

1970

# The State of Utah v. Gary D. Acker :Brief of Respondent

Utah Supreme Court

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IN THE  
SUPREME COURT  
OF THE  
STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

GARY D. ACKER,

Defendant.

BRIEF OF

Appeal from the Judgment  
for Weber County, The Honorable  
Presiding.

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LAURENCE  
CHAS. J.  
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F-1

Clerk of Court

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IN THE  
**SUPREME COURT**  
OF THE  
STATE OF UTAH

THE STATE OF UTAH,  
*Plaintiff-Respondent,*

—vs.—

GARY D. ACKER,  
*Defendant-Appellant.*

Case No.

12268

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BRIEF OF RESPONDENT

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STATEMENT OF NATURE OF CASE

Appellant, Gary D. Acker, appeals from a conviction under Utah Code Ann., § 41-6-107.8(a) (1953), operating a motorcycle upon a public highway posted for a speed higher than 35 miles per hour without wearing protective headgear, on grounds that it is unconstitutional.

DISPOSITION IN LOWER COURT

The appellant was convicted and sentenced in the Ogden City Court and appealed that city court conviction to the Second District Court, Weber County, State of Utah. The Second District Court, the Honorable Ronald O. Hyde, presiding, upheld the conviction and found Utah Code Ann. § 41-6-107.8 (1953) constitutional.

## RELIEF SOUGHT ON APPEAL

Respondent respectfully requests the court to affirm the lower court conviction and sustain the constitutionality of Utah Code Ann. § 41-6-107.8(a) (1953).

## STATEMENT OF FACTS

Appellant was arrested while operating a motorcycle upon a public highway in a zone posted for speeds higher than 35 miles per hour without wearing any protective headgear on or about August 11, 1969.

Appellant was convicted in the Ogden City Court of Ogden City, Weber County, Utah, pursuant to Utah Code Ann. §41-6-107.8(a) (1953), which reads:

“No person shall operate or ride upon a motorcycle or motor-driven cycle upon a public highway posted for speeds higher than 35 miles per hour, unless he is wearing protective headgear which complies with standards established by the commissioner of public safety.”

Appellant appealed the Ogden City Court conviction and the matter was retried by the Honorable Ronald O. Hyde in the Second District Court. The Court found the appellant guilty and the statute constitutional.

## ARGUMENT

## POINT I

THE EVIDENCE WAS SUFFICIENT TO PROVE THAT THE APPELLANT HAD COMMITTED A CRIME UNDER UTAH CODE ANN. § 41-6-107.8(a) (1953).

Appellant first argues that all the elements of the crime were not proved at trial, to-wit: no standards for a

helmet were introduced. Under the stipulated facts at the trial court (R. 17) the defendant admitted that he was *not* wearing any type of helmet or protective headgear at the time he was arrested for the offense. The case before this Court does not present a factual setting where the existence or lack of safety regulations set by the commissioner can be questioned. The statute requires that headgear be worn and Mr. Acker was found wearing *none*.

Appellant's contention that there are no safety standards set forth by the Commissioner of Public Safety is without merit. Standards for motorcycle helmets have been established and promulgated by the Commissioner of Public Safety since May 13, 1969 (See Appendix A).

The defendant's conviction was rightfully based on the fact that he wore *no* headgear while riding a motorcycle on a highway posted for higher than 35 miles per hour.

## POINT II

UTAH CODE ANN. § 41-6-107.8(a) (1953) MUST BE HELD VALID BECAUSE IT DOES NOT CLEARLY VIOLATE ANY PROVISION OF THE CONSTITUTION OF THIS STATE OR OF THE UNITED STATES AND IS A VALID EXERCISE OF THE POLICE POWER OF THE STATE TO PROTECT THE PUBLIC WELFARE.

