ATTACHMENT A

Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

TRACIE K. LINDEMAN
Clerk of the Court

January 24, 2022

RE: MARK ELLIOT STUART v HON. GERLACH/KILEY/STATE
Arizona Supreme Court No. CR-21-0317-PR
Court of Appeals, Division One No. 1 CA-SA 21-0143
Maricopa County Superior Court No. LC2020-000239-001
Scottsdale Municipal Court No. M-0751-SC-2017003568

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on January 24, 2022, in regard to the above-referenced cause:

ORDERED: Petition for Review of a Special Action Decision of the Court of Appeals = DENIED.

A panel composed of Vice Chief Justice Timmer, Justice Bolick, Justice Lopez and Justice Beene participated in the determination of this matter.

Tracie K. Lindeman, Clerk

TO:
Linley Wilson
Kenneth M Flint
Mark Elliott Stuart
Douglas Gerlach
Hon Daniel J Kiley
Amy M Wood
ga

ATTACHMENT B

IN THE

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

DIVISION ONE
FILED: 09/09/2021
AMY M. WOOD,
CLERK
BY: KLE

MARK ELLIOT STUART, Petitioner, v. THE HONORABLE DOUGLAS GERLACH and THE HONORABLE DANIEL J. KILEY, Judges of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, Respondent Judge, STATE OF ARIZONA, Real Party in Interest.	Court of Appeals Division One No. 1 CA-SA 21-0143 Maricopa County Superior Court No. LC2020-000239-001 Scottsdale Municipal Court No. M-0751-SC-2017003568

ORDER DECLINING JURISDICTION

The court, Presiding Judge D. Steven Williams, Judge David B. Gass, and Judge James B. Morse Jr., has considered the petition for special action, the response to the petition for special action filed by Real Party in Interest, and Petitioner's reply. After consideration,

IT IS ORDERED in the exercise of its discretion, the court declines to accept jurisdiction of the special action.

IT IS FURTHER ORDERED denying Petitioner's motion to consolidate with 1 CA-CR 20-0620 as moot.

/s/

JAMES B. MORSE Jr., Judge

A copy of the foregoing
was sent to:

Stanley M Slonaker
Kenneth M Flint
Hon Daniel J Kiley
Hon Douglas Gerlach

ATTACHMENT C

Clerk of the Superior Court
*** Filed ***
8:00 a.m. 11-17-2020

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2020-000239-001 DT

11/13/2020

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT
T. DeRaddo
Deputy

STATE OF ARIZONA

KENNETH M FLINT

v.

MARK ELLIOTT STUART (001)

MARK ELLIOTT STUART
8629 E CHERYL DR
SCOTTSDALE AZ 85258

COMM. POPKO
REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT
JUDGE GERLACH

RECORD APPEAL RULING / REMAND

Lower Court Case No: SC2017003568

This is a case in which Mark Stuart was convicted in the Scottsdale City Court of a class 1 misdemeanor because he refused to comply with an instruction of an on-duty police officer given in the performance of that officer's duties, *viz.*, an instruction to sit down on a bench so that the officer could prepare and issue a citation. With this appeal, Stuart attempts to recast his refusal as an exercise in aid of his constitutional free speech rights, and thus, the conviction as a denial of those rights.

The court has considered Stuart's appellate brief, the response filed on behalf of the State of Arizona, the arguments presented at a hearing that took place on October 29, and relevant matters in the record. Because Stuart had no legally sufficient basis for refusing to sit down on the bench as directed, this court has decided to affirm the judgment of the Scottsdale City Court.[1]

[1] As part of this ruling, the court is granting Stuart leave to file a 56-page brief. Because numerous citations in Stuart's initial brief were not consistent with the way that the record on appeal was constructed, the court asked Stuart to submit an amended brief with citations corresponding to the record. References throughout this ruling to Stuart's

A. Facts Relevant to this Appeal.

1. Stuart's Refusal.

Acting on instructions from Scottsdale mayor Jim Lane, and apparently with at least the implicit consent of the remaining members of the Scottsdale city council, Scottsdale police officers removed Stuart from the council's February 7, 2017, public meeting. Lane ordered that action after Stuart had become disruptive and refused Lane's request to leave voluntarily. [City of Scottsdale, Closed Caption Transcript (2/7/17) at 9[2]]

Once outside the building, a Scottsdale police officer told Stuart that he was under arrest and instructed him "to sit down on a nearby bench" so that a citation could be issued. [Scottsdale Police Dep't, Incident/Investigation Report (2/7/17) at 6] Stuart refused to comply with that instruction. [*Id.*] The officer warned Stuart that, if he did not sit down, he would be charged with disorderly conduct and taken to jail. [*Id.*] Stuart again refused to comply. [*Id.*] He was then handcuffed and guided to the bench, where the arresting officer "sat him down." [*Id.*] A short time later, Stuart was taken to the city jail and booked. [*Id.*; Stuart Br. at 8, paras. 19-20]

Stuart's refusal to sit down on the bench as instructed led to his conviction for violating Scottsdale city code section 19-13, which states in relevant part: "No person shall refuse to obey a police officer engaged in the discharge of his duty." A violation of that section is a class 1 misdemeanor. Scottsdale city code section 1-8.

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opening brief are to that amended brief (filed 10/19/20), which, like its predecessor, consumed 56 pages. The court asked the State to submit a written response regarding only one issue, which the State did. [See discussion in section E, below]

[2] This transcript is a City of Scottsdale public record that is available on the Internet. As such, the transcript is a matter of which this court may take judicial notice. *Miller v. Berryhill*, No. EDCV 16-1822-KS, 2017 WL 3671158, at *5 (C.D. Cal. Aug. 25, 2017) (stating that "the court can take judicial notice of public records available from reliable Internet sources such as websites run by government agencies" (citing *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 999 (9th Cir. 2010) (taking judicial notice of information on websites of two school districts))); *County of Santa Clara v. Astra USA, Inc.*, 401 F.Supp.2d 1022, 1024 (N.D.Cal. 2005) (taking judicial notice of information posted on a Department of Health and Human Services web site); *see also State v. Rojers*, 216 Ariz. 555, 560, ¶25 (App. 2007) (noting that appellate courts often utilize the doctrine of judicial notice to add facts necessary to affirm the trial court (citations omitted)); *In re Sabino R.*, 198 Ariz. 424, 425, ¶4 (App. 2000) (recognizing that Ariz. R. Evid. 201 "allows this [appellate] court to take judicial notice of anything of which the trial court could take notice, even if the trial court was never asked to take notice").

Since the oral argument took place, the court has located the recording of the February 7 council meeting, which was submitted as part of the record on appeal, and compared that recording to the transcript. No citation to the transcript in this ruling is inconsistent with what can be heard on the recording.

2. Events Preceding Stuart's Refusal.

Stuart maintains that his refusal to comply with the police officer's instruction was permitted because of the following set of events that led up to his removal from the council meeting.

At that meeting, Stuart attempted to speak during an open call to the public. One of Stuart's purposes was to solicit volunteers to circulate petitions in support of the Save Our Preserve initiative, which Stuart wanted to have placed on the ballot at the next election, thus allowing Scottsdale voters to decide whether the city could proceed with plans to construct a Desert Discovery Center in the McDowell Sonoran Preserve. [See Def's. Trial Exh. 2[3]]

In a letter citing A.R.S. §38-431.01(H), Scottsdale city attorney Bruce Washburn told Stuart, eight days before the meeting, that "[t]he obtaining of signatures on petitions is not a matter that is within the jurisdiction of the Scottsdale city council, and therefore, under the [Arizona] Open Meeting Law, is not a permissible topic to be addressed during the call to the public." [Def's. Trial Exh. 2] At the same time, Washburn explained that Stuart was "free to address your comments to other matters that are within the council's jurisdiction, such as, for example, whether they should authorize any particular construction that might take place in the Preserve." [*Id.*]

An email exchange between Stuart and Washburn ensued. Stuart insisted that the United States and Arizona constitutions guaranteed him the right to speak in support of the election initiative at the council meeting, including the right to recruit petition circulators and signers. [*Id.*] In response, Washburn reminded Stuart that "comments during the call to the public are by statute restricted to matters within the jurisdiction of the City Council. The obtaining of signatures on petitions is not a matter that is within the jurisdiction of the Scottsdale City Council." [*Id.*]

On the morning of the council meeting, Stuart provided both Lane and the Scottsdale city clerk with copies of the materials that described what he (Stuart) intended to present at that meeting. [*Id.*] Those materials included:

> (i) An "update" on the progress being made to obtain signatures for the Save Our Preserve effort along with information about how to reach Stuart by telephone, email, and the Internet;
>
> (ii) Six pages devoted to Stuart's view of his asserted constitutional right to speak;

[3] Throughout the oral argument, Stuart referred to his "Exhibit 11" when discussing his planned presentation to the city council. No Exhibit 11 was admitted in evidence at the trial. For purposes of this ruling, the court assumes that what Stuart referred to as Exhibit 11 is Defendant's Trial Exhibit 2.

