

January 9, 2014 Case: 211314234 State of Oregon v. Andrew Clark
Stipulated Facts "Trial" Judge McAlpin Courtroom 204 4:30 PM. Audio Posted:
www.youtube.com/user/fightfeces/videos (1st item), or directly
<https://www.youtube.com/watch?v=ZnFMR-H6R4c>

This transcript is important because the Prosecutor comes very close to saying that even in his opinion there was no actual crime committed. He backpedals in a big way. Erik Hasselman is a good man and does a good job in a very hard function. His trust was used and abused by my accusers. He was put in a position where he was compelled to continue prosecution. There was no reason for him to have said a word past the stipulated facts but he was compelled to by his morality, almost like a confession.

I honestly believe that Erik Hasselman would have told my corporate accusers to "go jump in a lake" had he been aware of all the facts prior to arrest. I submitted, per law, a 180 day Notice of Claim for \$4 million in damages. I believe that also inflamed the prosecution and redoubled their determination to gain a conviction to escape damages under the Notice of Claim. While I might have 'put them off' with my determination, they are not allowed to act upon that but they did.

Consider by this time I had been in jail for a week in maximum security, had my computers taken and my home searched and was on the hook for \$600,000 bail. The ankle bracelet had been on since late July 2013. I previously documented in detail how that is highly coercive given that trial can and is delayed indefinitely and the health risks and other risks of not accepting some easy way out once it is realized that pleading 'guilty' was rewarded by removal of device, release from highly restrictive pretrial conditions and bail return.

My attorney made it clear to me. Say nothing if possible and go get the bracelet cut off. It was pretty simple when put that way under the circumstances I was inflicted with. Just a couple months prior, I could not imagine 'pleading guilty' and considered it perjury, as the District Attorney himself noted in correspondence to Laura Fine Moro, attorney (attached and previously submitted).

Still, you can hear me in the background whispering protest to my attorney and him telling me to say nothing. Despite extreme duress, I at least wanted to go on record opposing it, my attorney advised against it if I wanted out. After the 20 minute 'trial', I was immediately rewarded with ankle bracelet removal, release from onerous and cruel pre-release conditions and then got my bail money back. Somehow, I was no longer considered a grave public threat as Risk Assessment Tool indicated.

Judge: State of Oregon versus Andrew Glen Clark 211314234..... (1 minute delay cut out of audio).
Good afternoon, we are here on State of Oregon versus Andrew Glen Clark, case 211314234. John Halpern for Mr. Clark, Erik Hasselman for the State. My understanding is we have a negotiation to enter into and there is a sentencing I am going to be bound to. I have here a Motion to waive jury trial and petition to consent to be found guilty by stipulated facts. Mr. Halpern, do you want to put the negotiations on the record first or did you want to....

Mr. Halpern: Well, I think we could rely upon what is in the written record...sure... essentially we are agreeing that the court sitting as tryer of facts will find that the if the state called witnesses the state would convince your honor beyond a reasonable doubt that facts stated in count 1 are true and we are agree that such of proof that we stipulate to that your honor should find Mr. Clark guilty of count 1 stalking, counts 2 – 10 will be dismissed and the conditions from the rest of the agreement and in the written material....(hard to hear).

Judge: And part of that agreement was a ...a stipulation to a stalking protective order of a limited duration of 10 years and the attorneys have presented me a copy of that prior to going on the record

which I have signed and we have a case number now with that, do the attorneys have a copy of that

Mr. Erik Hasselman, Prosecutor: we are getting them right now....

Mr. Halpern: And I can tell your honor that I have reviewed the order that has been signed that is now case 18.14.00.649 and that Mr. Clark reviewed that with me and we discussed the terms of it and it is a part of the negotiations in case that we stipulate to and consent that the court sign that order.

