

District Court, Larimer County, Colorado 201 LaPorte Ave. Fort Collins, CO 80521	DATE FILED: September 14, 2020 12:26 PM FILING ID: FA74F5A375BAE CASE NUMBER: 2019CV30889
Appeal from the Fort Collins Municipal Court The Honorable Kathleen M. Lane Case No. 2018-0240752-MD	
PEOPLE OF CITY OF FORT COLLINS, Plaintiff-Appellee, v. Adam Wiemold, Defendant-Appellant	☐ COURT USE ONLY ☐
Adam Frank, #38979 FRANK & SALAHUDDIN LLC 1133 N Pennsylvania St. Denver, CO 80203 Phone: (303) 974-1084 Fax: (303) 974-1085 E-mail: <a href="mailto:adam@fas-law.com">adam@fas-law.com</a> In cooperation with the American Civil Liberties Union Foundation of Colorado  Mark Silverstein, #26979 Rebecca Wallace, #39606 ACLU Foundation of Colorado 303 E. 17 <sup>th</sup> Ave., Suite 350 Denver, CO 80203 Phone: (303) 777-5482 Fax: (303) 777-1773 Email: <a href="mailto:msilverstein@aclu-co.org">msilverstein@aclu-co.org</a> <a href="mailto:rtwallace@aclu-co.org">rtwallace@aclu-co.org</a>	Case No. 2019 CV 30889
<b>RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY</b>	

Mr. Wiemold submits the following response to Fort Collins’s Notice of Supplemental Authority:

The Denver District Court’s opinion in *People v. Burton*, 19CV34925 (Denver Dist. Ct. Sept. 6, 2020), in no way undermines any argument Mr. Wiemold has made to this Court. First, the bulk of the *Burton* appellate decision addresses Mr. Burton’s facial challenge to Denver’s municipal

camping ban. Mr. Wiemold did not bring a facial challenge to the Fort Collins municipal camping ban. This portion of *Burton* is thus inapplicable to Mr. Wiemold’s appeal.

Second, regarding Mr. Burton’s as-applied challenge, the facts of Mr. Burton’s case were materially different from those of Mr. Wiemold’s, in a way that requires a different outcome under the reasoning of *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019). Mr. Burton “was contacted by police and given the option of going to a homeless shelter.” *Burton*, slip op. at 1. Mr. Burton was only cited under the Denver ordinance after he “received an offer of shelter, which he refused.” *Id.* at 2. In contrast, Mr. Wiemold had no indoor shelter available to him at the time he was cited. *See* Opening Brief, p. 8-15; Reply Brief, p. 3-4, 9-21.

It is precisely because of the difference between him and Mr. Burton – the fact that Mr. Wiemold had no indoor shelter available to him – the Fort Collins ordinance is unconstitutional as applied to him. As *Martin v. City of Boise* holds, “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” 920 F.3d at 617. Mr. Wiemold asks this court to follow the *Martin* court and recognize that under the principles of basic human decency embodied in the Eighth Amendment, it is cruel and unusual to punish him for sleeping in his vehicle at a Fort Collins rest area when he had no place to shelter indoors.

Finally, the city’s statement that Mr. Wiemold “repeatedly relies” on the county court’s decision in *People v. Burton*, 19GS004399 (Denver Mun. Ct. Dec. 27, 2019) is incorrect. Mr. Wiemold mentioned the holding in that case once in his Opening Brief and never cited to or relied on the reasoning contained in that decision. *See* Opening Brief, at 8.



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Adam Frank, #38979  
Frank & Salahuddin LLC

In cooperation with the ACLU Foundation of Colorado  
Dated: September 14, 2020



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Mark Silverstein, #26979  
ACLU Foundation of Colorado  
Dated: September 14, 2020



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Rebecca Wallace, #39606  
ACLU Foundation of Colorado  
Dated: September 14, 2020

**Certificate of Service**

I hereby certify that on September 14, 2020, I served a true and correct copy of the foregoing electronically via the CCE e-filing system upon the following individuals, either through CCE:

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