### A. Presumption of Constitutionality.

There is a "long established presumption in favor of the constitutionality of a statute," *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, at 354 (1936). This presumption has been relied on by the Supreme Court of the State of Utah; *Gord v. Salt Lake City*, 20 Utah 2d 138, 434 P.2d 449 (1967); *Trade Commission v. Skaggs Drug Center*,



*Inc.*, 21 Utah 2d 431, 446 P.2d 958 (1968); and *State v. Nielson*, 19 Utah 2d 66, 426 P.2d 13 (1967). In the *Nielson* case the court specifically states:

“The general rule of statutory construction is to hold an enactment of the legislature valid unless it clearly appears to violate some provision of the Constitution of this State or of the United States.” *Id.* at 69.

The presumption of constitutionality has been important in other jurisdictions where the constitutionality of motorcycle helmet legislation has been questioned. In *State v. Anderson*, 164 S.E. 2d 48, 50 (1968), the State of North Carolina upheld its motorcycle helmet law stating that “all reasonable doubts will be resolved in favor of the lawful exercise of their powers by the representatives of the people.” See also *Bisenius v. Karns*, 165 N.W. 2d 377, 379 (1969), 395 U.S. 709, appeal dismissed (1969).

The presumption of constitutionality seems especially apposite when a State enacts legislation as a complement to an Act of Congress. The Federal Highway Safety Act of 1966 (P.L. 89-564) requires that “Each State shall have a highway safety program . . . designed to reduce traffic accidents and deaths. . . .” These programs “shall be in accordance with uniform standards promulgated by the Secretary.” 23 U.S.C. § 402(a). The Standard requires that “Each state shall have a motorcycle safety program to insure . . . that protective safety equipment for driver and passengers will be worn.” This, then, is the Federal Standard that the State legislation was enacted to implement at the express command of the Congress. Added weight may



be placed on the already strong presumption of constitutionality because of the legislative implementation of a Federal Congressional request.

#### B. Proper Exercise of Police Power

Headgear legislation stems from the police power of the state. The police power includes the power to enact laws within constitutional limits to promote the public safety and health. Protection of a motorcyclist and his passenger while on the public roads is within the legitimate concern of the state and not an area reserved to the individual. In *State v. Lombardi*, 241 A.2d 625 (1968) the Supreme Court of Rhode Island explains how motorcycle helmet safety laws affect the general public:

“ . . . [W]e are not persuaded that the legislature is powerless to prohibit individuals from pursuing a course of conduct which could conceivably result in their becoming public charges. Be that as it may, however the requirement of protective headgear for the exposed operator bears a reasonable relationship to highway safety generally. It does not tax the intellect to comprehend that loose stones on the highway kicked up by passing vehicles, or fallen objects such as windblown tree branches, against which the operator of a closed vehicle has some protection, could so affect the operator of a motorcycle as to cause him momentarily to lose control and thus become a menace to other vehicles on the highway.” *Id.* at 627. (See also *Everhardt v. New Orleans*, 217 So. 2d 400 (1968), appeal dismissed and *cert. denied*, 395 U.S. 212 (1969)).

The Idaho Supreme Court recently held their motorcycle helmet legislation to be constitutional and in doing so

defined the following interests of the state as supportive to its police power:

“There can be no doubt that certain interests of the general public in its welfare and safety are served by statutes of the type presented herein. We believe that the general traveling public is benefited as a class in that the protective helmet reduces to some extent the possibility of a motorcycle rider losing control of his vehicle and endangering other highway users. It further reduces the need for and therefor the costs of providing police, ambulance and other emergency personnel and equipment at accident scenes. While the interest of the general public may be secondary as compared with the importance of wearing a helmet to the motorcycle rider, those rights of the general public are nevertheless real, ascertainable, and needful of protection.” *People v. Albertson*, 470 P.2d 300, 303 (1970). (See also *Massachusetts v. Howie*, 238 N.E. 2d 373 (S. Jud. Ct. Mass., 1968); 393 U.S. 999, *cert. denied* (1968).