Mr. Hasselman: And for the State, I am not technically the one who stipulated to that order. I will tell the court that the petitioner is represented by counsel out of Portland by the name of Steven Seymour however I have been in good contact with him a draft of this order had been transmitted by electronic mail this morning to Mr. Seymour and Ms. Lively both of them have responded to me via electronic mail and indicating the terms of that, that stalking order are what they were seeking and they both agreed to waive their appearance here in court today.

Judge: So Mr. Clark, the first thing I want to do is I have this document called Election to Waive Jury Trial, did you get a chance to read this document.

Me (Andy Clark): Yes your honor.

(note, compare my voice in this audio with the 10.15.13 audio, by now I was seriously degraded and it showed despite my best efforts.)

Judge: Did you understand it?

Me: Yes your honor.

Judge: And did you talk with your attorney about it?

Me: Yes your honor.

Judge: Was he able to answer any questions that you have if you have any questions?

Me: Yes your honor.

Judge: And then right (?) there right about the halfway point it looks like it what purports to be what appears to be your signature...

Me: Yes your honor that is

Judge: did you sign this freely and voluntarily.

Me: Yes your honor

Judge: ok we will file that for you. We also have this petition to be found guilty by stipulated facts trial did you get to read this document

Me: Yes your honor

Judge: Again, Did you understand it?

Me: Yes your honor

Judge: And talk to Mr. Halpern about it?

Me: Yes your honor.

Judge: Was he able to answer any questions you may have about it?

Me: Yes your honor.

Judge: And again, just at this time just above that at that point is that your signature...

Me: Yes your honor.

Judge: And did you sign it freely and voluntarily.

Me: Yes your honor.

Judge: Alright so we will make sure to file that for you. I will go over a little bit about covering some of the things that are also written down there. For instance I want to talk to you about the rights that you have that you give up when you go forward in this manner. When you go forward by stipulated facts you are in the most likely by the end of it because you expect to be found guilty you giving up your right to remain silent eventually. You are giving up your right to have a jury trial on this case. You are giving up your right to call and cross examine the state's witnesses in this case. You are still having the right to have the state prove the case beyond a reasonable doubt but you are doing that by stipulating to their evidence rather than having them call that in. Do you understand that you have all those rights and when you go forward you are giving up those rights you are giving all that up.

Me: Yes your honor....**(listen in background to my dissent with attorney)**

Judge: Alright... I also need to let you know that if you are not a US citizen if you get convicted you might be subject to deportation or the refusal of naturalization, if you are a citizen that obviously does not apply.

Me: Yes your honor.

Judge: I tell everyone because I don't want to guess who is a citizen and who is not. Did you hear the negotiations that your attorney told you about and laid out in this petition?

Me: Yes your honor.

Judge: Is that your understanding of what the negotiations are?

Yes your honor they are

Judge: Has anyone promised you anything other than those negotiations to get you to do this

Me: No...

Judge: Did anyone threaten you in any way to get you to do this

Me: No...

Judge: Alright, this is a class A misdemeanor, I needed to let you know what the maximum penalty is. It is not what you are going to get but it's what you could get if you got the maximum. The maximum for a class A misdemeanor is one year in jail and a \$6,250 fine.

Me: Yes your honor

Judge: You understand that is not the deal and I am going to follow the deal but I just needed you to understand that is the most you could get.

Me: Yes your honor

Judge: Are you on probation or parole on any other case?

Me: No

Judge: Alright, have you had enough time to talk with Mr. Halpern about what you are doing here today?

Me: Yes your honor

Judge: Alright, and this is what you want to do?

No: Yes

Judge: Alright, Mr. Hasselman will you present the stipulated facts on count 1?

Mr. Hasselman: I can do that judge although within the stipulation of the civil case that the court has before it I think there is probably a sufficient admission by the respondent to the meat of the case that what I will say is that had this case gone to full evidentiary trial and if witnesses were called the state would have put on witnesses to include one of the alleged victims in this matter, Leah Lively. And frankly when counsel and I had talked before I had indicated that I would be (?) to eliminate the issue of whether a corporation can be a victim in a criminal case. I agree that I would just proceed regarding Ms. Lively being a, a, a, a personal victim on this count rather than substantiating that both she and the lawfirm she worked for, Ogletree Deakins (et al) as well. So essentially, I will be scratching those (Judge says "ok"), that allegation of the firm being a victim.

