

Cerbat Justice Court
County of Mohave, State of Arizona

State of Arizona,)
 Plaintiff)
 vs.)
 Mervin Gray Fried,)
 Defendant)

Case Number CR-10-231
 Order

Procedural History:

- I. February 16, 2010: The Defendant was arrested for a violation of A.R.S. §13-1502.A.1. – Criminal Trespass in the third degree – a class 3 misdemeanor: "A person commits criminal trespass in the third degree by knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry." The incident occurred in and around the Mohave County Administration Building located at 700 Beale Street, Kingman, Arizona.
- II. February 24, 2010: At the Initial Appearance and Arraignment, the Defendant entered a plea of not guilty, and the Court denied a request for court appointed counsel.
- III. February 25, 2010 the Cerbat Justice of the Peace recused himself "to avoid the appearance of impropriety" because of his relationship to the prosecuting attorney.
- IV. March 10, 2010: Mohave County Presiding Justice of the Peace, Jill Davis reassigned the case to "Judge Pro Tempore Paul Julien."
- V. April 2, 2010: Attorney Eric Engan entered an appearance for Defendant Fried.
- VI. April 8, 2010: Defendant filed a "Motion for Inclusion of Defendant in all Court Action and for Publication of Court Record"
- VII. April 22, 2010: Defendant filed "Notice of Defenses" "Objection to Trial Date Reset" and "Motion to Continue."
- VIII. April 27, 2010: Over objection of the State, Court grants Motion to Continue and sets the matter for pre-trial conference and trial. Regarding the Motion for Inclusion, etc., the Court orders copies of all court records in the case to be provided to the State and Defense Counsel and apologizes for the Defendant's name being omitted from docket and assures that the mistake

- will not occur again. The Court also explains then rule regarding assignment of a Judge pro tempore to preside over the case.
- IX. July 6, 2010: Defendant files 2nd "Motion to Continue" the trial date, and the Court grants continuance.
- X. August 26, 2010, August 30, 2010, September 3, 2010, October 19, 2010, and October 28, 2010: Defendant files "Motion to Dismiss"- State files "Response to Motion to Dismiss" - Defendant files "Reply in Support of Motion to Dismiss" and the Court hears oral argument. Defendant argues 1) that he should have been allowed to bring a pitchfork into the County Administration Building (the "Building") during a Board of Supervisors' Meeting; 2) that his conduct was within the law and protected by the U.S. Constitution; and 3) that the County Manager had no authority to prevent the Defendant from entering the Building. The State argues that the County Manager had authority to prevent Defendant from entering the Building with a pitchfork and that his request to the Defendant to leave the pitchfork outside the building was lawful and reasonable. According to the State, the issues in the Motion are (1) whether the County Manager had sufficient authority over county real property as to prohibit bringing a pitchfork into the County Administration Building, and (2) Whether his request that Defendant leave the pitchfork outside was reasonable. Upon review of the Defendant's Motion, the State's Response, the Defendant's Reply, and oral argument from counsel, on October 28, 2010, the Court concluded that the State provided sufficient evidence under each element of the charge to avoid dismissal under the Rules of Criminal Procedure 16. b. However, the Court warned that "this initial conclusion only means that the case will not be dismissed at this stage. It is not a final determination that the State will prevail on the merits at the trial." In addition, the parties disputed application of U.S. Constitutional protection to the Defendant's conduct. The Court determined that the defense would be allowed at trial; however, the Court was not persuaded that the defense was a bar to the State's prosecution in this matter.
- XI. September 17, 2010, November 8, 2010, November 18, 2010, November 23, 2010, and November 24, 2010: Both parties file various motions regarding extending or accelerating the trial date, and the Court set the final trial date for January 5, 2011.
- XII. December 15, 2010, December 22, 2010, December 23, 2010, and January 5, 2011: Defendant filed "Second Motion to Dismiss" to which the State responded and Defendant replied. Defendant reasserted arguments made in his first motion to dismiss and added an additional argument that, even if the County Manager had authority to trespass a citizen off of county property, the Defendant could not have known that fact. The State argued that it would offer evidence to establish the required elements under A.R.S. §13-1502. A. 1. In an Order dated January 4, 2011, the Court wrote that "The State must

