

LARIMER COUNTY DISTRICT COURT 201 LAPORTE AVENUE, SUITE 100 FORT COLLINS, COLORADO 80521	DATE FILED: October 2, 2019 3:53 PM FILING ID: F9C186D7E7CE6 CASE NUMBER: 2019CV30889
Appeal from the Fort Collins Municipal Court The Honorable Judge Kathleen M. Lane Case No. 2018-0240752-MD	
Defendant-Appellant:  ADAM WIEMOLD  v.  Plaintiff-Appellee:  PEOPLE OF THE STATE OF COLORADO	COURT USE ONLY
Adam Frank FRANK AND SALAHUDDIN LLC 1741 High Street, Denver, CO 80218 adam@fas-law.com Phone: 303-974-1084 Fax: 303-974-1085 Attorney Registration Number: 38979 In cooperation with the ACLU of Colorado	Case Number:
<b>NOTICE OF APPEAL</b>	

Pursuant to C.R.M.P. 237 and Crim. P. 37(a), Mr. Wiemold hereby gives notice of his intent to appeal the Municipal Court’s orders concerning his Motion to Dismiss and his Motion to Vacate Conviction and Enjoin the Imposition of Any Sentence.

Statement of the Case

On the early morning of September 11, 2018, Fort Collins Police Officers gave Mr. Wiemold a summons for allegedly violating Fort Collins Municipal Ordinance § 17-181, which restricts camping on public property. On that morning, Mr. Wiemold was homeless and sleeping in his truck

at a Colorado Department of Transportation rest area located at I-25 and East Prospect Road. All homeless shelters were full and Mr. Wiemold had nowhere else he could stay. Other people experiencing homelessness were also sleeping in their cars at the rest area that morning and were similarly summonsed. The officers did not contact or summons truck drivers sleeping in the cabs of their trucks at the same rest area.

On March 22, 2019, Mr. Wiemold filed a motion to dismiss the charge pending against him. This motion alleged that (1) it violated the Eighth Amendment and article II, section 20 of the Colorado Constitution for the City of Fort Collins to prosecute Mr. Wiemold for sleeping in his truck when he had nowhere else to sleep, and (2) that it violated the Fourteenth Amendment for the City of Fort Collins to prosecute people the city believed to be homeless for sleeping in their vehicles at the rest area when the City did not prosecute the similarly situated truckers.

On May 7, 2019, the Municipal Court held an evidentiary hearing on Mr. Wiemold's motion. On May 30, 2019, the Municipal Court denied the motion. Regarding the Eighth Amendment challenge, the Municipal Court ruled that the challenge was not ripe, as Mr. Wiemold had not yet been convicted or sentenced. Regarding the Fourteenth Amendment challenge, the Municipal Court found no violation.

On August 7, 2019, the Municipal Court held a court trial. On August 8, 2019, the Municipal Court found Mr. Wiemold guilty of violating Fort Collins Municipal Ordinance § 17-181.

On August 7, 2019, Mr. Wiemold filed a Motion to Vacate Conviction and Enjoin the Imposition of Any Sentence. This motion alleged that it would violate the Eighth Amendment and article II, section 20 of the Colorado Constitution for Mr. Wiemold to suffer a conviction and the imposition of any sentence for his conduct of sleeping in his truck at the rest area, given that the only reason he was sleeping in his truck was he had nowhere else to go. At Mr. Wiemold's request, the Municipal Court held this motion in abeyance until the Municipal Court rendered its verdict.

On September 6, 2019, the Municipal Court denied Mr. Wiemold's motion.

Alleged Errors of the Municipal Court (Crim. P. 37(b))

Mr. Wiemold alleges that the Municipal Court erred when it denied his Motion to Dismiss because his prosecution constituted selective enforcement of the law in violation of the Fourteenth Amendment.

Mr. Wiemold alleges that the Municipal Court erred when it denied his Motion to Dismiss because his prosecution for sleeping in his truck when he had nowhere else to go violated the Eighth Amendment and article II, section 20 of the Colorado Constitution.

Mr. Wiemold alleges that the Municipal Court erred when it denied his Motion to Vacate Conviction and Enjoin the Imposition of Any Sentence because the imposition of a conviction and any sentence for Mr. Wiemold sleeping in his truck when he had nowhere else to go violated the Eighth Amendment and article II, section 20 of the Colorado Constitution.

Designation of Record

The record for this appeal should consist of:

- The entire contents of the Municipal Court file, including but not limited to all motions, responses, replies, hearing briefs, hearing brief responses, hearing brief replies, orders, and the verdict concerning the two contested motions subject to this appeal;
- A transcript of the May 7, 2019 motions hearing;
- A transcript of the August 7, 2019 trial.



Adam Frank, #38979

FRANK & SALAHUDDIN LLC

In Cooperation with the ACLU of Colorado

## Certificate of Service

I hereby certify that on October 2, 2019, I served a true and correct copy of the foregoing electronically via the CCE e-filing system upon the trial court, as well as the following individuals, either directly through CCE or via email:

Jill Heuser  
For Collins City Attorney  
[jhueser@fcgov.com](mailto:jhueser@fcgov.com)

Fort Collins Municipal Court Clerk  
[court@fcgov.com](mailto:court@fcgov.com)



---

Adam Frank  
FRANK AND SALAHUDDIN LLC  
*Attorney for Plaintiff*