

IN THE IOWA DISTRICT COURT FOR MITCHELL COUNTY

STATE OF IOWA,	)	
	)	
Plaintiff,	)	Nos. CMCICI100034
	)	STA0008549
vs.	)	
	)	
DEREK H. ZIMMERMAN,	)	ORDER AFFIRMING
	)	MAGISTRATE'S DECISION
Defendant.	)	

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This case comes before the Court on appeal from the Mitchell County Magistrate. Defendant Derek Zimmerman was charged under Mitchell County Local Ordinance 46A pertaining to Mitchell County steel or metal wheel ordinance. On August 24, 2015, Zimmerman was found driving a tractor on Addison Avenue. The tractor had steel grouser bars that directly contact the surface of the Mitchell County hard-surface road. The Magistrate found that the State had proven violations of Iowa Code § 321.441 and Mitchell County Local Ordinance 46A beyond a reasonable doubt.

Zimmerman, however, argues that the charges should have been dismissed as Zimmerman was exercising his freedom of religion pursuant to the First Amendment of the United States Constitution. Zimmerman is associated with the Old Order Groffdale Conference Mennonite Church. As part of their religious beliefs, they are forbidden to drive tractors unless the wheels are equipped with steel cleats. These religious order members are not allowed to have certain luxuries as those would be contrary to their interpretation of the Bible. If a church member violates the religious rules by using rubber tires, the member can be excommunicated or removed from the church. Zimmerman lives on a hard-surface road, and the only way to leave his farm with a tractor is to drive it on the road at least with one wheel on the shoulder and one wheel on the road. The only other option would be to hire other persons to drive them for business purposes. However, this leads to additional expense.

Mitchell County contends that the steel wheels are harder on the light top surfacing.

A previous Mitchell County ordinance was reviewed by the Iowa Supreme Court in *Mitchell County v. Matthew Zimmerman*, 810 N.W.2d 1 (Iowa 2012). Matthew Zimmerman is Derek Zimmerman's brother. This Court will refer to the prior case as *Zimmerman I*.

In *Zimmerman II* the Court considers the following Mitchell County ordinance:

No person shall drive over the hard surfaced roadways, including but not limited to cement, concrete and blacktop roads, of Mitchell County, or any political subdivision thereof, a tractor or vehicle equipped with cleats, ice picks, studs, spikes, chains or other projections of any kind or steel or metal wheels equipped with cleats, ice picks, studs, spikes, chains, or other projections of any kind.

In analyzing the previous Mitchell County ordinance, the Supreme Court first considered whether the county ordinance was facially neutral. Because the ordinance referred to the use of steel wheels in a secular and non-religious context, the ordinance was facially neutral. The Iowa Supreme Court ruled that Zimmerman's religious practice was not being intentionally discriminated against. Mitchell County enacted the ordinance not to persecute members of a particular faith, but to protect its investment in repaved roads. The Supreme Court then turned to the question of whether or not the ordinance was "generally applicable." The Supreme Court followed a two-step analysis to evaluate the potential under-inclusiveness or non-generality of the challenged ordinance. The Supreme Court found that the Mitchell County ordinance was under-inclusive because it chose to prohibit only a particular source of harm to the roads that had a religious origin. The Supreme Court contrasted the county ordinance with State law, which contained various limits on the overall weight of vehicles and also limits weight per inch of tire width. Mitchell County did not include those matters in its ordinance. The Supreme Court concluded that the under-inclusiveness was substantial not inconsequential. Having found that the ordinance failed the general applicability test, the Supreme Court then applied strict scrutiny to the ordinance. The County had the burden to show that the ordinance served a compelling state interest and was the least restrictive means of attaining that interest. The Supreme Court concluded that the ordinance was not narrowly tailored to achieve the stated objective of the road preservation. The Court concluded there was a lack of evidence of the degree to which the steel lugs harm the County's roads. The Court noted that a more

narrowly-tailored alternative might allow steel wheels on county roads in some circumstances by also including a provision which established an effective mechanism for recouping the costs of any necessary road repairs if damage occurs. The Court concluded that the County's goal of road preservation could be accomplished less restrictively without banning the tractors used by the Mennonites. The Supreme Court held that the application of the Mitchell County Road Protection Ordinance violated the defendant's right of free exercise of religion under the First Amendment of the United States Constitution. The Supreme Court found that the charges against Matthew Zimmerman should be dismissed.

Following the Supreme Court case, Mitchell County adopted a new ordinance. The restrictions under Section 4 of the County Ordinance 46A utilize the same language that appears in Iowa Code § 321.442.

No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberances of any material other than rubber which projects beyond the tread of the traction surface of the tire except that it shall be permissible to use:

1. Farm machinery with tires having protuberances which will not injure the highway.
2. Tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.
3. Pneumatic tires with inserted ice grips or tire studs projecting not more than one-sixteenth inch beyond the tread of the traction surface of the tire upon any vehicle from November 1 of each year to April 1 of the following year, except that a school bus and fire department emergency apparatus may use such tires at any time.

