

**People of the State of
California v. Melody Robin Woods**

**A Decision from the Butte County Municipal Court,
Traffic Division**

DECISION

On the fourth day of July, 1992, Officer Victor Vasquez of the California Highway Patrol issued a traffic citation to defendant Melody Robin Woods (hereinafter "WOODS") for a violation of California Vehicle Code Section 278039b).

Section 27803 provides in pertinent part:

"(a) A driver and any passenger shall wear a safety helmet meeting requirements established pursuant to Section 27802 when riding on a motorcycle, motor-driven cycle, or motorized bicycle.

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

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"(e) For the purposes of this section, 'wear a safety helmet' or 'wearing a safety helmet' means having a safety helmet meeting the requirements of Section 27802 on the person's head that is fastened with the helmet straps and that is of a size that fits the wearing person's head securely without excessive lateral or vertical movement."

Vehicle Code Section 27802 provides as follows:

"(a) The department may adopt reasonable regulations establishing specification and standards for safety helmets offered for sale, or sold, for use by drivers and passengers of motorcycles and motorized bicycles as it determines are necessary for the safety of those drivers and passengers. The regulations shall include, but are not limited to, the requirements imposed by Federal Motor

Vehicle Safety Standard No. 218 (49 C.F.R. Sec. 571.218) and may include compliance with that federal standard by incorporation of its requirements by reference. Each helmet sold or offered for sale for use by drivers and passengers of motorcycles and motorized bicycles shall be conspicuously labeled in accordance with the federal standard which shall constitute the manufacturer's certification that the helmet conforms to the applicable federal motor vehicle safety standards.

"(b) No person shall sell, or offer for sale, for use by a driver or passenger of a motorcycle or motorized bicycle any safety helmet which is not of a type meeting requirements established by the department."

WOODS plead not guilty at her arraignment. A court trial was conducted before the undersigned on September 2, 1992. Officer Vasquez and WOODS were the sole witnesses, and neither was represented by counsel.

The evidence is undisputed. WOODS was the operator of a motorcycle, and wore a black helmet described by the witnesses as a "beanie", or "half-shell". The helmet was produced in Court. The helmet bore absolutely no identification as to its manufacturer. On the rear exterior of the helmet was a round sticker approximately 1" in diameter. Three letters, each about 3/8" tall, were printed on the label -- "DOT" (apparently for Department of Transportation).

Officer Vasquez testified that he had received a bulletin from the California Highway Patrol which indicated that helmets of the type worn by WOODS did **not** meet Department of Transportation standards, even though the manufacturer sold them with the sticker affixed, signifying Department of Transportation approval.

The bulletin referred to Officer Vasquez is dated June 2, 1992, is identified as Bulletin No. 34, and the second page of the bulletin depicts four pictures of the "beanie", which appear to this Court to be photographs of the same helmet worn by WOODS (including the DOT sticker on the rear of the helmet).

A copy of bulletin is attachment "A" to this Ruling.

WOODS received her citation a month after the date of Bulletin No. #34 (Attachment "A").

WOODS testified that prior to the effective date of the helmet law (January 1, 1992), she had shopped in various motorcycle helmet stores in the Sacramento areas. She was, and is, on a limited income, and sought to be in compliance with the helmet law when it took effect.

WOODS bought the helmet in question for approximately \$35.00 prior to January 1, 1992. She believed the helmet to be in compliance with all California requirements because of the presence of the DOT sticker. She does not now recall where she purchased the helmet.

WOODS produced a California Highway Patrol Information Bulletin dated December 16, 1992, which she stated she received from the Nevada County Office of the California Highway patrol. (WOODS lives in Nevada County, but received the citation in Butte County.)

The December 16, 1991 bulletin produced by WOODS states, in pertinent part:

"The DOT is prohibited by federal law from establishing a list of approved helmets. However, to assist you in determining if a helmet is legal, the most common approved styles are shown on the attached. While every helmet may not fit into one of the categories shown, the officer may determine, upon inspection, if the helmet appears to afford adequate protection. Further, to be legally sold in California for on-highway use, a helmet must be DOT approved.

It is significant to note, that once the DOT approves a helmet, the manufacturer is responsible for applying the DOT sticker. As a result, stickers will vary in shape and size by manufacturer. Also, once purchased, many individuals remove the DOT sticker (not required to remain on the helmet), therefore, it will be common for helmets not to have DOT stickers on them."

A copy of that bulletin is Attachment "B" to this Ruling.

