

Hearing October 15, 2013 Case: 211314234 State of Oregon v. Andrew Clark
Hearing to modify pre-release conditions Ankle Bracelet removal requested.
Judge Vogt. Courtroom 306 9 am. Audio Posted: www.youtube.com/user/fightfeces/videos (1st item).

Situation: I arrived several minutes early while a sentencing was in process on another case. I was pleasantly surprised to find that audio portion on my court record. The woman being sentenced had been convicted of felony theft from people she knew. From what I could discern, she had used their credit cards for thousands of dollars of merchandise.

The felony offender accused of major theft had never been placed in jail. By contrast, I was jailed in high-security lockup for a week when first arrested awaiting bail. The reason given by the judge is astounding and speaks to the problem at hand. The judge references the convict's RAT SCORES being good as reason that she had many different correction options.

That is in shocking contrast to how the judge treated me based on the scores. As the transcript reflects, I questioned the system as it relates to law and policy. The judge felt all she needed to do was tell me, and I quote, that “she believes in the system” even though she had no idea how it operated or what data was used to arrive at scores. That is clear from the transcript.

A judge stating in court that the reason for her action was her “trust in the system” reduces the Court to a form of religion. The judge had trust/faith in a system she could not see. She used that trust/faith above the law itself and common sense, possibly in two cases but I only have standing to evaluate my case. The judge ignored the tangible reality I presented and rested her decision entirely on her trust. Our courts are not trust or faith-based systems. They are supposed to employ evidence, common sense, and conform to the Constructs of Oregon Criminal Law. Communication is NOT to be so aggressively prosecuted without due process as is clear in State of Oregon v. Rangel, Moyle, and Ryan.

Again: the first several minutes of TRANSCRIPT ARE OF SENTENCING OF FELONY CONVICT to 10 days in jail. I was in jail almost that long in maximum security PRE-TRIAL because of the same broken RAT system. Relevance being to contrast the illegality and illogic of the RAT Scores and how those scores affect all aspects of the criminal “justice” system:

Judge, in mid sentence on my audio, speaking of the preceeding case: I will also order that you comply with any requests from your PO for a polygraph if your PO thinks you are not complying with conditions of probation. I will order you have no contact whatsoever with the victims in this case. None. And that is even through third parties. You will leave these people alone. I will also order that you not attend the same church as these people. They don't need to go to church if they think they are going to run into you. Ok? Period. Is there anything I neglected from the state? (she asks a similar question of the convict, in both cases a voice answers 'no your honor'). You have a right to file an appeal (judge gives instructions on filing appeal).

M'am (referring to convict), as I said you are going to qualify for alternatives and I am going to allow for all alternatives but I am going to have you taken into custody right now because I want you to see the inside of a jail. I think it will make an impression on you. I fully expect you will be out today because of your scores because I looked at those. (referring to RAT scores) but you need to see what it is like because you never want to go back there again. Have a seat in the jury box and you will be taken into custody.

My case transcript starts on the next page.

You can hear me in the background on the audio frequently saying “yes, m'am” and similar acknowledgement of what the judge is saying. I left those out of this transcript to simplify it; the omitted words are on audio. They speak of my cooperative, respectful nature, despite jailing, ankle-bracleted and under extreme pre-trial release conditons that were not inflicted upon the prior felony convict. This is PRE-TRIAL, I was not convicted of anything but clearly had much worse pretrial treatment than the CONVICT before me.

Judge: State vs. Clark, Andrew... Glen. As soon as they leave the table sir you can join that table. This is case 211314234. We are here on a couple of matters. First off, we have a motion to modify the pre-trial release conditions that I read with all its accompaniments. I also have a Motion to Dismiss that was tendered by Mr. Clark and I have read that with its accompaniments. I also....

Me (Andy Clark): excuse me m'am....is this for that one?

Judge: Not yet, just a minute. I also have Mr. Hasselman's response (refers to prosecutor Erik Hasselman who was not personally present) to the motion to dismiss and I have....

Me (Andy Clark): I did not ask for a jury hearing I mean a court hearing on the motion to dismiss. I asked for a court hearing on a demurrer...

