North Dakota Law Review

Volume 45 | Number 2 Article 7

1968

Constitutional Law - Motor Vehicle Statutes - Motorcyclists' Protective Headgear

John C. Lervick

RECENT CASES

CONSTITUTIONAL LAW—MOTOR VEHICLE STATUTES—MOTORCYCLISTS' PROTECTIVE HEADGEAR. Appellant was arrested for violation of a Michigan statute[1] requiring all operators and passengers of motorcycles to wear a crash helmet approved by the department of state police. Summary judgement was given by the trial court, from which this appeal was made, requesting a declaration of rights as to the constitutionality of the amendment. Appellant contended that the amendment violated his constitutional rights as guaranteed by the Michigan[2] and United States Constitutions.[3] The Court of Appeals of Michigan, Division Two, reversed the trial court decision, holding the contested amendment to be an improper exercise of the state's police power. They reasoned that while a relationship to the safety and protection of the individual motorcyclist himself was shown, no sufficient relationship existed between the amendment and the public health, safety or welfare. *American Motorcycle Assn. v. Davids* ——Mich.——, 158 N.W.2d 72 (1968).

The opinion in the instant case turns on the direct question as to whether or not the statute challenged has a sufficient relationship to the public health, safety, or welfare. While the Michigan court concedes that the state does have a substantial interest in highway safety, they quote from a United States Supreme Court decision[4] that governmental purposes may not be pursued by broadly stifling fundamental personal liberties. The court here recognizes the principle of treating enacted legislation with a presumption of validity, yet it looks to the purpose of the enactment as intending to protect the motorcyclist from himself and not to protect the public as it feels validly exercised police power should. The court looked to the constitutional protection of being left alone as cited in a recent decision of the United States Supreme Court,[5] and concludes that only by stretching one's imagination can a relationship be found between the statute involved and the public health, safety, morals and welfare.

The power of a state to exercise its police power to provide

1. MICH. COMP. LAWS ANN. § 257.658(d) (1967).
2. MICH. CONST. art. 1, § 17 and 23.
3. U.S. CONST. amend. 9 and 14.
4. Shelton v. Tucker, 364 U.S. 479, 488 (1960).
5. Griswold v. Connecticut, 381 U.S. 479, 494 (1965).

for the needs of the public is considered an inherent right.[6] A precise definition of what constitutes the scope of police power has been virtually impossible because of the rapidly changing social and economic conditions of this age. However, most attempted definitions have included the element of reasonableness[7] in preserving the public order, health, safety, and morals.[8] It should be noted that the scope of the police power of the state cannot be limited to merely the preservation of the public health, safety and morals, but includes any valid exercise of the power which promotes these ends. The United States Supreme Court has ruled that the protection of the health, morals, and lives of citizens is within the legislative police power,[9] and that the police power of the state embraces regulations which promote the public convenience or general prosperity, as well as regulations designed to promote the public health, safety and morals. The Supreme Court stated that the validity of the exercise of such power must depend on the circumstances of each case and the character of the regulations involved, and whether they are arbitrary or unreasonable, and really designed to accomplish a legitimate public purpose.[10]

While the scope of the police power may be extremely wide, it must always be subject to certain constitutional limitations[11] and cannot indiscriminately interfere with certain constitutionally guaranteed rights. The most apparent of these rights are those of the due process clause of the Fourteenth Amendment to the Federal Constitution.[12] While certain exercises of the police power may infringe on some constitutionally protected rights, they can be considered valid as long as they bear a real and substantial relation to the public health, safety, morals and welfare and are not unreasonable or arbitrary.[13] In the instant case language of a prior decision of the Michigan Supreme Court is referred to:

> Under our Constitution and system of government the object and aim is to leave the subject entire master of his own conduct, except in the points wherein the public good requires some direction or restraint.[14]