Mr. Halpern: May I make a suggestion please. (Mr Hasselman says "sure" I had thought it would be sufficient if we could literally stipulate that Mr. Hasselman read or I read or the Court asked Mr. Clark here about the facts alleged in count one would be proven by the state beyond reasonable doubt rather than some exhaustive.

Mr. Hasselman: No I am happy to say that the state via Ms. Lively would substantiate verbatim the information in count 1 on this indictment and if the defendant has no argument against that and agrees that is legal and sufficient then I am satisfied as well.

Mr. Halpern: Yes we so stipulate.

Judge: And does everyone waive. Let me make sure I ask this question. Mr. Clark, have had a chance to read count 1 of the information?

Me: Yes your honor.

Judge: Alright, and is it true that through your attorney you are stipulating that if this case went to trial the state could produce evidence sufficient to establish everything in count 1 beyond a reasonable doubt

Me: Yes your honor

Judge: OK

Mr. Hasselman: if the defense waives argument I would as well.

Mr. Halpern: Ha, Well, we are agreeing the court should find Mr. Clark guilty on stipulation of facts.
Judge: Alright, based on that stipulation Mr. Clark I find you guilty of stalking as laid out in count 1. You have the right to wait two days before your sentence. You can waive that right and be sentenced today if you would like to.

Me and Attorney: today.....

Judge, OK go ahead and have a seat and(can't understand)

Mr. Hasselman: Judge thank you I know the court has some background what this case when the defendant was represented by Laura Fine Moro we had a settlement conference in front of your honor that didn't advance very far. But also the court presided an earlier pre-trial hearing that was conducted regarding a demurrer that had been filed and so I know the court has some background here so I would say I think the parties have spent a lot of time reaching the resolution we have arrived at in this case. From the victims perspective both Ms. Lively and the alleged victim of a lawfirm ah, Mr. Clark's continued communications with them some of which were pertinent to litigation they were wrapped up with but even after that litigation ended caused a lot of consternation and fear on their part. I would say out of the hundreds of communications Mr. Clark transmitted to Ms. Lively and Ogletree Deakins as well as some of their partners ah that most of them appeared to be just complaining about his treatment in the litigation and did not constitute the types of communications that would constitute stalking. However they escalated at times and there were some more personal attacks and suggestions that were more threatening and as a result of that a partner in the national firm had sent a letter to Mr. Clark saying any more communication needed to be directed to me (referring to the attorney). That was not adhered to and as such the defendant continued to engage in repeated, unwanted communications with them. However, as the court well knows, there is a case called State v. Rangel that dealt with whether or not communications of a written variety um even if they were unwanted could really substantiate an allegation of stalking. And again, I would say in Mr. Clark's behalf that most of communications did not rise to the level the State believed would constitute the type of threatening communication that would satisfy constitutionally the provisions that the supreme court laid or the criteria for those more heightened serious threatening communications. However there were some that were and the combination and context of them, Mr. Clark represented in some of his communications that he believed the law firm was trying to kill him. Uh, and subsequent communications said "I am going to visit on you what you visited on me." One of that appeared to be vampire-like that was depicted as having a dagger driven through her heart and bleeding from the wound and it was entitled the subject of that was "Cal Poly Attorney" and obviously the significance of that was that Ms. Lively was a Cal Poly Law Graduate so she took that as a very threatening gesture a very intimidating gesture and the combination again of those communications and I could go on and on about that ... won't ..certainly justified the action that I think the lawfirm that they hired to represent to try to deal with Mr. Clark's communications to attempt to obtain a stalking protective order and as the court may or may not know law enforcement attempted to go out and advise Mr. Clark last July that his communications were unwanted that they had gotten to a level the firm was seeking a stalking protective order against him if he didn't cease and desist and unfortunately after that, Mr. Clark after that law enforcement warning to punctuate the warning that had been given to him by the firm directly chose to continue communicating in a very demeaning and profane manner and that is what generated this prosecution. But I would say again in Mr. Clark's defense that since the last hearing that this court

