

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

DEPARTMENT 12

BEFORE THE HONORABLE MICHAEL BARTON, JUDGE

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THE PEOPLE OF THE
STATE OF CALIFORNIA,
Plaintiff,

vs.
RICHARD JAMES QUIGLEY,
Defendant./

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

FILED
SUPERIOR COURT
CO. OF SANTA CRUZ
WATSONVILLE
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YOLANDA ORTEGA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SENTENCING

March 11, 2005

APPEARANCES:

For the People: GRETCHEN BROCK,
Deputy District Attorney

City of Watsonville: RICHARD ALLEN,
Attorney at Law

California Highway Patrol: KAREN KIYO HUSTER,
Deputy Attorney General

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

Official Court Reporter: OSCAR A. MORENO,
CSR 3441

1 Watsonville, California

March 11, 2005

2 P R O C E E D I N G S

3

4 THE COURT: Page three page four and page 10. Mr.
5 Quigley. Let's see if we have all the players now.

6 All right. So since we have a plethora of people,
7 Mrs. Brock, do you want to state your appearance for the
8 record and we'll see who else is here.

9 MS. BROCK: Yes, Gretchen Brock for the People.

10 MS. KIYO HUSTER: Good morning, Your Honor, I'm
11 Karen Kiyo Huster Deputy Attorney General on behalf of the
12 State of California, Highway Patrol.

13 THE COURT: Do you want to -- Ms. Kiyo Huster,
14 would you spell it, please.

15 MS. KIYO HUSTER: K-I-Y-O H-U-S-T-E-R.

16 MR. ALLEN: Good morning, Your Honor. Allen Smith
17 City Attorney for the City of Watsonville.

18 THE COURT: Good morning, Mr. Smith. Mr. Quigley,
19 how are you this morning?

20 THE DEFENDANT: How are you this morning, Judge?

21 THE COURT: We generated a lot of appearances this
22 morning. High priced talent.

23 THE DEFENDANT: Well, that was sort of the way I
24 felt when I came in. I was going to wear my pajamas bottoms
25 -- but I wasn't late.

26 THE COURT: Let's deal with the easiest part of this

1 first.

2 Ms. Brock, just so we're all on the same page I
3 believe that at some point -- and I think that Mr. Quigley had
4 filed a motion to correct the transcript from I think the last
5 hearing and I believe that after getting that I had talked to
6 Mr. Quigley and I think I talked to you, and you had indicated
7 at least informally that based upon what you had seen and read
8 there was no objection to those corrections.

9 MS. BROCK: That's correct.

10 THE COURT: All right. So then I'll indicate that I
11 believe Mr. Moreno has in fact prepared that and corrected it
12 but so we're clear on the record those corrections have now
13 been made.

14 So like I said, that's the easiest part of all this.

15 All right. So, I'm not sure who wants to go first
16 on all this. Ms. Brock, I'm not sure you have a lot to say.

17 MS. BROCK: I don't have a lot to say. The only --
18 my only participation was this was the due date for the
19 citations to either be corrected or for Mr. Quigley to be
20 sentenced on the citations and that's why I'm here.

21 THE COURT: I understand. That was my guess.

22 Let me work it then in a slightly different way:
23 Mr. Smith, I read your for lack of a better term the response
24 to the SDT and the Motion for Reconsideration. Mr. Quigley, I
25 got your fax in response to Mr. Smith's Motion for
26 Reconsideration.

1 I'll deal mostly with the SDT because I'm not going
2 to reconsider it at this point and I'll make that record in a
3 minute, but, Mr. Smith, then as to the SDT.

4 MR. ALLEN: Well, we -- I think Mr. Quigley asked
5 for records. We provided an affidavit from the Chief of
6 Police that there are no records in response to his request.
7 We have an officer here from the Watsonville PD, if there is
8 any other questions, who's knowledgeable and can respond to
9 any questions. But we got the subpoena so late without any
10 prior notice that the Chief had already made prior
11 arrangements and it didn't seem that it was appropriate since
12 he's the Chief that he needed to physically be here under
13 these circumstances and so we have Officer Gluhan here
14 instead.