Perhaps the most classic statement regarding the exercise of

6. Nebbia v. New York, 291 U.S. 502, 524 (1933).
7. Goldblatt v. Hempstead, 369 U.S. 590, 594 (1962).
8. State *ex. rel.* Minot v. Gronna, 79 N.D. 673, 59 N.W.2d 514, 531, 532, (1953); Barker v. Palmer, 217 N.C. 619, 8 S.E.2d 610, 613, 614 (1940).
9. Holden v. Hardy, 169 U.S. 366, 395 (1898).
10. C.B. & Q. Railway v. Illinois *ex. rel.* Comm'rs. 200 U.S. 561, 592 (1906).
11. Panhandle Eastern Pipeline Co v. State Highway Comm. 294 U.S. 613, 622 (1935), *reh. denied,* 295 U.S. 768 (1935).
12. U.S. CONST. amend. 14.
13. *E.g.* Benjamin v. Columbus, 167 Ohio 103, 146 N.E.2d 854, 860 (1957), *cert. denied,* 357 U.S. 904 (1958).
14. People v. Armstrong, 73 Mich. 288, 41 N.W. 275, 277 (1899).

the police power is contained in the language of the court in *Lawton v. Steele*,[15] as affirmed in 1962 in *Goldblatt v. Hempstead*:

> To justify the state in . . . interposing its authority in behalf of the public, it must appear . . . First, that the interests of the public . . . require such interference; and second that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive on individuals.[16]

From the preceding statements it is apparent that before the exercise of individual liberties or actions (such as riding a motorcycle without a crash helmet) can be prohibited by statute, the wrong or danger resulting from that act must sufficiently endanger the public health, safety, morals or welfare so that the infringement on individual rights and privilege is considered justified.

The current status of the bounds of the police power seems to be stated in *Williamson v. Lee Optical*,[17] where the United States Supreme Court dealt with the regulation of the sale of eyeglasses by other than licensed optometrists and opthamologists. The Court said that state legislation imposing regulations under the police power to correct an evil at hand is valid if it might have been thought by the legislature that the particular measure was a rational way to correct the evil contended with.[18] It appears as though the past tests as to the validity of the exercise of police power have dealt primarily with the regulation and control of industries and activities which may pose a direct threat to the general public and their health, safety, or welfare. Typical of such regulations are those requiring licensing of certain professions,[19] regulation of highways, prevention of financial hardship and possible reliance upon welfare agencies of the state,[20] and requirements for the support of uninsured motorist funds.[21] It is notable that North Dakota has required big game hunters to wear red caps while hunting since 1931,[22] a departure from the usual standard in that its protection is not directed at the pubiic in general. The constitutionality of this statute has never been tested in the courts, and the statute is still valid and must be recognized as a type of legislation analagous to the statute in question in the instant case.

Thus, the conflict between the individual's liberties and public

15. Lawton v. Steele, 152 U.S. 133, 137 (1894).
16. Goldblatt v. Hempstead, *supra* note 7 at 594, 595.
17. Williamson v. Lee Optical Co., 348 U.S. 483 (1955).
18. *Id.* at 488.
19. Barsky v. Board of Regents, 347 U.S. 442, 449 (1954).
20. Schecter v. Killingsworth, 93 Ariz. 273, 380 P.2d 136, 141 (1963).
21. Allied American Mutual Fire Ins. Co. v. Commissioner of Motor Vehicles, 219 Md. 607, 150 A.2d 421 (1959).
22. N.D. CENT. CODE § 20-05-05 (1960).

concern has become the essential issue. This question, because of the ever changing political, economic and social conditions of the era, should be decided by the legislature. The United States Supreme Court in *Goldblatt v. Hempstead,* said that "debatable questions as to reasonableness are not for the courts, but for the legislature" in determining whether or not the police power is to be reasonably exercised.[23]

In upholding a Utah statute preventing miners and ore refinement workers from laboring for more than eight hours, the United States Supreme Court has termed the question as being whether the legislature had adopted the statute with reasonable discretion, or whether the action was an excuse for unjust discrimination, oppression and spoilation of a particular class.[24] In that decision, while discussing the state's power to protect individuals against themselves, the court said:

> The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer.[25]

In holding the statute in the instant case to be unconstitutional, the Michigan court finds support from three decisions[26] of other courts regarding similar statutes.[27] In *People v. Smallwood,*[28] the Irondequoit, New York, Court of Special Sessions held that while the state did have the right to require all vehicle operators and highway users to waive certain rights and privileges for the protection of other motorists or vehicles, the right to wear certain clothing is not a privilege that can be waived, provided that the clothing is not indecent. The statute was again held unconstitutional by the Oakfield New York Court of Special Sessions two months later in *People v. Carmichael,*[29] finding the legislation intended to require a citizen to protect his own well being rather than to make the highways safer and more useful to the general public. The *Smallwood* court seemed to foresee some unfavorable consequences of upholding such legislation, stating that if protective headgear could be required of motorcyclists, the legislature could require protective shin guards, knee and elbow pads for motorcyclists, as well as requiring auto-

