

Defender of Homeless Wins Important Court Ruling

The Santa Barbara Appeals Court upholds the necessity defense, finds two homeless vehicle dwellers not guilty.

by Robert Norse

In a significant legal victory for the rights of homeless people, the convictions of David Ridley and Julie Cooper for camping in a vehicle were reversed on appeal by the Appellate Division of the Santa Barbara County Superior Court (2nd District). The court ruled on December 18, 2001, that both defendants had proved the "necessity" defense, as set out in the Eichorn decision.

In the Eichorn case, the Fourth Appellate District Court had ruled that necessity is a valid defense to the charge of violating a city law banning sleep in public areas. James Eichorn, a homeless man, was cited for violating Santa Ana's anti-camping ordinance, which made it illegal for any person to camp anywhere in the city. [See *Street Spirit*, March 1999, "Eichorn Decision Upholds A Human Right."]

In the Santa Barbara case, Appellate Judges Adams, Canter, and Jennings unanimously overturned the lower court conviction and found Ridley and Cooper not guilty. "The necessity defense," wrote the judges quoting the Eichorn decision, "is established when the defendant violated the law (1) to prevent a significant evil, (2) with no adequate alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief in the necessity, (5) with such belief being objectively reasonable, and (6) under circumstances in which s/he did not substantially contribute to the emergency."



Art by Osha Neumann

Case by case and city by city, homeless advocates are hammering out a legal survival space for poor people who do what they must under the shadow of increasing police power.

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Key to the Santa Barbara case were the Eichorn findings that sleep deprivation is a significant evil, and that inadequate alternatives for unhoused people and the harsh economic forces that contribute to homelessness are judicially relevant. The City's claim that Ridley and Cooper had failed to meet conditions 2, 4, and 5 by not using the Rescue Mission as an "alternative" was resoundingly rejected by the higher court, which held that the necessity defense applied, requiring a finding of not guilty.

The City is not expected to retry the two homeless defendants.

Ridley was a street juggler who lived with Dena Conroy (his disabled companion of four years) and her dog in a recreational vehicle (RV). The decision of the appellate court described the facts: "The couple normally park the vehicle in various spots in an industrial area... because they consider it the least disturbing place to stay. They move it around to minimize the impact on the community.... They had resided in the RV for about a year, after it had been given to them by a friend. Prior to that time, the couple were homeless, and slept in a tent in Rocky Nook Park."

Officer Robert Casey cited them for "habitating a vehicle," a violation of Santa Barbara Municipal Code, section 15.16.080. Commissioner Deborah Talmadge found Ridley guilty because she felt he made enough money to find adequate housing in Santa Barbara — an "adequate alternative" overturning his necessity defense.

The three appeals court judges, however, found that Commissioner Talmadge's "evidence" of Ridley's adequate income was based on her own personal speculation. Ridley had testified he made \$1600 per month in the summer during good weather when the streets were full, but that these earnings dropped off sharply in the off-season. Even the added \$785 disability income of Ms. Conroy, his partner, did not permit them to rent in the wildly-inflated Santa Barbara housing market.

In the appeal, the City Attorney countered that Ridley still had a legal alternative to "illegally habitating" a vehicle by going to the Santa Barbara Rescue Mission for shelter. Not so, responded Ridley's pro bono defense attorney Glen Mowrer. The Rescue Mission required sitting through a mandatory religious sermon, limited stays to 10 nights per month, segregated men and women (even married couples), did not allow pets, and provided no safe storage place for possessions or vehicles.

Moreover, noted the Appeals Court, agreeing with Mowrer in the Factual Background section of its ruling, "Many of the homeless population have concerns for safety within the Rescue Mission, due to drug use and trafficking, and alcohol abuse within the facility. Additionally many are concerned about health risks, including infectious diseases such as tuberculosis and hepatitis."

Also, on the night in question, there was room for men but not women. "Although the Rescue Mission is an emergency alternative for those who have nowhere to sleep, it simply cannot be considered an 'adequate' affordable housing alternative to habitation of a recreational vehicle.... Having already found an alternative to homelessness, this court does not believe that appellant is required to daily seek refuge at an inadequate facility, in order to avail himself of the [necessity] defense."

All three judges found Commission Talmadge's refusal to uphold the necessity defense was a reversible error.

Then Judges Adams and Canter went even further. Forcing a couple whose home is their vehicle to use a religious shelter with mandatory religious instruction to avoid a penal sanction blatantly violates the "no establishment of religion" nor censorship of "free exercise" clauses of the First Amendment. Ridley had the right to be free from compulsory religious propaganda, particularly since his only alternative was to be fined and conceivably jailed if he used his vehicle as housing.

For the first time anywhere in the country, an appeals court has held that the City cannot use inadequate religious shelters with compulsory services to evict a person from their home, even when that home is a vehicle. This decision broadens and deepens the successful use of the necessity defense.

