

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE CITY OF  
LATHRUP VILLAGE,

Plaintiff,

v

No. 09-DA8981-AV

JAMES MICHAEL SOLANO,

Defendants./

MOTION HEARING

BEFORE THE HONORABLE RUDY J. NICHOLS

Pontiac, Michigan - Wednesday, September 16, 2009

APPEARANCES:

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WITNESSES :

None

EXHIBITS :

RECEIVED :

None offered.

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Pontiac, Michigan

Wednesday, September 16, 2009 - 9:09 a.m.

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THE CLERK: Now calling number 13 from the docket; are both parties here in the matter of Lathrup Village versus James Solano? Case number 09-DA8981-AV.

(At 9:09 a.m., counsel from previous hearing requesting clarification from the Court.)

(At 9:09 a.m., proceeding continues.)

MR. SEYMOUR: Morning, your Honor, Philip Seymour appearing on behalf of the City of Lathrup Village.

Your Honor--

THE COURT: This is your claim of appeal, right?

MR. SEYMOUR: Yes.

THE COURT: And, you are?

MR. VESPRINI: Good morning, your Honor, Dondi Vesprini appearing on behalf of the defendant.

MR. SEYMOUR: Your Honor, I really don't have anything to add, other than--

THE COURT: Okay.

MR. SEYMOUR: --other than what was in the brief--

THE COURT: If you'll have a seat, I'm ready--

1 I'm prepared to--this matter is before the Court on  
2 plaintiff/appellant's claim of appeal of the April 17,  
3 2009, order granting defendant's motion to dismiss in  
4 finding defendant not responsible in the 46th Judicial  
5 District Court.

6 Defendant was issued a citation for improper  
7 or no safety equipment on September 21, 2008.  
8 Defendant had been pulled over for excessive noise  
9 while driving a motorcycle. In conducting the stop,  
10 Officer Becker of the Lathrup Village Police not--  
11 noticed that the defendant's helmet appeared to be a  
12 novelty helmet and not in compliance with state  
13 regulations. The matter proceeded to formal hearing,  
14 and at the close of the plaintiff's proofs, defendant  
15 moved for a directed verdict, arguing that the only  
16 helmet requirement that defendant failed to comply with  
17 was a labeling requirement, and such requirement does  
18 not apply to the user of the helmet, but instead to the  
19 manufacturer.

20 The man--the parties submitted supplemental  
21 briefs, and after a second hearing, the trial court  
22 entered the order dismissing the citation.

23 Today, plaintiff argues the trial court erred  
24 in relying on opinion letters not offered in to  
25 evidence; that plaintiff introduced evidence that the

1 helmet did not contain the permanent labeling required  
2 by state law, and that defendant failed to produce  
3 evidence of defendant's affirmative defense that the  
4 helmet was once labeled but since had been removed.  
5 Defendant/appellee's response and arguments are noted  
6 for the record and incorporated by reference.

7 An appellate court review of a trial court's  
8 decision to grant a motion is--for directed verdict is  
9 de novo; see Meagher v Wayne State, 202 Mich App 700.

10 MCL 257.658 provides in pertinent part that a  
11 person operating or riding on a motorcycle on a public  
12 thoroughfare shall wear a crash helmet on his or her  
13 head. Crash helmets shall be approved by the Department  
14 of State Police. The Michigan State Police adopted the  
15 model specification established by the United States  
16 Department of Transportation National Highway Safety  
17 Administration, hereinafter NHTSA.

18 In part, 49 CFR 571.218 provides for a  
19 labeling requirement. Each helmet shall be labeled  
20 permanently and legibly, in a manner such that the  
21 label can be read easily without removing padding or  
22 permanent parts, with the following: manufacturer's  
23 name and identification, precise model designation,  
24 size, month and year of manufacture, the symbol DOT  
25 constituting the manufacturer's certification that the

1 helmet conforms to applicable federal motor vehicle  
2 safety standards.

3 In this case, Officer Becker testified that  
4 his investigation of the helmet revealed it did not  
5 have a crush liner. It did have a plastic buckle, that  
6 when applied pressure to the helmet the helmet  
7 collapsed inwardly, that there was no label inside or  
8 out; see trial transcript volume one, pages 13 to 16.

9 The district court found that nothing within  
10 the regulations required a buckle on the helmet or a  
11 crash liner; transcript volume two, page 50.

12 In finding that the NHTSA standards do  
13 provide for a labeling requirement, the trial court  
14 noted that the regulations are guidelines that have not  
15 been administratively approved pursuant to state  
16 statute; transcript volume two, pages 60 to 61.

17 The court relied on opinion letters supplied  
18 in support of the motion for directed verdict stating  
19 that label guidelines are requirements for the manu--  
20 for manufacturers rather than for consumers. The trial  
21 court found no evidence was presented by plaintiff that  
22 the helmet in and of itself was not suitable and non-  
23 compliant. The court further stated that no evidence  
24 was shown that the helmet did or did not meet the  
25 specific manufacturing specifications; transcript

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volume two, pages 65 to 66.

Having reviewed the transcripts, specifically the testimony of Officer Becker, as well as the-- reviewing the requirements of 49 CFR 571.218, district court--this Court agrees with defendant and finds that the trial court did not error in granting defendant's motion to dismiss. Contrary to plaintiff's arguments, plain--plaintiff fails to satisfy this Court that the trial court improperly relied upon opinion letters, or that it was necessary that defendant establish that he removed a label that was once there. For these reasons and those further stated by defendant/appellee, plaintiff's claim of appeal is denied. Defendant may present an order to this Court which should reflect it is a final disposition. Have a good day.

MR. SEYMOUR: Thank you.

MR. VESPRINI: Thank you, your Honor.

THE COURT: Yep.

(At 9:14 a.m., proceeding concluded.)

\* \* \* \* \*

1 COUNTY OF OAKLAND ) ss.

2 STATE OF MICHIGAN )

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4 I certify that this transcript is a true and accurate  
5 transcription to the best of my ability of the proceeding in  
6 this case before the Honorable Rudy J. Nichols as recorded  
7 by the clerk.

8 Proceedings were recorded and provided to this  
9 transcriptionist by the Circuit Court and this certified  
10 reporter accepts no responsibility for any events that  
11 occurred during the above proceedings, for any inaudible  
12 and/or indiscernible responses by any person or party  
13 involved in the proceeding or for the content of the  
14 recording provided.

Dated: October 4, 2009

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Sandra Traskos, CER 7118