15 THE COURT: And again, I'll deal with the issue of
16 reconsideration. I'm assuming that maybe the AG is here also
17 on that but every time I make assumptions I get in trouble.
18 Mr. Quigley, briefly then as to the response from the city
19 attorney as to the subpoena DT.

20 THE DEFENDANT: I don't want the Court to think that
21 I'm not doing these things as timely as possible, Your Honor.
22 I brought proofs of service on everything and I'd like to give
23 those to the clerk if we can if you want to have those.

24 THE COURT: Okay.

25 THE DEFENDANT: The SDT I think is what you are
26 calling it --

1 THE COURT: Right.

2 THE DEFENDANT: -- was served on the Chief through
3 the -- through his lawyers on the 3d which I thought -- my
4 understanding was that was all timely.

5 THE COURT: And I think that what Mr. Smith is
6 saying is that in and of itself it's not that untimely but
7 that the Chief had made other arrangements so the Chief left.
8 And I don't have a problem with that.

9 THE DEFENDANT: Nor do I, Your Honor. In fact, I
10 had written to Mr. Smith an email and I brought in a copy
11 today. If they have someone in his stead who can explain this
12 elusive criteria, that's all I was hoping for when I asked the
13 Chief to come to the party.

14 THE COURT: Well, it's not that Chief Medina
15 wouldn't be happy to join us if he did not have someplace he'd
16 rather be, but I don't have a problem with him not being here.
17 I have some other comments about that and the reconsideration
18 so we'll get to that.

19 Ms. Kiyoo Huster, your issue or position as to why
20 you are here.

21 MS. KIYO HUSTER: Your Honor, we're here as simply
22 in response to some documents that Mr. Quigley served on
23 various employees of the California Highway Patrol. They
24 appear to be subpoenas for discovery, different policies and
25 practices of the highway patrol. I'm here to respond to that.

26 THE COURT: Okay. Mr. Quigley.

1 THE DEFENDANT: I object to her appearance, Your
2 Honor.

3 I happen to know through some personal experience
4 the CHP has some lawyers. I thought that the Attorney General
5 if they've come here they may have brought perhaps an Attorney
6 General's opinion that would get this whole thing cleared up
7 but to make an appearance for the Highway Patrol, I think it's
8 inappropriate for the Attorney General who is supposed to be
9 as I understand it as much watching out for me as they are the
10 People of the State of California because I am one, would not
11 be responding to this. I would think that it would be
12 Mr. Rothman's charge as Chief Counsel for the California
13 Highway Patrol. In either case, the -- as I understood the
14 rules of court from the time that I filed my motion and notice
15 of motion I have not had any communication whatever from
16 anybody, either Rothman's office or the Attorney General.

17 THE COURT: Okay. Hang on one second. Off the
18 record.

19 (Off the record.)

20 THE COURT: It could be that there is that issue,
21 but I'm not sure that other than -- and no offense meant, but
22 other than making an appearance and recognizing her on the
23 record, I'm not sure that it's that important in certain
24 respects in relation to all of this.

25 THE DEFENDANT: Your Honor, not wanting to argue
26 with that, but my rights are not being protected, if -- to

1 some degree if the Attorney General is not being neutral at
2 this point in these proceedings.

3 There is -- to my mind, there is nothing in front of
4 the Attorney General.

5 Now, I tried to contact the Attorney General's
6 Office, Your Honor, to meet with them, to sit down at the
7 table and discuss with them what I know of this statute and
8 find out what the their feelings were on this statute so we
9 could get the Attorney General's participation in resolving
10 and fixing this problem but the very notion that the Attorney
11 General would come in in opposition to this motion or in
12 defense of the conduct of the California Highway Patrol, I
13 consider extremely wrong and to the degree that it affects my
14 -- the protection of my rights, offensive.

15 THE COURT: Well, let me put this way, Mr. Quigley,
16 and, again, you and I have had lots of discussions about how
17 long we both have been playing in the system, but over
18 probably the last 25 or 30 years, generally the Attorney
19 General appears in Court in relation to issues with the CHP,
20 so I don't find it unusual.