The interdependence of the acts of an individual and the interest of the state has long been recognized. “The whole is no greater than the sum of all the parts, and when the individual’s health, safety, and welfare are sacrificed or neglected, the state must suffer.” *New York Central R.R. Co. v. White*, 243 U.S. 188 at 206-207 (1916). Accordingly states have legislated in many situations where there is a demonstrable risk to an individual which can be substantially reduced by requiring him to take certain protective measures. Many states require safety devices to be worn by window cleaners; eye protection for welders; hard hats for those involved in demolition work; life preservers to be worn while water skiing, and nets protecting aerial

performers from the effects of accidental falls. Headgear legislation belongs to this class of legislation.

The interest of a state legislating self-protection in the area of motorcycle helmet legislation has been recognized by the Supreme Court of Wisconsin:

"There is in the law no sanction for self-destruction, and certainly there is no right on the part of anyone to use public highways for risking or courting or seeking such self-destruction. Protection of the safety of all users of the highway even against the consequences of their own actions is a legitimate use of the police powers of the state." *Bisenius v. Karns*, 165 N.W.2d 377, 382 (1969), 395 U.S. 709, appeal dismissed (1969).

The state has a valid interest under its police power in protecting individuals from dashing their brains out on the public highways.

Other courts, after finding motorcycle helmet legislation a valid extension of the police powers of the state, have held that the measures adopted for protection are within the legislature's discretion:

"It lies within the power of the Legislature to adopt reasonable measures for the promotion of safety upon public ways in the interest of motorcyclists and others who may use them. . . . The act of the Legislature bears a real and substantial relation to the public health and general welfare and is thus a valid exercise of the police power . . ." *Massachusetts v. Howie*, 238 N.E. 2d 373, 373-374 (1968); *cert. denied*, 393 U.S. 999 (1968).

The Supreme Court of Wisconsin has similarly held in

*Bisenius v. Karns, supra*, regarding the determination of safety standard by the legislature.

“We would hold that, once within the area of proper exercise of police power, it is for the legislature to determine what regulations, restraints or prohibitions are reasonably required to protect the public safety and only the abrogation of a basic and substantial individual liberty would justify judicial intervention to set aside the legislative enactments.” *Id.* at 383.

Appellant argues that there may be detrimental effects to wearing helmets for safety while riding a motorcycle. According to the principles stated above, such considerations are clearly within legislative powers. The legislature weighs the pros and cons of specific legislation. This Court now is being asked only to determine if this is a proper area for the State to establish legislation.

Appendix B is a list of the Highest Courts of the various states where the question of motorcycle helmet legislation has been presented. It should be noted that the weight of authority is very strong in upholding the constitutionality of motorcycle helmet legislation.

### POINT III

UTAH CODE ANN. § 41-6-107.8 (a) (1953), IS NOT ARBITRARY AND CAPRICIOUS AND DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Guidelines for determining if the motorcycle helmet law requiring those riding motorcycles on highways posted

for higher than 35 miles per hour can be found in Utah case law. In *State v. Mason*, 94 Utah 501, 507, 78 P.2d 920 (1938), the Utah Supreme Court laid down this rule:

“Of course, every legislative act is in one sense discriminatory. The Legislature cannot in one act legislate as to all persons or all subject matters. It is inclusive as to some class or group and as to some human relationships, transactions, or functions and exclusive as to the remainder. For that reason, to be unconstitutional the discrimination must be unreasonable or arbitrary. A classification is never unreasonable or arbitrary in its inclusion or exclusion features so long as there is some basis for the differentiation between classes or subject matters included as compared to those excluded from its operation, provided the differentiation bears a reasonable relation to the purpose to be accomplished by the act.”

The Legislature of the State of Utah has recognized that the more serious motorcycle accidents usually involve high speeds. A recent decision in the State of Washington has commented on the increased dangers to motorcyclists when riding in high traffic in holding its state motorcycle law constitutional:

“. . . [W]e think that a state of facts can reasonably be conceived to exist that motorcycles capable of *operating at very high speeds are far more hazardous to their riders than automobiles and other kinds of vehicles*. Motorcycles not only appear to have less stability than other kinds of vehicles, but they seem more hazardous too because their riders have no protective frame or structure surrounding them. Even at slow and moderate speeds, motorcycle riders are subject to greater dangers of injuries from skids, slips, slides and

spills than are riders in other kinds of motor vehicles, and at high speeds these dangers increase enormously." (Emphasis added.) *State v. Laitinen*, 459 P. 2d 789, 791 (1969), 397 U.S. 1055, *cert. denied* (1970).