prove (beyond a reasonable doubt at trial) the following elements of A.R.S. §13-1502 A. 1. in order to prevail: 1) The County Manager had lawful control over the Building authorizing him to request that the Defendant leave the building; 2) the County Manager reasonably requested that the Defendant leave the Building; and 3) Defendant knowingly entered or remained unlawfully in the Building." The Court reiterated that "as with the Defendant's First Motion to Dismiss, the Court concludes that in response to the Motion to Dismiss the State has provided sufficient evidence under each element of the charge to avoid dismissal under the Rules of Criminal Procedure 16. b. This initial conclusion only means that the case will not be dismissed at this stage. It is not a final determination that the State will prevail on the merits at the trial."

- XIII. January 5, 2011: Present at criminal bench trial - Robert A. Taylor for the State, Defendant Mervin Gray Fried, and Defense Counsel, Eric J. Engan. The trial was recorded. State and Defense Counsel offered opening statement. The State presented testimonial evidence from Mohave County Manager Ron Walker, defense cross examined, and state re-directed questions. The State also presented testimonial evidence from Mohave County Deputy Sherriff Gunnoe, and Defense Counsel cross-examined. At the conclusion of the State's evidence, Defendant moved for a Judgment of Acquittal pursuant to Rule 20, Rules of Criminal Procedure. The Court denied Defendant's Motion – finding that the State provided the requisite substantial evidence to warrant a conviction. The Defense presented testimonial evidence from Michael Roundy and the State cross-examined. The Defendant also testified on his own behalf after the following warning from the Court: "The State has the burden of proving you guilty beyond a reasonable doubt. You are not required to testify or present any evidence. You have the right to remain silent and if you testify the State can ask you questions." The State cross-examined Defendant and Defense Counsel conducted re-direct examination. The State provided evidence in rebuttal and the parties rested. After a gentle reminder from counsel, the Court permitted closing arguments from both counsel. Without objection from the State, the Court admitted the following exhibits:
- a. Defendant's Exhibit "A" – Copy of A.R.S. §13-3102.01 "Storage of deadly weapons"
 - b. Defendant's Exhibit "B" – 36 page transcript of recorded Interview with Mohave County Manager Ron Walker dated June 30, 2011.
 - c. Defendant's Exhibit "C" – Mohave County Loss Prevention Program – Chapters 1-11
 - d. Defendant's Exhibit "D" – Mohave County Board of Supervisors Ordinance No. 1991-1

- e. Defendant's Exhibit "E" – Photograph of Defendant and Mohave County Manager Walker. On the back of Defendant's T-Shirt the photograph depicts the following quote from Thomas Jefferson: "A government big enough to give you everything you want is strong enough to take everything you have."
- f. Defendants Exhibit "F" – 3 photographs depicting assembled group outside County Building with flags, signs, posters, cameras, cell phones, and revolvers visible.
- g. Defendant's Exhibit "G" – "Column: Rule of law deserves respect" written by Mohave County Manager Ron Walker.
- h. Defendant's Exhibit "H" – Diagram
- i. Defendant's Exhibit "I" – Pitchfork
- j. Defendant's Exhibit "J" – Diagram

Findings of Fact:

