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

People of the State of California,)	CASE #: 3WM018538,
)	4WM034081, 4WM021512, 4WM023363,
)	4SM028271, 4SM021812, 4SM021512,
Plaintiff.)	4SM023894 & 4SM044470
vs.)	
Richard J. Quigley)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Defendant.)	AND ORDER AFTER HEARING

BACKGROUND

Defendant was cited for violating California's mandatory helmet use law on July 24, 2003, February 6, 2004, March 19, 2004 and June 11, 2004 by the Watsonville Police Department, and on April 4, 2004, April 8, 2004, April 27, 2004, May 31, 2004 and August 27, 2004 by the California Highway Patrol. On each occasion, the evidence has shown that the defendant was wearing some form of headgear bearing evidence of a certification of compliance with Federal regulations, the letters "DOT," except on June 11, 2004, when the defendant was not wearing any headgear at all.

On March 17, 2006, defendant filed a motion to dismiss on constitutional grounds. At the conclusion of the hearing of defendant's motion, on July 14, 2006, this court did find the helmet law statutes were unconstitutional as applied by the citing officers, dismissed the charges against the defendant, and on this date filed this Findings of Fact, Conclusions of Law and Order After Hearing to clarify the reasons for its ruling.

1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 *The Statutes*

3 The requirements for compliance with California’s mandatory helmet use law are
4 set out in California Vehicle Code (hereinafter “CVC”) §§27802 and 27803, which state
5 in order of application:

6 CVC §27803(b) – It is unlawful to operate a motorcycle, motor-driven cycle, or
7 motorized bicycle if the driver or any passenger is not wearing a safety helmet
8 as required by subdivision (a).

9 CVC §27803(a) – A driver and any passenger shall wear a safety helmet meeting
10 requirements established pursuant to Section 27802 when riding on a motor-
11 cycle, motor-driven cycle, or motorized bicycle.

12 CVC §27802 – The department may adopt reasonable regulations establishing
13 specifications and standards for the safety helmets offered for sale, or sold, for
14 use by drivers and passengers of motorcycles and motorized bicycles as it
15 determines are necessary for the safety of those drivers and passengers. The
16 regulations shall include, but are not limited to, the requirements imposed by
17 Federal Motor Vehicle Safety Standard No. 218 (49 C.F.R. Sec. 571.218) and
18 may include compliance with that federal standard by incorporation of its
19 requirements by reference. Each helmet sold or offered for sale for use by drivers
20 and passengers of motorcycles and motorized bicycles shall be conspicuously
21 labeled in accordance with the Federal Standard which shall constitute the
22 manufacturers certification that the helmet conforms to the applicable Federal
23 Motor Vehicle Safety Standards.

24 Subdivision (a) and (b) of CVC §27803 make it unlawful to operate a motorcycle
25 without a safety helmet “meeting *requirements* established pursuant to Section 27802.”
26 (Italics added.)

27 Section 27802, subdivision (a), contains three sentences. The first sentence
28 merely authorizes the department to adopt “reasonable regulations establishing specifi-
cations and standards for safety helmets.” This first sentence, which is merely an en-
abling provision, does not appear to be one of the “requirements” referred to in section
27803.

1 The second sentence of the subdivision mandates that the promulgated state
2 regulations include, at a minimum, “the *requirements* imposed by Federal Motor Vehicle
3 Safety Standard No. 218 (49 C.F.R. Sec. 571.218)” (hereinafter “FMVSS 218”). (Italics
4 added.) This sentence, which actually includes the word “requirement,” certainly *could*
5 be one of the “requirements established pursuant to Section 27802” referred to in section
6 27803, subdivision (a). If the latter statute were so construed, California law would
7 require motorcyclists *to wear a properly fabricated helmet*, i.e., a helmet meeting federal
8 safety standards.

9 The third sentence of section 27802, subdivision (a), imposes a requirement that
10 every helmet “sold or offered for sale...be conspicuously labeled” by the manufacturer,
11 which label shall “constitute the manufacturer’s certification that the helmet conforms”
12 to federal safety standards. This sentence requiring conspicuous labeling could also be
13 read as one of the “requirements established pursuant to Section 27802” referred to in
14 section 27803, subdivision (a). If the latter statute were so construed, California law
15 would require a motorcyclist *to wear a properly labeled helmet*,” i.e., a helmet bearing
16 the manufacturer’s “certification” that it meets federal safety standards (whether or not
17 the helmet *in fact* did meet those standards). Alternatively, the third sentence could
18 reasonably be viewed as imposing a requirement on the *sellers and/or manufacturers* of
19 motorcycle helmets, but not on the *users* of the helmets (who have no practical control
20 over their labeling.)

21 Thus, read together, sections 27803 and 27802 could reasonably be construed to
22 require that motorcyclists wear a helmet that (1) is properly *fabricated*, i.e., meets fed-
23 eral safety standards, or (2) is properly *labeled*, i.e. bears the manufacturer’s certification
24 that it meets federal safety standards (whether or not the certification is correct), or (3) is
25 *both* properly fabricated and properly labeled.

