

California Catholic Daily

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Published: January 19, 2009

“We will appeal this verdict”

Pro-life pastor found guilty of violating Oakland’s abortion clinic ‘bubble law,’ faces imprisonment and hefty fines

The Rev. Walter Hoye, a pro-life Baptist pastor from Berkeley, faces up to two years in jail and \$4000 in fines following his conviction on two counts of “unlawful approach” in violation of Oakland’s restrictive new ‘bubble law.’ His attorneys say they plan to appeal.



Rev. Walter Hoye

Hoye had initially been charged with four counts of violating the ordinance – two counts of “unlawful approach” and two counts of using “force, threat of force or physical obstruction” against ‘escorts’ at Family Planning Specialists Clinic in Oakland. The charges stemmed from two separate incidents – one on April 29, 2008 and one on May 13, 2008. Hoye was arrested on May 13 after a clinic staff member called police. He was carrying a 40-inch sign that read, “Jesus Loves You & Your Baby. Let Us Help You,” and attempting to hand out pro-life literature.

A regular fixture at the clinic and an outspoken opponent of the “bubble law,” Hoye had challenged the constitutionality of the ordinance in a federal lawsuit pre-dating his arrest. He had become a top target for the clinic staff.

Alameda Superior Court Judge Stuart Hing dismissed one count of using “force, threat of force or physical obstruction” before the trial got under way on Jan. 5. After deliberating for about two days, the jury found Hoye guilty on Thursday, Jan. 15, of two counts of “unlawful approach,” but not guilty on the remaining “threat of force” count.

Hoye is scheduled to appear before Judge Hing on Feb. 19 for sentencing. Hoye said the judge ordered him to stay 100 yards away from the abortion clinic and have no contact with anyone associated with the clinic while he awaits sentencing. “It is my prayer that God’s name be glorified and the life of His Son Jesus Christ be revealed in me,” said Hoye.



Judge Stuart Hing

Katie Short of Life Legal Defense Foundation and one of Hoye’s attorneys, expressed concerns over the judge’s instructions to the jury, a concern echoed by Hoye. “The jury members came back to ask to watch the videos again and asked the judge to define what constituted an ‘approach,’” said Hoye. “There is a clear definition given by the U.S. Supreme Court in a case related to a similar law, the law the Oakland law is based on, but he wouldn’t give it to them.”

The videos to which Hoye refers were recorded outside the abortion clinic on May 13 and presented as evidence by the defense during Hoye’s trial. The tapes showed that clinic employees approached Hoye, not the other way around.

Short said that, on appeal, the constitutionality of the ordinance would be challenged. In addition, she said, the prosecution failed to meet its burden of proof.

Short also cited the questionable testimony of Family Planning Specialists clinic director Jackie Barbic, who told the jury she came downstairs with a tape measure and told Hoye to back away from patients, staff and escorts.

Barbic testified that Hoyer then came very close to her, stared at her and made her and two escorts feel very threatened and intimidated.

“When Barbic was on the stand, she told that story, saying that Walter walked up to within a couple of feet of her, and she had to back away from him,” said Short. “Her voice actually choked with emotion as she recounted how frightened she had been. She didn’t know that Walter had someone videotaping him that day. So on cross-examination, we showed her the videotape of the incident, showing her approaching Walter, and him not moving an inch toward her. Up until then, she had detailed everything that happened at the clinic that morning. But when she saw the tape that debunked her story, she said, ‘Oh! I just remembered that there was another time later in the day when I was downstairs that he approached me.’ We have videotape of Walter from when he arrived to when he left. What a smart person would have done was look at the videotape and say, ‘Oh man, you know, I could have sworn he got closer and had a threatening look on his face.’ Instead, she still insisted that he had threatened and intimidated her, but just later in the morning. And she gave us some cock and bull story that she had the tape measure to show the escorts the zone.”

Short said she is also troubled by the interpretation of what constitutes an “approach” under the law. “The ordinance prohibits approaching within eight feet of someone entering an abortion clinic, without their consent, for the purpose of... let’s call it ‘communication,’” Short explained. “The clinic director and escorts took this to mean that Walter could not approach them without their consent, even though they were not entering the facility and he was not trying to communicate with them.”

Hoyer, who has no previous criminal record, rejected a plea bargain offered by the district attorney before trial. The deal guaranteed no jail time if Hoyer pleaded guilty to one count in exchange for dismissal of the other three. “The threat of four years in jail is a potent one, but my client is more interested in getting the truth out, both on the sidewalk and in the courtroom,” commented Mike Millen, another Life Legal Defense Foundation attorney working on Hoyer’s case, when the offer was turned down.

“This is a miscarriage of justice and we will appeal this verdict,” said Allison Aranda, a staff counsel for Life Legal Defense Foundation, in a prepared statement following the verdict. “After speaking with several jurors after the verdict was read, it is clear that the court’s failure and outright refusal to instruct the jury regarding the key elements of the crime led to the erroneous conviction of Rev. Hoyer.”

The verdict came at the beginning of the holiday weekend honoring Martin Luther King Jr. -- an irony not lost on Rev. Hoyer. “It’s Martin Luther King Jr.’s birthday again and I can still hear his words in my heart: ‘The Negro cannot win as long as he is willing to sacrifice the lives of his children for comfort and safety.’”

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