

1 I. GROUNDS FOR APPEAL

2 A. THE COURT LACKS JURISDICTION

3 Defendant has notified that court from the beginning that he would
4 not waive any of his constitutionally protected rights, and asserted from
5 the beginning that the court did not have jurisdiction proceed against the
6 defendant against defendant’s will and over his objections, in that:

7 1.The defendant did not (and will not) stipulate to a Traffic Ref-
8 eree (as opposed to an elected Judge) assuming jurisdiction over a
9 criminal matter for which a defendant is bound to answer.

10 2.The defendant did not (and will not) waive his right to the filing
11 of a proper verified complaint, by the public prosecutor, as a prerequi-
12 site to any court assuming jurisdiction over a criminal action.

13 3.The defendant did not (and will not) enter a plea to a traffic cita-
14 tion, a “Notice to Appear,” or any other complaint, that does not sub-
15 stantially conform to Penal Code Sections 950 and 952, as provided in
16 Penal Code §1004.

17 4.The defendant did not (and will not) waive his right to rely on
18 the plain language of the statutes, as interpreted by the higher courts, in
19 his defense.

20 By its actions 1) the trial court has presumed jurisdiction over the
21 defendant, against the will and over the objection(s) of the defendant, by
22 in essence ruling (without citing authority) that the defendant must ei-
23 ther accept the jurisdiction of the court, or move to disqualify the court
24 (170.6 or 170.1), and that no stipulation by the defendant is required as
25 a condition of a Traffic Referee assuming jurisdiction over infraction
26 matters; 2) that the public prosecutor is not required to file a verified
27 complaint against the defendant as a condition of the court assuming
28 jurisdiction in that a “Notice to Appear” filed on a form “approved by

1 the Judicial Council,” “verified” by the citing officer, establishes juris-
2 diction for the court; 3) that because the complaint (the aforementioned
3 Notice to Appear) is on a form approved by the Judicial Council, de-
4 murrer relating to defects in the complaint are not sustainable; and 4)
5 ruled, in essence that the bald assertions of the prosecutor are superior
6 to the plain language of the statutes, and supersede the rulings of the
7 higher courts.

8 B. THE ALLEGATIONS DO NOT CONSTITUTE A PUBLIC OFFENSE

9 Defendant has loaded the court up with evidence that violations of
10 CVC §27803 — because they involve “equipment” infractions con-
11 tained in Division 12 of the Vehicle Code — are correctable equipment
12 violations pursuant to Vehicle Code §40303.5.

13 The court has ignored the plain language of the statute(s), defer-
14 ring instead to the unsupported contentions (bordering on neurotic snits)
15 of the prosecutor that they are not.

16 The record will show that the defendant challenged the prosecutor
17 directly, to come up with something — any authority whatsoever be-
18 yond ““cause I said so” — that disproves the defendant’s contention that
19 Vehicle Code §40303.5 establishes the violations as correctable viola-
20 tions.

21 The best the prosecutor could do, in response, was read from Divi-
22 sion 12, citing statutes having to do with clearance lights and the like, as
23 if the fact that clearance lights are equipment somehow belies helmets
24 belonging in Division 12?

25 The case file and record of proceedings will show that the defen-
26 dant has provided a history of evaluation of the statute establishing
27 §27803 as falling within the category of correctable violations, includ-
28 ing the plain language of Vehicle Code §40303.5, definitions of helmets

1 as equipment, transcripts of discussions of the California Judicial Council
2 relating to statute, letters from the current Attorney General, the sit-
3 ting Chief Justice of the California Supreme Court and others, explain-
4 ing their understanding that the statutes clearly make helmet tickets
5 *correctable* violations; but the court ruled, instead, that based on *noth-*
6 *ing* from the prosecutor, that a ruling from the CJC in 1994 which at-
7 tempted to change the nature of the statute, is adequate authority for the
8 court to ignore the plain language of the statute.

9 Defendant subsequently provided the court with a copy of an Ap-
10 pellate Court Decision — *California Court Reporters Association v.*
11 *California Judicial Council*, 39 Cal App 4th 15 — which states in plain
12 language that the CJC is forbidden from causing a statute to be applied
13 in a manner inconsistent with the plain language of the statute, only to
14 once again be ignored.

15 It is clear that no matter the plain meaning of the statutes, when
16 that meaning does not support the desires of the prosecutor to obtain a
17 conviction of the defendant, the statutes are being ignored — a condi-
18 tion, more than any other, which eliminates any possibility that the de-
19 fendant can defend his innocence.