Judge: I am looking at your document and...sir...right at the top it says “emergency hearing requested”.

Me (Andy Clark): Right, it is because of the Pro Se and its ok, no worries..

Judge: before we go any further on any of this, I am going to deal with I am going to talk with you about your Pro Se status first, ok? Because...you may sit....because...the...uh...I know you were represented by Ms. Moro, is that correct (I acknowledge it is correct). Ok, and she did withdraw, I saw that she had withdrawn and I need to go over some of your rights with you about having an attorney and about representing yourself, um, I have to do this with anyone who represents themselves at some point because we need to make sure that it is your choice to not have a lawyer, that you are making that decision knowingly and voluntarily and that's really what you want to do, ok?

Me (Andy Clark): I sought counsel, I do have counsel I obtained.. his name is Keneth, Kevin Bons...

Judge: well, he is not here...

Me (Andy Clark): Right but he couldn't make it this morning

Judge: Well, now here is the thing, if you have an attorney then you cannot represent yourself in this case.

Me (Andy Clark): Right, he is not signed into the case yet.

Judge: So you don't have an attorney?

Me (Andy Clark): I understand thank you...

Judge: So that is why I need to go over these rights with you...

Me (Andy Clark): I appreciate these distinctions.

Judge: It really does make a difference in how I can proceed in different hearings.

Me: so I need to let you know that at least right now you are acting as your own attorney and if you wish to waive your right to have an attorney and act as your own attorney I am required to make a finding you are waiving that right intelligently and voluntarily and competently. Ok. So to make that finding I need to inform you of certain things and then I need to make sure that you understand those things before making that decision, ok?

First, the offenses that you are charged with. At this point in this time time you are charged with 10 counts. All stalking counts. They are each class A misdemeanors they are each punishable by a maximum statutory penalty of one year in jail and a \$6250 fine. I need to tell you that if you are on parole or probation any conviction for these offenses can affect your parole or probation or post prison supervision status. I need to tell you that and you have been provided with that at arraignment I know, copies of the information with the charging documents on there and I remind you of those to make sure you do have a copy of those, correct?

Me (Andy Clark): That is correct.

Judge: Ok, I need to tell you that at this point in time I don't know many of the facts of this case. I have read everything you provided. I have read what the state has provided. I have read what has provided to my staff at pre-trial services including any of your correspondence with them and any attachments to that and I have been provided with some police reports that are really very rudimentary because they just appear to be face pages really with some attachments to them because we get those in order to make release decisions but I really don't know much more than just that from those documents about this case. So, given that I don't know whether there might be some factual legal defense in this matter of some type and/or to these charges. I can tell you that an attorney would be able to go over that with you would be able to talk with you about potential defenses. An attorney would be able to investigate your case, call witnesses, obtain evidence, research the law, raise potential constitutional issues, other legal issues, such as motions potentially at trial to exclude evidence or search issues or confessions or admissions. They may be able an attorney would be able to help you know and understand courtroom procedures more than maybe you would because you are not an attorney. They would be able to deal with at a trial eventually jury selection process, the evidence code, opening statements, direct examinations, entering exhibits how to even do that. They would be able to engage potentially with the state in your behalf which may be more effective that you doing those on your own with their knowledge of the law. They also may be able to state your case at any potential sentencing in the future in the best way and in the best light for you and avoid other pitfalls because of a lawyers legal training and experience they might even be able to help you in other ways frankly that I can't even imagine because I don't know all of the facts of your case. So, you need to understand that as a judge we are, I am not allowed help either side. I can't help you, I can't help them, ok, even if someone wanted me to and soometimes frankly people are out there just stepping in it and I wish I could help them but I am not allowed to do that and so it is not like you can look to the court for that type of assistance because you are acting as your own attorney, OK? So knowing all of those things it is your right to be represented by an attorney, it is your right to chose to represent yourself. At this point in time you chose to represent yourself in this case.

Me (Andy Clark): ahhhh, Yes I do, because of time.

Judge: And you understand now all of those things that I told about and your rights and how and attorney can help you?

Me (Andy Clark): Yes I do um I am here again today without an attorney, and I had sought an attorney he wasn't able to be here today...inaudible to me)

....

