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

People of the State of California, Plaintiff. **vs.** **Richard J. Quigley** Defendant.	**Case #: 3WMO18538** **RESPONSE TO PLAINTIFF'S RESPONSE TO MOTION TO DISMISS** **Date:June 11, 2004** **Time: 1:30 p.m.** **Department: 12**

COMES NOW THE DEFENDANT, by way of Response to Plaintiff's Response to Motion to Dismiss, and says:

"PLAINTIFF'S RESPONSE TO MOTION TO DISMISS"

It's hard for the defendant to know whether the prosecution understands the case he's attempting to prosecute at all, or if he has just finally reached the point of resorting to the last desperate act of a primate – to defecate, and start throwing it in all directions.

The defendant is pleased, however, that at least some attempt was made in the opening paragraph of the response to accurately report the defendant's grounds for his Motion to Dismiss – that (1) the statute with

which the defendant is charged is unconstitutionally vague as written and applied and (2) that neither the citing officer, nor the prosecution, have the requisite probable cause to prosecute the defendant for an alleged violation of CVC §27803(b) on the basis of the evidence available to them.

"CONSTITUTIONALITY"

Basically, what the prosecution argues is two points: (A) that this court has already found the statute to withstand the constitutional challenge of the defendant on Demurrer, and (B) that since the defendant has yet to receive a fair hearing in Santa Cruz County on this issue so far, that there is no reason to see that he is given a fair hearing now.

The latter speaks for itself. (Or see Exhibits "F" & "G")

As to the claim that the court has already ruled on the defendant's constitutional challenge in response to Defendant's Demurrer, the defendant hesitates to point out that, to his recollection, on Demurrer, the court found that, irrespective of the constitutionality of the statute, or not, the complaint was sufficient to establish jurisdiction for the court, and to state the allegations sufficiently for the defendant to enter a plea – in short, that there was no defect on the face of the complaint.

The next paragraph contains two parts, the first starting on line 3 of page #2, and continuing to line 14, appears to be a response to an argument not put forth by the defendant.

The portion of the *Buhl* decision referenced by the prosecution in this part of his response, has to do with why the *Buhl* court did not find CVC §27803(e) to be unconstitutional on the complaint that it was "too broad." The defendant sees no sense in addressing those arguments in that, unless there are charges pending of which the defendant has not been informed, the defendant is not charged with having violated §27803(e), but of subsection (b).

However, in citing the October 25th, 2001 decision by Judge Danner as his authority, the prosecution did help clarify what actually happened on those 6 tickets. Although the defendant was charged with having violated CVC §27803(b) in that case, he was apparently convicted of 6 counts of §27803(e). Most certainly, the language of the *Buhl* decision cited by Danner in his written opinion was from the portion of the *Buhl* case having to do with a constitutional challenge of CVC §27803(e) – which the defendant didn't make in that court either.

In the last half of the paragraph, starting at line 14 on page #2, the prosecution then explained, rather amazingly in the face of the *Easyriders* case, that having been (wrongly) convicted 9 times (out of 24 tickets) somehow established that the defendant's helmet had been found to be non-conforming by someone authorized to do so, without explaining the authority for that conclusion. What's that about?

Further, the prosecution claims that the defendant has special knowledge about which helmets are "DOT approved," and which are not, and is therefore somehow more culpable than the average citizen. How does that work? The defendant knows that absolutely NO helmets are "DOT approved," so he is the only person required to wear one?

And as for whether or not Exhibit "Y" constitutes a "list" of approved helmets? That's just silly. All Exhibit "Y" shows is that in the most comprehensive testing ever done of motorcycle helmets in 1994-5, two out of three "FAILED." That's it. There's nothing else there, at least not insofar as any requirements of CVC §27803(b) are concerned.

"LACK OF PROBABLE CAUSE TO ISSUE THE CITATION"

In this portion of his response, the prosecution states, as if he is going to be the first person in the history of the World ever to prove a negative, that the "evidence will show that there was probable cause to

believe either that (1) *the cap worn by Mr. Quigley was not certified* by the manufacturer at the time of sale . . .". [PRB: page #2, lines 25-27, *emphasis* added] (What's the standard of evidence for that?)

"…(O)r (B) the helmet (did he say "helmet"?) was certified by the manufacturer at the time of sale and Mr. Quigley had actual knowledge of a determination of non-conformity with federal standards" – citing the Danner decision in 2001 as the finding and source of such "actual knowledge," [PRB: page #2, lines 27-28] when, with great respect, the Superior Courts of California have yet to be authorized to make such a finding *without more* (eg: "(1) a determination of non-compliance issued by the National Highway Transportation Safety Administration or (2) a manufacturer recall of a helmet because of non-compliance with FMVSS 218 or (3) other competent objective evidence from independent laboratory testing that the helmet does not meet FMVSS 218." *Easyriders*).

"So therefore," counsel concluded, "there is credible evidence of non-compliance." (The last desperate act of a primate? ...'nuff said.)

"MOTION TO SUPPRESS NOT MADE"

It is correct to note that the defendant did not make a 1538.5 motion as he had indicated he might. To the defendant's reading of Penal Code Section 1538.5, it would have been a waste of the court's time for him to attempt to suppress unlawfully obtained evidence; since the prosecution has no admissible evidence to present, there is nothing to move to suppress – the defendant cannot prove a negative either.

According to the return on the defendant's discovery, unless they are saving it for some later proceeding, the prosecution does not have anything more than the citing officers' subjective opinions as to whether the defendant's helmet was properly *fabricated* to present to the court in support of their allegations against the defendant.

To be precise, the prosecutor argued:

> "It is expected that the officers who stopped and then cited Mr. Quigley will testify that they were able to determine that Mr. Quigley's soft, felt baseball hat with brim but without chin strap was not a helmet under any standard of objective experience." [PRB: page #2, starting at line 7.]

Fabrication.

That's it.

That's all the prosecution can offer, the subjective opinion of the citing officers (and himself) that the defendant's helmet was not properly *fabricated* – even though neither the statute, nor (cite-able)/precedent decisions, establishes an "objective experience" standard as evidence of helmet law compliance, or not (except as to *fit* – §27803*(e)*, *Buhl*).

Finally, it seems the prosecution is prepared to provide *NOTHING* but conjucture relating to whether or not the defendant's helmet/head-gear is properly *certified* – the only requirement even remotely clear from reading the statute, and the only criteria acknowledged in *Buhl, Bianco* and *Easyriders* for compliance with CVC §27803**(b)**.

So, even if the defendant's Motion to Dismiss is not granted, the defendant will next more to exclude all irrelevant ("absurd") testimony, such as the citing officers' subjective opinion of helmet fabrication, before trial, and move once again to dismiss, next time for lack of evidence.

For the reasons stated, the Motion to Dismiss should be granted.

Submitted June 3, 2004, by

Richard Quigley, Defendant, pro se