

## **Court: Man can't be punished 'simply for being homeless'**

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BOSTON — A homeless man convicted of criminal trespassing for taking shelter in privately owned buildings during harsh winter weather won a new trial Thursday when the state's highest court ruled that he should have been allowed to argue it was his only way to protect himself from the cold.

The Supreme Judicial Court found that the judge at David Magadini's trial was wrong to deny a request to instruct the jury on a so-called necessity defense. Magadini wanted to use that defense to argue that his behavior was justified for a person trying to escape extreme temperatures.

In a unanimous, 7-0 ruling, the court threw out six 2014 trespassing convictions. The court said the necessity defense allows a jury to weigh the plight of a homeless person against any harm caused by a trespass before determining criminal responsibility.

"Our law does not permit punishment of the homeless simply for being homeless," Justice Geraldine Hines wrote for the court.

The court noted that its ruling was not an open invitation for homeless people to trespass.

"Allowing a defendant to defend his trespassing charges by claiming necessity will not, of course, condone all illegal trespass by homeless persons," Hines wrote.

The owners of three properties in Great Barrington had obtained no-trespass orders against Magadini. He was convicted of seven counts of criminal trespass for entering the buildings in February, March, April and June of 2014, and was sentenced to 30 days in jail.

In requesting a jury instruction on the necessity defense, Magadini's lawyer argued that his conduct was justified as the only alternative for a homeless person facing the "clear and imminent danger" of exposure to the elements during periods of extreme outdoor temperatures.

The trial judge denied the request, finding that Magadini had alternatives to trespassing, including motels, hotels and the police station. The judge said the evidence was lacking on Magadini's inability to rent a hotel room on particularly cold nights.

Magadini said he had stayed at the local homeless shelter during the winter of 2007, but he was told to leave because of "certain issues" that were not disclosed in the SJC's ruling.

Prosecutors argued that Magadini presented no evidence that he was unable to rent an apartment outside of Great Barrington.

Magadini's lawyer, Joseph Schneiderman, hailed Thursday's decision as a landmark ruling that could have a broad impact for homeless people, saying it "has the potential to do great good."

Berkshire District Attorney David Capeless said prosecutors were surprised by the ruling and believe it represents a new interpretation of earlier case law.

"Previously, the law indicated that it was for a judge to determine whether or not there was a reasonable basis within the evidence for the jury to determine necessity, and if so, to give the instruction, but now they're saying if there was any basis, then the instruction should be given," Capeless said.

Magadini, now 67, became homeless after he moved out of his parents' home in 2004, according to background included in the court's ruling. He lived outside year-round, first at a park and later at an outdoor gazebo behind Great Barrington Town Hall. He considered the gazebo his home and registered to vote from its address.

He sometimes sought shelter in private buildings during severe winter weather.

While the SJC vacated six of Magadini's convictions for trespassing during the winter months, it upheld one conviction for an incident in June 2014, when Magadini entered an ice cream shop where a no-trespass order had been issued against him and used the bathroom.

The case has been closely watched by advocates who supported Magadini.

"The necessity defense provides a critical safety valve, which allows juries to acquit individuals when they determine that following the law would cause more harm than breaking it," said Jessie Rossman, a staff attorney with the American Civil Liberties Union of Massachusetts.

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