

1 Lisa McCamey SBN # 168215
2 ATTORNEY AT LAW
3 915 Cedar Street
4 Santa Cruz, CA 95060
5 Telephone: (831) 458-2889
6 Facsimile: (831) 460-9781
7 lisa.mccamey@sbcglobal.net

8 Attorney for Defendant
9 BRENT ADAMS

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 IN AND FOR THE COUNTY OF SANTA CRUZ

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff

17 v.

18 BRENT ADAMS,

19 Defendant;

) CASE NO. F22197
)
)
)

) NOTICE OF MOTION AND
) MOTION TO SET ASIDE
) COUNT ONE OF THE
) INFORMATION PURSUANT TO
) PENAL CODE SECTION 995;
) POINTS AND AUTHORITIES
)

) Date: March 11, 2013
) Time: 8:15 a.m.
) Dept.: TBA
)

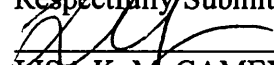
20 TO BOB LEE, DISTRICT ATTORNEY OF SANTA CRUZ COUNTY, AND HIS
21 DULY AUTHORIZED REPRESENTATIVE:

22 PLEASE TAKE NOTICE that on March 11, 2013, in Department TBA at 18:15 a.m., or
23 as soon thereafter as the matter may be heard, the defendant, Brent Adams, will move this Court
24 for an order to set aside Count One of the Information pursuant to Penal Code section 995. This
25 motion will be based on the attached memorandum of points and authorities, on the court

1 records and pleadings in the court files for this case, and on any evidence and argument that
2 may be presented at the hearing on this motion.

3
4 Dated: February 25, 2013

Respectfully Submitted,


5 LISA K. McCAMEY
6 Attorney for Defendant,
7 BRENT ADAMS
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1

2

3

7

8

9

1 Police Department, to discuss the exit plan for the group. Lt. Richard told Ms. Ripley-Phipps
2 that the group needed to leave the building immediately based on the owner's wishes; that they
3 were trespassing, and he wanted to know their exit strategy. (RT V1 18:9-26; 19:1-7.) Ms.
4 Ripley-Phipps, who identified herself as a spokesperson for the group, said she needed to go
5 back to the group and discuss the plan. (RT V1 20-26.) At approximately 10:21p.m., Lt.
6 Richard called Ms. Ripley-Phipps cell phone, whereupon he was informed the group was not
7 immediately leaving and wanted more negotiations. (RT V1 20:10-25.)

8 On December 2, 2011, Lt. Richard again posted no trespassing fliers at 75 River Street.
9 At this point, Lt. Richard added Penal Code section 602, subdivision (m) to the flier, which had
10 previously only listed Penal Code section 602, subdivision (o). (RT V1 21:7-22; 22:21-26;
11 23:1-4.) On this occasion, Lt. Richard spoke with codefendant Cameron Laurendeau as he
12 walked by, and told him he was trespassing and needed to leave the building. (RT V1 27:23-26;
13 28:1-14.) Lt. Richard also contacted Ms. Ripley-Phipps again on her phone. Lt. Richard was
14 told the group was still meeting and discussing their plans. Lt. Richard told her they needed to
15 leave immediately and they were trespassing. (RT V1 28:15-26; 29:1-4.) Lt. Richard contacted
16 Ms. Ripley-Phipps again later that evening, and was told since the power went out they were
17 going to meet again the next morning to discuss their plans. (RT V1 RT V1 29:24-26; 30:1-15.)
18 Lt. Richard had no personal knowledge as to whether Ms. Ripley-Phipps was in the building
19 during these conversations. (RT V1 30:17-25; 31:1-15.)

20 On December 3, 2011, Lt. Richard went back to 75 River Street to post more fliers. At
21 that time, Lt. Richard contacted Ms. Ripley-Phipps outside the building and again told her she
22 was trespassing and asked for her exit strategy. Ms. Ripley-Phipps was in the company of a
23 gentleman who called himself Kelly, and was later identified at Daniel Walters. Mr. Walters
24 told Lt. Richard there was damage inside the bank. (RT V1 32:5-26; 33:1-26; 34:1-11.) Later
25 that afternoon Lt. Richard spoke again to Ms. Ripley-Phipps. She stated the group needed 24

1 hours to leave the bank and they wanted time to clean up. (RT V1 34:12-26; 35:1-12.) At
2 approximately 10:15 p.m., Lt. Richard went back to the building and it was vacant. (RT V1
3 36:7-18.)