21 But, let me get down to where I'm at in response to
22 Mr. Smith's issue for reconsideration in response to probably
23 the CHP's concern about the subpoena DT and sort of what I
24 tried to do ultimately in relation to all of this. And, you
25 know, I have over the years always thought that judges who
26 talk too much get themselves in a lot of trouble and I'm

1 probably going to do that, but my whole idea, desire, and
2 decisions were laid out so that either one of two things is
3 going to happen: Somebody would take me up which I still
4 don't -- which I believe may or may not occur, either you
5 Mr. Quigley or any side -- any of the three or four or five
6 sides on that side, because I honestly believe over the years
7 and I've always dealt with that, I have understood that the
8 appellate courts always look back on us and make decisions or
9 and can be contrary to what I do. I don't have a problem with
10 that.

11 Actually, at this point I'm sort of inviting that
12 because maybe as you say, we can solidify or clear up this
13 situation. So I've sort of put it in the position that
14 somebody is going to take me up and I will not be surprised
15 that I might even have people who disagree with my decision,
16 but I'm trying to get it in that position or get the issue of
17 what a helmet is, One, or Two, get the issue of you have a
18 helmet and everybody else is happy, you get no more tickets,
19 and we all go off happy and not back in court.

20 One of those two things is what I was hoping to
21 happen.

22 I believe that at least and I don't know what day it
23 ultimately was that I gave my decision, but I believe at that
24 point I discussed and laid out the fact that and, by the way,
25 you get your head covering --

26 THE DEFENDANT: It's a helmet, Your Honor.

1 THE COURT: Head covering back -- and oh, and your
2 board.

3 THE DEFENDANT: Oh.

4 THE COURT: It came too. So I will on the record
5 release those.

6 THE DEFENDANT: Thank you, Your Honor.

7 THE COURT: You are welcome. But I believe I stated
8 on that date that at least based on my reading of FMV --

9 MS. BROCK: FMVS218.

10 THE COURT: Thank you, it's been a while. FMVS218
11 and the vehicle codes involving that, that I stated on that
12 date, that the exhibit which is the head covering with DOT on
13 the back and the bill and made of a soft material was not in
14 compliance and that you were on notice that it was not in
15 compliance with my reading of FMVS218, and that the compliance
16 at that point would be what I described as a hard shell head
17 covering that complied with -- had a DOT acceptance on it, not
18 approval.

19 So that's where we're at at this point. I did that
20 because based on my reading of the Vehicle Code and my reading
21 of FMVS22 and -- 218, excuse me, not 22. FMVS218, and my
22 reading of the cases that that's what was appropriate and
23 required. Again, then giving either side the ability to
24 appeal that or take me up as it were, or to comply with that
25 by obtaining a hard shell head covering helmet that is or has
26 a DOT sticker on it that is then signed off by either the CHP

1 or Watsonville and then if they wouldn't sign that off, that
2 gives you another ability to take up my decision or their lack
3 of being willing to on paper say, "This is an acceptable
4 helmet". Because again, I believe that we all know where
5 we're supposed to be. It's just somebody hasn't gotten us
6 there, so I'm trying to get us to that point that we can in
7 fact put this to rest, as it were.

8 So that's where we're at at this point. And I
9 understand, Mr. Quigley, that you have subpoenaed records from
10 Watsonville and apparently from the CHP, but I believe based
11 on my decision that those are unnecessary, but I'll listen to
12 you.

13 THE DEFENDANT: Your Honor, the reason that I
14 subpoenaed the records from Watsonville first, I discovered
15 them first, is and some of the reasons will switch over, is
16 that when I got the first ticket from the Watsonville Highway
17 Patrol on July 24th, 2003 --

18 THE COURT: The Highway Patrol --

19 THE DEFENDANT: Pardon me, the Watsonville Police
20 Department.

21 I went immediately from the scene to the police
22 station.

23 I walked in to the police station and I asked to
24 speak to the public information officer, The purpose of that
25 visit was to find out from the Watsonville Police Department
26 how to comply with their enforcement with policies relative to

1 27803(B). On that day I had the pleasure of meeting a rather
2 large sergeant that I have a feeling was something other than
3 just an information officer who came out and explained to me
4 that in essence there was none. And so everything that
5 happened behind that from my perspective has be the failure of
6 the Watsonville Police Department to tell me what their
7 enforcement standard is.

