IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

IN AND FOR THE APPELLATE DIVISION

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent.	No. BR 053990
v.	
KEVIN PERELMAN, Defendant and Appellant.	

APPEAL FROM THE JUDGEMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

APPELLANTS REPLY BRIEF

Los Angeles Superior Court Case No. 7VW04099
Honorable Eric P. Harmon, Judge

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1. ISSUE NOT ADDRESSED

Any point raised by the government in their response brief not addressed in this brief is not a concession of that issue. Instead it means that appellant feels the point was adequately addressed in the opening brief and does not need further briefing.

2. THE OVERALL ISSUE IS THAT THE JURY WAS MISINSTRUCTED ON THE LAW.

The thrust of the Appellant's argument is that the jury was misinstructed on the law. Respondent tries to distract from this by concentrating their argument on the position that the special jury instructions proposed by Appellant were erroneous. The special jury instructions were not erroneous but regardless if they were or were not that does not negate the issue that the jury was not properly instructed on the law which resulted in erroneous verdicts. The trial court had a duty to properly instruct the jury on the law, that duty was not adhered to.

3. THE TRIAL COURT'S JURY INSTRUCTIONS INADEQUATELY INSTRUCTED THE JURY FOR COUNT 8.

The Respondent's Brief dismisses our understanding of First Amendment jurisprudence, and reserves its lengthy disagreements to a footnote. (RB 15-16, fn. 4.) Regardless of the Respondent's position on the First Amendment, it utterly fails to address the whole text of Los Angeles Municipal Code section 28.01 demands different jury instructions. Simply put, section 28.01's text places Perelman's charged conduct outside of its own purview.

The Respondent's Brief correctly noted this Court should declare instructional error "if 'it is reasonably probable that [the appellant] might have achieved a more favorable result . . .' if the jury was correctly instructed. (RB 8, quoting *People v. Cabral* (2004) 121 Cal.App.4th 748, 753, citation omitted.) Yet, the Respondent's Brief failed to explain why the trial court did not commit instructional error. Rather than demonstrating why the statute itself – section 28.01 – demonstrates there was no instructional error, the Respondent's Brief meaninglessly depends on its own competing understanding of First Amendment jurisprudence.

To reiterate our Opening Brief, section 28.01's text and Perelman's testimony altogether demonstrate that Special Jury Instruction No. 2 was proper, and this Court should reverse Perelman's conviction under Counts 8 and 9.

A. Los Angeles Municipal Code section 28.01's own text circumscribes its sanctions against handbill distribution to commercial advertising material.

LAMC section 28.01's own text expressly limits its own reach to commercial speech. Subsection (a) of LAMC section 28.01 is a sweeping sanction against handbilling a car:

> No person shall distribute or cause or dissect the distribution of any handbill to passengers on any streetcar or throw, place or attach any handbill to or upon any vehicle. (LAMC section 28.01(a).)

However, the notes of section 28.01 make clear that subsection (a) is intended to sanction the handbilling of cars only regarding commercial advertising:

The freedom of press guaranteed by the First Amendment of the Federal Constitution, and made applicable to the states by the Fourteenth Amendment has no application to the distribution of hand-bills on the streets for purely commercial advertising. . . A City ordinance making it unlawful to deposit advertising matter in or on motor vehicles parked on streets does not violate the constitutional guaranties of freedom of speech and of the press, and does not constitute an arbitrary and unreasonable restraint on the conduct of a lawful business. (LAMC section 28.01.)

The pertinent case this note cites toward is *People v. Uffindell*, (1949) 90 Cal. App. 2d Supp. 881. In this case, the appeal court held that a business owner's as-applied First Amendment challenge toward an ordinance sanctioning all handbilling on vehicles was meritless. Simply put, the *Uffindell* court specifically held that the First Amendment did not bar cities from sanctioning individuals for handbilling parked vehicles for commercial purposes.

The section under which section 28.01 falls under has an umbrella definition for "hand-bill," which is:

Any hand-bill, dodger, commercial advertising circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter calculated to attract attention of the public. (LAMC section 28.00.)