4 **Testimony of Santa Cruz Police Sergeant Michael Harms**

5 Sgt. Harms testified that on November 30, 2011, at approximately 6:30 p.m., he took a
6 group of approximately 20 officers to 75 River Street to secure some open doors and engage in
7 “crowd control.” (RT V1 71:21-26; 72:1-9; 104:5-17; 109:23-26; 110:1-10.) Sgt. Harms had
8 been told that the property owners said whoever was in the building was trespassing and they
9 asked the police to have them leave. (RT V1 73:24-26; 74:1-2.) Sgt. Harms was aware that the
10 doors to the bank had been opened earlier a few hours earlier, and people had been freely
11 coming and going from the bank prior to his arrival, while approximately 15 police officers
12 were on scene. (RT V1 108:9-26; 109:1-11; 111:17-23.) Sgt. Harms and his group of 20
13 additional officers arrived in riot gear, including helmets, face masks, exposed batons, and
14 shields. (RT V1 113:16-26; 114:1-14.) At some point after Sgt. Harm’s group arrived, the other
15 15 officers also donned riot gear. (RT V1 117:11-25.) When Sgt. Harms’s group arrived, he
16 observed approximately 150 people gathered outside the building near the sidewalk. (RT V1
17 71:17-26; 72: 1-2.) Sgt. Harms testified that his group of officers in riot gear got “a response”
18 from the protesters. (RT V1 119:15-22.) Sgt. Harms approached the open doors with five other
19 officers, while 10 to 25 officers faced the crowd gathered on the sidewalk area. (RT V1 121:13-
20 26; 122:1-3.)

21 Sgt. Harms noted that the doors appeared to have been barricaded by furniture and
22 “things” stacked up in front of them. Some window also appeared to be covered with cardboard.
23 (RT V1 73:3-6.) Sgt. Harms then testified that actually when he arrived, the doors “open.”

24 Sgt. Harms and crew walked up to the doors to secure them open. Sgt. Harms then
25 addressed a group of about 20 to 25 people inside the building regarding the fact they “broke

1 into the bank,” including Mr. Adams. (RT V1 74:3-13; 76:5-13; 87:9-15.) He stated that within
2 “a minute or within five minutes” a large desk was “shoved” in front of the doors by a group of
3 people. (RT V1 73:7-13; 123:15-18.) Mr. Adams was approximately five feet inside the
4 building, and Sgt. Harms observed Mr. Adams as part of the group pushing a desk or bookshelf
5 in front of the doors. (RT V1 75:4-19; 85:11-18.) Mr. Adams stated to Sgt. Harms that they had
6 negotiated in the past, and told him to contact “Gabby.” (RT V1 75:20-26; 76:1-4.) At this point
7 more things were being stacked in front of the doors. (RT V1 76:14-26; 77:1-11.) Sgt. Harms
8 testified he was continuing to talk and trying to make contact with everyone. (RT V1 77:23-26;
9 78:1-3.) Sgt. Harms acknowledged that during this interaction there was a lot of yelling and
10 chanting, with the protesters using bullhorns to communicate. (RT V1 124:15-22.) Also Sgt.
11 Harms said he was able to communicate with people inside the bank, he acknowledged that he
12 heard “a lot of loud things” while he was there, including music, yelling, and chanting, and
13 there could have been a problem with what he heard. (RT V1 120:1-21; 125:3-9.) Sgt. Harms
14 stated the conversation he had with Mr. Adams happened within seconds. (RT V1 126:20-23.)
15 Mr. Adams did not have a bullhorn when he allegedly yelled something to the crowd of
16 protesters 40 to 50 feet away. (RT V1 133:20-26.) However other people in the crowd with
17 bullhorns were giving instructions to the protesters. (RT V1 134:3-8.)

