

# Homeless Man Defends Himself in Court, Wins Crucial Ruling Against Santa Cruz Sleeping Ban

For more than a decade, the poor have suffered a grim procession of arrests and fines for "sleep crimes" in Santa Cruz. Basically it consists of kicking people when they're down.

by Linda Ellen Lemaster

Craig Canada, a homeless and disabled man, left Judge Denine Guy's courtroom in Santa Cruz on July 6, 2007, with four fewer criminal sleeping tickets. Canada presented a complex defense, though he is not an attorney, compelling Judge Guy to dismiss those particular charges by four different police officers, who cited him for the "crime" of sleeping in public, illegal within the City of Santa Cruz under Municipal Code 6.36.010.

That sums up the news, but doesn't begin to tell the story about this man's "David versus Goliath" accomplishment in court. I attended defendant Canada's trial and ultimately was questioned as an "expert witness" about the extent of unavailable shelter and unmet critical needs for homeless people in Santa Cruz County.

My testimony flowed from Canada's decision — requiring the judge's approval — to present the "necessity defense," a



Activists have fought the Santa Cruz "Sleep-Crime" laws for years. Now, a homeless man who represented himself has won a crucial court victory over these laws.

not-so-simple presentation that was crucial in overturning his sleep crime tickets.

The woman judge called me a "good expert" for my testimony about how little is known, or nailed down into viable and fair procedures, about helping homeless people survive, and about how few are ever able to get any help at all. Sure I have credentials behind this status, yet once in the "hot seat" of that adversarial stage in the California Superior Court, I felt rather like a tiny worm about to get crushed by a ponderous institutional system hungry as a spring robin.

My adventure with this legal situation began when I called local civil rights attorney Kate Wells and she surprised me by saying, "Craig Canada plans to use the necessity defense." This meant he would be asserting that there is a higher law than the Santa Cruz ordinance that bans sleeping, camping and covering up. It meant Canada would have to confess guilt to the crime of public criminal sleeping before he'd be allowed to mount his necessity defense.

So I had to attend his trial, recalling from personal experience that there's barely anything more demoralizing than an empty courtroom when one is attempting to plant new seeds in harsh ground under the scrutiny of the Courts. It didn't seem right to risk leaving a brother alone up there with the important work of potentially keeping people out of jails for committing victimless crimes. Initially I

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came to court just to root for him.

### GRIM PROCESSION OF ARRESTS

For more than a decade, I've watched a grim procession of arrests in Santa Cruz, and I've often seen at first-hand how easily ticketing the poor for "sleep crimes" helps destroy people's lives. Basically it consists of kicking people when they're down. As a granny, I need to do what I can to expose this particular anti-sleep law for what it is: mean and selectively enforced.

"This man's stuck between a rock and a hard place," my dead father's voice reverberated through my brain, as I entered the courthouse, hovering outside Courtroom One, waiting for Judge Denine Guy to resume this man's trial for the criminal act of sleeping in public.

Defendant Craig Canada is never allowed emergency shelter in Santa Cruz, yet is never permitted to sleep in doorways or alcoves or on sidewalks in public, either. The Santa Cruz sleeping ban was passed in the mid-1980s specifically to target the then-surge and mostly male homeless population. It continues to be a generously administered tool of law enforcement.

I'm straining at the City map in my brain, asking myself, "where can he go to sleep safely?" Sleeping in public at night is technically a trespass crime in Santa Cruz. The prosecutors are trying an absolutely perfect Catch-22 "crime."

Since few of the people who get these tickets can mount a trial on their own behalf, it's important when someone does. According to attorney Kate Wells, "People need to know that they can do this defense; for decades now they have had no recourse. Craig's trial is important because it shows that an individual can sometimes get out from under this form of harassment."

Wells shares the opinion that the sleeping ban is an unconstitutional ordinance.

Defendant Craig Canada is a disabled, mature man who requires ongoing health care supports; by great effort he is able to maintain his independence. Every month he has to choose between either sheltering himself "at over a hundred dollars a

night," he said, or health care, decent food and basic necessities.

Mr. Canada gets retirement and Social Security income, but cannot afford both shelter and survival in Santa Cruz. It is clear he's competent and keeps his own trip functional, amazing to most of us who've tasted ongoing homelessness.