presided over there have not been continuing problems. The defendant still finds himself embroiled in some litigation I think with the firm and his former employer Wells Fargo who that firm had been retained by to handle the litigation with Mr. Clark originally in this. Ah,... there haven't been the repeated problems, the defendant has ceased and desist...desisted in his behavior counsel Mr. Halpern has indicated that he feels he has had some good communication with his client, his client recognizes that that was not the way to go about expressing his frustration over his treatment to this point and we have come to this agreement that includes this limited duration stalking protection order as well as some special conditions of probation that prohibit Mr. Clark from having any direct communication with either of the lawfirms involved with trying to protect Ms. Lively from Mr. Clark's threatening communications except if Mr. Clark is communicating with them through represented counsel or has to find himself in their presence in depositions or court appearances with his counsel there and so um, ... I know the court has indicated in chambers to counsel now on the record that you will follow the negotiations so I really don't have anything more to add unless you have specific questions. I do appreciate Mr. Halpern's efforts and Mr. Clark's efforts obviously in resolving this case short of trial. This case would have been really exhausted the courts resources for some time for the state to present all evidence that we had to ... and for the defendant to do so as well so I think this is a good resolution for both parties and appreciate the court's willingness to

Judge: and I have no questions other than to ask for you to pay attention to the sentence to make sure I don't miss anything. (Mr. Hasselman agrees to do so). Mr. Halpern.....

Mr. Halpern: Yes..I was telling Mr. Clark... oh I know your honor... the criminal file. (hard to hear) I have nothing to add so I ask your honor so sentence your honor.

Judge: Mr. Clark is there anything you would like to say or anything that you think I need to know before imposing sentence.

Me: No, no, no thank you very much your honor.

Judge: Ok so Mr. Clark you are on two years of bench probation, it is different than supervised probation, you are not going to have a probation officer to check in with. Essentially, I am your probation officer. The conditions of bench probation are really simple. Number 1, violate no law and act as a peaceful law abiding citizen. Number 2, I want you to report to me within 5 days of any change of address. What is your current mailing address?

Me: 3270 Stoney Ridge Road, Eugene Oregon 97405

Judge: The reason for that condition is if someone says that you were not doing something you are supposed to do on this probation or that you are doing something you are not supposed to be doing on this probation I am not going to take their word for it. I want to write you a letter, I am going to get your side of the story so you make sure you get those letters, OK so if you move from that address you just need to let me know within 5 days. Third condition is you must advise me in writing if you get arrested for anything or get a citation for anything. So if you get a speeding ticket in Springfield even before you have go to court on it you just need to let me know you got a speeding ticket in Springfield. You want me to find out about stuff like that from you rather than someone else does that make sense?

Me: Makes sense your honor

Judge: Whenever you let me know something either a change of address or you got a speeding ticket it doesn't need to be typed up or on any special legal pleading paper you don't have to use a lawyer for it you don't have to use any magic words. Just your name, your case number and the information I need is all I am looking for, Ok

Me: yes your honor

Judge: additional conditions of probation, seven days in the Lane County Jail with credit for time served considered served. You need to comply with the stalking protective order of limited duration in case number ending in 1800649 and have no contact with Leah Lively, no contact of any employee or staff of the lawfirms Ogletree Deakins (et al) or Samuels Yoelin Kantor LLP except through your legal counsel or with your representative counsel. Anything I missed as far as negotiations for the state?

Mr. Hasselman: There is not however complying with the stalking protective order is one of the conditions of probation and to that end that stalking protective order that you signed now requires the defendant get a referral through QRA for mental health evaluation and that he execute any necessary releases to let the court know the results of that, to let the court know it happened and to let the result of that are so I am asking the court order that referral today or give them that referral today.