As a general matter, section 28.01(a) sanction against handbill distributions on vehicles is limited by this definition. However, the ordinance's definition on handbills is further limited by the *Uffindell* citation, which appears within section 28.01 and within no other handbill regulations. Since *Uffindell*'s citation is a unique part of section 28.01's text amidst other handbill regulations, it was meant to serve as a circumscription of the ordinance's handbill definition.

This court should not ignore section 28.01's citing to *Uffindell*. It serves as a clear indicator that a jury may convict an individual – like Perelman – pursuant to its text only for commercial advertising. Thus, the issue becomes whether Perelman was indeed charged for commercial advertising.

B. Perelman's handbill distribution did not constitute commercial advertising material.

Perelman's testimony from the trial court demonstrated that his handbill distribution was all about informing people about his website, which detailed a world-wide conspiracy against him. Regardless of how one feels about his conspiracy, the handbill distribution was undoubtedly non-commercial. (AOC.) Thus, if section 28.01 does not sanction non-commercial handbill distribution and Perelman's handbills were non-commercial, the jury instructions should have made clear that section 28.01 did not sanction such conduct.

C. Unlike Special Jury Instruction No. 2, the trial court's jury instructions failed to elucidate section 28.01's own circumscriptions against the sanctioning of non-commercial advertising material.

The jury instructions the trial court used for section 28.01 went as follows:

> To prove that the Defendant is guilty of [distribution of a handbill, in violation of Los Angeles County Municipal Code section 28.01(a)], the People must prove that the Defendant distributed or caused or directed the distribution of *any* handbill to passengers on a street car, placed or attached *any* handbill to or upon any vehicle. (TR 979-80.)

Clearly, the jury instructions informed the jury that *any* handbill distribution onto a car violated section 28.01(a); however, section 28.01's entire text clearly establishes that section 28.01(a) sanctions only "purely commercial" handbill

distribution.

This court must find that the instructions above constituted an instructional error because it failed to detail a key component of the law that favored Perelman's case. Thus, Special Jury Instruction No. 2, which details the law accurately, was proper and should have been given.

D. The Respondent's Brief erroneously characterizes Special Jury Instruction No. 2 as inconsistent with the section 28.01's definition of a handbill.

The Respondent's Brief asserts that Special Jury Instruction No. 2 is inconsistent with section 28.01's definition of a handbill. (RB 17.) However, this assertion is actually inconsistent with section 28.01's text. As explained above, the *Uffindell* citation makes clear that section 28.01 is not meant to punish non-commercial speech. Therefore, this Court should disregard this argument against the special instruction.

E. The Respondent's Brief erroneously asserts that Special Jury Instruction No. 2's "free speech" clause is ambiguous and confusing.

The Respondent's Brief asserts that the "free speech" portion is repetitious and duplicative. (RB 18.) However, there is good reason to repeat these instructions under different charges. Perelman has been charged for different actions and under several different charges. For the jury to properly evaluate the charges, the court must allow them the opportunity to assess each charge with

comprehensive information at their disposal under each charge. Thus, the assertion that these instructions are unnecessary is erroneous; the court has the responsibility to keep the jury fully informed.

4. THE TRIAL COURT'S JURY INSTRUCTIONS INADEQUATELY INSTRUCTED THE JURY FOR COUNTS 1 AND 6.

The Respondent's Brief raises two main arguments against Special Jury Instruction No. 1 regarding counts 1 and 6, and there arguments are underwhelming.

A. The Respondent's Brief erroneously asserts that Special Jury Instruction No. 1's "free speech" clause is ambiguous and confusing.

The Respondent's Brief asserts that the "free speech" portion of Special Jury Instruction No. 1 is confusing and ambiguous. (RB 19.) However, when one examines the instruction at-issue and places it within the context of Perelman's case, there is nothing confusing or ambiguous about it.

The Respondent's Brief quotes the full passage at-issue, which is essentially the verbatim definition of what does not constitute a public nuisance. (RB 19.) Although the definition is long, it was a necessary part of the jury instructions because the jury had to decide whether Perelman committed a public nuisance. In order to do that, the jury must have been aware of the limitations of public nuisance charges.