8 Now -- so, I was hoping today and the reason that I
9 was hoping to be able to ask one of the officers what is it,
10 what is it they wanted to see and why, you know, the legal
11 authority for that.

12 Relative to the CHP, the request is similar except
13 the request with the CHP goes back literally 13 years. They
14 still don't want to tell me.

15 And while I'm on the subject with CHP I think this
16 letter hit the court's file as an attachment to some letter,
17 document, reaction I had to something somewhere.

18 And I would like to include it in the case file
19 here, if I may. It's a letter from Captain -- I think it's
20 F-O-L-L-E-T-T, he's a captain with the Highway Patrol, Special
21 Projects, Office of Special Projects.

22 THE COURT: Okay.

23 THE DEFENDANT: And what he has said in here in
24 essence, Your Honor, and I'll first give it to you if I may,
25 is that notwithstanding your determination of noncompliance,
26 on what I can't get you to call anything other than this

1 headgear, according to the Office of Special Projects of 1993,
2 we can have the ceremony here and now where I can simply
3 re-certify this helmet my own self and I'm out the door with a
4 certified helmet.

5 So, with your permission I haven't done that yet,
6 but I'm likely to do it either here or just after I walk out
7 the door. That's how flawed this law is.

8 Everything is certification. Nothing is fabrication
9 and I understand Your Honor. My respect for you is pretty
10 tall but it doesn't quite climb over that thing about who gets
11 to do this and one of the things that the Buhl Court layed out
12 is that fabrication is not an issue. The Buhl Court, if you
13 look at it with a blank screen going in and apparently you've
14 done that.

15 I mean, you've been amazing in that regard which is
16 why I feel about you the way I do, starting with a clean
17 field. But Buhl said fabrication is nothing; evidence of
18 certification is everything. And until the California Highway
19 Patrol, the Watsonville PD, and the other agencies I'm bound
20 to run into get in touch with that, problems are not going to
21 end.

22 I'm with you, I want this thing fixed. If it means
23 I got to wear two helmets I've figured out a way to do that.

24 I brought them here today. I can show you. I got
25 two helmets, I don't like them, but I can wear two at one
26 time, you know. But I can assure you that I can take you over

1 to Fremont and I can wear those two and I will get as many
2 police officers at that scene as I have attorneys here today.
3 Probably more.

4 And they'll be want to steal my motorcycle and cuff
5 me up and chain me to a bench and all that stuff, so -- I'm 61
6 years old, Judge. I don't have that many more years I'm going
7 to be able to ride. I'm anxious to get this fixed and it just
8 keeps dragging on.

9 But while the attorney general is here and I just
10 want to get it on the record and then I'm -- the -- parties
11 get in trouble talking too much too, I know that.

12 THE COURT: Absolutely.

13 THE DEFENDANT: The Attorney General in their
14 arguments in Easy Riders, on the injunction against the
15 Highway Patrol for riding for writing tickets to people with
16 certified helmets without the criteria set out for a
17 determination of noncompliance, when they upheld that
18 injunction against that behavior, the Attorney General's
19 Office argued that if they upheld any portion of that
20 injunction it would render the helmet law statute
21 unenforceable, and they did, and it did if the CHP had
22 followed the law.

23 They've never -- they've refused to with almost a
24 vengeance, refused to follow them, the plain language of the
25 statute, the interpretations by the Court and even a federal
26 injunction.

1 The word at CHP is we're going to do what we want.
2 It's not correctable tickets. We won't sign them off, we
3 won't tell you how to sign them off. We're the CHP. It's all
4 left over from Moury Hannigan. I don't believe that
5 Commissioner Brown is of that ilk, I don't believe even
6 Commissioner Helmick was of that ilk, but Moury Hannigan, I
7 sat across depositions from him in Easy Riders. God bless who
8 whoever retired that crazy -- any way, so, that's where I'm
9 at, Judge. I'm right here.