(iii) A threat to sue Lane "and your co-conspirators on the council" for punitive damages;

(iv) A description of the progress being made to collect signatures along with an invitation to join that effort;

(v) A reference to "creat[ing] desirable political outcomes here in Scottsdale," and

(vi) A request to remove an item from the council's published agenda because "it is directly at odds with the Save Our Preserve ballot initiative."

In short, a reasonable person could view the materials that Stuart identified as his "presentation" to the city council as signaling an intent to deliver what amounted to a campaign speech in support of his election initiative.

Before Stuart could begin his presentation at the council meeting, Lane reminded him that he was not permitted to speak about "the Preserve and your petition." [City of Scottsdale, Closed Caption Transcript (2/7/17) at 8] In response, Stuart insisted, over and over, that he had a right to do so. In response, Lane said that he was not going to debate the issue, but that Stuart would be permitted "to speak about something other than trying to influence an election." [*Id.* at 8-9]

When Stuart insisted that, "I will give our save the ballot [sic] initiative update," and "[t]here's nothing that you can do to stop me," Lane asked Stuart to "simply remove yourself then from the podium." [*Id.* at 9] Stuart responded, "I'm not willing to do that. I would like to give my full public comment." [*Id.*] Lane then asked Scottsdale police officers to escort Stuart out of the meeting, which they did. [*Id.*] There is no dispute here that, by the time police officers and Stuart were outside the building, Stuart was under arrest. [Stuart Br. at 7-8, paras. 17-19]

Seemingly in contemplation of Article 2, section 15 of the Scottsdale City Charter, the materials that Stuart submitted to Lane and the city clerk in advance of the council meeting also included a reference to "a citizen petition that I hope to present to the council tonight." [Def's. Trial Exh. 2] Article 2, section 15 states that "[a]ny citizen of the city may appear before the council at any regular meeting and present a *written petition*; such petition shall be acted upon by the council, in the regular course of business, within thirty (30) days." (Emphasis added) No such written petition appears in either of the two trial exhibits making up what Stuart described as his "presentation" to the council [see *id.*; State's Trial Exh. 7], and otherwise, no such written petition is among the exhibits admitted in evidence at the trial.

During the oral argument, Stuart also said that he wanted to speak to the city council about the substance of the letter that he had received from Washburn and why the position taken in that

letter was unconstitutional.[4] At the same time, Stuart also conceded that he did not think to raise that issue as a basis for his defense until after the trial.[5]

In sum, the record can be reasonably viewed to establish that, when Lane advised Stuart that he would be permitted "to speak about something other than" his election initiative, Stuart refused the invitation. He did not say, for example, that he had a written petition to submit, much less did he attempt to submit a written petition. Nor did Stuart say that he wanted to speak about Washburn's purported disregard for his (Stuart's) constitutional rights, which Stuart's brief now maintains (at 7, para. 15) is a subject about which he was denied an opportunity to speak. Instead, the record establishes that, when Lane explained to Stuart that he would be allowed to speak about anything other than urging support for his election initiative, Stuart insisted on speaking about that initiative anyway. Only then did Lane ask Stuart to step away from the podium.

B. Issues Presented.

Stuart's brief contends that a reversal of his conviction is required for any of the following reasons:

> (i) Stuart was wrongfully convicted for failing to comply with a police officer's order because the conviction arose out of the denial of his constitutional right to speak. [Stuart Br. at 17-24]
>
> (ii) Stuart was wrongfully convicted for violating a provision of the Scottsdale city code (*viz.*, section 19-13) that is both unconstitutionally vague and unconstitutionally overbroad. [*Id.* at 24-32]
>
> (iii) Stuart was denied due process because the prosecutor who conducted the trial was afflicted with what should have been treated as a disqualifying conflict of interest. [*Id.* at 32-39]
>
> (iv) Stuart was the victim of prosecutorial vindictiveness. [*Id.* at 39-42]

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[4] See FTR Recording (10/29/20) at approx. 11:05.

[5] Because the issue was not raised at trial, the issue warrants no consideration on appeal. *McDowell Mountain Ranch Land Coalition v. Vizcaino*, 190 Ariz. 1, 5 (1997) (stating that issues not raised in the proceeding below are not considered on appeal); *National Brojer Assocs., Inc. v. Marlyn Nutraceuticals, Inc.*, 211 Ariz. 210, 216, ¶30 (App. 2005) (stating that appellate courts "will not address issues raised for the first time on appeal"); *City of Tempe v. Fleming*, 168 Ariz. 454, 456 (App. 1991) ("arguments not made at the trial court cannot be asserted on appeal").

(v) Stuart was denied his right to a speedy trial under Ariz. R. Crim P. 8.2 and the sixth amendment to the United States constitution. [*Id.* at 42-55]

C. Standard of Review.

It is well-settled that this court, like all other Arizona appellate courts, must view "the facts in the light most favorable to sustaining the conviction[]." *State v. Rivera*, 226 Ariz. 325, 327, ¶2 (App. 2011) (citation and internal quotation marks omitted)); *State v. Karr*, 221 Ariz. 319, 320, ¶2 (App. 2008) ("We construe the evidence in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant" (citation and internal quotation marks omitted)); *see also Bennett v. Baxter Group, Inc.*, 223 Ariz. 414, 417, ¶2 (App. 2010) ("When reviewing issues decided following a bench trial, we view the facts in the light most favorable to upholding the court's ruling").

"[T]he controlling question is whether the record contains 'substantial evidence to warrant a conviction.'" *State v. West*, 226 Ariz. 559, 562, ¶14 (2011) (quoting then-Ariz. R. Crim P. 20(a) (now Ariz. R. Crim P. 20(b)(2)); *State v. Windsor*, 224 Ariz. 103, 104, ¶4 (App. 2010) (recognizing that an appellate court "will not reverse a conviction unless the state has failed to present substantial evidence of guilt"). Evidence is substantial if it is sufficient to support a conclusion "even if the record also supports a different conclusion." *JHass Group L.L.C. v. Arizona Dep't of Financial Inst.*, 238 Ariz. 377, 387, ¶37 (App. 2015) (citation omitted); *see also State v. White*, 155 Ariz. 452, 456 (1987) ("The standard of review on this appeal is whether there is substantial evidence to support the jury's verdict. . . . [S]eeming conflicts of evidence must be resolved against the defendant" (citations omitted)). A conviction will be reversed only if there is a "complete absence of probative facts" to support it. *Rivera*, 226 Ariz. at 327, ¶3 (citation and internal quotation marks omitted); *see also State v. Girdler*, 138 Ariz. 482, 488 (1983) (stating that reversal of a conviction is warranted only when there is "a complete lack of probative evidence" to support it).

To obtain appellate review of the sufficiency of the evidence, an appellant must submit a "certified transcript of the trial." Sup. Ct. R. App. P. (Crim.) 7(b)(9). "[F]ailure to submit a complete record on appeal precludes review of the sufficiency of the evidence," and when "[f]aced with an incomplete transcript the Superior Court abuse[s] its discretion by not affirming the municipal trial court." *State ex rel. Baumert v. Superior Court*, 118 Ariz. 259, 260-61 (1978); *see also State v. Mendoza*, 181 Ariz. 472, 474 (App. 1995) ("When matters are not included in the record on appeal, the missing portion of the record is presumed to support the decision of the trial court"). When, as here, Stuart has arranged for submission of only a partial transcript, this court is, nevertheless, required to consider questions of law that his brief raises. *Smith v. Smith*, 115 Ariz. 299, 302 (App. 1977) ("[E]ven if no transcript is forwarded on appeal, the reviewing court

must consider questions of law which are raised by the partial record transmitted to the court" (citing *Orlando v. Northcutt*, 103 Ariz. 298, 300 (1968)).

During the oral argument, Stuart insisted that this court was permitted to review the sufficiency of the evidence that he presented to the trial court without the submission of a complete transcript because he had submitted all that was relevant. When asked how the court could confirm that, Stuart replied, in effect, that the court should take his word for it.[6] No authority applicable to appeals to this court allows an appellant to decide what is relevant and then, based on that self-interested determination, submit what amounts to an edited transcript.

At the same time, Stuart also maintained that both Ariz. R. Crim P. 31.8 and Rule 7(b)(9) of the Superior Court Rules of Appellate Procedure (Criminal) permit the submission of a partial transcript.[7] Rule 31.8 of the criminal procedure rules does not apply here. Superior Ct. R. App. P. (Criminal) 1(b) (stating that the Rules of Criminal Procedure apply only in the absence of an applicable appellate rule). And, Rule 7(b)(9) refers to a transcript and not sections of a transcript or a partial transcript. Further to that point, Stuart's contention ignores what our supreme court said in *Baumert*, which, as here, was an appeal from a city court: "It has been the contention of the state throughout these proceedings that the defendant in appealing a conviction by a justice or police court must furnish a *complete* transcript of the trial. *We agree.*" 118 Ariz. at 260 (applying Rule 7(b), emphasis added); see also *Meister v. Rakow*, 79 Ariz. 97, 100 (1955) (recognizing that submission of a partial transcript meant that "all the evidence is not before us," and consequently, the findings and judgment of the lower court will not be set aside); Maricopa Cty. Loc. R. 9.4(b) (requiring the "verbatim record" of a limited jurisdiction court, and not merely selected parts of that record, to be transcribed when a proceeding exceeds 90 minutes).[8]

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[6] See FTR Recording (10/29/20) at approx. 10:24.