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B. The Respondent's Brief erroneously asserts that Special Jury Instruction No. 1 is unnecessarily repetitious and duplicative.

The Respondent's Brief asserts that the "free speech" portion is repetitious and duplicative. (RB 20.) However, there is good reason – as explained above – to repeat these instructions under different charges. Perelman has been charged for different actions and under several different charges. For the jury to properly evaluate the charges, the court must allow them the opportunity to assess each charge with comprehensive information at their disposal under each charge. Thus, the assertion that these instructions are unnecessary is erroneous.

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5. PROSECUTOR DID IMPROPERLY VOUCH FOR THE WITNESS AND IT WAS NOT HARMLESS.

The prosecutor did improperly vouch for the witness, Mr. Scroggins, when she stated:

"And at that point Mr. Scroggins, who I have to say was one of the most brutally honest witnesses I have ever come across told....." (RT 988)

There was nothing presented in the trial concerning what witnesses the prosecution had "ever come across" during her career as an attorney. Thus to state he "was one of the most brutally honest witnesses" she had ever come across was clearly outside of the record. There just can be no dispute that this was vouching.

Nor can there be any doubt that this was harmful. The jury only had two witnesses to evaluate the charges involving Mr. Scroggins. One witness had been told to them was one of the most honest witnesses the prosecutor had ever come

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across. The other witness, appellant, had no one to state he was one of the honest witnesses they had ever come across. Thus the jury had to believe one or the other, and they chose the one the prosecutor gave *de facto* testimony about. Thus the conviction for the count involving Mr. Scroggins was obtained due to improper information being conveyed to the jury. The vouching was not harmless and requires reversal of this count.

6. THE SENTENCE WAS CRUEL AND UNUSUAL PUNISHMENT.

The United States Supreme Court stated in the paramount case of *Robinson v. California* (1962) 360 U.S. 660 that:

> It is unlikely that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. A State might determine that the general health and welfare require that the victims of these and other human afflictions be dealt with by compulsory treatment, involving quarantine, confinement, or sequestration. But, in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. (Citation omitted)

As a community we struggle as to what to do with the mentally ill in our midst. Many of them are homeless, some refuse treatment, but incarceration is hardly the answer. This is a case where the community did not know how to properly interact with one who is mentally ill. One must wonder if the sentence imposed in this case would make the community any safer or just elongate the mental illness.

there is and has been only one Peron in SEVERE Danger and that has been Kevin Perelman Since 5 yrs old and now

When a sentencing judge seeks punishment for the mere sake of punishment and does not consider what is in the best interest of the community or the defendant, than call it what one may, abuse discretion, cruel and unusual punishment, the one thing it cannot be called is a sentence that is in the best interest of the community.

7. CONCLUSION

For the reasons stated in this brief, the relief requested should be granted. The errors that occurred in this case rise to said request.

Respectfully submitted,

Dated: May 28, 2019

Seymour I. Amster
Attorney for Appellant/Defendant

CERTIFICATION OF COMPLIANCE

Under Rule 8.883 (c) of the California Rule of Court, I hereby certify that this brief contains 2,591 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare this brief.

Dated: May 28, 2019

Seymour I. Amster
Attorney for Appellant/Defendant

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, am employed if the aforesaid County of Los Angeles, State of California, I am over the age of eighteen years and not a party to this action, my business address is : 18017 Chatsworth Street, Suite 337, Granada Hills, Ca. 91344.

On May 28, 2019 I served the foregoing:

APPELLANTS REPLY BRIEF

on the interested parties in this action by placing a true copy thereof ,in a sealed envelope with postage thereon fully prepaid, in the United States mail at Granada Hills, Ca. addressed as follows:

Los Angeles City Attorney
200 North Main Street
500 City Hall East
Los Angeles, Ca. 90012

Honorable Eric Harmon
C/O Clerk of the Superior Court
111 North Hill Street
Los Angeles, Ca. 90012

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on May 28, 2019.

Seymour I. Amster
Attorney for Appellant/Defendant