In order to protect that class of motorcycle riders and passengers who travel in the more dangerous speed zones of higher than 35 miles per hour, the legislature has required the use of protective helmets for these individuals. The helmet legislation applies to all motorcyclists who are found traveling on highways posted for speeds higher than 35 miles per hour without discrimination clearly fitting the guidelines of the *Mason* case.

Because the courts have held that once within the area of proper exercise of police power it is a legislative matter to determine what safety standards are required, (*Bisenius v. Karns*, *supra*.) the "higher than 35 miles per hour" provision should be upheld as constitutional. The legislature has recognized the inherent dangers extending to that class of motorcyclists traveling in the higher speed zones.

## CONCLUSION

The evidence at the trial court was sufficient to prove that the defendant had violated the motorcycle helmet requirement. The statute requires that headgear be worn and Mr. Acker was found wearing none.

The motorcycle helmet legislation is constitutional and does not violate the equal protection clause of the United States Constitution. The statute was enacted to satisfy specific safety needs on highways of higher speeds.

The statute is not discriminatory in its application to that class of people it was designed to protect.

Respondent respectfully submits that appellant's conviction should be affirmed and Utah Code Ann. § 41-6-107.8(a) (1953) be held constitutional.

*Respectfully submitted,*

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## APPENDIX A

In the BULLETIN dated May 13, 1969, the standards for motorcycle headgear required by the new law were set forth. They state:

"The standards for the protective headgear is the 290.1—1966 *American Standard*. Normally, the label inside the helmet will so indicate when the helmet meets the specifications of this standard. . . ."

This BULLETIN was sent to the Utah Highway Patrol, Sheriff Departments, Police Departments, Prosecutors and Judges. It has also been available continuously from the Commissioner of Public Safety at his office in the State Capitol.

## APPENDIX B

## I. UNITED STATES SUPREME COURT.

1. Massachusetts v. Howie, 393 U.S. 999 (1968) certiorari denied. (S. Jud. Ct. Mass. held motorcycle helmet law constitutional)
2. Everhardt v. City of New Orleans, 395 U.S. 212 (1969) certiorari denied. (S. Ct. Louisiana reversed an appellate decision and upheld a city ordinance which is similar to state statute.
3. Bisenius v. Karns, 395 U.S. 709 (1969) appeal dismissed "for want of a substantial federal question." (S. Ct. Wisconsin upheld statute as constitutional).
4. Krafft v. New York 396 U.S. 24 (1969) certiorari denied. (Onondaga City Ct. upholding its vehicle and traffic law).
5. State v. Laitinen, 397 U.S. 1055 (1970) certiorari

denied. (S. Ct. Washington holding statute constitutional).

## II. FEDERAL COURTS

1. Eitel v. Faircolth, 311 F.S. 1160 (1970) dismissed for failure to state a claim upon which relief could be granted (S. Ct. Florida upholding F.S. 317.981).

## III. STATE COURTS

1. State v. Also, 463 P.2d 122 (1969) (Ct. of Appeals —Arizona holding statute constitutional).
2. Penny v. City of North Little Rock, 455 S.W.2d 132 (1970) (S. Ct. of Arkansas holding statute constitutional).
3. Love v. Bell, 465 P.2d 118 (1970) (S. Ct. of Colorado entered declaratory judgment declaring constitutionality of statute.)
4. State v. Burzycki, 252 A.2d 812 (1969) (petition for appeal to S. Ct. Connecticut denied after lower court held statute constitutional).
5. State v. Eitel, 227 So.2d 489 (1969) (S. Ct. Florida upholding F.S. 317.981).
6. State v. Lee, 465 P.2d 573 (1970) (S. Ct. of Hawaii affirming statute constitutionality).
7. People v. Albertson, 470 P.2d 300 (1970) (S. Ct. Idaho reversing lower decision and holding statute constitutional).
8. People v. Fries, 250 N.E. 2d 149 (1969) (S. Ct. Illinois holding statute unconstitutional). Statute is worded different than Utah law. It does not specify that motorcycle must be in use on any public highway.