[7] See FTR Recording (10/29/20) at approx. 10:27.

[8] Although Stuart is not an attorney, that does not excuse his failure to submit a complete trial transcript. *In re Marriage of Williams*, 219 Ariz. 546, 549, ¶13 (App. 2008) ("Parties who choose to represent themselves . . . are held to the same standards as attorneys with respect to familiarity with required procedures and . . . notice of statutes and local rules" (citation and internal quotation marks omitted, alterations added)); *see also Copper State Bank v. Saggio*, 139 Ariz. 438, 441 (App. 1984) (same). Moreover, it is not as if Stuart is a stranger to litigation. *See Stuart v. City of Scottsdale*, No. CV-20-00755-PHX-JAT, 2020 WL 4446506, at *1 (D. Ariz. Aug. 3, 2020) (Teilborg, J.) (stating that "[t]his case arises out of Plaintiff Mark Stuart's litigiousness").

During the oral argument, Stuart asked for the opportunity to obtain and submit the unfiled parts of the transcript. The court denied that request. In effect, Stuart's request was similar to a trial lawyer asking the judge to resume the trial so that additional testimony could be presented after a question emerged from the jury's deliberations that sensitized the lawyer to a failure to put on certain evidence that had been overlooked. And, it is not as if Stuart can reasonably claim that he was caught unaware: applicable rule and case law put him on notice that a complete transcript was to be prepared and submitted before he filed his brief and certainly before the court convened oral argument.

D. Applicable Law.

1. Stuart's Asserted Right to Speak.

Stuart's principal argument on appeal may be summarized as follows:

- The refusal to allow Stuart to speak at the city council meeting was an impermissible government-imposed prior restraint in violation of his right to speak under the United States and Arizona constitutions.[9]

- Consequently, the orders that followed that refusal, *viz.* Lane's order to move away from the speaker's podium and the later order of the Scottsdale police to sit down both grew out of that violation and, thus, were themselves unlawful.

- A citizen may not be convicted for failure to comply with a government's unlawful order.[10]

The prohibition against free speech protections "is not an absolute. Restraints are permitted for appropriate reasons." *Elrod v. Burns*, 427 U.S. 347, 360 (1976); *see also Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640, 647 (1981) ("[T]he First Amendment does not guarantee persons the right to communicate their views at all times or in any

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[9] It should be remembered that, at the council meeting, the only subject about which Stuart was denied an opportunity to speak was support for his election initiative. Once at the meeting, Stuart chose only to try debating Lane about his right to speak in support of that initiative and, despite being allowed to speak on other subjects, effectively chose not to attempt doing so before he was, in effect, ruled out of order.

[10] Although protection of speech from government action is broader under article 2, section 6 of the Arizona constitution than under the first amendment to the United States constitution, Stuart's brief provides no developed argument that warrants analyzing the right to speak issue here differently under the former than under than latter. See e.g., *Committee for Justice & Fairness v. Arizona Secretary of State's Office*, 235 Ariz. 347, 356 n.15, ¶35 (App. 2014). Stated otherwise, the Stuart brief presents no argument supported by applicable authority to the effect that what occurred in this case was permissible under federal constitutional standards but not Arizona constitutional standards. Indeed, with respect to Stuart's asserted right to speak, the Stuart brief (at 16-24) relies substantially on federal case law with Arizona case law occasionally mixed in, and then only to recite hornbook-like principles, without any attempt to explain why the events here pass muster under the federal but not the state constitution. During the oral argument, Stuart resisted this characterization of his brief. But fairly read, although that brief asserts a violation of article 2, section 6, it fails to present a reasoned explanation why, without regard to the United States constitution and federal case law authorities, what transpired here violated the state constitution. In short, the contention that a violation of the Arizona constitution occurred here irrespective of the United States constitution is a contention supported only by Stuart's own say-so.

manner that may be desired"). Thus, "[n]othing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799–800 (1985); *see also Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 761 (1995) ("It is undeniable, of course, that speech which is constitutionally protected against state suppression is not thereby accorded a guaranteed forum on all property owned by the State").

Both federal and Arizona courts recognize that the extent to which the government may regulate speech depends on the nature of the forum where the speech takes place. *E.g., Christian Legal Soc. v. Martinez*, 561 U.S. 661, 679 (2010) (recognizing that "in a progression of cases, this Court has employed forum analysis to determine when a governmental entity, in regulating property in its charge, may place limitations on speech"); *United States v. Kokinda*, 497 U.S. 720, 726–27 (1990) (stating that "the Court has adopted a forum analysis as a means of determining when the Government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes. Accordingly, the extent to which the Government can control access depends on the nature of the relevant forum" (citing *Cornelius*, 473 U.S. at 800)); *Korwin v. Cotton*, 234 Ariz. 549, 554, ¶9 (App. 2014) (adopting the United States Supreme Court's "so-called forum analysis": "Under this analysis, the extent to which the government can control access to a particular forum depends on the nature of the forum"). Courts have generally recognized three types of public forums: traditional, designated, and limited. *Christian Legal Soc.*, 561 U.S. at 679 n.11; *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44–46 (1983). Traditional public forums are places such as streets and parks, "which by long tradition or by government fiat have been devoted to assembly and debate." *Perry*, 460 U.S. at 45. Designated public forums include nontraditional forums that "the state has opened for use by the public as a place for expressive activity." *Id.*; *see also Cornelius*, 473 U.S. at 802 (recognizing designated public forum as government property not traditionally regarded as a public forum that is opened to the public). Limited public forums are government property "limited to use by certain groups or dedicated solely to the discussion of certain subjects." *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 470 (2009).[11]

"When the State establishes a limited public forum, the State is not required to and does not allow persons to engage in every type of speech. The State may be justified in reserving its

[11] No Arizona appellate court decision has adopted the term "limited public forum" in its forum analysis. A "nonpublic forum," however, has been recognized. *Korwin*, 234 Ariz. at 555, ¶15. And, a limited public forum and a nonpublic forum are two sides of the same coin. *E.g., Jackson v. McCurry*, 303 F.Supp.3d 1367, 1381 n.10 (M.D. Ga. 2017) (quoting *Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1226 (11th Cir. 2017) (recognizing that the Supreme Court "has, in the past, used the term 'nonpublic forum' when it should have employed 'limited public forum'")); *see also Summum v. Callaghan*, 130 F.3d 906, 914 (10th Cir. 1997) (stating that "the [Supreme] Court has used the term 'limited public forum' to describe a type of nonpublic forum").

forum for . . . the discussion of certain topics." *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 106 (2001) (citations, internal quotation marks, and formatting omitted, ellipsis added).

Courts have repeatedly recognized meetings of city councils and similar public bodies as either limited public or nonpublic forums. *Norse v. City of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010) ("[T]he entire city council meeting held in public is a limited public forum"); *Steinburg v. Chesterfield County Planning Comm'n*, 527 F.3d 377, 385 (4th Cir. 2008) (recognizing that planning commission meeting was a limited public forum); *Eichenlaub v. Township of Indiana*, 385 F.3d 274, 281 (3rd Cir. 2004) (citizen's forum portion of township's board of supervisors meeting considered limited public forum); *Rowe v. City of Cocoa, Fla.*, 358 F.3d 800, 803 (11th Cir. 2004) ("As a limited public forum, a city council meeting is not open for endless public commentary speech"); *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266, 270 (9th Cir. 1995) (stating that the nature of "city council and city board meetings fit more neatly into the nonpublic forum niche"); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990) (recognizing city council meeting where citizens afforded opportunity to address council as limited public forum); *Snyder v. Murray City Corp.*, 902 F.Supp. 1444, 1451 (D. Utah 1995) (recognizing city council meeting as a nonpublic forum), *rev'd in part on other grounds*, 159 F.3d 1227 (10th Cir. 1998); *see also Cornelius*, 473 U.S. at 803, 805 (government workplace is nonpublic forum during hours of government business: "Not every instrumentality used for communication . . . is a traditional public forum or a public forum by designation"); *Jones v. Heyman*, 888 F.2d 1328, 1332 (11th Cir. 1989) (stating that city commission meeting is forum where speech may be restricted "to specified subject matter" (citation and internal quotation marks omitted)); *Jackson v. McCurry*, 303 F.Supp.3d 1367, 1381 (M.D. Ga. 2017) (recognizing school board meeting as limited public forum); *Lundberg v. West Monona Cmty. Sch. Dist.*, 731 F.Supp 331, 337-38 (N.D. Ia. 1989) (recognizing school board meeting as a nonpublic forum).

