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**IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE**

STATE OF WASHINGTON)	
)	
Plaintiff,)	No. 6Z0117975
)	
v.)	PA# 16-6-90725-2
)	RPT# CT I, II: 2016-00950725
GEORGE E. TAYLOR)	RCW CT I: 9A.52.080-M (#17735)
WM 12/15/39)	CT II: 81.48.020-M (#63031)
)	FINDINGS OF FACT AND
Defendant(s).)	CONCLUSIONS OF LAW
)	

THIS MATTER having come on for hearings on June 26, 2017 and August 21, 2017 pursuant to the Defendant's pre-trial Motion to Allow Affirmative Necessity Defense and to Call Expert Witness at Trial. Those present included Defendant GEORGE TAYLOR, and Counsel for the Defendant, ERIC CHRISTIANSON, MARK HODGSON, and RACHEL OSBORN, and Counsel for the State, MARGARET MACRAE and RACHEL E. STERRET. The Defendant, after the hearings on the motion, obtained counsel KAREN S. LINDHOLT and ALANA L. BROWN.

1 The Defendant presented testimony of Dr. Steven Running and Professor Tom Hastings, both
2 of whom who are qualified as experts upon motion in their respective fields, testified regarding their
3 respective fields, and were subject to cross-examination by Counsel for the State of Washington.
4 Defendant George Taylor testified and presented the Declaration of Fred Millar, submitted by
5 agreement of the parties. The State of Washington presented the testimony of Karl Dreyer, Burlington
6 Northern Santé Fe Corp (BNSF) police officer. The COURT having heard the live testimony,
7 reviewed both parties briefing on the motion and reviewed the stipulated declaration, and heard
8
9
10 Counsels' oral arguments, now makes the following:

11
12 **FINDINGS OF FACT**

- 13 I. On September 29, 2016, the defendant was a part of a group of approximately twenty-four
14 (24) protestors who walked onto BNSF Railway property and stood on the mainline railroad
15 tracks in front of a BNSF freight train near the intersection of Crestline and E. Trent
16 Avenue.
17
18 II. The protestors were on BNSF property which is private property and posted with signs that
19 read "No Trespassing".
20
21 III. The defendant knew that he was entering private property and that he did not have
22 permission to enter that property.
23
24 IV. The defendant took actions to safely protest, including placing a phone call to BNSF to tell
25 the company that there was a planned protest at one of their properties and reviewing train
schedules to plan the protest when no trains were scheduled to be on the tracks, believing
these actions would prevent the risk of harm.
V. While on the property and tracks, some of the protestors chanted, held up signs and
displayed large banners protesting the transport of coal and oil.

1 VI. For the safety concerns of the protestors, BNSF employees and the public, trains in the
2 general vicinity were held idling at the railway yard.

3 VII. BNSF and other law enforcement officers responded to the area.

4 VIII. The protestors, including the defendant, were advised to leave and warned by law
5 enforcement that they would face arrest if they did not leave.

6 IX. Three protestors, including the defendant, politely refused to leave the property and
7 remained on the railroad tracks.

8 X. The three remaining protestors were escorted off the railroad tracks, peacefully arrested and
9 transported to the Spokane County Jail where they were charged and released.

10 XI. **The Defendant, Mr. George Taylor testified:**

- 11
- 12
- 13
- 14 1. His actions on September 29, 2016 were acts of civil disobedience to bring attention to
15 the Legislative and Executive Branches about the imminent harm he perceived was
16 occurring;
- 17
- 18 2. He believed his actions and the actions of the other protestors were necessary to avoid or
19 minimize the imminent danger to the Earth due to climate change and the serious and
20 imminent risk of danger to safety of Spokane citizens in the downtown area where
21 BNSF transports volatile oil.
- 22
- 23 3. He believed the danger to the public by BNSF transporting coal and oil through the city
24 of Spokane was far greater than his act of trespassing on the railroad tracks;
- 25
4. He stated that he and the other protestors took measures to protest safely and minimize
any potential harm caused by their actions by providing notice of the protest to BNSF,
planning the protest when no trains were scheduled to approach and making themselves
aware of railroad safety;