18 Sgt. Harms also recognized codefendant Frank Alcantara on top of the desk, twisting a
19 camera attached to the inside of the building. (RT V1 78:9-26; 79:1-8.)

20 At one point, approximately 150 to 200 people on the sidewalk began advancing
21 towards the doors and shouting back and forth to the people in the bank, 40 to 50 feet away. Sgt.
22 Harms alleged that Mr. Adams was directing this group to secure the doors. (RT V1 81:3-20.)
23 Sgt. Harms described the group on the sidewalk as emotionally charged, angry and hostile. (RT
24 V1 82:2-6.) Soon thereafter, Sgt. Harms and his group withdrew. (RT V1 82:22-26; 83:1-3.)
25

1 **Testimony of Santa Cruz Police Detective Michael Hedley**

2 On November 30, 2011, Det. Hedley was assigned to go to 75 River Street regarding a
3 planned protest. He and Det. Damon Williams arrived just before 4:00 p.m., and stationed
4 themselves on the River levee across from the bank. (RT V1 153:18-26; 154:1-9; 188:12-21.)
5 Shortly after they arrived, the officers saw the protesters arrive and the bank. Immediately they
6 saw a group of 40 to 50 people coming and going from inside the bank, carrying wood furniture
7 and pallets. (RT V1 155:1-13; 156:1-12.) When Det. Hedley first arrived, it was his impression
8 the doors of the bank were unlocked. (RT V1 190:15-18; RT V2 17:23-26; 18:1-5.) The number
9 of protesters "kept growing," up to approximately 100 people, as the officers kept watch on the
10 building. Members of the public were moving freely in and out of the bank. (RT V1 156:8-12;
11 183:5-8; RT V2 19:5-11.) In the video shot November 30, 2011, Det. Hedley identified Brent
12 Adams exit and enter the building with 7 or 8 plastic trashcans. Det. Hedley observed Mr.
13 Adams put a trashcan outside by a tree. (RT V1 163:14-22; 165:13-24; RT V2 22:17-26; 23:1-3;
14 24:1-9.)

15 Det. Hedley returned on December 4, 2011 to document the condition of the premises.
16 (RT V1 169:14-19.) He noticed plywood pieces and personal items in front of the bank, signs
17 covering the inside of the windows, furniture stacked up against the doors, and the for rent sign
18 outside had graffiti on it. (RT V1 170:3-16.) Inside the building, Det. Hedley noticed graffiti on
19 some of the walls and elevator, some security cameras had been removed or disconnected, many
20 handwritten protest signs on the walls, some garbage, and some broken cabinets and a broken
21 ladder leading to the roof. (RT V1 171:22-26; 172:1-24; 179:3-9.) Det. Hedley stated there
22 were also "rules" posted inside the building, one of them being "no vandalism." There was also
23 a list of supplies needed, including window cleaner, brooms, rags, sponges, and trash bags. (RT
24 V2 34:14-19; 35:8-23.) Det. Hedley stated there were several areas in the bank where the
25

1 graffiti appeared to have been painted over with beige paint, and area where it appeared
2 someone had tried to scrub the graffiti off the walls. (RT V2 36:7-24; 37:7-13.)

3 Det. Hedley acknowledged he had no way of knowing who painted graffiti the walls,
4 moved furniture in the building, or otherwise caused damage inside the bank. (RT V1 176:15-
5 16; 184:19-24; 196:3-17.)

6 On December 1, 2011, Det. Hedley was filming Lt. Richard as he placed no trespassing
7 signs on the outside doors of the building. Det. Hedley observed Mr. Adams exit the building
8 and speak to Det. Richard. (RT V2 25:19-24; 27:18-26; 28:1-4; 29:7-9.) Mr. Adams told Lt.
9 Richards that they had tried to talk to the police the night before, they had refused to speak to
10 him. (RT V2 29:16-26; 30:1-9.) Lt. Richard responded that he did not know that. (RT V2 30:10-
11 12.)