Judge: But he isn't your attorney yet

Me (Andy Clark): As you pointed out, so as long as I make that distinction to the court, as of right now you are right...you are exactly right

Judge: And do you want to proceed today without an attorney when you have told me you clearly understand the importance of having one and you are working on hiring one or do you want to wait for your attorney.

Me (Andy Clark): I would like to just hear the motion to modify pretrial release conditions today, ok?

Judge: Well, I am going to rule on the other motion because like you said you asked for a hearing and then now you are saying you don't want a hearing on that motion.

Me: oh, well again it is just due to... I have been involved in the divorce courts and when they have hearings they just do it behind the scenes and then....

(note, at this point I am reminded by a court clerk to stand to address the court, stood up, apologized and carried on, the judge was not at all put off by my gaffe, which I appreciated a lot at the time).

Me, continuing... they just make a ruling I ask for a hearing and they don't actually have a hearing now I understand that not being an attorney and all....(very difficult to hear much of this sentence).

Judge: So do you want a hearing on your motion to dismiss

Me: Um at this point I really I feel that the motion I came here for today I came here...

Judge: Just answer this question first, do you want me to schedule a different date for a hearing on that motion

Me. Go ahead and rule on the motion to dismiss and then that way we can put it in (inaudible).

Judge: Ok, alright so the motion to dismiss taking into account everything you filed and the state's response the motion to dismiss is denied. And I will enter that order after this hearing and I'll sign that.

Me. And the basis or bases of the findings of the court upon which the decision was made

Judge: is that the motion is without any legal or factual merit, OK? Do you want to be heard further on your motion that we are scheduled here for today which is regarding the pre-trial release.

Me: uh, uh, that is the one I came here for.

Judge. Do you want to be heard further on your motion we are scheduled for today which is regarding

the pre-trial release.

Me: That is the one I came here for.

Judge: Uh um. Do you want to be heard further about that?

Me: Yes m'am, I would, um first thing I have got the motion here and as you know I address two different points. I talked with pre-trial service people. They say to file with the court my attorney Ms. Moro noted that..., before when when I had one, noted that the courts tend to point back to the pre-trial service people.

Judge: Well, they are my employees so I have given them directives....

Me: Point being this, is that first of all I don't stalk people. We are talking about faxes to Portland uh that are in full compliance with Rangel, its there is just no stalking per Rangel, no threat per Moyle. There are significant irregularities in the way the case came to the police. The 10 charges were duplicated exactly, one after the other saying a corporate victim, the original complaint to the DA's office dated 6.21.13 did not list this Leah Lively as a complainant and only listed... if you look at page 2 of the letter it only lists Christopher Mixon out of their Atlanta office and then a corporation Ogletree Deakins. There is no actionable physical contact whatsoever. I have have not been anywhere near these people, I have not beent to Portland in over two years, I would not recognize Leah Lively if she was sitting in the back of the courtroom. I have only met her briefly on two occaisons the last one being over a year ago, always in Court for brief occasions. Uh There is no allegation of any physical contact whatsoever. I have absolutely no history of violence whatsoever. Um I do ask a lot of questions and you know that can be irritating and sometimes people mistake my determination, my resolve uh for justice but I have not hurt anybody in my life. I am the most non-violent person on the face of the planet. I mean that. You know, I do work around my community voluntarily without anyone noticing, people do, I keep little trails cleared and stuff. I am so harmless, this is an uncomortable burden for me. I feel the 10 counts were duplicated, I mean I have been in jail already for 5 days nd so I have seen the inside of a jail and it is not a place that I want to be, it really isn't. Um, I think I took it pretty well, I think I handled it pretty well. I think I got out and did what I could with words, never actions, never hurt anybody, never threatened anybody. Most importantly, the conduct that they were talking about which is entirely faxing it stopped the second that I was aware it was a problem when I got out of jail it just stopped and I even cut off the phone service that allowed it.