- 1 5. He stated that the protestors' purpose was much more than to just garner media
2 attention, they believed their actions would be an impetus to effect actual change;
- 3 6. He believes members of his family are at risk for asthma symptoms resulting from the
4 environmental hazards of the transportation of coal;
- 5 7. He testified that he is seriously concerned about his granddaughter's safety as she
6 attends Lewis & Clark High School near the downtown area where the trains travel. His
7 concerns were that she and others would suffer tragic consequences if the oil cars
8 derailed or erupted in flames due to the volatile nature of the oil and inadequate
9 construction of the railroad cars.
- 10 8. He has voted for "green" legislation in support of his concerns;
- 11 9. He has met with all three Washington State Senators;
- 12 10. He has personally visited, called and sent emails to Representative McMorris Rodgers
13 with no response.
- 14 11. He delivered a petition against the railroad transporting coal and oil personally to the
15 office of Representative McMorris Rodgers.
- 16 12. He has testified three times on the dangers and risks of BNSF's decision to transport
17 coal and volatile oil through the downtown corridor.
- 18 13. He supported the Spokane City Council's proposed ordinance to intervene in dangerous
19 conduct of BNSF,
- 20 14. He is a member of the Sierra Club and Safer Spokane;
- 21 15. He noted that there have been seven derailments in 2017 and believes it is necessary to
22 act now to minimize imminent harm caused by derailments and oil spills.
23
24
25

1 16. He is discouraged by the lack of progress on this issue but still hopes that the
2 government will do the right thing;

3 17. He believes he has exhausted all other reasonable legal means.
4

5 **XII. State's Witness BNSF Officer Dryer testified:**

6 1. The protestors presented a dangerous situation because the trains travel through the area
7 of the protest;

8 2. The advance call of the protestors was to the BNSF office in Texas and the details were
9 too vague to support stopping the trains;

10 3. BNSF held trains in the vicinity at the railroad yard to protect the public;

11 4. Local law enforcement was contacted;

12 5. He responded to the scene and spoke to Mr. Taylor. He asked him to leave or face arrest;

13 6. The defendant refused to leave but was cooperative during the arrest;

14 7. BNSF had to check the tracks for any tampering before train track could resume. No
15 evidence of tampering was found.
16
17
18

19 **XIII. Defense Expert Witness Dr. Steven Running, Professor of Global Ecology at the
20 University of Montana, testified:**

21 1. He served as co-Lead Chapter Author for the 2014 U.S. National Climate Assessment,
22 currently chairs the NASA Earth Science Subcommittee, is a member of the NASA
23 Science Advisory Council and a member of the NASA Science Advisory Council. As
24 Lead Author for the 4th Assessment of the Intergovernmental Panel on Climate Change,
25 he shared the Nobel Peace Prize with Al Gore in 2007.

2. There are three basic facts that climate scientists see (a) Greenhouse gasses and carbon
dioxide are going into the atmosphere and have been measured for over 50 years; (b)

1 Because of these increasing greenhouse gasses, the global air temperature has gone up
2 and in the last 20 years has accelerated significantly; and (c) That, what we as climate
3 scientists propose, is to reduce carbon emissions necessary to stabilize the global climate
4 in the future.
5

- 6 3. The global impact is caused by human behavior – the largest source of CO2 emissions is
7 from burning coal, the second is from burning oil and the third is from burning natural
8 gas;
9
- 10 4. If carbon emissions continue to grow, all climate models project higher global
11 temperatures in the coming decades.
- 12 5. With current national policies, temperatures in the Pacific Northwest could rise 10
13 Degrees Fahrenheit. Reducing carbon emissions reduces the CO2 in the atmosphere
14 proportionally, which reduces temperature increases and impacts proportionally.
15
- 16 6. The failure to act more forcefully to abate GHG emissions will lead to harms that are
17 severe, imminent, and irreparable, both at a global level and regionally in the Inland
18 Northwest.
19
- 20 7. China is the largest consumer of coal and that coal comes from Montana and Wyoming
21 and is shipped through our area. China is trying to reduce its CO2 emissions and is
22 committed to reducing the amount of coal they import from the United States.
23
- 24 8. Global warming is increasing rapidly and is the result of the collective practices of
25 global citizens. Individual choices such as driving cars as well as each country's
government policies all contribute to the problem of global warming. It is crucial that
this issue continues to be addressed and action taken before the damage to our planet is
too great.