Either way – whether a limited public or nonpublic forum – the outcome is the same. Thus, "[a] council can regulate not only the time, place, and manner of speech in a limited public forum, but also the content of speech – as long as content-based regulations are *viewpoint neutral* and enforced that way." *Norse*, 629 F.3d at 975 (emphasis added); *accord Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 679 & n.11, 697 (2010) (concluding that content-based speech restriction in limited public forum was permissible because it was "reasonable and viewpoint neutral"); *Summum*, 555 U.S. at 469-70 (government entity may impose restrictions on speech that are reasonable and viewpoint neutral in limited public forum); *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 683 (1992) (stating that speech restriction in nonpublic forum "need only be *reasonable*; it need not be the most reasonable or the only reasonable limitation" (italics in text, citation and internal quotation marks omitted)); *Kokinda*, 497 U.S. at 730 (regulation of speech activities "for nonpublic fora. . . must be reasonable and 'not an effort to suppress expression merely because public officials oppose the speaker's view'" (quoting *Perry*, 460 U.S. at 46)); *Barrett v. Walker County Sch. Dist.*, 872

F.3d 1209, 1225 (11th Cir. 2017) (""[P]rior restraints on speech can exist in limited public fora"); *Kindt*, 67 F.3d at 271 ("[L]imitations on speech at [city council] meetings must be reasonable and viewpoint neutral, but that is all they need to be"); *see also Pleasant Grove*, 555 U.S. at 470 ("[A] government entity may impose restrictions on speech that are reasonable and viewpoint neutral"); *Perry*, 460 U.S. at 61 (stating that prohibition against government imposed restrictions on speech applies only when the restrictions "discriminate among viewpoints").

The record here establishes that the refusal to allow Stuart to speak in support of his election initiative was driven exclusively by the limit that A.R.S. §38-431.01(H) imposes. Other than Stuart's self-interested protests to the contrary, nothing in the record suggests that the city's desire to comply with applicable law was unreasonable. And, as explained above, the record also establishes that the refusal to allow Stuart to speak was not driven because of a disagreement with the substance of what Stuart wanted to say. In other words, in the circumstances of this case, the refusal to allow Stuart to urge support at a city council meeting for what was a political issue and to solicit volunteers to join the effort was both reasonable and viewpoint-neutral.[12]

The Stuart brief seems to assume that, merely because Stuart wished to utter words, his proposed speech had content, and thus, to deny him the opportunity to speak those words was an impermissible content-based speech restriction. The issue, however, is not whether a speaker had something to say: the issue is "whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (citation omitted)). "[A] regulation is generally 'content-neutral' if its restrictions on speech are not based on disagreement" with the substance of the message. *Brazos Valley Coalition for Life, Inc. v. City of Bryan, Tex.*, 421 F.3d 314, 326–27 (5th Cir. 2005) (citations and footnote omitted); *accord Kokinda*, 497 U.S. at 730 (regulation of speech activities "for nonpublic for a . . . must be

[12] Although the Stuart brief maintains, in effect, that he had what amounted to an unqualified right to speak during the open call to the public, that brief does not dispute that urging support, and soliciting volunteers to obtain signatures, for an election initiative was beyond the city council's jurisdiction. See A.R.S. §38-431.01(H). Nor does the Stuart brief argue that the statute's restriction to "any issue within the jurisdiction of the public body" is somehow unconstitutional. Indeed the Stuart brief never discusses section 38-431.01(H) and its effect When asked about this during the oral argument, Stuart replied, in so many words, that section 38-431.01(H) was unconstitutional, at least as applied to him, without the brief having any need to say so. The court is unaware of any authority supporting that position. The court is aware, however, of authority recognizing that constitutional challenges can be waived when not sufficiently briefed. *See Commodity Futures Trading Comm'n v. Tokheim*, 153 F.3d 474, 476 n.3 (7th Cir. 1998) ("[U]ndeveloped arguments are waived even where those arguments raise constitutional issues" (citation, internal quotation marks, ellipsis, and parentheses omitted)); *Utah Environ. Congress v. MacWhorter*, No. 2:08-CV-118-SA, 2011 WL 4901317, at *16 (D. Utah Oct. 4, 2011) (concluding that "inadequately briefed" constitutional challenge was waived); *State v. Valenzuela*, 237 Ariz. 307, 316, ¶34 (App. 2015), *vacated on other grounds*, 239 Ariz. 299 (2016) (challenge to constitutionality of a statute is waived when argument to that effect is not fully developed); *see also Sholes v. Fernando*, 228 Ariz. 455, 457 n.1, ¶1 (App. 2011) (stating that issues "not argued sufficiently" on appeal are not considered).

reasonable and 'not an effort to suppress expression merely because public officials oppose the speaker's view'" (quoting *Perry*, 460 U.S. at 46)); *DeGrassi v. City of Glendora*, 207 F.3d 636, 645-46 (9th Cir. 2000) (stating that city councils "may confine their meetings to specified subject matter . . . as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view" (citation and internal quotation marks omitted)); *see also Heffron*, 452 U.S. at 649 (concluding that anti-solicitation ordinance was content-neutral because it was "applie[d] evenhandedly to all").

The Stuart brief identifies no evidence establishing that he was not allowed to speak in favor of, and solicit support for, his election initiative because Lane, Washburn, or anyone else was opposed to that initiative. Indeed, all evidence is to the contrary. Lane stated at the council meeting that statements from anyone about a political issue, "whether it's for or against," would not be permitted, and he went on to say that "neither side" of "an effort to influence an election" would be allowed to speak. [City of Scottsdale, Closed Caption Transcript (2/7/17) at 8-9] Moreover, no evidence in the record suggests that, despite what Lane said, opponents of Stuart's election initiative were, nevertheless, allowed to speak on that subject.

Both in his brief and during the oral argument, Stuart insisted that the refusal to allow him to speak at the city council meeting must be subjected to strict scrutiny analysis. In support of that contention, the Stuart brief relies on *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), which applied strict scrutiny analysis to the town's sign ordinance. What *Reed* decided, however, did not pertain to a limited public forum: instead, the case involved designated public forums, i.e., government properties made available to the public for expressive activity that Gilbert attempted to regulate. For that reason, Gilbert's sign ordinance was subjected to strict scrutiny analysis.

Contrary to Stuart's view, courts do not treat designated public forums in the same way that they treat limited public or nonpublic forums. For limited public and nonpublic forums, courts have recognized that strict scrutiny analysis does *not* apply. *See e.g., Summum*, 555 U.S. at 469-70; *Good News Club*, 533 U.S. at 106–107; 1 *Smolla & Nimmer on Freedom of Speech* §8:8.50 (Oct. 2020 Westlaw Update) (""Content-based restrictions that define the contours of a limited public forum are not subject to strict scrutiny"). Instead, as stated in the numerous cases cited above, restrictions on speech in a limited public or nonpublic forum need only be reasonable and viewpoint neutral.

To get around that, Stuart also maintained during the oral argument that *Reed*, in effect, overruled all of those cases cited above, and others, in which a reasonable and viewpoint-neutral level of scrutiny was applied to speech restrictions in limited public and nonpublic forums. Leaving aside that the issue presented in *Reed* did not require such overruling, and further leaving aside that *Reed* does not refer to overruling any prior case law, and still further leaving aside that, when the Supreme Court overrules a case, it usually knows how to say so, no case cited in the

Stuart brief, nor any case that this court's independent research has located, supports Stuart's view of *Reed*. Instead, courts in the post-*Reed* era continue to recognize that strict scrutiny does not apply to restrictions on speech in limited public and nonpublic forums. See e.g., *Amalgamated Transit Union Local 1015 v. Spokane Trans. Authority*, 929 F.3d 643, 650-51 (9th Cir. 2019) ("In limited public forums, content-based restrictions are permissible, as long as they are reasonable and viewpoint neutral" (citation and internal quotation marks omitted)); *McDonnell v. City and County of Denver*, 878 F.3d 1247, 1253 n.2 (10th Cir. 2018) ("[C]ontent-neutral restrictions in a nonpublic forum are subject to a reasonableness test" and not strict scrutiny (citation and internal quotation marks omitted)); *Shurtleff v. City of Boston*, 337 F.Supp.3d 66, 75 n.4 (D. Mass. 2018) ("[S]trict scrutiny is not the proper standard of review for a restriction on speech in a limited public forum"); *Verlo v. Martinez*, 267 F.Supp.3d 1113, 1117 (D. Colo. 2017) (recognizing that a nonpublic forum requires a less than strict scrutiny "reasonableness evaluation"); see also 1 *Smolla & Nimmer* §8:8.50 (October 2020 update) (recognizing that strict scrutiny does not apply in limited public forum cases).

Stuart has further insisted that, even if his attempt to generate support for a political issue was not permitted at a city council meeting, he was, nevertheless, impermissibly denied a right to speak that was guaranteed to him by article 2, section 15 of the Scottsdale city charter, which says that "[a]ny citizen of the city may appear before the council at any regular meeting and present a *written* petition; such petition shall be acted upon by the council, in the regular course of business, within thirty (30) days." (Emphasis added) The record in this case includes no "written petition" that Stuart was prepared to present at the council meeting. And, the trial court was not required to accept Stuart's asserted desire to present a written petition as a proven fact based merely on his self-interested testimony. *Aries v. Palmer Johnson, Inc.*, 153 Ariz. 250, 261 (App. 1987) ("The trial court is not bound to accept as true the uncontradicted testimony of an interested party"); *see also City of Tucson v. Apache Motors*, 74 Ariz. 98, 107 (1952) ("The rule is that the judge . . . may or may not believe an interested party"); *Walsh v. Advanced Cardiac Specialists Chartered*, 229 Ariz. 193, 197, ¶12 (2012) ("[W]e have long recognized that a jury may appropriately discredit a witness's uncontradicted testimony for various reasons, including the witness's personal interest in the case").