12 **Testimony of Santa Cruz Police Officer William Winston**

13 On November 30, 2011, Officer Winston was assigned to observe the activity of a
14 planned march. (RT V2 60:13-25.) Officer Winston testified that he saw Mr. Adams during the
15 march going west down Water Street and going in and out of the building at 75 River Street.
16 (RT V2 79:6-26.) After Officer Winston arrived at the bank, he had a conversation outside the
17 bank with Mr. Adams, wherein Mr. Adams told Officer Winston he had made the banner that
18 was actively being hung outside the bank by other people, and misspelled the word "occupy."
19 (RT V2 80:2-26; 117:18-26; 118:1-15.) Officer Winston had no idea when the sign was made,
20 or when the misspelling of "occupy" was corrected. (RT V2 80:17-23; 118:16-26; 119:1-6.)
21 After this conversation, Officer Winston saw Mr. Adams inside the bank, but did not know what
22 he was doing. (RT V2 81:1-7.)

23 **Testimony of Santa Cruz Police Detective David Gunter**

24 Det. Gunter was assigned the task of getting an estimate of the damage caused during
25 the occupation of 75 River Street from November 30, 2011 through December 3, 2011. (RT V2

1 5:16-20.) Det. Gunter spoke to a Laicia Bucher, who was the regional property manager for
2 Wells Fargo Bank. (RT V2 5:21-26; 6:1-3.) Ms. Bucher received estimates from six different
3 companies that estimated the damage to be approximately \$23,000.00. (RT V2 6:4-24.)

4 **Holding Order**

5 Initially, the magistrate stated he had not heard sufficient evidence to conclude there was
6 reasonable cause to believe that there was agreement to establish a conspiracy as alleged in
7 Count 1 of the Complaint. The magistrate made factual findings that there was a planned march
8 to banks in downtown Santa Cruz and foreclosed property. That during the course of the march,
9 someone somehow gained entry into 75 River Street. A “spontaneous” event ensued where
10 people entered the building without the consent of the owner. (RT V2 129:10-22; 132:18-24.)
11 The magistrate found that the evidence was insufficient to infer that there was an agreement to
12 trespass; when the building became open and people “spontaneously” entered. (RT V2 129:23-
13 26; 138:13-26.) The magistrate concluded that based on all of the evidence, he could not infer
14 there was an agreement to go into the building, occupy it, and stay there even after being given
15 trespass warnings by law enforcement. (RT V2 139:7-15.)

16 As to the Penal Code section 602(m) charge alleged in Count 3, the magistrate did not
17 issue a holding order based on the fact it appeared the trespass was a “transient coming and
18 going,” and no one was removed from the building. (RT V2 131:12-17.)

19 With regard to the Penal Code section 602(o) charge alleged in Count 4, the magistrate
20 found that Mr. Adams was at 75 River Street on “multiple days,” and he was present in the
21 building after it was announced that the agents of the bank had given law enforcement the
22 authority to order people out and he was being asked to leave or he would be found in violation
23 of trespassing laws. (RT V2 130:1-8.)

24 The magistrate then found that the Penal Code section 594 alleged in Count 2 was a
25 natural and probable consequence of the trespass. (RT V2 130:9-14.) Specifically, the Court

1 held that like Mr. Alcantara, Mr. Adams was a “direct perpetrator,” or “directly” violated Penal
2 Code section 602(o), and his conduct “had the natural and probable consequence of aiding and
3 abetting a vandalism charge.” In other words, the Court held that Mr. Adams aided and abetted
4 the vandalism by his “active trespass.” (RT V2 139:1-20; 142: 19-26; 143:1-16.)