1 **XIV. Defense Expert Witness Tom Hastings, Assistant Professor of Conflict Resolution, at**
2 **Portland State University testified:**

- 3
- 4 1. He teaches courses on the efficacy of nonviolent civil resistance and has served as an
5 Academic Advisor to the Washington DC-based International Center on Nonviolent
6 Conflict and is a member of the Governing Council of the International Peace Research
7 Association. He is also Co-Chair of the Peace and Conflict Studies Association.
- 8
- 9 2. Civil resistance is effective in bringing about social changes. Drs. Erica Chenoweth and
10 Maria Stephan examined 323 case studies from 1900-2006, both violent and nonviolent,
11 and found that nonviolent civil resistance is not only approximately twice as effective as
12 violent civil resistance, but also that nonviolent civil resistance is more likely than not to
13 succeed in achieving the stated goal (See Stephan, M.J. & Chenoweth, E. *Why Civil*
14 *Resistance Works*", Columbia University Press, 2011.)
- 15
- 16 3. Reverend Taylor's actions are an example of the non-violent civil resistor.
- 17
- 18 4. Civil resistance includes outreach to the media and others to educate fellow citizens and
19 ultimately change public policy;
- 20
- 21 5. Some examples of civil disobedience resulting in significant changes include the Boston
22 Tea Party, Women's Suffrage which resulted in the right of women to vote, and Labor
23 Actions which resulted in the creation of unions to protect worker's rights;
- 24
- 25 6. Each resulted in victory where nonviolent resistance had been used. The same result
could be accomplished for environmental protections, resulting in institutional,
corporate, and public policy change.

1 7. When all other legal means have been taken, and those attempts have not resulted in
2 change, the judicial branch is the last best hope. The most notable cases are (1) *Brown v.*
3 *Board of Education*; (2) *Plessy v. Ferguson*; and (3) Rosa Parks.

4
5 8. Civil resistance is breaking a law to uphold a higher law when the threat is imminent and
6 every legal means has not resulted in policy change.

7 9. He stated experts agree that climate change is conducive to a civil resistance campaign.

8
9 XV. **Defense Expert Fred Millar** is a recognized international analyst in nuclear waste storage
10 and transportation and industrial chemical use, transportation and accident prevention, and
11 emergency planning and homeland security.

12 1. His declaration addressed the lack of adequate preparedness and emergency response
13 protocols around the nation to protect public safety in the event of crude oil train
14 derailment, spills and/or explosion.

15
16 2. He stated the harm associated with the derailment of trains carrying BAKKEN crude
17 oil is an imminent and grave harm. Governmental accident data and regulatory
18 impact analyses estimate than an ongoing, almost monthly, occurrence of U.S. crude
19 oil releases by rail derailments, some with oil spills and fire events. Such events have
20 recently occurred with respect to trains carrying coal and oil products in Montana and
21 Oregon, and involved trains that traveled through Spokane.

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24 From the foregoing Findings of Fact, the Court now makes the following:
25

CONCLUSIONS OF LAW

- 1 I. The U.S. Constitution provides criminal defendants a Constitutional right to present a
2 complete defense, including presenting the Affirmative Necessity Defense, when legally
3 relevant.
4
- 5 II. The evidence must be relevant, although the threshold is low, “even minimally relevant
6 evidence is admissible”. *State v. Darden*, 145 Wn.2d 612.
7
- 8 III. Rules for the Necessity Defense are purposefully flexible and calls for reasonableness in its
9 application, so that justice may be served. 38 New Eng. L. Rev. 3.
10
- 11 IV. Historically, the Necessity Defense has been allowed in numerous civil disobedience cases
12 in other state court on a case-by-case basis: (1) Protesting nuclear weapons – Oregon
13 (1977), Illinois (1978 and 1985), California (1979 and 1982), Pennsylvania (1989), Vermont
14 (1984), Michigan (1984 and 1985); (2) Protesting alleged corruption of county officials –
15 North Carolina (1988); (3) Anti-abortion protestors charged with Trespassing – Nebraska
16 (1990); (4) Catholic priest charged with malicious mischief for painting over billboards
17 advertising tobacco and alcohol – Chicago (1991); (5) Activists charged with illegally
18 supplying clean needles to protect people from the spread of the AIDs virus – Chicago and
19 California (1993).
20
- 21 V. While Washington courts have not officially recognized the Necessity Defense in civil
22 disobedience cases, several courts have allowed criminal defendants to raise this defense. In
23 1985, the Necessity Defense was allowed when doctors in Seattle protested the medical and
24 other effects of apartheid in South Africa at the home of the South African consul; and
25 again, in 1987 when Evergreen State College students were arrested for Trespass and
Disorderly Conduct when they also protested the effects of apartheid in South Africa.