9. *City of Wichita v. White*, 469 P.2d 287 (1970) (S. Ct. Kansas upholding constitutionality).
10. *Commonwealth v. Coffman*, 453 S.W. 2d 759 (1970) (Ct. of Appeals - Kentucky reversing Cir. Ct. Jefferson County and holding statute constitutional).
11. *Everhardt v. City of New Orleans*, 217 So.2d 400 (1968) (S. Ct. Louisiana reversing 208 So. 2d 423 and upholding city ordinance similar to state statute).
12. *Massachusetts v. Howie*, 238 N.E.2d 373 (1968) (S. Jud. Ct. Massachusetts upholding statute in Memorandum decision).
13. *State v. Edwards*, 177 N.W.2d 40 (1970) (S. Ct. Minnesota holding statute valid).
14. *State v. Cushman*, 451 S.W.2d 17 (1970) (S. Ct. Missouri holding statute constitutional).
15. *State v. Darrah*, 446 S.W.2d 745 (1969) (S. Ct. Ct. Missouri upholding § 301.010 R.S. Mo. and reversing 1968 decision of Sedalis Mun. Ct.).
16. *State v. Krammes*, 254 A.2d 800 (1969) (Petition for appeal denied by Supreme Court of New Jersey. Statute in 252 A.2d 223 was held constitutional).
19. *People v. Schmidt*, 295 NYS 2d 936 (1968) (Ct. of Appeals, New York dismissed appeal from 283 N.Y.S. 2d 290 affirming constitutionality).
20. *State v. Anderson*, 166 S.E. 2d 49 (1969) (S. Ct. North Carolina reversing city court and upholding G.S. 20-140.2(b)).
21. *State v. Odegaard*, 165 N.W.2d 677 (1969) (S. Ct. North Dakota upholding statute).

22. *Elliot v. City of Oklahoma*, 471 P.2d 944 (1970) (Ct. of Criminal Appeals Oklahoma held statute valid).
23. *State v. Fetterly*, 456 P.2d 996 (1969) (S. Ct. Oregon holding constitutional).
24. *Commonwealth v. Arnold*, 258 A.2d 885 (1969) (Superior Ct. Pennsylvania holding statute constitutional reversing Ct. of Common Pleas decision).
25. *Colvin v. Lombardie*, 241 A.2d 625 (1969) (S. Ct. Rhode Island upholding constitutionality).
26. *Arutanoff v. Metropolitan Government*, 448 S.W. 2d 408 (1969) (S. Ct. Tennessee upholding constitutionality).
27. *Ex Parte Smith*, 441 S.W. 2d 547 (1969) (Texas statute is upheld as constitutional).
28. *State v. Solomon*, 260 A.2d 377 (1969) (S. Ct. Vermont upholding statute).
29. *State v. Laitinen*, 459 P.2d 789 (1969) (S. Ct. Washington holding statute constitutional).
30. *Bisenius v. Karns*, 165 N.W. 2d 377 (1969) (S. Ct. Wisconsin upholding statute).

#### IV. LAW REVIEW NOTES AND ARTICLES.

1. *Constitutionality of Mandatory Motorcycle Helmet Legislation*, 73 Dick L. Rev. 100 (1968).
2. *Fatal motorcycle accidents*, J.W. Graham, 14 *Journal of Forensic Science* 79 (1969)
3. *Motorcycle Helmets and the Constitutionality of Self-protective Legislation*, 30 *Ohio State Law Journal* 355 (1969).
4. *Validity of the Motorcycle helmet legislation*, 30 *U. Pitt. L. Rev.* 421 (1968)

5. **Constitutional Law — Validity of Safety Helmet Requirements** 71 W. Va. L. Rev. (1969).
6. **Constitutional Law — Police Power Motorcycle Crash Helmet Laws' Relation to Public Welfare,** 1969 Wisc. L. Rev. 320 (1969).