

0931-MU00044

CITY OF BATTLEFIELD V ANTONIO RIVAS

Security Level: 3 Confidential

<u>Filing Date</u>	<u>Description</u>
28-Sep-2009	<p>Correspondence Filed LETTER AND ATTACHED CASELAW FILED VIA FAX BY ATTY JAMES M. KELLY. TO COURT FOR REVIEW. /TAW Filed By: JAMES M KELLY</p> <p>Tried by Court - Not Guilty JUDGMENT: COURT REVIEWS CORRESPONDENCE AND CASELAW CITED BY COUNSEL. ATER FURTHER CONSIDERATION, THIS COURT FINDS THAT THE ORDINANCES RELIED UPON BY THE CITY CONTAIN ESSENTIAL TERMS INCLUDING "TOWER," "TELECOMMUNICATION FACILITIES," "TELECOMMUNICATION TOWERS," AND "AMATEUR RADIO OPERATORS EQUIPMENT" WHICH ARE VAGUE, OVERBROAD, AND DO NOT GIVE PEOPLE OF ORDINARY INTELLIGENCE FAIR NOTICE OF WHAT CONDUCT IS PROHIBITED. COURT THUS FINDS SAID ORDINANCES DO NOT COMPLY WITH DUE PROCESS. COURT FINDS THE "CROXDALE" CASE RELIED UPON BY THE CITY IS DISTINGUISHABLE, BECAUSE THE EXCEPTION RELIED UPON BY DEFENDANT HERE IS INDEED PART OF THE ENACTING CLAUSE AND THE DESCRIPTION OF THE SUBJECT OFFENSE. THUS, IT WAS THE CITY'S INITIAL BURDEN TO SHOW THE ALLEGED EQUIPMENT WAS NOT THE TYPE EXCEPTED FROM THE TERM "TOWER" (SEE DEFENDANT'S EXHIBIT 5). COURT THUS THAT THE CITY DID NOT SUSTAIN ITS BURDEN OF PROOF TO SHOW THAT DEFENDANT MAINTAINED A TELECOMMUNICATIONS TOWER AND THE COURT NOW SUSTAINS DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL AT CLOSE OF CITY'S EVIDENCE. COURT FINDS DEFENDANT NOT GUILTY. COPY TO ATTYS KELLY AND FREDRICK BY FAX. JRB/TAW</p> <p>COPY OF DOCKET SHEET FAXED TO ATTYS KELLY AND FREDRICK. /TAW</p>