

Minnesota v. Hershberger

Learner Outcomes

Students will:

1. Know the basis for freedom of religion.
2. Compare the protections offered by the Minnesota Constitution with those offered by the U.S. Constitution.
3. Understand that cases reflect real problems facing communities and that lawsuits are only one way of solving the problems.
4. Evaluate rights, responsibilities, actions, and consequences surrounding freedom of religion.

Materials needed: *Copies of* **CASE SUMMARY: *Minnesota v. Hershberger***
ANALYSIS CHART

Time needed: 2 class periods

Grade level: Grades 9-12

Procedure:

1. Ask students to define freedom of religion. Can the right to practice one's religion ever be limited? When? When it infringes on another's rights? Jeopardizes the public safety?
2. Have students consider what would happen if religious freedom was absolute, if government could not regulate it in any way? What if one's religion requires human sacrifice?
3. Explain to students that under both the Minnesota Constitution and under the U.S. Constitution, the government has the power to regulate rights, but that it can do so in a very limited way. The frequent attempts by government to regulate the practice of religion or to act in ways that establishes religion and the countering freedom of religion assertions made by individuals results in many freedom of religion cases.
4. Have students read the **CASE SUMMARY: *Minnesota v. Hershberger***, which is a 1990 freedom of religion case that clarified the Minnesota Constitution's freedom of religion protection. Discuss.
5. Explain to students that most cases are more complex than the facts that are considered by the court (court is limited to the legal questions) and that these complex facts include people making decisions to fulfill their responsibilities and/or assert their rights.

Procedure cont.

6. Have students analyze the *Hershberger* case by using the **ANALYSIS GRID**. Working in small groups, they should answer the questions and discuss the conflicting interests that exist in the community. Students may need assistance in stating the problem and identifying the rights and responsibilities asked for in Question 1. At the conclusion of their analysis, have them select the best solution to the problem. (For your assistance, a **KEY** for the grid has been provided.)
7. Compare grids and preferred solutions. Analyze solutions for constitutional problems.

Adapted from material collected and written by : Lynn Gresser, Teacher, Jackson Junior High School, Anoka, MN

CASE STUDY *Minnesota v. Hershberger* 462 N.W.2d 393 (1990)

FACTS: Members of the Old Order Amish, who avoid the modern world and travel in horse-drawn buggies, refused to obey a state law requiring reflecting triangles on the rear of all slow-moving vehicles. They said complying would mean they trusted man rather than God.

In 1986, a new Minnesota law was passed that permitted the use of a black triangle with a white outline. In 1987, the law was changed to require that the orange triangle always be carried in the slow-moving vehicle and used at night or in conditions of poor visibility. Many Amish refused to carry the orange triangle. Amish buggy and wagon drivers began to be ticketed, fined, and/or sentenced to community service or jail time for violating the law. Initial fines were in the \$20-\$22 range, and first jail sentences were often for 7 days. Sentences were often stayed if there were no additional violations within six months. As repeat offenders began appearing in court, judges were less willing to accept religious freedom as a defense.

In December 1988, Mr. Hershberger and thirteen others appeared in court for violation of the sign law. They asked the court to dismiss the traffic citations explaining their refusal to display the sign was based on their sincere religious beliefs and that the sign law punished them for their beliefs through fines and jail time. They wanted to practice their religion without interference from the government as guaranteed by the First Amendment. They believed that the law should allow an alternative that would not violate their religion. The alternative suggested was the use of silver reflecting tape.

The judge refused to dismiss the citations, and the Minnesota Supreme Court considered the constitutional questions on appeal and found that the law violated the Free Exercise Clause of the U.S. Constitution. As a result, the trial court's decision to refuse to dismiss the charges was set aside and all charges against the Amish were dismissed.

The State appealed to the U.S. Supreme Court. The U.S. Supreme Court agreed to consider the case but remanded (sent back) the Hershberger case to the Minnesota Supreme Court for reconsideration applying newly decided standards on free exercise cases under the federal constitution. The Minnesota Court also had to consider the protections offered by Article 1, Section 16 of the Minnesota Constitution, which says:

Freedom of conscience; no preference to be given to any religious establish mentor mode of worship. The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

CASE SUMMARY: *Minnesota v. Hershberger* cont.