Medical marijuana helps Canada cope with worsening and various medical conditions. In the City of Santa Cruz, he keeps getting anti-homeless anti-sleep tickets because he is excluded from emergency and other public shelters — by definition for using his medicine. The police know this. He says they have been harassing him publicly for using this medicine, and not just at nighttime when they sometimes find him committing the crime of being asleep downtown.

### WHERE CAN HE SLEEP SAFELY?

Many nights each month, Craig Canada becomes a criminal by falling asleep, no matter what he does to avoid the situation. Our society has no honest way for Canada to step around these public policy hurdles and snags to gain access to the few public shelter spaces, nor to discover if perhaps he "qualifies for" specialized assistance that sometimes exists in a limited fashion, but not for men who can maintain their own independence.

He cannot find shelter unless he gets arrested for hurting either himself or somebody else and is subjected to lockdown inside a mental health ward for three days — a crap shoot, at best, that creates heavy additional problems, potentially including forced drugging. Or unless he is ejected from a hospital visit before he is well enough medically to survive outside; in that case, maybe he could get a bed at taxpayers' expense for exactly however long doctors say it takes before he can stand on his own feet again.

Any such "help" is not available to people who can still take care of themselves at all. Doctors' brains seem trained to assume their patients have "normal" support systems, which include safe and dignified housing, with family or caregivers attached. In other words, the medical interventions which may get a few folks off the streets are as severe as the

Homeless people should not be made to scurry around like mice to avoid the police every night. They should not be made to feel so unwelcome everywhere that they have to sleep under the courthouse steps until they get up the courage to hang themselves out in the hills, as a friend did several years ago.

sidewalk at best. Homeless folks who've experienced the psychiatric wards and the hospitals say they do not find solutions for their actual lives. They talk about a palliative "last stop" before dying.

So we'll set aside these rare exceptions that could be mistaken as options. Unless this defendant's health plummets terribly, there will be no such respite for Craig Canada in Santa Cruz.

### NECESSITY DEFENSE

The Eichorn Decision, from a southern California homeless man's trial back in 1996, allows one to mount a hard-to-prove and very specific legal defense of "necessity" for one's admitted sleep crime. Using the necessity defense is hard work in court, for one must prove the need for sleeping even while confessing it's a crime. Sleep is medically necessary to sustain life, yet our courts indicate it seems so only if you can "prove" every aspect of a six-point formula.

The Eichorn Decision's necessity defense had been attempted only once before to fight the municipal sleep tickets in Santa Cruz County. In that instance, a group of people creating their own river-side campsite village — remember Camp Paradise? — got Commissioner Joseph Irwin to listen to attorney Paul Sanford's necessity defense. All that "proof" was submitted, yet Commissioner Irwin decided to not believe there was no more suitable place for these people to sleep without it being a crime.

"It has been successfully utilized in Santa Barbara, Albany, and Sacramento, but not in 'liberal' Santa Cruz," volunteered Robert Norse of HUFF and Free Radio. It is his view that the whole necessity defense should no longer be required, because "the more recent Jones Decision from L.A." covers similar matters and "is less demanding to prove."

Norse says the recent Jones decision sets aside any individualized necessity defense proofs, and presents as known fact the premise that people sleeping in public don't have access to better sleeping digs or they wouldn't be asleep in public in such numbers. He claims the City of Santa Cruz has held secret its understanding of the Jones ruling, which leaves our defendant out in the cold, and having to prove the necessity of his crime.

The Jones ruling in Los Angeles found that overly restrictive sleep laws are a form of "cruel and unusual punishment." The deadliness of sleep deprivation may finally be exposed as unconstitutional, as it is obviously wrong, once the courts begin dealing with the outcomes of the Los Angeles court decision.

But Canada argued the very complex necessity defense, which requires that six elements must be proved by a preponderance of evidence. The six elements are: (1) the defendant must have acted to prevent a significant evil; (2) there were no adequate alternatives to performing the act; (3) the harm caused by the act was not disproportionate to the harm avoided; (4) the defendant had a good faith belief that the act was necessary; (5) the defendant's objective belief was reasonable under all the circumstances; and (6) he did not substantially contribute to creating the "emergency."

### SLEEPING CRIMES

As far as dealing with the camping ban/sleeping ban/blanket ban over the years, I'm almost surprised the City of Santa Cruz doesn't outfit its officers in hooded black robes with long, sharp scythes when they issue their anti-camping tickets which start at \$90 a night, and can increase. The anti-sleeping tickets prevent defendant Canada from sleeping at night in (or anywhere near) the public.

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