Likewise, this court is not required to accept as true the contention in Stuart's brief (at 7, para. 13) that he was impermissibly denied an opportunity to address Washburn's purported disregard for his (Stuart's) constitutional rights. The record can be viewed reasonably to support the conclusion that Stuart was given the chance to address that issue but turned it down in favor of arguing with Lane, *viz.*, "I will give our save the ballot [sic] initiative update," and "[t]here's nothing that you can do to stop me." [City of Scottsdale, Closed Caption Transcript (2/7/17) at 9] And, because this evidence, at a minimum, can be viewed in either of two mutually inconsistent

ways, that is enough to reject Stuart's view of things. *E.g., White*, 155 Ariz. at 456 ("[S]eeming conflicts of evidence must be resolved against the defendant" (citations omitted)).[13]

Finally, "[t]here is a significant governmental interest in conducting orderly, efficient meetings of public bodies." *Rowe v. City of Cocoa, Fla.*, 358 F.3d 800, 803 (11th Cir. 2004). Like judges in their courtrooms, Lane had a duty to maintain decorum in council meetings by ordering disruptive individuals to leave immediately. *E.g., Jones*, 888 F.2d at 1333 ("[T]o deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting . . . would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions"). Because Stuart was not denied a constitutional right to speak, his conduct at the council meeting became disruptive, and citizens who disrupt public meetings may be removed without infringing on their constitutional rights. *E.g., Norwalk*, 900 F.2d at 1424, 1426 (recognizing that speakers may be subjected to restrictions when "their speech disrupts, disturbs or otherwise impedes the orderly conduct of the Council meeting" (internal quotation marks omitted)); *see also Norse*, 629 F.3d at 976 (describing *Norwalk* as holding that a city's "'Rules of Decorum' are not facially over-broad where they only permit a presiding officer to eject an attendee for actually disturbing or impeding a meeting").

2. Stuart's Asserted Right to Disobey.

It should be remembered that Stuart was not convicted for speaking or trying to speak, nor was he convicted for refusing to leave the speaker's podium after Lane asked him to do so. He was convicted only for refusing to sit down after being asked to do so by a police officer so that a citation could be issued.

As such, even if one were to assume that Stuart was impermissibly denied the opportunity to speak at the city council meeting, under no authority cited in Stuart's brief or that this court's own research has uncovered, does that negate Stuart's conviction. The general rule is that a person must obey a police officer's commands, even if the command is unlawful. *See e.g., State v. Storer*, 583 A.2d 1016, 1021 (Me. Sup. Ct. 1990) ("The legality of the arrest for obstructing government administration does not turn upon either the legality of the order . . . or [the officers'] knowledge of the legality of that order. [Defendant] had an obligation to obey the commands of the police, at least if issued in a good faith belief in their lawfulness" (citations and internal quotation marks omitted)); *cf. State v. Herrera*, 211 N.J. 308, 334-35 (2012) ("[S]uspects must obey a police officer's commands during an investigatory stop, even if the stop is unlawful, and test the stop and detention later in court. . . . Even though the suspect may have done nothing wrong, he cannot be the judge of his own cause").

[13] In any event, Stuart has waived the opportunity to have this issue addressed on appeal. See nn. 4-5 above, and accompanying text.

To put it differently, *Wright v. Georgia*, on which the Stuart brief relies (at 17, 55), states that "one cannot be punished for failing to obey the command of an officer if that command *is itself* violative of the Constitution." 373 U.S. 284, 291-92 (1963) (emphasis added). Stuart does not contend that the instruction *itself* violated any constitutional principle. Instead, unsupported by any authority, the Stuart brief adopts what amounts to a derivative theory, *viz.*, because the refusal to allow him to speak violated his constitutional rights, what then occurred after that refusal also violated his rights. That, however, is not what *Wright* says: *Wright* says that the police officer's command must be unlawful *itself*, and not derivatively so.[14]

In short, at the moment Stuart refused to comply with what he was told to do, he was not engaged in any constitutionally protected activity. In those circumstances, he should have acceded to the police officer's instruction by sitting down on the bench and accepting a copy of the citation that was issued, while contesting the citation's validity in court later on.

3. Constitutionality of Section 19-13.

The only speech to which section 19-13 refers consists of words in the form of instructions or commands coming from Scottsdale police officers who are carrying out their duties. In other words, section 19-13 does not regulate constitutionally protected speech. Thus, section 19-13 does not implicate free speech concerns under either the federal or state constitutions, and that alone is sufficient to end the inquiry regarding the constitutionality of that code provision. *See State v. Brown*, 207 Ariz. 231, 236 (App. 2004) (concluding that statute that "regulates neither constitutionally protected speech nor expressive conduct . . . does not implicate the First Amendment"); *State ex rel. Napolitano v. Gravano*, 204 Ariz. 106, 113, ¶24 (App. 2002) (recognizing that "statutes [that] contain no reference to the content of speech or expressive materials . . . are speech- and content-neutral").

As explained in the following two sections for additional reasons, Stuart's void for vagueness and overbreadth challenges each independently lack merit.

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[14] None of the cases on which the Stuart brief relies (at 17) support overturning the conviction here. In *Wright*, the police officer's command was intended "to enforce racial discrimination," and not merely to issue a citation. 373 U.S. 284, 292 (1963). In *United States v. Goodwin*, the defendant was not convicted for failing to comply with a police officer's (or anyone else's) order. 457 U.S. 368, 384 (1982). *Shuttlesworth v. City of Birmingham* is a case, unlike here, involving a traditional public forum (streets and sidewalks). 394 U.S. 147, 148 (1969). And, in *Duran v. City of Douglas*, a police officer stopped the defendants despite, unlike here, lacking a good faith basis for doing so. 904 F.2d 1372, 1376-77 (9th Cir. 1989). The Stuart brief also relies (at 17) on language appearing in a concurring opinion in *Brown v. State of Louisiana* that commanded the support of no justice other than its author [383 U.S. 131, 149 (1966)] and an opinion dissenting from the denial of a petition for certiorari in which only one other justice joined [*Drews v. Maryland*, 381 U.S. 421 (1965)].

a. Void for Vagueness.

Stuart insists that his conviction must be set aside because section 19-13 of the Scottsdale city code is void for vagueness. [Stuart Br. at 24-27] That same argument was rejected in *State v. Kaiser*, where the court concluded that section 19-13 (i) can be understood by a person of ordinary intelligence, (ii) "provides sufficient objective standards for one charged with its enforcement to know what conduct is unlawful," and (iii) "does not encourage arbitrary enforcement." 204 Ariz. 514, 519, ¶16 (App. 2003). That should end the inquiry about purported vagueness, especially when the Stuart brief does not mention *Kaiser*, much less make any attempt to explain why the *Kaiser*-court's reasoning is in any way flawed or, otherwise, why this court should ignore the holding in that case. *See generally City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 195, ¶88 (App. 2008) (recognizing that when appellant "fails to adequately develop its argument," it is waived); *Sholes*, 228 Ariz. at 457 n.1, ¶1 (stating that issues "not argued sufficiently" are not considered).

Leaving that aside, a void for vagueness argument implicates due process and not first amendment rights. *United States v. Williams*, 553 U.S. 285, 304-05 (2008) ("Vagueness doctrine is an outgrowth not of the First Amendment, but of the Due Process Clause of the Fifth Amendment"). To succeed on a claim based on the denial of due process, the claimant must show resulting prejudice. *E.g., County of La Paz v. Yakima Compost Co.*, 224 Ariz. 590, 598, ¶12 (App. 2010) (stating that denial of due process is not reversible error when the appellant "fails to demonstrate how it was unreasonably prejudiced by the deprivation"); *see also Fisher v. Arizona State Bd. of Nursing*, No. 1 CA-CV 18-0167, 2019 WL 764028, at *2, ¶9 (Ariz. Ct. App. 2019) ("The party asserting a denial of due process must show prejudice"). Because the refusal to comply with a police officer's instruction is not a constitutionally protected activity, Stuart was not denied due process, and for that reason as well, the void for vagueness argument fails. *E.g., State v. Smith*, 130 Ariz. 74, 76 (App. 1981) ("A person may not urge the unconstitutionality of a statute unless he is harmfully affected by the application to him of the particular feature of the statute alleged to be violative of the constitution" (citing *State v. Varela*, 120 Ariz. 596, 600 (1978))).

b. Overbreadth.