ISSUE: Does the Minnesota Constitution’s guarantee of freedom of conscience provide greater protection of religious freedom than the U.S. Constitution’s free exercise clause?

DECISION: In comparing the language of the Minnesota Constitution with the language of the First Amendment to the U.S. Constitution which says “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise of . . .,” the Minnesota Supreme Court said “This language [the Minnesota Constitution] is of a distinctively stronger character than the federal counterpart. . . Accordingly, government actions that may not constitute an outright prohibition on religious practices (thus not violating the First Amendment) could nonetheless infringe on or interfere with those practices, violating the Minnesota Constitution. The state Bill of Rights expressly grants affirmative rights in the area of religious worship while the corresponding federal provision simply attempts to restrain governmental action.”

The Minnesota Supreme Court, in interpreting the protections of the Minnesota Constitution, chose to use earlier standards used by the U.S. Supreme Court (but rejected in a more *recent case*) *which require that the state must demonstrate (1) a compelling state interest in the goal of the law and (2) that there is no less restrictive alternative to the action required or prohibited by the law.*

Under this standard, once a claimant has demonstrated a sincere religious belief intended to be protected by Section 16, the state should be required to demonstrate that public safety cannot be achieved by proposed alternative means.

CONCLUSION

The Court ruled that the state failed to demonstrate that the alternative signs did not protect public safety, and therefore the application of the Minnesota law to the Amish defendants violated their freedom of conscience rights protected by the Minnesota Constitution.

ANALYSIS CHART

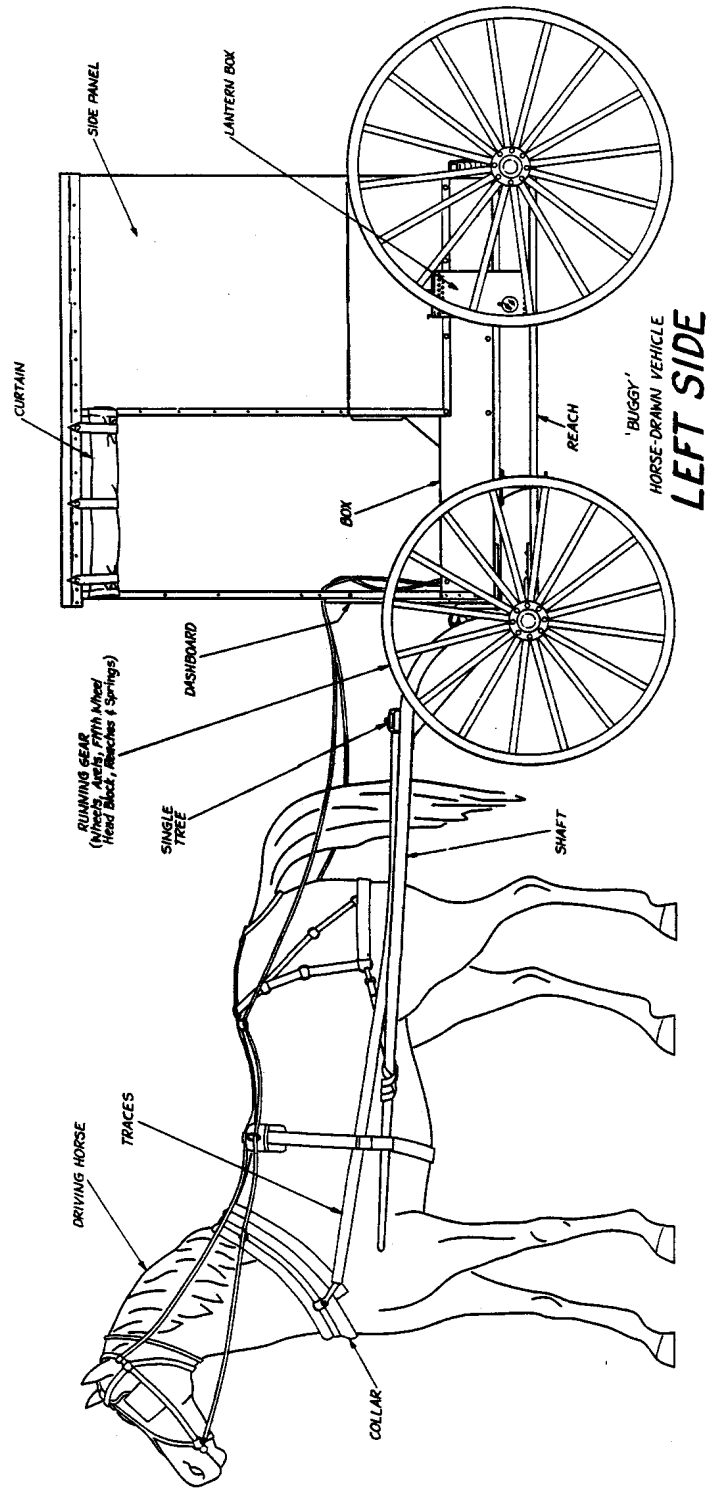
| | <i>Minnesota</i> | | <i>Hershberger</i> | |
|--------------------------------------------------------------------------|------------------|--|--------------------|--|
| 1. What rights, responsibilities are involved in this case? | | | | |
| 2. What are the sources of these rights, responsibilities? | | | | |
| 3. a. What happens if you ignore these rights, responsibilities? | | | | |
| b. What happens if you enforce these rights, responsibilities? | | | | |
| 4. What is the importance of each? | | | | |
| 5. a. What other problems have arisen? b. Who is impacted negatively? | | | | |
| 6. What alternative solutions are there? | | | | |
| 7. What is the best solution? | | | | |

