

<p><b>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):</b>                  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;"><b>FOR COURT USE ONLY</b></p>
<p><b>ATTORNEY FOR (Name):</b>  <b>NAME OF COURT:</b> Superior Court of California, County of Santa Cruz  <b>STREET ADDRESS:</b> 701 Ocean Street  <b>MAILING ADDRESS:</b> 701 Ocean Street  <b>CITY AND ZIP CODE:</b> Santa Cruz, CA 95062  <b>BRANCH NAME:</b></p>	
<p style="text-align: center;"><b>PEOPLE OF THE STATE OF CALIFORNIA</b>                  vs.  <b>DEFENDANT/APPELLANT (Name): RICHARD QUIGLEY</b></p>	
<p style="text-align: center;"><b>PROPOSED STATEMENT ON APPEAL (Infraction)</b></p>	<p><b>CASE NUMBER:</b> Sup. Ct. #90332665</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.
  - b. 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.
  - c. 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.
  - d. 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.
  - e. 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.  The above-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 MUTING**

Muting was sworn and took the stand.

**DIRECT:**

Muting testified that he stopped the defendant because the defendant was not wearing a helmet. Defendant objected, foundation.

Court: “It’s alright with me if you want to make a continuous objection so you don’t need to, you know, state it repeatedly in terms of foundation and I’ll be glad to preserve it that way.”

The defendant and the court agreed that the defendant would have a continuing objection to all references to “helmets” or “baseball caps” on foundational grounds – e.g.: the officers, and none of them are experts nor could they provide any objective evidence as to what either actually were.

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

However, as to this witness, the court said: "It will be overruled for purposes of this testimony."

The officer testified that the defendant was wearing something that looked like a baseball cap. The officer testified that the defendant insisted that the headgear was a helmet, but that he insisted that it was a baseball cap and issued the citation.

## CROSS:

The deputy testified that he had received no training as to how to enforce the helmet law; that his subjective opinion was sufficient to warrant a citation; and that he carried the belief that there was some sort of "approval system" in place relative to motorcycle safety helmets. When the defendant asked the deputy why he had indicated that it was not a correctable violation, the prosecutor objected on relevance. The court responded: "His reason for yes or no on that's not really relevant."

Defendant: "Why he marked it not correctable is not relevant?"

Court: "No. Not in terms of his reasoning, no. That's what his view was at the time, clearly, and so the document speaks for itself. He marked it."

Defendant to witness: "Are you familiar with Vehicle Code 4-0-3-0-3 point 5?"

DA: "Objection. Irrelevant."

The court stated it hadn't been paying attention, and in catching up said to the defendant: "It's not going to be relevant here as to his (the citing officer's) actions because he didn't use it. It's (referring to CVC40303.5) not involved."

Defendant: "But your honor, the Legislature's, not mine, excuse me, the Legislature's position is that 4-0-3-0-3 point 5 directly relates and instructs as to how to issue citations such as 2-8-9-0-3-B."

Court: "Mr. Quigley, that's a legal argument. I understand your argument on that. I've heard it before. But it doesn't have anything to do with him at this point. He did what he did, you know. I will have his testimony. That's what we're having. And later, if he didn't do the right thing, legally, then it's gonna be outta here."

Defendant: "Aren't I allowed to talk about the reason that we're here as opposed to the reason that I'm not here?"

Court: "You're allowed to ask questions of this officer. That's what I want you to do. Okay, and then I rule on whether or not they're relevant. Whether they are otherwise appropriate. And that's what we're gonna do."

Defendant: "Not trying to try your patience, your honor, and trying to keep you from trying mine; but the fact of the matter is that had he marked the non-correctable box, we would not be here. I mean the correctable box. He marked the not correctable box so we are here. So the reason that I'm here seems to be an important one. It seems it would be an important one to a triar of fact that's trying to follow the law. I don't understand how the elements that brought me here are not being discussed."

Court: "Mr. Quigley, you have a view of the law that may or may not be in the end, the view of the court. Alright? So it doesn't do your case any good as far as saying the triar of fact here has to follow the law. The triar of fact is the court. I know that, alright? So please, let's don't be pejorative in terms of your presentation. Let's just ask the questions. I'm going to allow you a lot of argument when that time comes, as to the legal issues, alright?"

After a brief discussion of whether or not the deputy had or had not seen the defendant riding with the same headgear since he issued the at-issue citation, the defendant asked the officer if he could define the term helmet. The prosecution objected, citing relevance. The court allowed the deputy to answer.

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3. a. (witness testimony continued):

Muting: "A helmet is some sort of a device that you put on your head, to protect you head. I believe at one time I did read a definition that described a hard plastic surface . . . I know there's specific dimensions but I don't recall the specific. I do know a baseball cap from a helmet though, and you were wearing a baseball cap. Do I have enough common sense to know the difference between a helmet, which is a safety device, and a baseball cap? Yes I do."

The defendant pointed to five helmets and asked the officer if he would have cited the defendant for wearing any of them. When the officer said no, the defendant asked if it would surprise him to know that none of the five helmets comply with California's helmet law. The prosecutor objected citing relevance. The court sustained. The defendant took exception, explaining that in order to challenge the constitutionality of the statute, he needed evidence that the police had inadequate guidelines for enforcing the helmet law.

When asked specifically about his training, the deputy testified: "I believe there was a pamphlet that was passed around the sheriff's office that outlined the requirements for a helmet. I don't recall what they are. I just briefly looked at it and other than that, no."

When the defendant asked the deputy to explain the difference between a baseball cap and a helmet, the court answered: "I think he's answered the question. The difference from his standpoint is a common sense one. One protects. One doesn't, okay? . . . and from his point of view, that's enough."

The defendant attempted to find out what the deputy knew about what protects a motorcyclist, and the court objected, saying: "His definition is a common sense one, as he says, one protects, one doesn't . . . from the standpoint of injury or anything else I assume."

The defendant asked to take a recess.

The court ordered a recess. (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

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(TYPE OF PRINT NAME)

(SIGNATURE OF DEFENDANT/APPELLANT OR ATTORNEY)