuse to do this and refuse to do that,
17 and keep asking you the Court to rewrite the statute.

18 It's not there, Your Honor. It's a strict -- it is
19 a specific intent statute as interpreted by the California
20 courts -- that's already been asked and answered. That's on
21 the record.

22 It's a specific intent but nobody can say what the
23 you got to do because they won't start with the starting
24 point, "What's a helmet?"

25 MS. WELLS: May I say something?

26 THE COURT: Briefly, Ms. Wells.

1 MS. WELLS: Will you let me? The issue here is the
2 degree of noncompliance. In other words, this one looks a
3 little better therefore it's not as noncompliant as that one.

4 That does a disservice to the law because the law,
5 the intent of the law is to protect people. And if people are
6 on the streets wearing these helmets thinking they are
7 protected, it's worse than knowing they are not.

8 THE COURT: I don't necessarily disagree with that
9 at all.

10 MS. WELLS: All right. So we're dealing with
11 degrees of noncompliance. They don't know what is compliant
12 anymore than I do or Richard does. The Highway Patrol doesn't
13 know. No one knows.

14 THE COURT: That's my hope at this point is that
15 some somebody will make the next obvious leap that I am not in
16 a position to be able to do and we'll go from there. I'll
17 make them all correctible and then you need to get a helmet
18 signed off by the CHP and that's the next step that we'll deal
19 with.

20 THE DEFENDANT: That all nine, Your Honor?

21 THE COURT: All nine.

22 MS. BROCK: Your Honor, how much time is the Court
23 giving Mr. Quigley to get these signed off? The statute says
24 30 days.

25 THE COURT: Well, in anticipation of a lot of other
26 things happening I'll indicate by the 11th of March which is

1 45 days -- 46 days.

2 THE DEFENDANT: I tell you what I'll do, Your Honor.

3 MS. BROCK: Furthermore, Your Honor, given that the
4 Court again today told Mr. Quigley that he needs to wear a
5 helmet with a hard outer shell, if he fails to do so would he
6 be in contempt of court?

7 THE COURT: I'd have to see what happens. I'm not
8 going to rule on this at this time. We're in recess until
9 10:20.

10 THE DEFENDANT: I ain't never going to be in
11 contempt of your court, Your Honor. Write that down, I'll
12 sign it in blood if you want.

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14 (End of proceedings.)

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