Umm, so, when you look at the RAT manual and I don't know if you are familiar with it, you know I don't want to drag you through the whole thing, I just want to point out a couple aspects, um, you know what what it is for is to minimize three major areas: risk of recivism and we talked about that it faxes and it stopped. The risk of being a danger to the public; there is no evidnece whatsoever that I am a danger to the public, not. I never hurt anyone, I own my home free and clear. Uh, then of course the other one there is what is called the flight risk, risk of failure to appear in court. And if you check my divorce file () and I made every hearing all these years, owning a home free and clear, having ties in the community, I am not a flight risk.

The purpose of the RAT tool was to help make intelligent, informed decisions and there are formulas they use illustrated on page 11 and you can see how when they put in these numbers of charges in the system, 10 stalking charges that are exactly duplicated in time, victim, place, everything. It creates a certain system output or outcome and if the charges were merged into one and the RAT system were rerun, it would result in a different outcome....a substantially different outcome.

So, to give you two basic reasons for the removal of the ankle-bracelet. First and foremost of course is the public safety and I have tried to illustrate to the court that I am not a threat, I have not hurt anybody, and the nature of the allegations...fax threats to Portland....is not consistent with needing an ankle bracelet here in Eugene. It is diametrically opposed in fact if in theory it would give a person more time to fax, not that I am. Um, you know, it is uncomfortable, not that that is a concern of the court I am just pointing it out as an aside. But then it is primarily the issue of the systems needing good inputs the RAT manual also notes on page 11 they do look, their estimate, is that 15% would be overridden and they reference appendix G but that was redacted out of the manual I found online so I am not able to determine the basis upon which they override but if..... a logical person would say that (mumble) I mean a fully informed person looking at the evidence and realize it is a pile of faxes, most of them not even to the complainant at all, the vast majority....that the complainant it is an entirely commercial dispute, that there is not personal intersection, no one has seen me in Portland, no one has accused me of being in Portland, there is no form of physical contact, um I always show up for all the court hearings and all that good stuff.

I think the combination that should strongly mitigate is hey, the ankle bracelet is costing the guy money you know that really should be going elsewhere at this time. Yeah, he is a little bit outraged but he has handled that and has not hurt anybody. He has brought in papers very logically. He 'sHe is determined, he is intelligent, he has been in our community for a very long time, and a very successful person for a very long time. So it is for those reasons I would pray to the court for relief from the ankle bracelet at this time.

Judge: Thank you sir, you may be seated.

Me: Thank you ma'm.

Judge: (names a name, hard to hear, referring to DA representative).

District Attorney Representative: State opposes the modification of pretrial release conditions and that would be the ankle bracelet. I would imagine some of the..... terms the defendant was speaking to the court about have been taken into consideration which is why he is out on the ankle bracelet. Uh but I think we have (.....about 10 seconds total are inaudible .) Demurrer regarding merging of the (... inaudible portion) and would ask that the present terms remain.

Judge: Mr. Clark, I will tell you, I wanted to know, because I don't know if you have a copy. Do you have a copy of the risk assessment summary.

Me: no, not with me, no.

Judge: but were you provided a copy of one?

Me: when I was in th jail they showed me one and it had ten stalking charges and 2 serious.....

Judge: I am just asking if you have a copy.

Me: No, not with me your honor.

Judge: Would you like a copy.

Me: Yes your honor (c. three minute delay while copy is made)

Judge: The reason I wanted you to have a copy of this Mr. Clark I do rely on the risk assessment tool and I think your arguments today have been intelligently made, I think part of the problem is that you are um, combining a couple of different legal issues into one that normally are not combined. One is that the Risk Assessment Tool has given you certain scores and you are basically contesting you shouldn't have those scores, that is one. Two is really a demurrer issue because you want to challenge the charging document which is not what we are here for today and that motion is not here before me. I would note that the Risk Assessment Tool has been validated and I'm one of the folks who monitors that frankly as the chief criminal judge of this bench. And on the scores you show high in every category, sir. Your danger score is 79.5. Now I noted with my staff that that is true even after they removed some criminal history because there wasn't a record of it because it is old from 1979 um, but the danger score is still 79.5 and I will tell you HIGH is 21. So, your CBR score is also 354.

Me: what does that mean?