Stuart maintains that his conviction should be set aside because section 19-13 is unconstitutionally overbroad. [Stuart Br. at 27-32] That argument was also rejected in *Kaiser*, where the court held that section 19-13 posed "no realistic danger to" individuals' first amendment rights." 204 Ariz. at 519, ¶¶17-18. Because the Stuart brief makes no attempt to explain why, in the circumstances here, *Kaiser* must be revisited or otherwise ignored, the holding in that case regarding section 19-13 ends the overbreadth inquiry. *E.g., City of Phoenix v. Leroy's Liquors,*

Inc., 177 Ariz. 375, 378 (1993) (recognizing that lower level appellate court may not "overrule, modify, or disregard" higher court case law).[15]

Leaving *Kaiser* aside, Stuart has the burden to demonstrate that section 19-13 is unconstitutionally overbroad. *E.g.*, *State v. Brock*, 248 Ariz. 583, 588, ¶10 (App. 2020). That requires a showing that section 19-13 will produce unconstitutional results in "a substantial number of its applications." *Committee for Justice & Fairness*, 235 Ariz. at 356 n.16, ¶35 (citing *United States v. Stevens*, 559 U.S. 460, 473 (2010) and *Washington State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n. 6 (2008)) (internal quotation marks omitted)); *see also State v. Musser*, 194 Ariz. 31, 32, ¶6 (1999) (stating that the effect on legitimate expression must be real and substantial (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)). And, "[t]he mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge." *Musser*, 194 Ariz. at 32, ¶6 (quoting *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 799 (1984) (alteration omitted)); *Kaiser*, 204 Ariz. at 519, ¶18 (same). Instead, Stuart "must demonstrate . . . *from actual fact* that a substantial number of instances exist in which the [l]aw cannot be applied constitutionally." *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 14 (1988) (emphasis added).

The Stuart brief fails to show "from actual fact" that a substantial number of the applications of section 19-13 have yielded or even would yield unconstitutional results. Instead, the only event described in the memorandum that is offered in support of the overbreadth claim is the police order given to Stuart after he was led out of the city council meeting. A single event is, however, insufficient to support a finding that a law is overbroad. *See Ritchie v. Coldwater Cmty. Schools*, 947 F.Supp.2d 791, 824 (W.D. Mich. 2013) (rejecting overbreadth challenge based only on claimant's own first amendment activity (citing *de la O v. Housing Auth. of El Paso*, 417 F.3d 495, 505-06 (5th Cir. 2005) (rejecting overbreadth claim because it "is predicated on plaintiff's own supposed injury resulting from the alleged unconstitutionality of the [housing authority] regulations"), *abrogated on other grounds, Regan Nat'l Adv. of Austin, Inc. v. City of Austin*, No. 19-50354, 2020 WL 5015455, at *5 n.3 (5th Cir. Aug. 25, 2020))); *see also Musser*, 194 Ariz. at 32-33 ("While Musser has conceived of some applications of the statute, he has provided no indication that any likelihood exists that the state would use the statute to reach such activities").

Moreover, Stuart's argument relies significantly on references to what transpired during the trial, for which Stuart chose to submit only a partial transcript. [Stuart Br. at 27, 29] As such, his argument also fails for lack of record support. *Baumert*, 118 Ariz. at 260-61 ("Faced with an incomplete transcript the Superior Court abused its discretion by not affirming the municipal trial court").

[15] The Stuart brief fails to cite anything in the record establishing that he urged the trial court that *Kaiser* is somehow inapplicable in this case.

3. Conflict of Interest.

Stuart maintains that his due process rights were violated because he was prosecuted by the Scottsdale city attorney's office despite a disqualifying conflict of interest that should have precluded that office's participation in this case. [Stuart Br. at 32-39] According to Stuart's brief, that conflict of interest was attributable to a lawsuit that Stuart filed against Lane, Washburn, and the city of Scottsdale, thus exposing them to possible financial liability. [*Id.* at 34 ("Because the State was seeking to defend city of Scottsdale policies, and to protect the Mayor, the city attorney and the City from financial liability for its actions against [Stuart], the Scottsdale prosecutor had an undeniable conflict of interest")] Stuart insists that, as a result, the city attorney's office disregarded its obligation to pursue the public's interest in justice in favor of assisting the city attorney, mayor, and the city itself to escape the financial consequences that would be result if Stuart's lawsuit succeeded. [*Id.*]

As presented in Stuart's brief, his argument, in effect, assumes that he is permitted to create a purported conflict of interest by initiating a lawsuit and then use that to secure a disqualification in a different litigated matter. If there is any authority – case law, statute, treatise, law review article, or anything else – that adopts that view, it will not be found in Stuart's brief. What authority there is warrants rejection of Stuart's idea that he should be allowed to engineer a disqualification based on a purported conflict of interest that he manufactured. *Cf. Smith v. Smith*, 115 Ariz. 299, 303, 564 P.2d 1266, 1270 (App. 1977) (recognizing that, if a party can obtain disqualification of a judge merely by having a lawsuit filed against that judge, "the orderly administration of judicial proceedings would be severely hampered").[16]

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[16] The Stuart brief's failure to identify any persuasive authority suggesting that a litigant is permitted to create a conflict of interest and then benefit from his self-creation is itself grounds for rejecting Stuart's argument. *In re $26,980.00 U.S. Currency*, 199 Ariz. 291, 299, ¶ 28 (App. 2000) (stating that arguments "offered without elaboration or citation to any . . . legal authority" are not considered on appeal); *Ness v. Western Sec. Life Ins. Co.*, 174 Ariz. 497, 503 (App. 1992) (stating that "[a]rguments unsupported by any authority will not be considered on appeal").

During the oral argument, Stuart, in effect, disavowed what his brief says regarding the purported conflict of interest arising out of the desire of Washburn, Lane, and the city to avoid the financial consequences of an adverse outcome in Stuart's lawsuit. Stuart said that, instead, the conflict was attributable to Washburn setting up "a scheme" to have Stuart arrested, which then occurred, and the prosecutor's subsequent failure to "exercise[] objectivity" in favor of vindicating Washburn's decision to have Stuart arrested. [See FTR Recording (10/29/20) at approx. 10:42 and following] Stuart conceded that he presented this issue twice in the proceeding below by asking for an evidentiary hearing, only to be denied both times. [*Id.*] Stuart's brief (at 51) identifies no authority supporting his contention that the trial court erred by denying the requested evidentiary hearing, and as such, the issue warrants no consideration on appeal. *In re $26,980.00 U.S. Currency*, 199 Ariz. 291, 299, ¶ 28 (App. 2000) (arguments "offered without elaboration or citation to any . . . legal authority" are not considered on appeal); *Ness*, 174 Ariz. at 503 (stating that "[a]rguments unsupported by any authority will not be considered on appeal"); *see also Nunes v. Industrial Comm'n*, No. 2 CA-IC

Apart from that, Stuart's argument succeeds only upon a showing that the Scottsdale city attorney's office failed to pursue "justice and society's interest in justice." [Stuart Br. at 34; see also *id.* at 35 (stating that the prosecutor "pursu[ed] the prosecution ahead of his obligations to seek justice on behalf of the public")] If Stuart did not have an unqualified right to speak at the city council meeting as he imagines, then the prosecution of Stuart was no failure to pursue justice. To put it differently, Stuart's argument equates the pursuit of justice with the adoption of his self-interested and erroneous view of first amendment law. Surely, therefore, to state Stuart's argument is to reject it.

4. Prosecutorial Vindictiveness.

Stuart contends that a reversal of his conviction is warranted because he was the victim of a vindictive prosecution. That argument fails for any, if not all, of the following reasons:

> (i) Prosecutorial vindictiveness is a violation of due process that occurs when the government "retaliat[es] against a defendant for exercising a constitutional or statutory right." *State v. Verdugo*, No. 2 CA-CR 2019-0112-PR, 2019 WL 3064921, at *1, ¶6 (Ariz. Ct. App. July 12, 2019) (citation and internal quotation marks omitted); *see also State v. Tsosie*, 171 Ariz. 683, 685 (App. 1992) (defining prosecutorial vindictiveness as "prosecutorial action taken to penalize [a defendant] for invoking legally protected rights"). The Stuart brief shows neither by the record nor by applicable authority that the refusal to sit down on a bench as directed by a police officer intent on issuing a citation amounted to the exercise of a protected legal right.
>
> (ii) The Stuart brief asserts (at 42), that "[t]he evidence from trial . . . proves both a vindictive motive and creates a presumption of vindictiveness." Those assertions are unsupported by a citation to anything in the record, and thus, they warrant no consideration on appeal. *State v. One Single Family Residence at 1810 East Second Ave., Flagstaff, Ariz.*, 193 Ariz. 1, 2 n.2 (App. 1997) (declining to consider facts stated in Appellant's brief that were not supported by citations to the record); *Matter of Estate of Killen*, 188 Ariz. 562, 563 n.1 (App. 1996) (disregarding appellant's statement of facts because it was not "supported by

2018-0012, 2019 WL 1349587, at *1, ¶4 (Ariz. Ct. App. Mar. 25, 2019) (recognizing that self-represented appellant is "held to the same standards as an attorney" and waives argument not supported with citations to relevant authority).

appropriate references to the record"). And, as here, the mere assertion of a self-interested conclusion does not qualify as its own proof.[17]

(iii) Stuart's argument relies on evidence produced at the trial. [*Id.* at 39, 42] Stuart's "failure to submit a complete record on appeal precludes review of the sufficiency of the evidence" in support of his contentions. *Baumert*, 118 Ariz. at 260. To put it differently, here, there is no basis in fact that would warrant second-guessing the trial court's determination that Stuart failed to make a case for prosecutorial vindictiveness. *See Karr*, 221 Ariz. at 320, ¶2 ("[W]e do not weigh the evidence; that is the function of [the trier-of-fact]"); *see also State v. Collins*, 104 Ariz. 449, 450 (1969) ("If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue then such evidence must be considered as substantial").