23. *Supra* note 7 at 595.
24. Holden v. Hardy, *supra* note 9 at 398.
25. *Id.* at 397.
26. Everhardt v. New Orleans,——La.——, 208 So.2d 423 (Ct. App. 1968); People v. Carmichael, 53 Misc.2d 584, 279 N.Y.S.2d 272 (Oakfield Ct. Sp. Sess. 1967); People v. Smallwood, 52 Misc.2d 1027, 277 N.Y.S.2d 429 (Irondequoit Ct. Sp. Sess. 1967).
27. MASS. GEN. LAWS ANN., ch. 90 § 7 (1958); N.Y. STAT. VEHICLE AND TRAFFIC LAW, § 381 Subdiv. 6 (McKinney 1966); R. I. GEN. LAWS ANN. § 31-10.1-4 (1956); CITY OF NEW ORLEANS PENAL ORDINANCE 3536 M.C.S., § 38-228.1 (c).
28. People v. Smallwood, *supra* note 26.
29. People v. Carmichael, *supra* note 26.

mobile drivers to wear protective headgear. Their opinion was that the statute merely prevented the individual from exercising his judgment or preference as to personal adornment. Eleven months after *Carmichael* in *Everhardt v. New Orleans,*[30] a New Orleans city ordinance[31] was held unconstitutional by the Louisiana Court of Appeals in that it was violative of Fourteenth Amendment protections and placed undue restrictions on one class of the motoring public without a salutory effect on the public at large. The reasoning was that while regulations for the public safety may affect one group more than others and still remain in the constitutional pale, such regulations must promote the public good. The decision in *Everhardt* was further supported by the idea that an individual cannot be constitutionally required to protect his well being so long as his conduct affects only himself.

Contrary to the aforementioned cases, six later decisions have upheld the challenged legislation[32] and found not unreasonable imposition on the individual. In *People v. Bielmeyer,*[33] the Buffalo, New York, City Court looked to the danger of a motorcyclist being struck by a flying object propelled by another vehicle causing distraction in the operation of the motorcycle, which would result in subsequent loss of control of the vehicle. The *Bielmeyer* court feared that a motorcycle out of control could cause the motorcyclist and his machine to be propelled off the road or into the opposite lane, causing damages and injuries to other motorists, passengers or pedestrians.

The Erie County, New York, Court in *People v. Schmidt*[34] expressed the same danger, referring to the delicate balance required of a motorcyclist and his machine, the slight distraction needed to upset the necessary balance, causing chaos for operators, riders, and anyone in their path. In the instant case, the Michigan court attempted to distinguish *Schmidt* by stating that a windshield requirement would accomplish the same objectives. This writer agrees that a windshield or face protective device would be more effective to protect against distraction from flying objects. However, it does not seem certain that anything short of complete protection from exposure would bring the desired result, as speculated by the *Smallwood*[35] decision. In sustaining the legislation in *Schmidt,*

30. Everhardt v. New Orleans, *supra* note 26.
31. NEW ORLEANS CITY PENAL ORDINANCE, 3536 M.C.S. § 38-228.1(c).
32. Commonwealth v. Howie, ——Mass.——, 238 N.E.2d 373 (1968); State v. Lombardi, ——R.I.——, 241 A.2d 625 (1968); People v. Carmichael, 56 Misc.2d 388, 288 N.Y.S.2d 931 (Genessee County Ct. 1968); People v. Newhouse, 55 Misc.2d 1064, 287 N.Y.S.2d 713 (Ithaca City Ct. 1968); People v. Schmidt, 54 Misc.2d 702, 283 N.Y.S.2d 290 (Erie County Ct. 1967); People v. Bielmeyer, 54 Misc.2d 466, 282 N.Y.S.2d 797 (Buffalo City Ct. 1967).
33. People v. Bielmeyer, *supra* note 32.
34. People v. Schmidt, *supra* note 32.
35. People v. Smallwood, *supra* note 26.

the court favored expansion of the scope of police power when related to public safety, contending that in such areas the legislature should have more than normal latitude in regulating pubiic conduct.[36]

A further justification of legislation requiring motorcyclists to wear helmets, even though their primary purpose may be for the protection of the individual motorcyclist or passenger, has been enunciated in a later New York County Court[37] and Rhode Island Supreme Court[38] decisions upholding the challenged statutes. These courts have reasoned that it is a state's responsibility to prevent individuals from becoming public charges and burdens to the state through state welfare or institutional care. They indicate that those failing to wear protective headgear are highly susceptible to injuries which if not fatal, will more than likely incapacitate the victim, rendering him a person for which the state welfare programs would be responsible.

