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### “Judge, this is unjust!”

*Pro-life pastor gets jail term, fine for violating ‘bubble ordinance’ outside Oakland abortion clinic*

In a courtroom jammed to capacity with spectators, a judge yesterday sentenced a Baptist pastor from Berkeley to 30 days in jail, fined him \$1,130 and placed him on probation for three years for violating Oakland’s restrictive ‘bubble law,’ crafted to keep pro-life sidewalk counselors away from women entering abortion centers.

Observers said as many as 150 people were outside the courtroom, which seats only about 60, before the 1:30 p.m. hearing began. Some of the standing-room-only crowd were there to support the embattled pro-lifer, while others showed up to back the abortion clinic.



Judge Stuart Hing

Alameda Superior Court Judge Stuart Hing sentenced the Rev. Walter Hoye amidst what one attorney close to the case called “total chaos, procedurally speaking” after Hoye refused to accept as a condition of probation an order that he stay away from the Oakland abortion clinic where he was arrested. Hing said Rev. Hoye could serve his jail time “by alternative means,” which defense attorney Dana Cody said would “likely mean some kind of community service.”

When Hing adjourned the hearing, an unidentified minister in the courtroom stood up and yelled, “Judge, this is unjust!” At one point, bailiffs tried to handcuff the minister, but later allowed him to leave the courtroom without further incident, witnesses said.

Cody said Hoye has the right to reject “an onerous condition of probation” – in this case a requirement that he stay away from the clinic, which she said was a violation of Hoye’s free speech rights. All parties are scheduled to return to Hing’s courtroom next month to resolve the probation question.

Hoye could have been sentenced to as many as two years in jail and a \$4000 fine following his Jan. 15 conviction on two counts of “unlawful approach” in violation of Oakland’s ‘bubble law.’ His attorneys said at the time they plan to appeal the verdict.

Before the sentencing, attorneys for Life Legal Defense Foundation, which represented Hoye, asked Hing to grant a motion for a new trial, saying that the judge erred in failing to give a “unanimity instruction” -- an instruction to the jury that they must agree unanimously on one incident for each count. Instead, jurors were presented with dozens of incidents from which to choose. That, argued Hoye’s lawyers, violated his rights to due process since the jury was not required to agree on which particular act committed by Hoye constituted a crime. Hing denied the motion and proceeded with the sentencing.



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



Rev. Walter Hoye

challenged the constitutionality of the ordinance in a federal lawsuit pre-dating his arrest. He had become a top target for the clinic staff.

Hing dismissed one count of using “force, threat of force or physical obstruction” before the trial got under way, and the jury found Hoye not guilty on the other count. Instead, the jury returned guilty verdicts on two counts of “unlawful approach,” although there is some question about how sure jurors were they were making the correct decision. “The jury members came back to ask to watch the videos again and asked the judge to define what constituted an ‘approach,’” said Hoye shortly after the verdicts were returned. “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.

Katie Short, an attorney with Life Legal Defense Foundation, told *California Catholic Daily* last month she was 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.”

Hoye, who has no previous criminal record, rejected a plea bargain offered by the district attorney before trial. The deal guaranteed no jail time if Hoye 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 Hoye’s case, when the offer was turned down.

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