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THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CRUZ

People of the State of California, Plaintiff/Respondent, **vs.** **Richard J. Quigley** Defendant/Appellant.	**Case #: AP1218** **APPELLANT'S FINAL BRIEF ON APPEAL**

APPELLANT'S FINAL BRIEF ON APPEAL

COMES NOW THE APPELLANT with his Final Brief on the above-entitled case(s), and moves to strike the Respondent's Reply Brief as non-responsive, and otherwise a malfeasant next step the ongoing prosecutorial misconduct which has been the hallmark of Assistant District Attorney Marigonda's prosecution.

Appellant has no idea how is it that this prosecutor could have been led to believe his conduct has any place in the judicial realm, but is certain that whether or not such behavior is the result of the courts' toleration (or even encouragement?) will soon be clear.

I. THERE WAS NO TRAIL OF THE APPELLANT

On his title page, Marigonda pronounced this appeal, an "APPEAL FROM CONVICTION AFTER A COURT TRIAL" as his only form of argument against the appellant's pointing to the reversible error that the failure to provide the appellant a trial prior to conviction, established. Frankly, the appellant is pretty much fed up with audacious pronouncements. The record clearly reflects that there was no trial prior to conviction. Marigonda had ample opportunity during the better than six months (and six appearances) it took to finally certify the record, to insure the record accurately reflected the facts. Marigonda agreed to certification of the record as submitted, without amendment, including the following:

> **"The nature of the proceedings was some sort of evidentiary hearing where the testimony of police officers was taken – most having to do with their opinions of what constitutes a properly fabricated helmet, not a trial."** (Proposed Statement on Appeal [certified as the record on appeal, without amendment] starting at paragraph #2 on the page #6, first sentence.)

The minute orders will reflect that the day referenced in this portion of the record, was the day set for trial. (On the 5th, the court attempted to move the date back once again, but the appellant put his foot down, stating: "It (the trial) will go down on the 7th, or not at all!") The certified record also reflects elsewhere in the settled statement, that there was no trial. Marigonda has offered no argument whatsoever, save his *titling* the case, and referencing a "trial" in his brief, that would give this court cause to ignore that one inescapable **fact: "The nature of the proceedings was . . . not a trial."** (The record.)

The law does not give this court authority to ignore the record.

II. APPELLANT WAS NOT INFORMED OF THE CHARGES.

Marigonda wrote: "…appellant has never cited any authority for his claim that a violation of Vehicle Code section requires the allegation of Vehicle Code section 40610." That's absurd, and that's as close as appellant will come to dignifying it.

However, how does Marigonda explain that the appellant was convicted of violations of CVC 27803, based on the fact that he was also (or first) found to have violated the disqualifying conditions contained in CVC 40610(b) – when the statute, 40610, was neither specified in the charging documents, supported by testimony of the citing officers, nor argued by Marigonda? In fact, Marigonda specifically stated that the defendant was not being held to answer for alleged violations of CVC 40610, but he was. How does that work? Because, were it not for the convictions for violating the subsections (specified in the court's written opinion) of CVC 40610, the citations would have been dismissed with proof of correction pursuant to CVC 40303.5 et. sec., and none of this would be necessary.

(NOTE: This one element alone is enough to justify finding the statute unconstitutional as enforced. Neither Marigonda nor the court could figure out how to interpret CVC 27803 in a manner consistent with its nature – a correctable equipment violation pursuant to CVC 40303.5. [subnote: A few years back, this court had the same problem adapting to the requirements of 40302(c), to detriment and ultimate conviction of the appellant on another, unrelated, matter – until the Federal Court otherwise explained, on behalf of another party, how that statute worked. You got it now, but it's a little late to save the appellant from his wrongful conviction that you wouldn't hear on appeal . . . something about a fatal, technical error.])

III. THE STATUTE IS UNCONSTITUTIONAL AS ENFORCED.

You'd of had to been there the day the court took testimony from the various citing officers, and seen Judge Danner's face when appellant pushed down on the top of what *appeared* to be a half-shell "helmet," all the way to the top of the table, to make the point that *appearance* is not only in no way addressed in the only objective standard as does exist (FMVSS 218), but is otherwise useless as a determining factor of whether or not a given object is a "helmet."

The "helmet" the appellant crushed with his finger was made of a very pliable vinyl which collapsed under the weight of the appellant's finger, but nonetheless looked enough like the other hard plastic "helmets" on the table to warrant the approval of all the officers who testified. The *appearance* of his "helmet" was the only basis by which the appellant was convicted – because his headgear had the *appearance* of a baseball cap, the court found that it could not possibly be a "helmet" as defined in the statutes. By that reasoning, he could do that with virtually any headgear, which leaves the appellate pretty much what? There was no objective evidence of noncompliance ever asserted, much less testified to. The appellant had no way to compare his conduct to any objective standard, and was therefore subjected to a finding of guilty based on nothing more than ad hoc, arbitrary, political disdain.