10 Your decision as far as I'm concerned I believe is
11 brilliant in the fact that it puts the issue right on the
12 table. "Tell Mr. Quigley what to bring to the department;
13 Mr. Quigley will bring that to the department. They sign it
14 off," I know what to wear; they know what to leave me alone
15 over; life is good, let's go have some fun. That's where I
16 want to go.

17 THE COURT: That's what I attempted to set up so
18 that --

19 THE DEFENDANT: I understand.

20 THE COURT: So, that again, if you all disagree,
21 take me up. If they don't sign it off, take that up, but
22 that's where we're at at this point and I think I've made my
23 record.

24 And again, Mr. Smith, I'm not reconsidering it
25 because if I reconsider it I change the decision which then
26 changes the appealability of it because I know that it's not

1 going to end here.

2 I'd love to end it right now, right today, and let's
3 just walk away, but I know that.

4 THE DEFENDANT: But Your Honor, please do -- do, do.

5 THE COURT: Let me finish -- no, because it's not --

6 THE DEFENDANT: Please, do. Your Honor you have --
7 they gave you the horsepower and I'm asking you, not -- I
8 don't mean to interrupt, but I'm asking you, please, do end it
9 today. Let them work back from the other direction.

10 I have been 13 years trying to prove that they can't
11 prove what a helmet is, they can't say what a helmet is.

12 Let them do a little work in the other direction.
13 Let them get old and gray.

14 THE COURT: They can take this up and do it.

15 But, so I'll give you -- what's today? The 11th.
16 I'll put it back on this Court's calendar on the 29th of April
17 for compliance one way or the other; you can have a helmet
18 signed off if they'll sign it off or they can take it up
19 because it's -- because I've said it's a ticket that can be
20 correctible.

21 You can take up those issues but --

22 MS. BROCK: Your Honor, would it be possible to
23 either have the week before or the week after? Either the
24 22nd or May 6th if that works with everyone's schedules?

25 THE COURT: May 6th.

26 THE DEFENDANT: Your Honor, what about my motion?

1 Surely you are not going to deny my motion. Surely you are
2 not going to deny my motion. All I'm asking for, Your Honor,
3 is for you to order them to give me the criteria so that I can
4 complete my end of this transaction.

5 THE COURT: But what I did -- and that's what's I'm
6 saying, is that I set out what the criteria is and I indicated
7 to you that the head covering with the DOT that's sitting on
8 the table is not the criteria and is not within the Vehicle
9 Code or FMVS218.

10 THE DEFENDANT: There is two S's in there.

11 THE COURT: SS218, excuse me.

12 But so that again, sets it out. You all have the
13 ability to take up whatever I've said or whatever I've
14 decided, but I laid out the issues for you all and you all can
15 now move forward with them one way or the other. But so what I
16 indicated is that there is -- and what I'm hearing is that the
17 Vehicle Code is the criteria. FMVSS218 is the issue.

18 I stated in my decision that it needs to be based
19 upon my reading of the cases and my reading of the statute and
20 FMVSS218 that it needs to be a hard shell DOT --

21 MS. BROCK: Certified.

22 THE COURT: -- applied certified helmet. So that's
23 where you are at, that's where they are at, and that's where
24 I'm leaving it.

25 So if you give them, that is, Watsonville or CHP
26 something that falls within that range, they sign it off. If

1 they don't sign it off you have the ability to take that up.

2 If they don't agree with me or you don't agree with
3 me you all can take me up but that's where I left it. And
4 that's where I'm sitting at this point.

5 THE DEFENDANT: Two seconds?

6 THE COURT: Yes.

7 THE DEFENDANT: When I was talking to these people,
8 one of the things they told me, the people that don't like
9 your ruling on the correctability, one of the things they told
10 me is that you can have your bailiff take care of this, why
11 should they get involved?

12 THE COURT: Because I'm not going to have my bailiff
13 do that.

14 Again, I'm setting it up so that there will be some
15 action beyond here because it's not going to end here. So I'm
16 not putting the Sheriff's office in the middle of this because
17 they've nothing to do with it.