Judge: um, its the scoring level um, the CBR? That is the capacity based release score which is why you are out on security and ankle bracelet. Your re-offense score and your FTA score are also high and so given those FACTS, a lot of the things you are talking to me about today have to do with me with me making a determination about the truth of allegations on um an unsworn statement. So I really can't base my decision on that sir, I need to base my decision on the risk assesment score in the file and the reports and the documents that are provided. I recognize that you do contest that and I am not diminishing in any way your position on contesting that. However, I am required to treat everyone similarly who are in similar situations. I can't treat one person differently than the other when they are in similar situations. And anyone who is out on a release agreement with these scores will be on an ankle bracelet, ok, because it is appropriate. So, like I said I am not diminishing your argument and am not assessing it in a factually truthful or untruthful way, ok. It is an unsworn statement and is its argument during this motion, alright

Me: which statement is unsworn your honor.

Judge: your entire argument, everything that you stood up and told me today, Ok?

Me: um, I would swear to it if it would help anything.

Judge: well, it is part of a motion. I am not here to make that factual determination. I need to treat everyone who is similarly situated similarly and as I indicated and as I indicated anyone who had these scores on our validated risk assessment tool, especially the 79.5 on a danger score would have an ankle bracelet. That is why I have to deny your motion today.

Me: Well, why is there a 79.5 when there is no risk to anyone, there is no contact, there is no..the risk assessment tool is a computer program, excuse me, it is a computer program. It is an adhoc computer program from what I can tell and it has 10 charges of stalking in it and I did put in a demurrer and I guess that will be a hearing at some point and I guess we can potentially relook at it at that point.

Judge; If charges are ever changed, then I have my staff reassess. But right now the charges have not changed.

Me: Ok, I have already my other attorney here is (inaudible).....in her opinion it is not stalking

because there is no physical actionable contact and it is not any threat per Rangle and the content of that communication is no violation or no deviance from Moyle, State of Oregon v. Moyle. I feel...

Judge: That sound like you have a defense you want for but that is not what we are doing today.

Me: But I feel the way the RAT tool has been used with the 10 counts of stalking that are exactly duplicated constutes a form of system fraud and the fact err...the the appearance of it being system fraud. Meaning why 10 stalking charges that are absolutely identical they can be merged for the purposes of re-running RAT and left alone for the purposes of trial. The fact is that Ms. Moro had suggested plea bargaining to much lessor charges. Um you know, given that...and again I told her I am not guilty of any stalking at all and I don't feel I should plead guilty to other charges but it it seems logical to me and I may wrong with my logic that the ankle bracelet represents a punishment in advance as did the five days in jail. I just watched a person who (referring to the felony convict)this is not relevant I will not get into that I'm sorry, only this case.....

Judge: I do, I do, and I noticed that, I understand you are frustrated.

Me: I am going to ask the court enter into the written record the findings that it used to deny this 10.15.13 motion for modifiication of pre-trial release conditions and I would like to go ahead and give this memorandum to the same if necessary to the court um..

Judge: I don't know what you have there, sir.

Me: It is just a letter requesting the court enter into their written record the findings it used to deny the 10.15.13 motion. This again.....(inaudible)

Judge: And based on the primary and secondary release criteria....

Me. And then I am alleging in this court that this represents fraud of the system in its context. And that the ankle bracelet has absolutely no relationship, it is not a logical logical tool. It has no relationship to these faxes. You ... am I allowed to ask her questions.

Judge: She does not have to answer your questions, it would be nice, sometimes I would like to ask them questions too.

Me. Are you aware this whole issue is about some faxes to some office in Portland, are you aware of that?

Judge: I don't have all the reports.

Me. Do you have any....

Judge: I have some reports and I have some faxes.

Me. I swear to you it is just a matter involving faxes. Now, there is no actionable contact it a 100 mile away office, ok, um the purpose of the RAT system....

Judge: But Mr. Clark you are asking me to make a determination of a final guilt or non-guilt at a pretrail motion regarding pretrail release which is really not appropriate for me to even comment

upon.

Me. I will go ahead and....

Judge: Do you know what I mean, do you understand?

Me. Again I am frustrated and I will admit that because this is an uncomfortable tool and I also believe it is somewhat of a health risk to me and I will be elaborating on that in other motions. Um, again (inaudible word) the demurrer, it has been filed. I had filed a demurrer.