26 ***Buhl v. Hannigan*, 16 Cal.App.4th 1612 (1993)**

27 The *Buhl* case involved an attack on the constitutionality of California’s motor-
28 cycle helmet laws, as written (in that the case was filed prior to the statute’s enactment

1 on January 1, 1992). One aspect of the attack was that the laws were void for vagueness
2 because they prescribed a standard which could not be understood by persons of ordi-
3 nary intelligence. (16 Cal.App.4th a p. 1622) The first and significant component of that
4 attack was directed at the requirement that helmets meet federal safety standards. The
5 appellants claimed that “[t]he incorporated federal safety standards are so technical one
6 must be a physicist or an engineer testing the product in a laboratory to ascertain whether
7 a particular helmet complies.” (*Id.*)

8 Significantly, the Court of Appeal rejected that argument by reasoning that it was
9 based on the *false* premise that sections 27802 and 27803 require motorcyclists to wear a
10 properly *fabricated* helmet. Rightly or wrongly, it characterized such a reading of the
11 statutes as “absurd,” and it held that the statutes require *only* that motorcyclists wear a
12 properly *labeled* helmet. The court opined as follows:

13 “underlying this [the appellants’ vagueness] argument is the proposition that the
14 statute requires the consumer or enforcement officer to decide if the helmet is
15 properly fabricated, and such a reading of section 27803 is absurd. When
16 sections 27802 and 27803 are harmonized, as they must be [citation], it is clear
17 the law requires only that the consumer wear a helmet bearing a certification of
18 compliance.” (*ibid.*)

18 *Bianco v. CHP, 24 Cal.App.4th 1113 (1994)*

19 The exception to the *Buhl* doctrine was set out in *Bianco v. CHP*, wherein the
20 court upheld the 3rd and 4th numbered judgment of the lower court, which said:

21 “3. In accordance with the terms of the Act, although in the first instance
22 manufacturers are authorized, indeed required before sale, to self-certify that
23 their helmets meet the standard of FMVSS 218, that self-certification creates
24 only a rebuttable presumption that such helmets meet FMVSS 218.

25 “4. In accordance with provisions of the Act, that presumption may be
26 rebutted by a determination of non-compliance issued by the National Highway
27 Transportation Safety Administration (hereinafter ‘NHTSA’) of the Department
28 of Transportation, by a manufacturer recall of its product, or by any other
competent objective evidence which establishes that in fact a given manufacturer’s
helmet does not meet the safety standards of FMVSS 218.”

1 In summary, the court concluded:

2 “We conclude the statement in *Buhl* that consumer compliance with the state law
3 only requires the consumer to wear a helmet bearing the DOT self-certification
4 sticker does not apply when a helmet has been shown not to conform with federal
5 standards and the consumer has actual knowledge of this fact.” *Ibid.*

6 ***Easyriders v. Hannigan, 92 F.3d 285 (9th Cir. 1996)***

7 In upholding an injunction issued by the district court in *Easyriders*, enjoining, or
8 attempting to enjoin, the very process imposed by the prosecution on the defendant here,
9 the 9th Circuit Court of Appeals wrote:

10 The helmet law, as interpreted by the California courts and correctly articulated
11 by the district court, requires *specific intent* as one of its elements. A motorcyclist
12 who is wearing a helmet that was certified by the manufacturer at the time of sale
13 must have actual knowledge of the helmet’s nonconformity to be guilty of
14 violating the helmet law. Thus, in addition to intending to wear the helmet in
15 question, the motorcyclist must intend to wear a helmet that he knows does not
16 comply with the helmet law. Thus, because a violation of the helmet law requires
17 *specific intent* on the part of a motorcyclist wearing a helmet that was certified
18 at the time of purchase, the ticketing officer must have probable cause to believe
19 that the *specific intent*, caused by the motorcyclist’s actual knowledge of non-
20 conformity, exists. (*Ibid* – *emphasis added*)

18 ***The Helmet Law Statutes, As Applied.***

19 Throughout the litigation of these cases, the prosecution did not provide any
20 evidence that the California Highway Patrol had adopted any regulations whatsoever,
21 pursuant to section 27802, other than the requirements imposed by FMVSS 218 – perfor-
22 mance standards, not model specifications – which according to the *Buhl* doctrine,
23 cannot be applied to consumers.

24 By contrast, the defendant provided ample evidence that the CHP had, for the
25 purposes of their in-house training, and training of their allied agencies, equated compli-
26 ance with FMVSS 218 with “DOT approved,” and stated that in order to comply with
27 the helmet law, motorcyclists must wear a “DOT approved” helmet (or at least an ap-
28 proved helmet). However, FMVSS 218 clearly provides nothing by way of authority to

1 approve helmets. The Federal government, in fact, has stated in its interpretive letters,
2 that the government does not approve helmets, that FMVSS 218 does not approve hel-
3 mets, and that the phrase “DOT approved” has no meaning in fact or in law.¹ (NHTSA
4 counsel letters.)

5 Additionally, CHP training instilled the belief in vehicle code enforcement offic-
6 ers throughout the State that they could tell by looking whether a given helmet was
7 *approved* for use in California – the presence of a certification of compliance (the
8 “DOT” symbol), the only requirement noted by the *Buhl* court, notwithstanding.