20 C. CONSTITUTIONALITY OF THE STATUTE

21 The defendant moved the court to rule that the subject statute was
22 unconstitutional, *as applied*. In addition to filing an extensive brief
23 outlining the authorities — both statutory and precedent decisions —
24 supporting his contention, the defendant subpoenaed the many officers
25 who had cited the defendant so that he could demonstrate that none of
26 the officers knew what the statute required.

27 The prosecutor called for an offer of proof as to the officers' testi-
28 mony, which the defendant explained was for the purpose of eliciting

1 testimony that would make the vagueness of the statute, as applied,
2 clear — the statute is a “specific intent” statute, with requirements that
3 are so vague as to leave even the most informed officer to necessarily
4 guess at what constitutes compliance.

5 The court dismissed the witnesses, ruling that both the *Buhl* and
6 *Bianco* courts had found the statute to be constitutional, and denied the
7 defendant’s motion on that ground, released the witnesses without hear-
8 ing their testimony, and set the matter for trial.

9 The court ignored the defendant’s pleas that both *Buhl* and *Bianco*
10 had ruled on the constitutionality of the statute as written, and not as
11 applied, and were therefore not suitable authority for a finding against
12 the defendant on the issue of a constitutional challenge.

13 For reasons that will be explained in depth on appeal, the court’s
14 denial of the defendant’s opportunity to challenge the constitutionality
15 of the statute, in the context of a motion (rather than at trial), effectively
16 denied the defendant the opportunity to argue the issue at all, even on
17 appeal — the testimony of the officers as to their training and under-
18 standing of the elements of the statutes was *absolutely essential* to the
19 defendant’s ability to challenge the statute on constitutional grounds . . .
20 an absolute right of the defendant.

21 D. ADMISSIBILITY OF EVIDENCE AT TRIAL

22 Defendant argued that the *Buhl* court had founded it’s decision
23 that the statute is constitutional purely on the basis of the plain language
24 of the statute; and that underpinning their decision was the assertion that
25 the statute did not require either the consumer (the defendant) or an
26 enforcement officer to determine proper helmet fabrication — an opin-
27 ion they held so strongly that they called even the proposition that it
28 could be otherwise, “absurd.”

1 “verified complaint,” rise above demur on the grounds that it is incom-
2 plete and insufficient — particularly if it does not substantially conform
3 to the requirements of Penal Code Sections 950 & 952 (as required by
4 Penal Code §1004), and which is not verified by the public prosecutor?

5 4. When a citation alleging a violation of an equipment violation
6 set forth in Division 12 is issued, and none of the disqualifying condi-
7 tions of 40610 are alleged on the charging documents (in this case, a
8 Notice to Appear), what authority is there for the court to disregard the
9 plain language of Vehicle Code §40303.5?

10 5. Can the opinion of the Appellate Court as to the constitution-
11 ality of a statute *as written*, be used as authority to deny a constitutional
12 challenge of the statute *as applied*?

13 6. Did the *Buhl* court mean what it said when it ruled that “the
14 proposition that the statute would require the consumer or enforcement
15 officer to determine if a helmet is properly fabricated . . . is absurd”;
16 and, is the trial court, any trial court, bound by that decision?

17 7. Is a defendant entitled to the precedent rulings of courts of
18 record, superior to the trial court?

19 8. Did the failure of the trial court to entertain a constitutional
20 challenge of the helmet law, on vagueness, as applied, deny the defendant
21 of his constitutional rights to a fair and impartial trial?

22 9. Did the trial court err when it excused witnesses that were
23 essential to the defendant’s attempt to show that the law is void for
24 vagueness as applied?

25 10. If the law does not apply, and Appellate and higher court opin-
26 ions are secondary to the opinions expressed by the prosecuting attor-
27 ney; by what rules are trials on traffic matters to be conducted?

28 11. Can a baliff, on duty as a bailiff, driving a prisoner transport

1 vehicle, validly issue a citation for items located in Division 12 of the
2 vehicle code?

3 **REQUEST FOR CERTIFICATION**

4 **MOREOVER**, defendant respectfully requests that these issues be certi-
5 fied by both the trial and appellate courts for further appeal, if neces-
6 sary.

7 Submitted June 20, 2000

8
9 Richard J. Quigley, Defendant, pro se

10
11
12
13
14 **VERIFICATION**

15 I, Richard J. Quigley, do hereby declare under penalty of perjury
16 that I have drafted the foregoing and know it to be true to the best of my
17 knowledge, except as to those things stated on information and/or be-
18 lief, and as to those things, I believe them to be true.

19 June 20, 2000

20
21 Richard J. Quigley