In reversing the earlier *Carmichael* decision[39] the Genessee County, New York, Court held that the infringement of individual constitutional rights is incidental to the exercise of the police power and not unreasonable when used to promote the public welfare. The most recent decision is that of *Commonwealth v. Howie,*[40] where the Massachusetts Supreme Court found the state statute[41] to be within the power of the legislature to pass reasonable measures for the promotion of safety upon public ways. The Massachusetts court looked to the interests of motorcyclists and others who may use the public highways, and that the act bore the necessary relation to public health and general welfare to be a valid exercise of the police power. In this decision the instant case was dismissed as being not controlling.

We thus see two sides of the conflict between individual liberties and the interests of the public. It appears that those decisions condemning motorcycle helmet legislation desire to place a strict limitation on legislative interference with personal liberties, honoring the individual's desire to disregard his health and safety by permitting harm to himself without concern by the government. The cases supporting the legislation, which at this time are in the majority, seem to recognize the moral aspects of the legislative intent to protect the individual from injuries which he doesn't seem to care about, either because of his lack of judgment or lack of concern about the future. The primary basis for upholding the

36. People v. Schmidt, *supra* note 32.
37. People v. Newhouse, *supra* note 32.
38. State v. Lombardi, *supra* note 32.
39. People v. Carmichael, *supra* note 32.
40. Commonwealth v. Howie, *supra* note 32.
41. MASS. GEN LAWS ANN. ch. 90 § 7 (1958).

legislation in these cases appears to be the minimization of public welfare cases.

It is apparent that the desire of legislators in enacting such statutes was basically to protect those immature and careless youngsters and adults who would injure themselves because of their vain desire to disregard safety for the sake of personal appearance. It is doubtful that those challenging the statutes desire to foresee the tragic consequences, and irrevocable nature of injuries common to victims of motorcycle accidents.

If, contrary to the majority of decisions rendered at this time, the eventual majority will be to strike down such legislation it is the opinion of this writer that some other means may be found to enforce the legislative intent. To carry out the desired results we may refer to tort law concepts to find a possible means of support for the desired protection. It is suggested that failure to use protective headgear may be a form of contributory negligence, thus denying the nonuser of any recovery for injuries sustained as a result of such nonuse in a contributory negligence jurisdiction. This approach has been recited in a Wisconsin Supreme Court decision[42] regarding failure to use seat belts and strongly advocated for future use.[43] Even in a comparative negligence jurisdiction such failure would tend to reduce the amount of damages. It would appear that the comparative negligence theory would work the most equitable results in cases where failure to wear the protective headgear has been a contributing factor to the injury, and not the cause of the accident. This latter theory would still impose the burden upon the wrongdoer, but the amount of damages would be reduced by the failure to wear the headgear. This defense to recovery would, however, require proof that the injuries were caused by the failure to have the helmet on, creating problems in each individual case.[44] Another indirect consideration for enforcement of the policy requiring or urging the use of protective headgear would be the inclusion by insurance companies of a clause requiring any protected individual under an insurance policy to wear the headgear to obtain coverage.

It is apparent that most courts are going to be willing to use the theory of preventing welfare burdens to sustain protective headgear legislation, and it appears that the instant case, while well reasoned, will become the minority. No argument can be made against the moral purpose of the legislation discussed, even though in clear terms the acts do somewhat infringe on the personal be-

42. Bentzler v. Braun, 34 Wis.2d 362, 149 N.W.2d 626 (1967).
43. Marks, *Contributory Negligence for Failure to Wear Seat Belts*, 1968 INS. L.J. 5.
44. Note, *Federal Legislation: The National Traffic and Motor Vehicle Safety Act: Must the Reasonable Man be Concerned?* 19 FLA. L. REV. 635, 651, 652 (1967).

havior and actions of those affected, and do not meet complete compliance with the standards established for an exercise of the police power.

JOHN C. LERVICK