1 VI. Other Washington courts have denied the use of the necessity defense in civil disobedience
2 cases. In 2017, climate activists charged with Sabotage and Burglary while protesting a
3 pipeline facility in Skagit County, responding to a call of action from the Standing Rock
4 pipeline protests in N. Dakota were denied the use of the Necessity Defense.
5

6 VII. A defendant may assert the common-law Necessity Defense when circumstances cause the
7 accused to take unlawful action to avoid a greater injury. *State v. Diana*, 24 Wn.App 908
8 (1979; *State v. Cozad*, 198 Wn.App 1007; WPIC 18.02
9

10 VIII. The defendant bears the burden of proof in asserting this defense and must satisfy four
11 prongs by a preponderance of the evidence: (1) he reasonably believed the commission of
12 the crime was necessary to avoid or minimize a harm; (2) the harm sought to be avoided
13 was greater than the harm resulting from the violation of the law; (3) the threatened harm
14 was not brought about by the Defendant; and (4) the Defendant believed no reasonable legal
15 alternative existed.
16

17 IX. In the present case, the defendant believed that his actions were necessary to avoid or
18 minimize the immediate harms of global change to the Earth.
19

20 X. The Defendant presented evidence that the harm sought to be avoided, the imminent danger
21 to the planet as well as imminent risk of harm to citizens of Spokane, including his
22 granddaughter was greater than the harm created when he and the other protestors violated
23 the law and were arrested for Obstructing or Delaying Train and 2nd Degree Criminal
24 Trespass.
25

XI. The harm that the defendant sought to prevent was not brought about by him or the other
protestors.

1 XII. The Defendant believed that he had exhausted all legal alternatives and that no other
2 reasonable alternative existed.

3 XIII. It is within the sole province of the jury, not the judge, to weigh the evidence, evaluate the
4 credibility of each witness, and decide the facts at issue in the case. The jury will ultimately
5 determine whether the Necessity Defense applies to the facts of the present case.
6

7 **ORDER**

8 Finding the Defendant has met the burden of proof by satisfying the four elements
9 required to present the Necessity Defense by a preponderance of the evidence, the Court
10 hereby grants the Defendant's motion to allow the Affirmative Necessity Defense to be
11 presented at trial and grants the Defendant's request to present expert witness testimony at
12 trial.
13

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15 Dated: 3-13-18

16 
17 JUDGE DEBRA R. HAYES

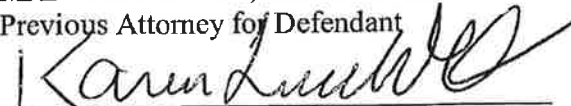
18 Presented by: Agreed as to form:
19 
20 50783 for

21 RACHEL E. STERETT
22 Deputy Prosecuting Attorney
23 WSBA #27141

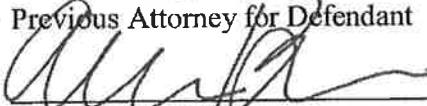

24 MARGARET MACRAE
25 Deputy Prosecuting Attorney
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26 Agreed by:
27 Withdrawn from case

28 MARK HODGSON, WSBA #34176
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30 KAREN LINDHOLDT, WSBA #24103
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32 RACHAEL OSBORN, WSBA #21618
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35 Attorney for Defendant