Mowrer won an earlier case when he used the necessity defense in August 2000 in the case of Linda Miller, 44, a disabled woman, who slept in her Winnebago with her children. She was told by Deputy City Attorney Bill Carroll she could "move to Bakersfield" as an alternative.

The Cooper/Ridley cases, however, are Mowrer's first victory at the appellate level.

Previously, police could use "an open bed" at the Rescue Mission as the basis for ticketing people living in their vehicles. Shortly after the Ridley/Cooper rulings came down, long-time activist "Protest" Bob Hansen's citation for vehicular sleeping was quickly dropped before court.

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Though it was ordered unpublished (and hence, not usable as precedent anywhere else in the state), the message to the Santa Barbara City Council and the County Board of Supervisors was clear: the necessity defense is alive and well.

The decision comes at a moment when Santa Barbara authorities are being persuaded to understand that for many, the only affordable housing in 2002 and for the foreseeable future will be a vehicle. Small car parking areas (in the manner of Eugene, Oregon) and exceptions for church and nonprofit business parking lots are under consideration, after extensive pressure and lobbying by the local Committee for Social Justice (CSJ), on which Mowrer sits.

On hold is a mean threat to simply ban all RVs from public parking places in Santa Barbara. This proposal by the city attorney would eliminate the use of the necessity defense and make any court challenges much more difficult by requiring a prior lengthy administrative process involving posting two different bails. This civil process eliminates traditional rights such as the presumption of innocence, right to confront one's accuser, the burden of proof, and places the matter before an administrative officer rather than a trained judge.

Tireless attorney Glen Mowrer has taken on virtually every homeless civil rights case to come along in the last two years after retiring as head of the Public Defender's office. He heads the Legal Project of the CSJ and saw the invidious impact of infractions issued to poor people for sleeping, camping, open containers, etc. Infractions penalize poor defendants without legal sophistication, deny them a court-appointed public defender, and eliminate their option to choose a jury trial.

Infractions supposedly do not involve a jail term. But problems getting to court and paying fines as well as a defendant's principled refusal to pay can send a "criminal sleeper" to jail. Jail can result from a "failure to appear" warrant, for "contempt of court," or for failure to pay a fine.

Yet frequently, the tickets issued for mean-spirited "quality of life crimes" are faulty on technical grounds, constitutionally defective, not proven beyond a reasonable doubt, or excusable by a necessity defense, as in the Cooper/Ridley cases.

Mowrer stepped into this neglected arena with years of legal training and experience behind him. He began systematically and successfully defending nearly every homeless civil rights case that came his way without charging a fee [see *Street Spirit*, June 2001, "Santa Barbara's Sleeping Ban Stumbles in the Courts"].

Julie Cooper also faced an \$80 fine under MC 15.16.080 for "habitating a vehicle." The Cooper case involved Officer Keld Hove reportedly skulking about the vehicle, assaulting the smaller Cooper, and issuing a citation at a time of day when the Rescue Mission wasn't even open as an alternative.

More significant for other cases, however, was extensive testimony in her trial about the high cost of rent in Santa Barbara. A one-bedroom unit rents for \$1000 per month, requires first, last, and security deposits — necessitating an annual gross income of \$36,000. Expert testimony established that there is a shortage of low-rent housing for people with low and moderate incomes, that available housing has decreased over the last five years with a vacancy rate of less than 1 percent, and that 3000 households are on a waiting list for Section 8 housing, with an average wait of two to three years.

Further testimony established that though about 500 SRO hotel units were available five years ago, now only the Faulding Hotel remains with its 89 rooms and its five-year waiting list.

Talmadge convicted Cooper anyway. The commissioner suggested that combining Cooper's disability stipend of \$680 per month with her husband's security pay of \$800 per month would allow them an adequate alternative, of which the Rescue Mission was one. But, Mowrer's necessity defense won again and the higher court reversed Talmadge. Mowrer's persistent battle on many fronts may be a key to his string of victories.

The Appeals Court also took judicial notice that the City of Santa Barbara itself had declared "there is a critical shortage of low and moderate income housing within the City" and noted "the trial court took judicial notice of the fact that housing is expensive in Santa Barbara." These are small indications that the defense of necessity is now expanding to include economic necessity, something explicitly recognized by the Eichorn decision.

Two years ago, attorneys David Ritchie and Jon Sternberg successfully used the necessity defense to dismiss punitive camping, illegal lodging, and curfew violations against homeless defendants in the Albany landfill encampment [see *Street Spirit*, January 2000, "The City of Albany Is Put on Trial," and February 2000, "Homeless Defendants Overcome Albany's Attacks"].

In Santa Cruz, Attorney Kris Frederickson is arguing on appeal that Camp Paradise residents needed to join together for mutual protection in a situation where the police chief's own assault statistics showed homeless people had more than three times the likelihood of being attacked than those living indoors [*Street Spirit*, December 2001, "No Necessity for Homeless Survival"].

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