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 I. STANDARD OF REVIEW

7 A. The Information Shall Be Set Aside If The Defendant Has Been 8 Committed Without Probable Cause

9 In determining a motion brought under Penal Code section 995, the superior court sits as
10 a reviewing court. (*People v. Laiwa* (1983) 34 Cal.3d 711, 718.) Information **shall** be set aside
11 if the defendant has been committed without probable cause. (Penal Code section 995(a)(2)(B).
12 Emphasis added.) Therefore, there must be some “**evidence**” at the preliminary hearing
13 supporting **each essential element** of the charges in the information. (*Garabedian v. Superior*
14 *Court* (1963) 59 Cal.2d 124, 127. Emphasis added.) And the inferences which may be drawn
15 from such evidence **may not be speculative**. (*Birt v. Superior Court* (1973) 34 Cal.App.3d 934,
16 938. Emphasis added.) Those inferences must generate a **strong suspicion** of the **guilt** of the
17 **accused** [and not merely that a crime was committed].” (*Malleck v. Superior Court* (1956) 142
18 Cal.App.2d 396, 397. Emphasis added; internal quotes omitted.) The evidence introduced at the
19 preliminary hearing must make it more probable than not that **the accused** committed the crime
20 charged in the information to deny a section 995 motion. (*Id.* at p. 399. Emphasis added.)
21 One may challenge individual counts as well as the entire information. (*People v. Hudson*
22 (1917) 35 Cal.App. 234, 237.)

23 The test has been stated in various ways: a defendant may be held to answer on a
24 showing of “such state of facts as would lead a man of ordinary caution or prudence to believe
25 and conscientiously entertain a **strong suspicion of guilt** of the accused.” (*People v. Uhlemann*
(1973) 9 Cal.3d 662, 667. Emphasis added.) “If the record shows **strong and credible evidence**

1 of defendant's **guilt**, the magistrate may reasonably assume the possibility of his guilt." (*People*
2 *v. Slaughter* (1984) 35 Cal.3d 629, 637. Emphasis added.)

3 Moreover, and highly relevant to this case, if the magistrate makes negative factual
4 findings on the evidence introduced which are fatal to a charge, the People **may not** file that
5 charge in the information, notwithstanding Penal Codes section 739. Depending on the
6 circumstances, those fatal negative findings may be implied, rather than express. (*Walker v.*
7 *Superior Court* (1980) 107 Cal.App.3d 884, 888-890.)

8
9 **II. MR. ADAMS CANNOT BE HELD TO ANSWER ON THE VANDALISM**
10 **CHARGE ON THE THEORY THAT HIS ACT AS A DIRECT PERPETRATOR**
11 **IN A TRESPASS WAS A NATURAL AND PROBABLE CONSEQUENCE OF**
12 **AIDING AND ABETTING A VANDALISM.**

13 **A. The Natural and Probable Consequences Doctrine Requires that Mr.**
14 **Adams Aided and Abetted the Target Crime.**

15 Initially, Mr. Adams could not be liable for a vandalism charge unless he **aided and**
16 **abetted** the target crime, which was trespassing. The court found that the vandalism was a
17 natural and probable consequence of the trespass, thereby finding that trespass was the target
18 offense, and vandalism was the non-target offense. The court also made a contradictory factual
19 finding that Mr. Adams was a "direct perpetrator" of the trespassing charge, not an aider and
20 abettor.

21 "[A] person who **aids and abets** a confederate in the commission of a criminal act is
22 liable not only for that crime (the target crime), but also for any other offense (nontarget crime)
23 committed by the confederate as a 'natural and probable consequence' of the crime originally
24 aided and abetted." [Citation omitted.] (*People v. Valdez* (2012) 55 Cal.4th 82, 148-149.) The
25 evidence must show that the defendant, (1) with **knowledge** of the confederate's unlawful
purpose, and (2) with the **intent** of committing, encouraging, or facilitating the commission of
any target crime(s), (3) aided, promoted, encouraged, or instigated the commission of the target
crime(s); whether (4) the defendant's **confederate** committed an offense *other than* the target

1 crime(s); and whether (5) the offense committed by the confederate was a natural and probable
2 consequence of the target crime(s) that the defendant encouraged or facilitated. (*People v.*
3 *Prettyman* (1996) 14 Cal.4th 248, 267. Italics in original. Emphasis added.)

4 “The latter question is not whether the **aider and abettor** *actually* foresaw the
5 additional crime, but whether, judged objectively, it was *reasonably* foreseeable. [Citation.]’
6 [Citation.] Liability under the natural and probable consequences doctrine ‘is measured by
7 whether a reasonable person in the defendant's position would have or should have known that
8 the charged offense was a reasonably foreseeable consequence **of the act aided and abetted.**’
9 [Citation.]’ [Citations omitted.]” (*People v. Favor* (2012) 54 Cal.4th 868, 874. Italics in original.
10 Emphasis added.)