5. Speedy Trial.

Stuart maintains that his conviction must be overturned because he was not tried within the time required by Ariz. R. Crim. P. 8.2 and because his right to a speedy trial under the sixth amendment to the United States constitution was violated. [Stuart Br. at 42-55]

While the proceeding below was pending, Stuart filed four different motions to dismiss what he insisted was an impermissibly delayed trial, each of which was denied. [See State's Resp. Mem. at 4 & Exhs. 1, 3, 5-7, 10] The first two of those motions were denied based on the trial judge's factual finding that Stuart was substantially responsible for the delays, in large part because of the numerous motions that he filed, which demanded the time and attention of both the court and the prosecution. [*Id.* at Exh. 5] Nothing in the record suggests that either of the other two denials reconsidered or otherwise disputed that view.

This court, like all appellate courts, does not conduct its own, independent evaluation of of a trial court's fact findings. *Karr*, 221 Ariz. at 320 ("[W]e do not weigh the evidence; that is the

[17] The Stuart brief's only citation in support of the contention that "*evidence* from the trial" (emphasis added) established prosecutorial vindictiveness consists of a reference to the prosecution's closing argument. [Stuart Br. at 39, 42] A closing argument is not evidence. *State v. Gonzales*, 105 Ariz. 434, 437 (1970) ("[C]losing arguments are not evidentiary in nature"). Otherwise, neither this court, nor any other appellate court, has an obligation to search the record to ascertain whether an appellant's contention about evidence in the record is supported. *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 343 (App. 1984) ("We are not required to assume the duties of an advocate and search voluminous records and exhibits to substantiate appellant's claims"); *Hubbs v. Costello*, 22 Ariz. App. 498, 501 (1974) ("This Court is not under any obligation to search voluminous records to ascertain if [evidence supporting appellant's claim] exists"); *see also Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 143 (App. 1987) ("It is not incumbent upon the court to develop an argument for a party").

function of [the trier-of-fact]"); *see also City of Glendale v. Bradshaw*, 114 Ariz. 236, 238 (1977) (stating that "a review and a weighing of the possible effect of the evidence . . . is not within our domain"); *Castro v. Ballesteros-Suarez*, 222 Ariz. 48, 52, ¶11 (App. 2009) (stating that "[w]e will not reweigh the evidence or substitute our evaluation of the facts"). Instead, the facts are viewed in any reasonable way that supports a trial judge's determination. *See e.g., Rivera*, 226 Ariz. at 327, ¶2 (App. 2011) ("We view the facts in the light most favorable to sustaining the convictions" (citation and internal quotation marks omitted)); *State v. Paredes*, 167 Ariz. 609, 612 (App. 1991) (motion to suppress: "[W]e must view the evidence in the light most favorable to upholding the trial court's ruling"). At most, the record establishes only that reasonable people could disagree about whether Stuart's failure to be tried as quickly as he would have liked was self-induced. And "[i]f reasonable men may fairly differ as to whether certain evidence establishes a fact in issue then such evidence must be considered as substantial" [*State v. Collins*, 104 Ariz. 449, 450 (1969)], which here means that substantial evidence (i.e., Stuart's responsibility for the trial delays) supports the rulings denying Stuart's motions to dismiss based on the asserted denial of his speedy trial rights.[18]

Apart from that, the Stuart brief fails to establish that he was adversely prejudiced by any delay for which the State could be considered solely or even principally responsible. To be sure, that brief lists an assortment of physical, mental, financial, procedural, and evidentiary conditions that, Stuart insists, were brought on by the delay and, thus, affected his ability to present a defense. But, in the proceeding below, none of the judges who considered Stuart's motions to dismiss concluded that he had presented credible evidence of adverse conditions severe enough to prejudice his defense. And, appellate courts do not second-guess trial courts' factual determinations. *Karr*, 221 Ariz. at 320 ("[W]e do not weigh the evidence; that is the function of [the trier-of-fact]"); *see also Doria J. v. Department of Child Safety*, No. 1 CA-JV 19-0030, 2019

[18] The Stuart brief (at 44-45) also maintains that the State moved to dismiss the charge for violating section 19-13 without prejudice and then, after the motion was granted, refiled the charge "solely to avoid Rule 8.2 issues." In support of that contention, the Stuart brief relies exclusively on four pages of text that appear in his Response to State's Motion to Dismiss Count 2 (S.R.C. §19-13) Without Prejudice (filed 10/129/19). Nowhere in any of those four pages is there a citation to any factual support for the motivation that Stuart would have ascribed to the State, and thus, the contention warrants no consideration on appeal. *One Single Family Residence*, 193 Ariz. at 2 n.2 (declining to consider facts stated in Appellant's brief that were not supported by citations to the record); *Killen*, 188 Ariz. at 563 n.1 (disregarding appellant's statement of facts because it was not "supported by appropriate references to the record"). Nevertheless, even if one were to give Stuart the benefit of the doubt (to which he is not entitled [see authorities cited in section C, above], the most that can be said is that the record supports an inference either way, i.e., the dismissal was motivated by a desire to avoid rule 8.2 issues, and the dismissal was not motivated by that desire. As a matter of well-settled law, all such conflicting inferences are resolved against the defendant. *E.g. Karr*, 221 Ariz. at 320, ¶2 (citing *State v. Greene*, 192 Ariz. 431, 436, ¶12 (1998)).

WL 4440385, at *3, ¶14 (Ariz. Ct. App. Sept. 17, 2019) ("We do not reweigh evidence on appeal and will not second-guess the fact-finder's evaluation of the evidence").[19]

Moreover, the Stuart brief overlooks that prejudice, for purposes of the analysis here, consists of more than a self-interested claim to that effect. Prejudice also requires a showing that, but for the purportedly prejudicial conditions that Stuart listed, the outcome of the trial would have been different. *See State v. Vasko*, 193 Ariz. 142, 147, ¶22 (App. 1998) (stating that, when a speedy trial violation is alleged, the defendant must show "a reasonable probability" that the conviction would not have resulted without the violation); *see also State v. Riley*, 248 Ariz. 154, 186, ¶117 (2020) (stating that, even in the event of fundamental error going to the foundation of the case or a deprivation of a right essential to the defense, to prove prejudice, defendant must show "a reasonable jury could have come to a different verdict"); *see generally United States v. Loud Hawk*, 474 U.S. 302, 315 (1986) (recognizing that the "possibility of prejudice is not sufficient to support respondents' position that their speedy trial rights were violated").[20]

In any event, to maintain that Stuart's defense was impeded by the delay in bringing the case to trial is to misanalyze the case. Correctly understood, the State was required to prove only two facts: (i) a police officer, while on duty, instructed Stuart to "sit down on a nearby bench" while a citation was written, and (ii) Stuart refused to do so. Stuart has disputed neither fact.[21] Thus, all of the purportedly disabling conditions on which Stuart bases his claim of adverse prejudice are beside the point: because Stuart conceded all that the State was required to prove, a reasoned conclusion that, but-for even one of those assertedly prejudicial conditions, an acquittal would have resulted, is not possible.

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[19] Stuart's claimed maladies and other conditions consist of asserted mental and psychological injuries, including hospitalization; asserted degradation of mental skills and impeded ability to mount a defense; police testimony purportedly coached by outside attorneys; inadequate notice of the facts supporting the charges against him; purported destruction of evidence by the State; obstruction of access to evidence; cover-up and concealment of conflicts of interest; purported concealment that jurisdiction was lacking; claimed loss of memory by officers; excessive costs; and asserted degradation of quality of life. [Stuart Br. at 45-46]

[20] The court is mindful of the four-factor test recognized in *Barker v. Wingo*, 407 U.S. 514, 530-32 (1972). Here, a discussion of all four factors is not required because "[t]he law is well-established in this state that a conviction will not be reversed unless the record shows an error prejudicial to some substantial right of the defendant," and "[t]he historic test for whether the error is prejudicial is whether the defendant has shown a reasonable probability that the verdict would have been different if the error had not been committed." *Vasko*, 193 Ariz. at 147, ¶22. Thus, because Stuart has failed to establish as a reasonable probability that an acquittal would have resulted if not for the asserted delay in bringing his case to trial, the inquiry ends without the need to address the *Barker* factors.

[21] See FTR Recording (10/29/20) at approx. 11:00.