Defendant argues that she should be found not guilty for several reasons:"

1. Referring to the California Highway Patrol December 16, 1991 Bulletin, WOODS argues that if there is no list of DOT approved helmets, how can one choose a helmet that complies with the law?
2. Again referring to the California Highway Patrol December 16, 1991 Bulletin, WOODS argues that if a helmet is sold with a DOT approval sticker, how can a person be guilty of CVC 27803(b) if Department of Transportation approval is subsequently revoked?
3. Finally, WOODS argues that the helmet in question in fact meets the Department of Transportation standards.

Taking the last point first, California Vehicle Code Section 27803 refers to Section 27802, which in truth adopts the minimum standards found in the Code of Federal Regulations (CFR), Title 49, Section 571.218. Subdivision S1 of Section 571.218 explains that the standard:

"" . . . establishes minimum performance requirements for helmets designed for use by motorcyclists . . ."

The minimum performance standards are met if the helmets pass certain tests, including impact attenuation and penetration tests.

Neither WOODS nor Officer Vasquez qualifies as an expert witness capable of applying the federal test standards to the helmet in question. However, Officer Vasquez produced the FINAL TEST REPORT, dated April, 1992, conducted on the headgear in issue (apparently) by Southwest Research Institute. The 31 page report determined that the "beanie" failed 5 of the 6 federal tests.

Also presented to the Court was a FINAL REPORT from the United States Testing Company, Inc., dated April 21, 1992, which also concluded that the helmet in question (apparently) failed to meet the federal standards.

These test results, and the position of the California Highway Patrol, were summarized on a one-page documents entitled "Synopsis of Material

Submitted", which was offered into evidence by Officer Vasquez. A copy of the synopsis is Attachment "C" to this ruling.

The type of helmet does not now meet DOT standards. Therefore, it does not comply with Vehicle Code Section 27802(a). (Footnote #1)

The troubling question is whether the new law meets the Constitutional requirement of certainty. Over sixty years ago the United States Supreme Court stated, in *Connaly v. General Construction Company* (1926) 359 U.S. 385, 46 S.Ct. 126, 127, 70 L.Ed. 322:

"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of the due process of law."

It is a well-settled rule of statutory interpretation that a statute is to be construed to avoid rendering it unconstitutional, if such interpretation does not do violence to the statute's language. Also a statute is to be read in the light of the problem that it was designed to solve. *People v. Plywood Manufacturers of California* (1955) 137 Ca2d Supp. 359, 364.

The federal law, adopted by Vehicle Code Section 27802, appears to be definite regarding the criteria a helmet must possess, and the tests it must pass, before it "meets the standards." It has long been the rule that the penal statute may refer to the law or regulations of another state, or the United States, as long as that other law or regulation is ascertainable and itself certain. *People v. International Steel Corporation* (1951) 102CA2d Supp. 935, 938, see Witkin and Epstein California Criminal Law (2nd Ed.) "Introduction to Crimes"), Section 48.

Further, the purpose of the helmet statutes (Footnote #2) appears to be served by requiring that helmets possess certain physical characteristics in order to provide protection to those riding motorcycles.

The problem: if no official list of helmets passing DOT standards is kept, how does the consumer know which to choose, particularly when it appears that DOT labels are attached to helmets which, in fact, do not meet federal standards? And, for the evidence presented, defendant made a thorough and reasonable attempt to comply with the law.

On the state of the evidence presented, the court finds that persons of common intelligence could not determine which helmet to use, or avoid, and thereby comply with the law. Ms. Woods, made an **uncommon** (Footnote #3) attempt to comply with the law.

The court finds the statute upon which the prosecution rests to be void for vagueness, upon the state of the evidence presented. (Footnote #4) Not guilty.

DATED: 9/29/92

STEVEN J. HOWELL, Judge of the Municipal Court

(Footnotes:)

1. No evidence was presented if the department has adopted regulations ("The department may adopt reasonable regulations . . .") under Vehicle Code Section 27802(a).
2. Vehicle Code Section 27803(f): "In enacting this section, it is the intent of the Legislature to ensure that all persons are provided with an additional safety benefit while operating or riding a motorcycle, motor-driven cycle, or motorized bicycle . . ."
3. It is somewhat ironic (and appropriate) that defendant received her citation on the Fourth of July, our Nation's day of celebration of its Independence. While this Court has no doubt that the legislature may validly impose legislation to force a citizen to take action to protect herself/himself (e.g. seat belt laws), the citizen must know what is expected, clearly and unequivocally, before sanctions are to be imposed for noncompliance.
4. This is not to say that in another prosecution, a presentation of different evidence might compel another result.

POST SCRIPT: The injunction issued in *Easyriders v. Hannigan* was the result of the very CHP Bulletin discussed in this decision. Judge Howell was even more correct than he knew – *as applied*, CVC 27803 is void for vagueness.