11 Mr. Adams cannot be held liable on a natural and probable consequences theory if the
12 magistrate found he acted “spontaneously” and alone. No “confederate” was ever identified in
13 the preliminary hearing, and the magistrate made the specific factual finding that Mr. Adams
14 was a “direct perpetrator” in the trespass. Without evidence of a **specific** confederate or
15 coparticipant to the trespass, there likewise can be no evidence (and none was presented) that
16 Mr. Adams had **knowledge** of some mystery confederate’s unlawful purpose in trespassing, that
17 Mr. Adams **intended** to commit, encourage or facilitate the commission of a trespass by some
18 other mystery person, and that Mr. Adams actually **did** aid, promote, encourage, or instigate a
19 trespass by another mystery person, the natural and probable consequences of which was a
20 felony vandalism committed by the mystery confederate. Likewise it is clear that anyone could
21 have committed the vandalism, not just a mystery confederate of Mr. Adams. No evidence was
22 presented at the preliminary hearing to suggest otherwise. (*People v. Prettyman* (1996) 14
23 Cal.4th 248, 267. Emphasis added.)

24 The magistrate made clear and unambiguous factual findings that Mr. Adams was a
25 “direct perpetrator” of the trespassing charge. This factual finding is fatal to the charge that Mr.

1 Adams **aided and abetted** a trespass, the natural and probable consequence of which was a
2 felony vandalism. (*Pizano v. Superior Court, supra*, 21 Cal.3d 128, 133; *Jones v. Superior*
3 *Court, supra*, 4 Cal.3d 660, 664; *Walker v. Superior Court* (1980) 107 Cal.App.3d 884, 888-
4 890.) Therefore, the felony vandalism charge in Count 1 must be dismissed.

5
6 **B. There is Absolutely No Evidence that Mr. Adams Aided and Abetted Felony
Vandalism as Alleged in Count One of the Information.**

7 Likewise, the record is devoid of any evidence that Mr. Adams directly aided and
8 abetted a felony vandalism. To prove Mr. Adams aided and abetted a felony vandalism, the
9 prosecution must present evidence that:

- 10 1. The perpetrator committed the crime;
11 2. The defendant knew that the perpetrator intended to commit the crime;
12 3. Before or during the commission of the crime, the defendant intended to aid and abet
13 the perpetrator in committing the crime; AND
14 4. The defendant's words or conduct did in fact aid and abet the perpetrator's
15 commission of the crime.

16 Someone *aids and abets* a crime if he or she knows of the perpetrator's unlawful purpose
17 and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or
18 instigate the perpetrator's commission of that crime. (CALCRIM 401; italics in original.)

19 As stated above, no evidence was presented of who the "perpetrator[s]" of the vandalism
20 were. By logical extension, no evidence was presented that Mr. Adams **knew** that any
21 perpetrator intended to commit vandalism, that he **intended** to aid and abet the mystery
22 perpetrator, and that he **did in fact aid and abet** the perpetrator's commission of the crime.
23 Therefore, Mr. Adams should not have been held to answer on the felony vandalism charge.

24 //

25 //

1
2 **CONCLUSION**

3 For the reasons herein and otherwise understood, Mr. Adams respectfully request this
4 Court grant his motion to dismiss Count One of the Information.

5 Dated: February 25, 2013

Respectfully Submitted,

6
7 

8 Lisa K. McCamey
9 Attorney for BRENT ADAMS
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25


1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

I am a citizen of the United States and I am over the age of eighteen years and not a party to the within-entitled action.

**Rebekah Young
Deputy District Attorney
Santa Cruz County District Attorney's Office
701 Ocean Street, Room 200
Santa Cruz, CA 95060**

Alexis Briggs, Attorney at Law
Alexis@Pier5Law.com

Jesse Rubin, Esq.
Page, Salisbury & Dudley
jruben@psdlaw.com



Lisa K. McCamey