Ok, so I am going to give you a referral to Quality Research Associates, I am going to give you until January 23, so essentially two weeks to get there. You need to do that by noon. That is just the deadline for getting it done, going and and checking in with them. Um, that is not when your initial evaluation or your... is going to be. What I want then is by the end of February, February 28. I would like you to provide releases for QRA to both the DA's office and to myself so we can see what the results of that evaluation is.

Me, I think: I will work with my attorney on that to make sure we...

Mr. Halpern: I will get them to you your honor and to Mr. Hasselman's office your honor.

Judge: And does that timeline seem like it works out and makes sense (attorney and I agree). Anything else I need to order, Mr. Hasselman?

I don't believe so your honor

Judge: And just to be clear for the staff, that is not going into the judgment.

Mr. Hasselman: That doesn't need to go into I think the judgment of court probation in this matter, it is referenced by complying with the stalking order and that order is in that case.

Judge: And that order does not require him to complete any specific treatment?

Mr. Hasselman: No, and for the record it is probably good to mention that counsel and I ordinarily in a stalking protective order when the court orders an evaluation it also orders they comply with any recommendations of the evaluator. In this particular case because Mr. Clark has been able to conform his behavior for a period of time since our last hearing I have made the agreement that I am not asking that he be required to undergo any treatment or counseling at this point but rather, I want to know they

feel are the issues so if there are any probation violations we have the information we might need to modify that probation down the line at some point and the court has that as well. So...that is why we have agreed to a different term than the court typically uses in these judgements.

Judge: Alright, anything else Mr. Halpern?

Mr. Halpern: No, your honor, my only question would be we would appreciate it very much if the court staff could notify the pretrail release people that this case has been sentenced because they are open to 5:30 and Mr. Clark will go right over there and surrender his ankle bracelet.

Judge: right, we will send alms off today is my understanding.

Mr Halpern, I think that...Thank you very much your honor.

Judge: We will do that, I think electronically. Alright. Mr. Clark you have the right to appeal this sentence. If you want to do that you need do that in writing to the Oregon Court of Appeals in Salem within 30 days (I say yes your honor) it is far more complicated that I just explained, talk to Mr. Halpern (I note that I let Mr. Halpern handle those issues and the judge puts the court in recess.)

AFTER THE ABOVE SENTENCING, MR. HALPERN AND I WENT QUICKLY TO THE JAIL FACILITY. THERE WAS SOME CONFUSION AT FIRST WITH THE PRE-RELEASE STAFF MEMBER WHO DIDN'T AT FIRST UNDERSTAND THAT THE ANKLE BRACELET CAME OFF BECAUSE I WAS SENTENCED BUT....THERE I WAS IN FRONT OF HER, NOT ON MY WAY TO JAIL OR PRISON AS WOULD BE TYPICAL. AFTER THAT BRIEF CONFUSION, ANOTHER STAFF MEMBER CONFIRMED REMOVAL OF BRACELET AND WE WALKED OVER TO THE OTHER BUILDING AND THEY CUT IT OFF WITH A PAIR OF ORDINARY GARDEN CLIPPERS.

SUDDENLY....AFTER ALL THAT....I WAS CONVERTED FROM A HORRENDOUS PUBLIC THREAT PER THE RISK ASSESSMENT TOOL BACK TO A CITIZEN. THE BRACELET WAS REMOVED, PRETRAIL RELEASE CONDITIONS WERE LIFTED, AND NOT LONG AFTER ALMOST \$60,000 OF BAIL MONEY SECURING THE \$600,000 BAIL WAS RETURNED.

I STILL DON'T HAVE MY COMPUTER EQUIPMENT BACK. ONE OF THEM CONTAINED IRREPLACABLE FAMILY PICTURES AND WAS NEVER USED FOR ANY OF MY BUSINESS PROJECTS. I WANT THEM BACK BUT I AM BEYOND LETTING IT UPSET ME FURTHER. ALL EFFORTS MUST BE FOCUSED ON OVERALL REDRESS AT THIS TIME.