18 THE DEFENDANT: As hard as it is for me to do
19 because I don't want to put you in the position that you are
20 putting yourself in, I don't want you there, Judge, but since
21 you've decided that you are going to be the one that does the
22 fabrication thing even though the Buhl Court said that ain't
23 the one, that's your hard shell, Judge. You got your chin
24 straps, Judge, got your little DOT sticker. Now, you want to
25 make a determination of compliance or noncompliance on this
26 today, Judge?

1 THE COURT: No, see, that's what I've done. I
2 haven't taken that position. What I've taken is by that
3 description they then either sign that off or not and give you
4 a reason why they will or won't, which you then have the
5 ability to take up. Or they then can take up the fact that
6 it's correctible or not correctible.

7 I've left that so that somebody will take this
8 beyond here because the last time we went through this dance
9 it didn't stop, so I'm trying so it up so that it will stop.

10 So that's where we're at. And I'm done.

11 MS. BROCK: Review date, Your Honor?

12 THE COURT: Mr. Quigley, the 6th work?

13 THE DEFENDANT: You understand that I'm going to
14 leave here today without understanding what's happening. And
15 it's not your fault; I'm a little slow.

16 THE COURT: Hopefully, Ms. Wells will give you that
17 other aspect of it.

18 May 6th?

19 MR. ALLEN: The 9th?

20 THE DEFENDANT: And they are not in contempt of your
21 ruling? I mean, the fact that you have already ruled on this
22 that this has already been done, we're going to do it again
23 because they won't do what you have asked them to do. Do you
24 have any doubt, Your Honor, that I have acted in good faith to
25 try to do what you have assigned to me?

26 THE COURT: No. But what I'm saying is that you

1 need to -- and that's why I put it in this position.

2 One last time: If you take what you believe to be
3 in compliance with what I've ruled and they don't sign it off
4 you have the ability then to make them work. If they don't
5 like my ruling they can take me up, you can take me up,
6 somebody can take me up, but it's not going to end here. It
7 won't end here until we get those other decisions and rulings.
8 So that's why I've set it up this way.

9 THE DEFENDANT: But, Your Honor, I did physically go
10 to the CHP office with my helmet and ask them to sign it off
11 and them say no.

12 What I got was preempted by they -- their position
13 is it's not correctible. I could bring anything I wanted to
14 in there and they wouldn't sign it off. And they have
15 assigned all their officers to take that stand.

16 So, why is that not -- I mean, if you had ordered
17 them at the last hearing to sign it off like you sort of
18 ordered me to get it signed off, would they have been in
19 contempt then and is that going to be different from now until
20 --

21 THE COURT: May 6th.

22 THE DEFENDANT: May 6th, Your Honor?

23 MS. KIYO HUSTER: 9:00 a.m. Your Honor?

24 THE COURT: The issue is this: It puts it in a
25 position for you to then move forward with this. You have
26 what you believe to be an item that is in compliance with my

1 ruling. If they don't sign it off, then they are going to
2 have to explain why they don't sign it off.

3 If they sign it off, you are good to go. If they
4 want to appeal my issue of the fact that this is a correctible
5 ticket then they can take it up too.

6 It's not going to end here, I know that. That's why
7 I've put it in the position I have and somebody has to move
8 from square one. So that's where we're at.

9 What I'm asking you to do is take it to the CHP or
10 take it to Watsonville to get it signed off. If they don't,
11 then you have the ability to move forward with their lack of
12 compliance or then make them say why they won't sign it off.

13 THE DEFENDANT: But I thought that's what the motion
14 to compel was for, Your Honor. That's what this --

15 THE COURT: Again, it's horse before the cart and at
16 this point that's where I'm leaving it. May 6th here at
17 9:00 o'clock.

18 MS. WELLS: Can I ask a question -- because I'm --

19 THE COURT: No. You know what: I can't make it
20 clearer. You all think too deep, too far, too hard, and it's
21 where it's at, and I'm done.

22 MS. WELLS: But he doesn't want to appeal your
23 decision and that's --

24 THE COURT: Well, then maybe they will.

25 MS. WELLS: But that leaves him --

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THE DEFENDANT: No, I will. I mean, if he forces me
to.

(End of Proceedings.)