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Attorney for GARY ALLEN JOHNSON

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

GARY ALLEN JOHNSON,

Defendant.

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Case No. M64170

DEFENDANT'S REPLY TO OPPOSITION TO DEMURRER

Date: February 17, 2012
Time: 1:30 P.M.
Dept: 2

I. NINTH AMENDMENT

The District Attorney seems to know better than Theodore Sedgwick what the Ninth Amendment protects. Congressman Sedgwick participated in House debates over the proposed Ninth Amendment in 1790, and expressed his concern that, if the Ninth Amendment were not adopted, Government might try to prohibit citizens from sleeping. The District Attorney, ignoring this explicit legislative history, blandly concludes that "There is no right to sleep, either enumerated or unenumerated, granted by the Ninth Amendment ..." Opposition, 2:23-24.

The District Attorney may be free to suppress the obvious truth, but this Court must not evade its duty to enforce the

document it has sworn to uphold. That duty includes making a coherent response to Defendant's contention that the Ninth Amendment was designed to protect (among many other rights) the natural, unavoidable need for sleep, regardless of whether the sleeper has previously obtained a property right to her sleep-site.

The District Attorney appears to contend that, if at least one appellate judge has not endorsed a right, that right simply does not exist. That is not the law. The law, the supreme law of the land, is the text of the Constitution. That is the document this court has sworn to uphold, and where, as here, a Congressional author of that document expresses the intent of the law in undeniably clear language, sweeping the matter under the rug and pretending that the constitutional author's words carry no authority would amount to a gross disregard of this Court's highest duty.

Nor can this Court merely dismiss the Defendant's contention on the grounds that (1) Defendant can not arbitrarily choose a particular site on public property, and therefore (2) Defendant had no right to sleep on the Courthouse grounds. If the right to sleep exists, then the State has a duty to designate at least one place where that right can be exercised. Otherwise there is not a single square inch available in the entire state, and the right would be wrongfully denied. In the absence of such a designation, the Defendant made a reasonable choice, where his activity does not interfere with any other person, and the State has no countervailing interest that defeats the Defendant's right.

The California Constitution's analogue to the Ninth Amendment simply fortifies the Defendant's contention as to his unenumerated right to sleep.

II. ARTICLE ONE, SECTION ONE OF THE CALIFORNIA CONSTITUTION

The District Attorney argues that, even though a person has the explicit right to seek and obtain happiness, this right does not include the right to sleep. The deprivation of sleep causes physical and mental problems, but this pursuit of happiness must be disregarded because no judge has held that such a right includes the right to sleep and because some unidentified but compelling interest of the State has been compromised by Defendant's act of sleeping.

The District Attorney similarly rejects Defendant's right to pursue and obtain privacy, to pursue and obtain safety, to enjoy and defend life and liberty. All these rights are expressly provided in Art. I, sec. 1 of the California Constitution.

Here again, this Court is duty-bound to apply this law and explain its reasoning. It is Orwellian for the District Attorney to issue a blanket dismissal of these basic rights on the ground that (1) none of them mentions the word "sleep", and (2) no appellate judge has held that these rights to include the right to sleep. This Court must recognize and acknowledge that the District Attorney's approach leads to a suppression of basic rights and a criminalization of the status of poverty.

If this judicial system is anything other than a hand-

maiden to Commerce and Finance it must forthrightly reject this class warfare imposed from above.

The statutory prohibition against "unlawful lodging" is interpreted as a prohibition against sleeping, and therefore, in light of all the bedrock constitutional rights set out above, the statute must be struck down as invalid on its face.

III. FIRST AMENDMENT

The Defendant was obviously engaging in expressive activity at the County Government Center, as indicated in the Complaint as the locus of the activity. Camping, lodging, sleeping is a legitimate form of First Amendment protest activity. Clark v. Community for Creative Non-Violence (1984) 468 US 288, 82 L.Ed.2d 221. The District Attorney misconstrues that Court's denial of the right to sleep, or camp out, in that case. There, the sleepers' activity conflicted with and obstructed the millions of tourists and sight-seers who flock to the park space that lies directly across the street from the White House in Washington, D.C., and that was the basis for the Court's denial of the right to camp out. 468 US at 296. In the instant case, there is no such obstruction. Therefore, as applied to Defendant's First Amendment-protected activity, the "unlawful lodging" statute is invalid.

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IV. FOURTEENTH AMENDMEND - VOID FOR VAGUENESS

The District Attorney cites People v. Scott (1993) 20 Cal.App.4th Supp.5 to support their contention that there is no vagueness problem here. That case indicates just the opposite. As the court there said: "If the West Hollywood ordinance did not provide a definition of what conduct is to be considered camping, the ordinance might be considered unconstitutionally vague." Id., at p. 11.

The instant statute, Penal Code sec. 647(e), contains no definition or explanation as to what constitutes "lodging", and hence is vague on its face and must be struck down.

V. CONCLUSION

For all the reasons set out above and in Defendant's two other filings in this case, this case must be dismissed as constitutionally flawed.

Dated: February 15, 2012

Respectfully submitted,

Ed Frey, Attorney for Defendant
GARY ALLEN JOHNSON

PROOF OF PERSONAL SERVICE

I, Ed Frey, declare the following:

I am over the age of 18 and am not a party to the within action.

My business address is:

4630 Soquel Dr., Ste. 12
Soquel, CA 95073

On Feb. 15, 2012 I served the following described document

Defendant's Reply to Opposition to Demurrer

by personally delivering it to:

Office of the District Attorney
701 Ocean Street
Santa Cruz, CA 95060

I declare the above to be true under penalty of perjury. Executed this 15th day of February, 2012, at Santa Cruz, CA