Further, even if one were to assume, albeit erroneously, that what transpired at the city council meeting is relevant to the conviction here, Stuart's litany of conditions that purportedly prejudiced his defense remains inconsequential. The State does not dispute that (i) Stuart attempted to speak in support of an election initiative, which included a solicitation of volunteers to aid that effort, (ii) after Stuart asserted his right to speak under the United States and Arizona constitutions, Lane denied him that opportunity and asked Stuart to step away from the podium, and (iii) when Stuart refused, Lane asked Scottsdale police officers to escort Stuart from the building. In other words, the facts on which Stuart bases his claim that he was wrongfully charged and, thus, wrongfully convicted, are not contested, and thus, any evidence that Stuart wanted to but was unable to present, and anything else that Stuart wanted to undertake in aid of his defense, were either irrelevant or, at best, cumulative, which does not warrant overturning his conviction. *Cf. State ex rel. LaSota v. Arizona Licensed Bev. Ass'n*, 128 Ariz. 515, 523 (1981) ("The exclusion of repetitious or cumulative evidence does not require reversal by an appellate court" (citation omitted)). To put it differently, if one were to assume that Stuart was impermissibly denied an opportunity to speak at the city council meeting, and thus, as a result, his removal from the building and arrest were unlawful, he did not need to establish as a complete defense any facts beyond what the State has conceded.[22] In these circumstances, therefore, convening a trial in January 2020 did not, by any reasoned measure, impair the ability to present a defense.

E. Stuart's Recusal Motion.

Stuart submitted a 56-page opening brief to which the State responded by filing a motion to strike for Stuart's failure to comply with Rule 8(a)(4) of the Superior Court Rules of Appellate Procedure (Criminal) (limiting opening memoranda to 15 pages). To accommodate Stuart's request for what amounts to a limitless opportunity to say what he wanted to say, the court has decided to deny the motion to strike.[23]

At the same time, to permit this appeal to proceed in a speedy, efficient, and fair way, the court did not require the State to file a response to Stuart's 56-page submission except as to the speedy trial issues. Consistent with this division's practice, the parties were provided with a preliminary draft ruling in advance of the oral argument so they could know, without having to guess, what this judge was thinking, thus allowing them time to plan how they might best address the concerns that the draft ruling revealed. When doing so, this judge explained that he was willing to be persuaded that some or all of his tentative thinking was incorrect. Because of that, and

[22] This validity of this conclusion is reinforced by the fact that Stuart's right to speak argument [see section D(1)] must be considered on this appeal despite his submission of only a partial trial transcript.

[23] At Stuart's request, this court also convened an oral argument, which wound up lasting almost two hours.

because the draft ruling was merely preliminary, this judge also explained that the final version might not resemble the draft.[24]

At the outset of the oral argument, Stuart asked this judge to recuse himself by accusing him of being biased in favor of the State. Stuart based that request exclusively on his reading of the preliminary draft ruling that he was provided.

"Judges are presumed to be impartial." *State v. Smith*, 203 Ariz. 75, 79, ¶13 (2002); *State v. Henry*, 189 Ariz. 542, 546 (997) (same). Moreover, "the bias and prejudice necessary to disqualify a judge must arise from an extra-judicial source and not from what the judge has done in his participation in the case." *Smith v. Smith*, 115 Ariz. 299, 303, 564 P.2d 1266, 1270 (App. 1977); *see also Simon v. Maricopa Med. Center*, 255 Ariz. 55, 63, ¶29, 234 P.3d 623, 631 (App. 2010) (same).

Further, although the draft concluded that Stuart's conviction should be affirmed, adverse rulings do not support a claim of judicial bias. *Simon v. Maricopa Med. Center*, 255 Ariz. 55, 63, ¶29, 234 P.3d 623, 631 (App. 2010) (stating that superior court's consistent pattern of adverse rulings does not demonstrate bias); *State v. Curry*, 187 Ariz. 623, 631, 931 P.2d 1133, 1141 (App.1996) (recognizing that disagreements over rulings are insufficient to support recusal); *see also Litekey v. United States*, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion"). And if that is true, then surely a preliminary, tentative, draft ruling that a judge is willing to reconsider does not establish bias.

Nevertheless, Stuart maintains that providing a draft ruling without first requiring a response from the State (except regarding the speedy trial issue) displayed favoritism. That contention ignores:

> (i) The State was not required to submit a response. Rule 8(a)(1), Superior Court Rules of Appellate Procedure (Criminal).
>
> (ii) Requiring the State to respond to Stuart's 56-pages would have made no difference. This court is permitted to affirm the trial court's decision for reasons that no one else considered. *See Glaze v. Marcus*, 151 Ariz. 538, 540 (App. 1986) ("We will affirm the trial court's decision if it is correct for any reason"); *see also State v. Perez*, 141 Ariz. 459, 464 (1984) (stating that trial court ruling will be affirmed if it "was legally correct for any reason"); *see generally Earl v. State*, No. 1 CA-CV 15-0470, 2016 WL 7104893, at *3, ¶10 (Ariz. Ct. App. Dec. 6, 2016)

[24] Indeed, the oral argument has caused a rethinking of several issues. As a result, in not insignificant ways, this ruling differs from the draft.

(recognizing that the trial court was attempting to proceed efficiently, and thus, finding no error in trial court's decision to grant motion to dismiss without requiring moving party to elaborate the reasons); *cf. Harris v. Brachtl*, No. CA-CV 16-0486, 2017 WL 1406396, at *2, ¶¶7-8 (Ariz. Ct. App. Apr. 20, 2017) (affirming trial court's decision to dismiss complaint on court's own motion).

(iii) Perhaps most important, Stuart conceded during the oral argument that he was not adversely prejudiced because the court did not wait for a complete response from the State.[25] The decision to proceed without requiring a comprehensive response to Stuart's 56-pages from the State was, more than anything, an accommodation to Stuart because, by applicable rule, he was limited to a 15-page brief. Rule 8(a)(4), Superior Court Rules of Appellate Procedure (Criminal).

IT IS ORDERED:

1. The State of Arizona's motion to strike Stuart's 56-page appellate brief for failing to comply with Rule 8(a)(4) of the Superior Court Rules of Appellate Procedure (Criminal) is denied.

2. The Stuart motion for recusal is denied.

3. The judgment of the Scottsdale city court in *State v. Stuart* (case no. SC 2017003568) is affirmed.

4. All other pending motions are moot and require no court action.

5. This case is remanded to the Scottsdale city court for any further proceedings that may be necessary.

6. No matters remain pending in connection with this appeal. This is a final order. See Rule 12(b), Superior Court Rules of Appellate Procedure (Criminal).

Honorable Douglas Gerlach
Judge of the Superior Court

[25] See FTR Recording (10/29/20) at approx. 11:21.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2020-000239-001 DT 11/13/2020

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.

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State Of Arizona VS. STUART, MARK ELLIOTT 8629 E CHERYL DR SCOTTSDALE, AZ 85258	Case #: M-0751-SC-2017003568 Complaint #: 01997588, 20190787	CHRISTOPHER P. CORSO 17470 N PACESTETTER WAY SCOTTSDALE, AZ 85255

MINUTE ENTRY

PURSUANT TO:

Defendant's Rule 24.2 Motion to Vacate the Judgment of Guilty on Scottsdale City Code 19.13 on the grounds that the conviction was obtained in violation of both the Arizona and the United States Constitutions

Defendant's request to extend the Appellate Memorandum due date until July 14, 2020 or until sixty days after the court rules on the pending Motion to Vacate the Judgment

IT IS ORDERED:

Defendant's Rule 24.2 Motion to Vacate Judgment of Guilty on Scottsdale City Code 19-13 on Grounds that the Conviction was Obtained in Violation of Both the Arizona and United States Constitution is **DENIED**.

In this case, the Court found Defendant guilty of Refusal to Obey Police which is a violation of Scottsdale City Code §19-13, an ordinance which has been in place for approximately forty-eight years. This crime occurred *outside* the City Council chambers and *after* Defendant was arrested. Defendant was, therefore, in police custody when he committed the offense. Officers arrested Defendant for trespassing in the City Council Chambers. An officer had to physically touch Defendant to get him to move from the lectern and he was contemporaneously arrested. Outside the chambers, Officer Cleary asked Defendant to sit down so processing could safely take place and Defendant refused. Officer Cleary then ordered Defendant to sit down twice. Defendant refused both of those orders. Based on the totality of the circumstances, a great deal of which the Court explained in its oral pronouncement on the record, the Court found Defendant guilty beyond a reasonable doubt of Refusal of Obey Police by refusing to obey Officer Cleary outside the Council Chambers. As a sentence, the court ordered a fine with an option of completing community restitution in lieu of paying the fine.

Based on the facts of this case, the Court finds that whatever happened in the City Council Chambers is simply not relevant. The Court found Defendant not guilty of the trespassing charge, which is alleged to have occurred in the Council Chambers.

The Court finds nothing unconstitutionally vague about Sec. 19-13 nor does the Court find it unconstitutional as applied to Defendant.

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Defendant's Request to Extend the Appellate Memorandum Due Date Until July 14, 2020 or Until Sixty Days After the Court Rules on the Pending Motion to Vacate Judgment is **GRANTED**. **Defendant's Appellate Memorandum is due on or before July 14, 2020.**

4/22/2020 J. Sampanes 4/22/20

Date Honorable James Sampanes