Judge: let me look, ok. Because let's make sure what you think is filed is filed.

Me. It is one page, yes m'am...(brief delay)..... It was filed on Thursday.

Judge: Do you know when ?

Me: Yes Thursday of last week.

Judge: Oh it might not have made it to my file yet because today is only Tuesday and they have to file it in the system and they have to put it into OJIN and then it comes upstairs and

Me. It is pretty simple, it just notes that the conduct....

Judge: Yeah, it hasn't made it to the file yet.

Me: Can you just ask her if they have any evidence of physical violence or contact whatsoever? I am saying this again as an allegation that the RAT system the way the data was input to it with the 10 stalking charges it is a program, it a (?) program and the RAT manual is very clear as to its purpose on page um... the purpose of it ok, the purpose. You have the results of the system but those are in contrast to the purpose of the system. The purpose of the system again is recidivism, danger to the public, and risk of failure to appear. Recidivism, there is absolutely no...regardless of what a score says...this is faxes and there has been no recidivism. There was no stalking protective order against me. (). Um, there is no danger to the public whatsoever. There is a greater danger to the public in having the ankle-braclet on me because it is defaming in the community and it scares people when they see it. And the risk of failing to appear in court...of course I am going to be in court and always have. So what happened here is we have scores that for various reasons are not within the scope of what the system was intended to do. Now again, that is why they suggested an override capacity. They took Appendix G out of that document so I have no way to look at it. I do respectfully ask her Honor to you know to consider what is called the construct of the RAT system as outlined on page 5 of the RAT manual. See, the manual says this is what the intention of the system is but then you have formulas and the ability to put in data that creates de facto punishment in advance of adjudication of the fact. Ok, so what we have is punishment, meaning five days in jail and the requirement of an ankle bracelet that is not within the construct of the RAT manual, isn't supported by the evidence at all and.. ummmm ... you know I ask you do you have any indication at all I am a violent person or hurt anybody. Do you have any indication at all I have sent out any more faxes, and do you have any indication I am a flight. Do you have any indication I am a flight risk other than a score that is out of a computer.

Judge: I have a score that comes out of our RAT tool that has been validated and I helped put in place frankly and that I do do trust sir and I do have some of the ...I have everything you provided, I have

everything that has been provided from the state. I also have the probable cause affidavit that was attached to the motion for the warrant.

Me. Do you have the FBI report. Do you have my FBI report dated 8-14.13.

Judge: No I don't, if you provided it I have it.

Me. I provided it to the District Attorney's office.

Judge: well, we don't we don't get things from the DA's office.

Me. Just so I understand this. Where do these scores come from I mean I got a piece of paper here and its saying () no alcohol condition, yes. What does that mean, I have no alcohol conditions, I guess that is saying I don't. No weapons condition, right, ok, no victim contact condition. So are 'yes' responses like in #6, I need to understand this m'am. It says no victim contact condition, yes. Is that yes to victim contact or is it...

Judge: no, the no victim contact has been placed in your release agreement which you have a copy of sir.

Me. I understand, ok. Ummm, current CCH warrant review. Now what is CCH?

Judge: That is your criminal history form sir.

Me: Ok, police report....other than the fact that they put in 10 identical counts of stalking, what here gives us a danger score of 79.5?

Judge: (long pause). It was your entire interview sir, it all went into Risk Assessment Tool.

Me: But what is the 79.5. What is it derived from?

Judge: From the Risk Assessment tool, I think we are getting circular now, sir. I think part of , part of the problem I will tell you part of the problem is you don't think that I understand your arguments. I do understand your arguments, I respect your arguments, it is just that I disagree with them and I am denying your motions.

Me. Thank you very your honor.

Judge: But that does not mean I don't understand them, I do sir. I also wanted you to know because my staff looked it up for you while we were sitting. Your demurrer that was filed on the 10th is entered into the system, it was entered on the 11th and it just has not make it in the file. But it is, we have check on it.

Me. Thank you very much. I appreciate the time of the court today mam, thank you mam.

Judge. I will enter (?) ..we are in recess.