Adapted from "intellectual tools" chart, *Responsibility, Level V*, Center for Civic Education/Law in a Free Society, Calabasas, CA.

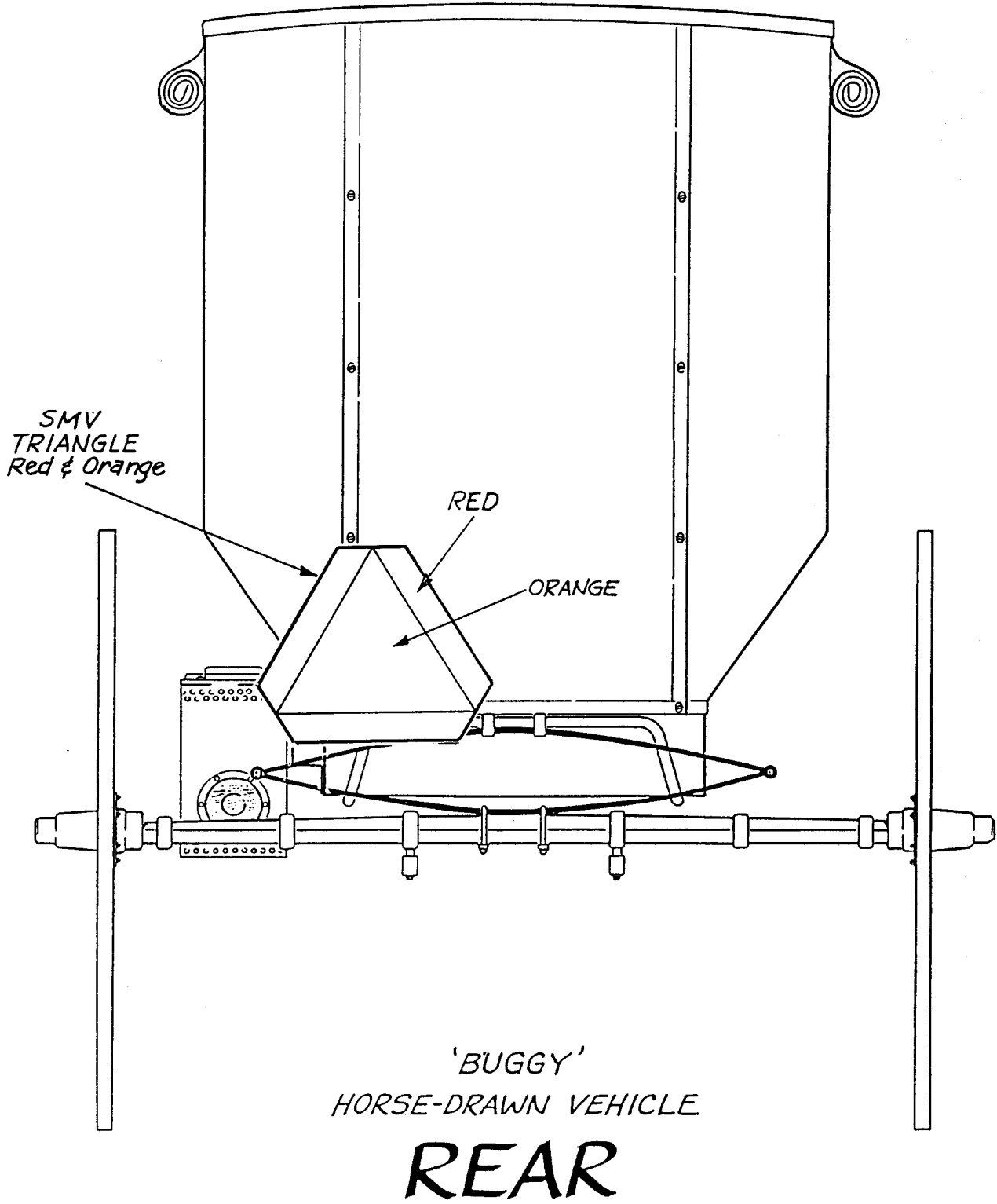
KEY: ANALYSIS CHART

| | <i>Minnesota</i> | | <i>Hershberger</i> | |
|----------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. What rights, responsibilities are involved in this case? | Enforcement of slow-moving vehicle sign law | Upholding First Amendment right to religious freedom | Uphold beliefs of Amish Religion | Obey laws of the state |
| 2. What are the sources of these rights, responsibilities? | State law | Constitution, State and Federal | Doctrines of the Amish religion | State law |
| 3. a. What happens if you ignore these rights, responsibilities? | <ul style="list-style-type: none"> - more accidents - community conflict - loss of job (patrol officer) - chaos | <ul style="list-style-type: none"> - infringement of First Amendment right - loss of guaranteed protection - inability by some to fully practice their faith | <ul style="list-style-type: none"> - "punishment" by Amish community - knowledge of failure to uphold belief - conflict within Amish community | <ul style="list-style-type: none"> - tickets, fines - jail - litigation - publicity - community conflict between Amish and non-Amish - accidents |
| b. What happens if you enforce these rights, responsibilities? | <ul style="list-style-type: none"> - fewer accidents - litigation - infringement of First Amendment right - community conflict - loss of religious freedom | <ul style="list-style-type: none"> - exceptions - treating people differently - community conflict over exceptions | <ul style="list-style-type: none"> - respected member of Amish community - self-satisfaction in being true to your faith - accidents - community conflict between Amish and non-Amish - litigation - you must assert your right | <ul style="list-style-type: none"> - failure to uphold Amish belief - fewer accidents - conflict in Amish community |
| 4. What is the importance of each? | <ul style="list-style-type: none"> - safety for all - uniformity of signs | <ul style="list-style-type: none"> - guaranteed right | <ul style="list-style-type: none"> - the Amish religion is his way of life | <ul style="list-style-type: none"> - important but religious conviction overrides duty to obey state law |
| 5. a. What other problems have arisen? b. Who is impacted negatively? | <ul style="list-style-type: none"> - the conflict between the people in the community has potential economic consequences - everyone | | | |
| 6. What alternative solutions are there? | <ul style="list-style-type: none"> - reflective tape - stay off state roads | | | |
| 7. What is the best solution? | | | | |