The State presented evidence that the defendant in this case, Derek Zimmerman, operated a tractor equipped with steel grouse bars that directly contacted the surface of a Mitchell County hard-surface road. The Magistrate found that Zimmerman violated Iowa Code § 321.441 and Mitchell County Ordinance 46A.

The Magistrate then considered Defendant's motion to dismiss both citations based upon his constitutional right of religion.

The Magistrate applied the general applicability test set forth in *Zimmerman I* and concluded that the new ordinance was under-inclusive because it failed to address other vehicles which are sources of road damage. The Magistrate followed the *Zimmerman I* analysis and found that a more narrowly tailored alternative might allow steel wheels on county roads in some circumstances, if the ordinance also established an effective mechanism for recouping the costs of necessary road repairs if damage occurs. The Magistrate found that Ordinance 46A does not survive the strict scrutiny analysis.

Zimmerman also challenged Iowa Code § 321.441, which states, "No person shall operate or move on a paved highway any motor vehicle, trailer or semitrailer having any metal tire or metal track in contact with the roadway." The Magistrate noted that unlike the county ordinance, Iowa Code § 321.441 had exceptions. One of the exceptions under Iowa Code § 321.443 was that local authorities could review any application for special permit and, with good cause shown, issue special permits authorizing operation upon the highway of traction engines or tractors having movable tracks with transfer corrugations upon the periphery of such movable tracks or farm tractors or farm machinery, the operation of which upon a highway would otherwise be prohibited under this chapter. There was no evidence that they made any application for a special permit as outlined under this code section. The Magistrate concluded that Zimmerman had failed to exhaust his administrative remedies as required to make an applicable constitutional challenge. The Magistrate found that the motion to dismiss should be granted as to CMCICI100034 and that in STA0008549 the motion to dismiss was denied. Defendant was sentenced to the scheduled fine of \$20 plus surcharge and court costs.

The State contests the appointment of counsel at state expense for the defendant. For the reasons set forth by the Magistrate, the Court finds that appointment was appropriate. See *State v. Young*, 863 N.W.2d 249, 281 (Iowa 2015). In addition to the possible penalties under the county ordinance, Zimmerman faced penalties under the state statute.

The State contends that Derek Zimmerman cannot claim that he was exercising freedom of religion because he is not yet a member of the Old Order Groffdale Conference. However, the free exercise of religion does not require membership in a particular group. The emphasis is on the role the

religious beliefs assume in Derek Zimmerman's life. See *State v. Olsen*, 315 N.W.2d 1, 8 (Iowa 1982) (quoting L. Tribe, *American Constitutional Law* §14.6). Even if Derek Zimmerman is not yet a member of the religious order, he does hold sincerely held religious beliefs.

The Court finds that the Magistrate's determination regarding the county ordinance is correct and that *Zimmerman I* controls this matter. Although Mitchell County has made efforts to modify its ordinance, the revised ordinance is still under-inclusive and is subject to strict scrutiny analysis. Under this analysis, the ordinance is not narrowly tailored to achieve the stated objective of road preservation. Mitchell County did not follow the Iowa Supreme Court's suggestion in *Zimmerman I*, that an ordinance could survive a strict scrutiny analysis by allowing steel wheels to be driven and also provide a mechanism for recouping the cost of necessary repairs if damage does occur. The Magistrate was correct in granting the motion to dismiss regarding the county ordinance.

In contrast to the county ordinance, Iowa Code § 321.441 must be considered in combination with Iowa Code § 321.443, which provides that special permits may be issued authorizing tractors with "transverse corrugations" to be operated on highways even if the operation of such tractors would be otherwise prohibited.

Defendant argues that it would have been fruitless to obtain a special permit, as the County would have rejected the permit because of the county ordinance. The Court cannot conclude that these efforts would be fruitless. The ability to seek a permit is established under state law. The existence of a conflicting county ordinance would not necessarily prevent the issuance of a permit under state law. Here there was not an effort to seek a permit, and it was not certain that no permit could be obtained. See *Town of Randolph v. Gee*, 199 Iowa 1981, 201 N.W. 567, 568 (1925) (municipal ordinance could not declare an act unlawful if the declaration violated an expressed state policy making the act lawful).

The Court also finds that the Magistrate's analysis regarding the state ordinance is correct. The Court concludes that because certain exceptions exist under state code, including Iowa Code § 321.443, that the state law is better tailored to the objectives of state law without violating the free exercise of religion. The State statutes therefore survive a strict scrutiny analysis and are constitutional.

As found by the Magistrate, Zimmerman did not seek such a permit. The Court finds that the State law is enforceable, and accordingly, the Court finds that the decision of the Magistrate should be affirmed.

ORDER

The Magistrate order in CMCICI100034 and STA0008549 is affirmed. The charge in CMCICI100034 is dismissed. The conviction in STA0008549 is affirmed.



State of Iowa Courts

**Type:** OTHER ORDER

<b>Case Number</b>	<b>Case Title</b>
STA0008549	STATE VS. ZIMMERMAN, DEREK HOOVER

So Ordered

A handwritten signature in cursive script that reads "Rustin Davenport".

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Rustin Davenport, District Court Judge,  
Second Judicial District of Iowa