1. On February 16, 2010, a group of about 40-60 people assembled outside the Mohave County Administration Building prior to a Board of Supervisors' meeting with an apparent intent to protest at the meeting.
2. Most of the assembled group began to enter the County Administration Building. The County Manager asked those with bull horns, banners, signs, and flags to leave them outside.
3. The County Manager's Ordinance, the Loss Prevention Program, and Board of Supervisors Rules provide broad authority to the County Manager to manage, supervise, and direct the administration and coordination of county operations including the county's resources and the responsibility to identify, control, regulate, or eliminate any circumstances that may cause serious physical harm or death to an employee. See Mohave County Board of Supervisors Ordinance 1991-1 "Relating to County Government Administration; Delineation Authority, Responsibilities and Duties of County Manager. . ." Defendant's Exhibit "D" and the County Loss Prevention Program - Defendant's Exhibit "C."
4. The court is persuaded that the County Manager had authority – either actual or implied – to manage county buildings and ensure the public's safety. Although Defendant's Counsel pursued a vigorous cross-examination of the County Manager and questioned his authority, the Court finds that the County Manager had authority to restrict access to county buildings – including the Defendant's access to the County Administration Building.
5. The County Manager didn't believe he had a right to restrict the Defendant from carrying the pitchfork outside the building.
6. Of significance to the Court, the County Manager testified that he allowed individuals with properly holstered handguns to enter the County Administration Building because the County had not adopted the required ordinances to comply

- with state law A.R.S. §13-3102.01 requiring the County to provide temporary storage for "deadly weapons" if the County intended to require persons to remove their weapons upon entry to the building. The County later enacted the necessary ordinances to comply with the statute and store the weapons. At the time of the incident at issue in this case, the County Manager decided he could not restrict people from entering the Board of Supervisors Meeting with firearms.
7. The Defendant carried a full size pitchfork in a sling over his shoulder with the intent to send a message to make a political statement. He never brandished the pitchfork, carried so as to prevent it from being perceived or construed as a weapon, and never threatened anyone with the pitchfork.
 8. The County Manager testified that he asked the Defendant to "please leave your pitchfork outside." According to the County Manager, the Defendant asked "Why?" Based on this response, the County Manager "had no idea what his intent or purpose was" and decided that the Defendant might be a threat. Under cross-examination, the County Manager admitted that he did not know the symbolism of the pitchfork. The Defendant also pointed out that the County Manager agreed that a pitchfork is less dangerous than a handgun depending on "what they did with it." See Defendant's Exhibit "B" pages 9-10.
 9. The Defendant also raised the legitimate question to the County Manager: Why does your authority allow you to prohibit a person to enter the building with a pitchfork but not a person with a firearm? The County Manager responded that he was concerned about the County's liability under the 2nd Amendment to the U.S. Constitution if he prohibited persons from entering the premises with firearms. Under further cross-examination the County Manager was inconsistent and arbitrary when asked whether he would prohibit other items such as tennis racquets, pool cues, or baseball bats.
 10. The Defendant testified that he ignored the County Manager because he didn't think there was any law prohibiting him from entering the public building with the pitchfork.
 11. Deputy Gunnoe was credible – answered every question on direct and cross. The Deputy testified that he saw no evidence of a disturbance; however, he was asked by the County Manager to prohibit the Defendant from entering the County Building. The Deputy told the Defendant he couldn't enter the premises and when the Defendant refused to comply he was arrested.
 12. The Defendant testified that he did not intend to enter the Board of Supervisors Meeting; rather, he was there to conduct business in another part of the Building.

Conclusions of Law

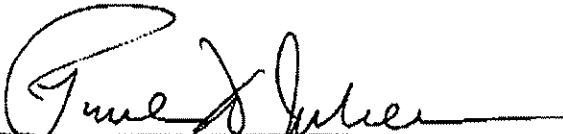
- The State must prove beyond a reasonable doubt the following elements of A.R.S. §13-1502 A. 1.: The County Manager had lawful control over the Building authorizing him to deny Defendant's access; the County Manager reasonably

denied access to the Defendant; and the Defendant knowingly entered or remained unlawfully in the Building.

- The Court concludes that the County Manager had authority to restrict access to the building.
- Without addressing any First Amendment protections which may be applicable to the Defendant, the Court concludes that the County Manager's decision to allow members of the public with holstered handguns to access the building but deny access to the Defendant because he had a "holstered" pitchfork was arbitrary, capricious, and unreasonable.

The Court finds the Defendant not guilty of criminal trespass in the third degree.

Dated this 5th day of March, 2011,



Paul D. Julien, Judge *Pro Tempore*