



Roll Call Training Bulletin

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Daniel Hahn, Chief of Police
Volume 63

September 7th, 2018 *Martin v. City of Boise*

INTRODUCTION

On September 4, 2018 the 9th Circuit Court of Appeals ruled that the Eight Amendment to the United States Constitution prohibits cities from prosecuting people for sleeping in public when shelter beds are not “practically available” – thereby expanding the concept of “unavailable” to encompass more than just physical capacity and space at shelters.

Previously, the Sacramento Police Department was advised to only cite individuals under Sacramento City Code sections 12.52.030 and 12.52.040 when the citing officer (i) contemporaneously confirmed that a shelter bed was available; (ii) offered to transport the individual to the bed; and (iii) the individual rejected the bed. In light of the *Martin v. City of Boise* ruling, SPD is now advised to only cite individuals under SCC sections 12.52.030 and 12.52.040 when the citing officer (i) contemporaneously confirms that a shelter bed is available; (ii) offers to transport the individual to the bed; (iii) confirms that there are no limitations to the individual’s (continued) use of the bed; and (iv) the individual still rejects the bed.

BACKGROUND

The plaintiffs-appellants in the *Martin* case were current or former residents of the City of Boise (“the City”), who are, or who have been, recently homeless. Plaintiffs allege that, between 2007 and 2009, they were cited by Boise police for violating one or both of two city ordinances: (i) Boise City Code § 9-10-02 (the “Camping Ordinance”), which makes it a misdemeanor to use “any of the streets, sidewalks, parks, or public places as a camping place at any time.”; and (ii) Boise City Code § 6-01-05 (the “Disorderly Conduct Ordinance”), which bans “[o]ccupying, lodging, or sleeping in any building, structure, or public place, whether public or private ... without the permission of the owner or person entitled to possession or in control thereof.”

Plaintiffs sought retrospective relief for their previous citations, and two of the plaintiffs additionally sought declaratory and injunctive relief against future prosecution, because they alleged that they expected to be cited under the ordinances again in the future.

At the time of the ruling, there were three shelters in Boise. One shelter was open to men, women and children of any faith. The other two shelters were run by Christian nonprofit organizations – one of which was only open to men, while the other was open to women and children only. The shelters also had various time and duration limitations.

After litigation began, the Boise Police Department promulgated a new order that prohibited enforcement of either the Camping Ordinance or the Disorderly Conduct Ordinance against any homeless person on public property on any night when no shelter was available. BPD implemented the order through a two-step procedure known as the “Shelter Protocol.”

Under the Shelter Protocol, if any shelter in Boise reached capacity on a given night, that shelter would notify BPD of the same, at roughly 11:00 pm. Each shelter had discretion to determine whether it was full, and the police had no other mechanism for gauging shelter capacity.



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ANALYSIS

In *Martin*, the 9th Circuit held that because “ ‘the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being . . . ’ ”, “the Eighth Amendment [also] prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” The Court went on to explain that “any ‘conduct at issue here is involuntary and inseparable from status – they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping.’ ” The 9th Circuit concludes by stating that “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.”

The Court observed that,

[In Boise] the Camping Ordinance is frequently enforced against homeless individuals with some elementary bedding, whether or not any of the other listed indicia of ‘camping’ – the erection of temporary structures, the activity of cooking or making fire, or the storage of personal property – are present. For example, a Boise police officer testified that he cited plaintiff Pamela Hawkes under the Camping Ordinance for sleeping outside ‘wrapped in a blanket with her sandals off and next to her,’ for sleeping in a public restroom ‘with blankets,’ and for sleeping in a park ‘on a blanket, wrapped in blankets on the ground.’ The Camping Ordinance therefore can be, and allegedly is, enforced against homeless individuals who take even the most rudimentary precautions to protect themselves from the elements.

Further, the *Martin* decision explains that municipalities must consider the *practical*, or *actual* availability of shelter beds (prior to issuing a citation) – which requires consideration of more factors than the simple physical availability of a bed.

In this case, the plaintiffs presented evidence indicating that, even when Boise shelters reported that they were physically open to homeless individuals, the same shelters limited the number of days individuals could stay or conditioned a stay on religious participation. In the view of the 9th Circuit, such characteristics acted as barriers to the plaintiff’s use of the shelters, on logistical and constitutional grounds. As the Court put it, under such circumstances,

there remains a genuine issue of material fact as to whether homeless individuals in Boise run a credible risk of being issued a citation on a night when Sanctuary is full and they have been denied entry to a . . . facility for reasons other than shelter capacity. If so, then as a practical matter, no shelter is available.

CONCLUSION

In light of the *Martin v. City of Boise* ruling, SPD is now advised to only cite individuals under SCC sections 12.52.030 and 12.52.040 when the citing officer (i) contemporaneously confirms that a shelter bed is available; (ii) offers to transport the individual to the bed; (iii) confirms that there are no limitations to the individual’s (continued) use of the bed; and (iv) the individual still rejects the bed.

If you have further questions, contact the Professional Standards Unit @ (916) 808-3790