

Top Massachusetts court weighs whether homeless break law by fleeing cold

The question of whether a homeless person breaks the law by trespassing onto private property to escape dangerously cold temperatures is one best answered by a jury, not a judge, Massachusetts civil liberties advocates argued on Monday.

The state's top court on Monday heard arguments by lawyers for David Magadini, a 67-year-old homeless man, who was repeatedly arrested by police in Great Barrington, in the state's hilly west, for sleeping in a mixed-use commercial building during the winter of 2014.

The lawyers argued that the judge who heard Magadini's case erred by not instructing jurors that the man could make a "necessity" defense, which can excuse a person for a reasonable violation of a law to preserve his or her life.

"At the time of the offenses, Mr. Magadini had no effective legal alternatives," to seeking shelter in the Barrington House development, which houses restaurants, shops and offices, said Jessie Rossman, a lawyer with the American Civil Liberties Union who spoke on Magadini's behalf.

The judge who heard the case in which Magadini was convicted of trespassing should have advised the jury to balance the "competing harms" in determining whether the man was in the wrong when he trespassed on private property to escape dangerous cold, she said.

The town regularly sees temperatures below 0 degrees Fahrenheit (-17.8°C) during winter months, according to court papers filed in support of Magadini's case.

Massachusetts, arguing that Magadini's conviction was proper, contended that he had created the emergency by refusing to move out of a town where he could not afford to live. Magadini had been banned from a local homeless shelter and was unwilling to travel to another shelter in Pittsfield, 20 miles (32 km) to the north, lawyers for each side said during Monday's hearing before the state's Supreme Judicial Court.

"He said, 'I was born here, I lived here my whole life, I refuse to leave Great Barrington,'" said John Bosse, an assistant district attorney. "An individual cannot knowingly place themselves in a position of imminent danger and then apply the necessity defense."

The seven-justice panel did not immediately rule. Magadini was sentenced to serve 30 days in prison for trespassing, though that sentence has been suspended pending the court's ruling.

Rossman, of the ACLU, argued that the case is about more than just trespassing: "It's a question of who is going to bear the burden of homelessness."

By Scott Malone