Marigonda's so smart, let him show this court where it says, in the statute, that a "helmet" cannot look like a baseball cap, or a stocking cap for that matter. Let him PROVE (now there's a novel concept for a criminal prosecution) that the *appearance* of a "helmet" has any objective significance. (If the appellant had had a trail, in an impartial forum, that challenge would have already been made, and Marigonda already failed.)

IV. THE TESTIFYING OFFICERS' TESTIMONY WAS INADMISSIBLE

The appellant objected to the testimony of the officers as to whether or not what he was wearing (and all agreed that the appellant was wearing *something* on his head at the time the citations were issued) met the legal requirements of CVC 27803. There was no foundation.

The requirements for a "motorcycle safety helmet," as referenced in the Vehicle Code, is FMVSS 218. FMVSS 218 is a testing standard (in other words, it does not explain what a "helmet" is, but, rather, what it is supposed to do when subjected to tests in a laboratory). The officers were not qualified to testify as to whether or not the appellant's headgear complied with a technical testing standard, because none were qualified to conduct the tests – it's called the Kelly-Frye doctrine – and they had no evidence, or were not required to provide evidence, that the headgear worn by the appellant had been tested and failed to meet the FMVSS 218 standard. Marigonda could not have provided a foundation for the relevance of the officer's testimony, had he been required to by the trial court. Couldn't then, and can't now. As it was, the trial court did not want to get bogged down in following the rules of evidence, and the failure of Marigonda to provide one whit of evidence that the appellant's headgear did not comply with whatever requirements called for in the statute, meant nothing.

If this court want to put an end to this, have Marigonda provide a list of "motorcycle safety helmet"s that comply with California's helmet law, from which the appellant could choose. Once that list is available, this type of prosecution could never happen. The officer might allege that appellant was not wearing proper headgear, but appellant could match the headgear with one on the list. Now ***that's*** an objective stan-

dard. Based on such a list, you could then legitimately conclude that there is nothing vague about the statute – at least relative to the technical requirements of construction.

And if you guys want to run to "strict liability" in all it's glory, write it down and I'll get you an opinion as to the constitutionality of the helmet law from that perspective, from somebody you have no choice but to respect. You try to enforce the helmet law as a strict liability statute, with nothing more than Marigonda and Judge Danner's "common sense" explanation of what a "helmet" is, and the appellant will not only use that opinion to take out the helmet law (better than if you did it directly), but make a laughing stock out of the lot of you.

V. "THERE WAS NO MISCONDUCT BY THE PROSECUTOR"?

That's what Marigonda says on page 3 of his so-called reply brief – "THERE WAS NO MISCONDUCT BY THE PROSECUTOR" – a contention as pathetic as the rest of the so-called brief was absurd.

It is interesting that Marigonda would reference a Charles Manson case in trying to prove he had done nothing wrong. (Like minds?) However, in the Manson case, Charlie's contention had something to do with the plea bargain offered to one of his followers, and her subsequent testimony against him, and nothing to do with circumventing the intent of excluding witnesses – which is what Marigonda did.

Marigonda is facing a demand to the California Bar Association demanding his dis-barment (and rightly so) for his misconduct in these cases having to do with the appellant. At worst, it could be argued that Marigonda has conspired to pervert and obstruct justice (PC 182?) as it relates to this appellant, and this case, from his first appearance.

The conspiracy is alleged on the basis that Marigonda has yet to be required to provide any more foundation for his claims against the

appellant than his bald (and rather stupid) assertion, based on his personal opinion, that "one either has a helmet on, or one doesn't." The fact that Judge Danner didn't require more of him is sufficient grounds for finding reversible error, even if the appellant had not so thoroughly otherwise argued at least a half dozen other reversible errors.

CONCLUSION

The appellant has argued his case, from the beginning, to the best of his abilities. On appeal, the appellant has gone to extraordinary lengths to provide a complete record of the case, and of the issues involved. It's all in there. The record of the proceedings, the complete case file with virtually all relevant evidence (at least, what the court would accept into the record). And, hard evidence of Marigonda's misconduct (if you can't believe a veteran CHP Officer, who can you trust?). What's left? It's all there, and hereby (again) included and incorporated in this appeal.

You'll never have a better chance to do what's right. We either fix this mess here and now (keeping our business within the family, so to speak), or you can count on the fact that the appellant is totally prepared to air the dirty laundry; because, the appellant is either going to be recognized by this court as one of the people discussed in Article I, Section 1, of the Constitution of California, or he is not.

If the appellant is "by nature, free and independent," then he's going to have to find out why he is not entitled to an equal application of the law. (I assure you, there ain't nobody in the history of this county who can show the number of *cases of only impression*, to their detriment, as can this appellant – *a course of conduct, over a period of time*, designed to separate the appellant from the entitlement of his status, which will absolutely *shock the conscience*.)

Reverse the finding of the lower court, and deal with Marigonda's misconduct. It's what the law requires. It's not too much to ask. It's the right thing to do.

Submitted July 3, 2002, by

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Richard J. Quigley, Appellant, pro. se.