9 The requirement of *Buhl* that the headgear bear a certification of compliance was
10 neither accepted by the citing officers nor the prosecution as evidence of compliance, nor
11 did the prosecution offer any evidence that the rebuttable presumption created by the
12 presence of the DOT label on the defendant’s headgear had been rebutted by a
13 manufacturer’s recall, a determination of noncompliance by NHTSA or evidence that the
14 headgear had been tested by an independent testing laboratory, and failed, as required in
15 *Bianco*.

16 This evidence of how the statute was implemented was substantiated by the
17 testimony of the citing officers and confirmed by the prosecution’s theories of the case(s)
18 throughout the proceedings.

19 The only evidence offered against the defendant, in those instances where he was
20 wearing headgear which he calls a “helmet,” were complaints by the prosecution that the
21 headgear looked like a “typical baseball cap” (appearance constitutes an element of
22 fabrication), “constructed of a soft fabric” (fabrication), “having no inner padding”
23 (fabrication), “having no chin strap or other type of ties which would fasten under the
24 chin” (fabrication), “a fixed front bill which extends approximately 4 inches” (fabrica-

25
26 ¹ The belief in “DOT approved” helmets, or in some kind of approval system, has become part
27 of the training of police officers statewide, common language in the materials used by police
28 officers in enforcing the statute (See the *Quik Code*), included in the information provided by
the California Department of Motor Vehicles in describing the type of equipment a rider is re-
quired to use when riding a motorcycle in Cali-
fornia, and even included in the California mo-
torcycle training manual used to train motorcy-
clists on how to safely operate a motorcycle.

1 tion) and other references to fabrication, all the while acknowledging defendant's head-
2 gear bore "a label or embroidered letters DOT on the back."

3 In short, not only did the prosecution fail to make its case that the defendant –
4 who they admitted was wearing headgear bearing a certification of compliance – had
5 violated the helmet law as written and/or interpreted by the California Courts, but the
6 defendant did prove to this court's satisfaction that issuance of eight citations for wear-
7 ing headgear bearing a certification of compliance with federal standards, violated the
8 injunction issued by the Federal Court in *Easyriders*, thereby violating the defendant's
9 Fourth Amendment rights as described in *Easyriders*.

10 Moreover, once it was established to the satisfaction of this court that no list of
11 compliant helmets, or other objective criteria, exists that would give a person of ordinary
12 intelligence a reasonable opportunity to know what is required or prohibited by the
13 helmet law statutes, this court had no choice but to otherwise dismiss all the above-
14 referenced citations (including the citation for wearing no headgear at all) on the grounds
15 that the enforcement policies and procedures adopted by the CHP and their allied agen-
16 cies have rendered the mandatory helmet use statutes void for vagueness, and otherwise
17 unworkable, as applied by the citing officers.

18 "It is a basic principle of due process that an enactment is void for vagueness
19 if its prohibitions are not clearly defined. Vague laws offend several
20 important values. First, because we assume that man is free to steer between
21 lawful and unlawful conduct, we insist that laws give the person of ordinary
22 intelligence a reasonable opportunity to know what is prohibited, so that he
23 may act accordingly. Vague laws may trap the innocent by not providing fair
24 warning. Second, if arbitrary and discriminatory enforcement is to be
25 prevented, laws must provide explicit standards for those who apply them. A
26 vague law impermissibly delegates basic policy matters to policemen, judges,
27 and juries for resolution on an ad hoc and subjective basis, with the attendant
28 dangers of arbitrary and discriminatory application." *Grayned v. City of
Rockford* 408 U.S. 104, 108 (1971)

1 **ORDER AFTER HEARING**

2 The CHP is the only State agency authorized by the statutes to adopt reason-
3 able regulations establishing specifications and standards for motorcycle safety
4 helmets. The CHP's failure to adopt such regulations, and make them available to
5 the public, has rendered the helmet law statutes void for vagueness as applied.

6 Although the statutes have been found to be constitutional by the *Buhl*,
7 *Bianco* and *Easyriders* courts, the law in question is not being applied in the man-
8 ner contemplated by those courts. For certain, the helmet law is not being applied
9 by the CHP and their allied agencies as contemplated in the *Easyriders* injunction.

10 Unless and until the CHP adopts compliance standards other than a citing
11 officer's subjective opinion of whether or not a given helmet is properly fabricated
12 (e.g.: complies with the actual, technical requirements of FMVSS 218), and aban-
13 dons the contention that in order to comply with the statutes a motorcyclist must
14 wear an "approved helmet," the helmet law statutes are void for vagueness, or
15 otherwise unworkable, as applied, for the reasons stated above.

16 Wherefore, it is the finding of this court that the charges against the defen-
17 dant in the above-entitled cases be dismissed, with prejudice, on the grounds that
18 the statute, CVC §27803(b), as applied by the citing officers, is unconstitutional.

19
20 Dated: August 16, 2006

21 

22
23 by Honorable Judge Michael Barton
24 Superior Court of California