

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

THE STATE OF GEORGIA
Plaintiff,

vs.

GREG D ALSPACH
Defendant

FILE NO: 97 D4025-2

ORDER OF COURT ON MOTION

The above and foregoing case coming on before the Court on the Motion of the Defendant to dismiss the charge because it is so vague and indefinite that an ordinary citizen could not determine whether he was violating the law or not; the state maintaining that the statute in question is clear and unequivocal; Defendant is charged with a violation of 40-6-315 (a) of the Official Code of Georgia, which states in pertinent part; "no person shall operate or ride upon a motorcycle unless he is wearing protective headgear which complies with standards established by the Board of Public Safety."

The evidence submitted by both sides in brief and testimony fails to reveal any standard which a person could be certain he was complying with the law.

Vagueness of a criminal law rests on a constitutional principle that procedural due process requires fair notice and proper standards for adjudication. Persons are not required at the peril of life, liberty or loss of property to speculate concerning a penal statute, but are entitled to know what it is that the state commands or forbids by statute.

A person could not look at this statute and be sure what was prohibited or required of them in the judgment of this court, and this court finds that the law as written is so vague and indefinite that a person could not determine what the statute commands or prohibits. It appears that the defendant was

wearing a baseball cap with a bill on it that affords protection from the sun, and this could certainly constitute a form of "protective headgear," and since the statute does not command nor prohibit, nor set any standards describing the "approved headgear" no one can determine the meaning of the law nor its requirements for compliance. Since it is clear that the Department of Pubic Safety has formulated no standards as of this time, it is futile to require a trial when it is evident the State cannot support the requirements for prosecution. It appears that the defendant in this case was wearing "protective headgear" in the form of a baseball cap, which arguably protects one from the sun, and which gives him the right to challenge the constitutionality of said statute since he was wearing "protective headgear." Said case is hereby dismissed as the statute on which it is based is too vague and indefinite to be capable of prosecution or defense, because there have been no standards established by the Department of Public Safety.

SO ORDERED this 25th day of June 1998

GENE REEVES, JR., Judge
STATE COURT by designation