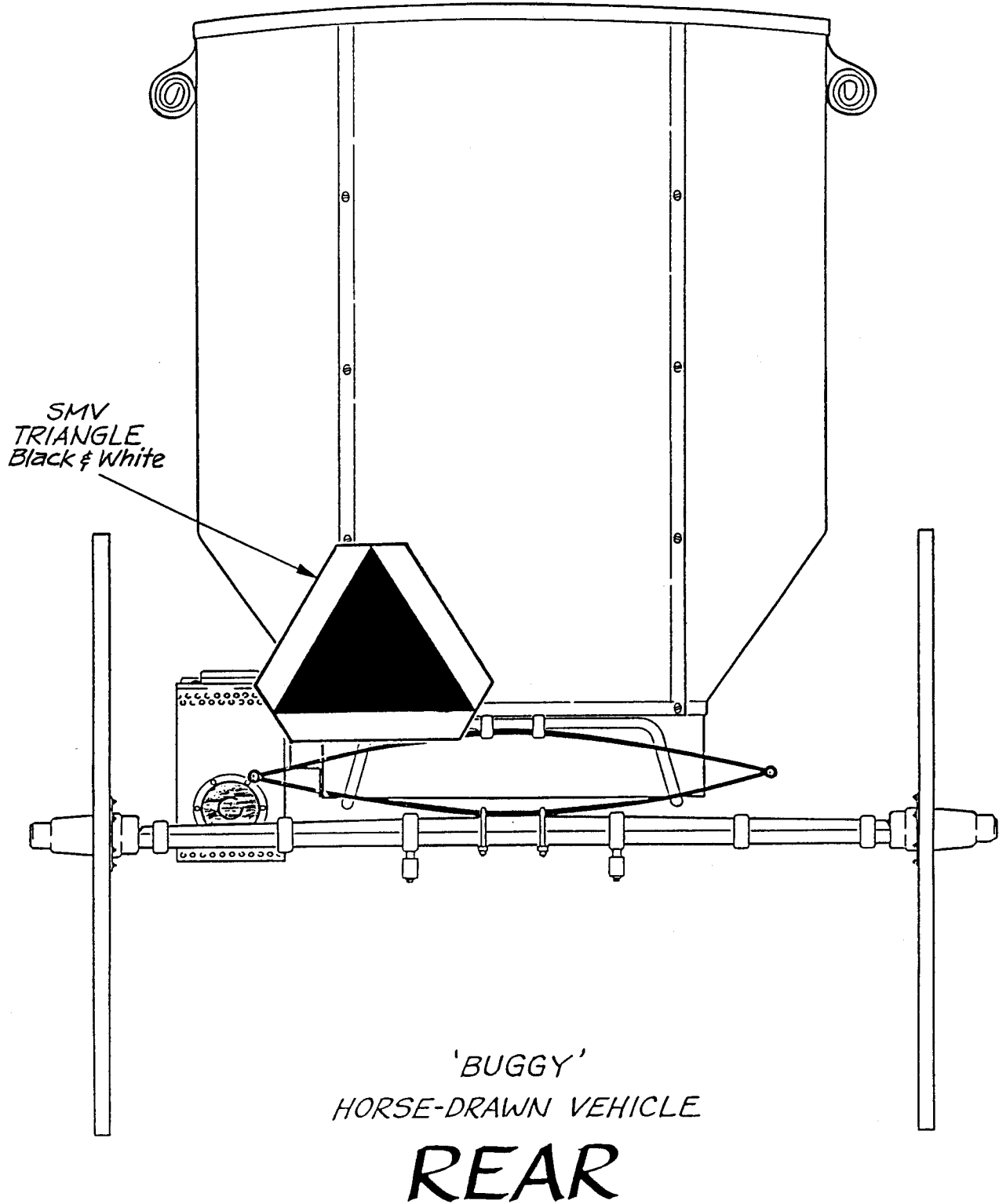
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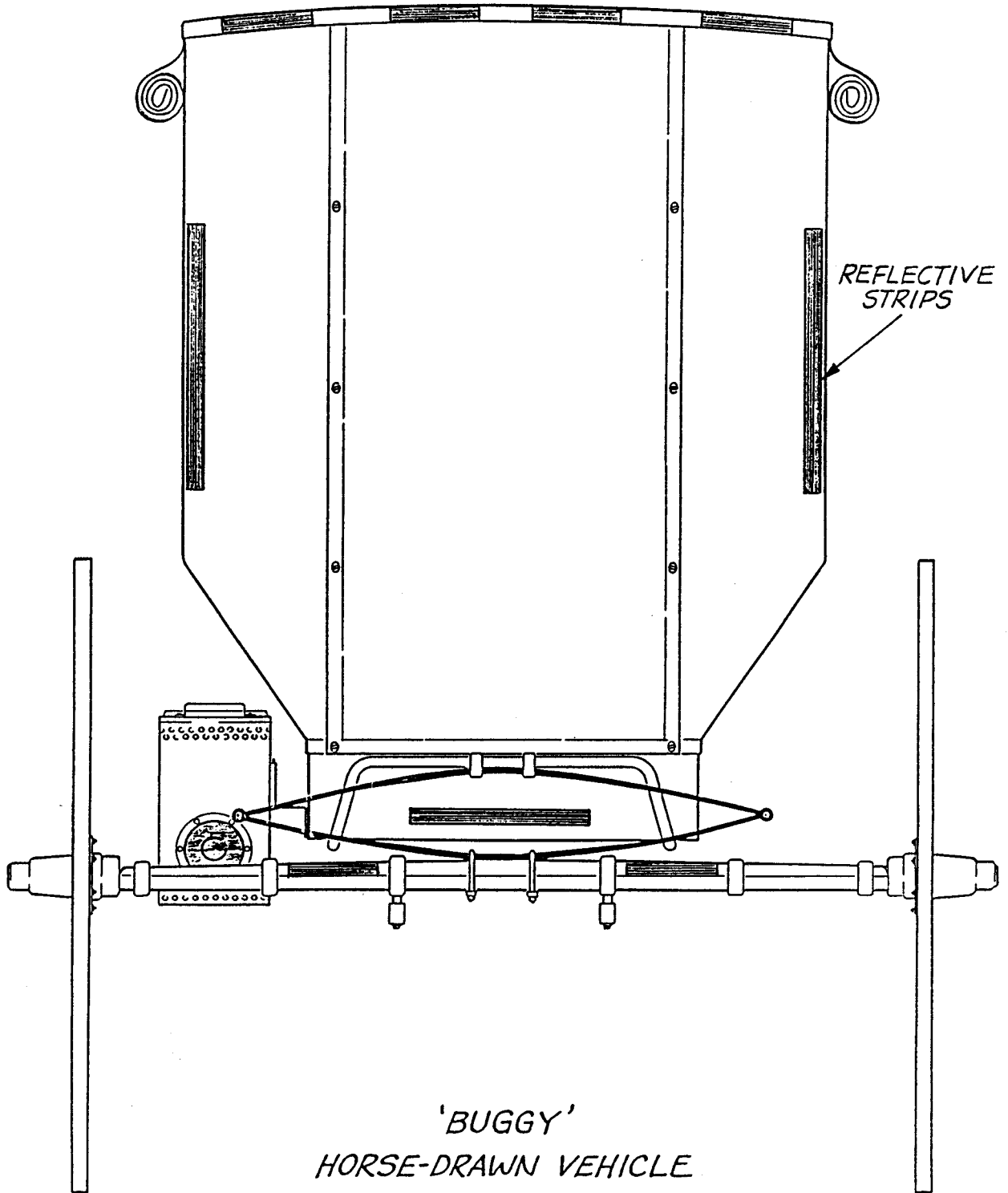
Exhibits from the trial: *State of Minnesota v. Eli A. Hershberger*



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'BUGGY'
HORSE-DRAWN VEHICLE
REAR

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