

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
)
)
)
) RESPONSE TO OPPOSITION TO
) MOTION TO SET ASIDE
) COUNT ONE OF THE
) INFORMATION PURSUANT TO
) PENAL CODE SECTION 995;
) POINTS AND AUTHORITIES
)
) Date: March 11, 2013
) Time: 1:30 p.m.
) Dept.: 3
)

20 **I. THE PROSECUTION IS INCORRECT IN ITS ASSERTION THAT A**
21 **DIRECT PERPETRATOR CAN BE LIABLE AS AN AIDER AND**
22 **ABETTER WHEN ACTING ALONE.**

23 The prosecution misreads Mr. Adams argument to mean that a direct perpetrator can never
24 be liable on an aiding and abetting theory. That is not the argument. The argument is Mr.
25 Adams cannot be held liable on an aiding and abetting theory as a direct perpetrator if the

1 magistrate found he acted “spontaneously” and **alone**. (Defendant’s moving papers, page 12,
2 lines 11-12.)

3 Even though a direct perpetrator and aider and abettor can be **equally liable** for the natural
4 and probable consequences of a target crime (*People v. Olguin* (1994) 31 Cal.App.4th 1355,
5 1366-67, emphasis added), the direct perpetrator and/or aider and abettor still must have acted
6 with **knowledge** of his confederate's unlawful purpose, and with the **intent** of committing,
7 encouraging, or facilitating the commission of any target crime(s). (*People v. Prettyman* (1996)
8 14 Cal.4th 248, 267. Emphasis added.) Of the hundreds of people who entered and exited 75
9 River Street over the course of three days, no “confederate” was ever identified in relation to
10 Mr. Adams, or any other defendant¹. Likewise, no evidence was ever presented that would
11 establish Mr. Adams had knowledge of anyone else’s unlawful purpose, and, more importantly,
12 that he had the **specific intent** of encouraging or facilitating the commission of the target crime
13 by any one of the hundreds of unidentified people who entered the building. To the contrary, the
14 evidence established that the doors were already open when people started to “spontaneously”
15 pour into the building. Lastly, there was absolutely no evidence presented regarding who
16 committed the vandalism, and/or when it occurred.

17 In every case cited by the prosecution, whether the defendant is charged as a direct
18 perpetrator or an aider and abettor, a conviction is only upheld if the evidence is clear that the
19 defendant knew his confederate(s), had knowledge of the crime his confederate(s) **planned** to
20 commit, and the defendants all **acted together** in committing and facilitating each other in the
21 target offense. (See e.g., *People v. Beeman* (1984) 35 Cal.3d 547; *People v. Prettyman* (1996)
22 14 Cal.4th 248, 267; *People v. Croy* (1985) 41 Cal.3d 1[evidence insufficient to establish as a
23
24

25 ¹ The magistrate made the specific factual finding that the entering of 75 River Street was a “spontaneous event” by
all defendants, thereby finding that there was no plan or knowledge on the part of these defendants, or anyone else.

1 matter of law that, even assuming appellant knew of the perpetrator's unlawful intent, he aided
2 them with the intent of facilitating the commission of a robbery].)

3 In *People v. Culuko* (2000) 78 Cal.App.4th 307, the evidence established that the
4 codefendants acted together in committing child abuse, the natural and probable consequences
5 of which was a murder. The defendant lived with the codefendant mother, took care of the baby,
6 and at times, was left alone with the baby, and was watching the baby on the day of it's death.
7 In addition, the jury was instructed that the codefendants could be convicted as aider and
8 abettors, **or** as direct perpetrators. (*Id.* at pp. 323, 334.) In *People v. Olguin, supra*, 31
9 Cal.App.4th 1355, Olguin was arrested and charged with his identified codefendants, Mora and
10 Hilario, for their joint act of confronting a rival gang member, leading to a murder. The
11 evidence was clear that Olguin and his identified codefendants shared the intent to commit the
12 target crime, and facilitated and encouraged each other in that crime, the natural and probable
13 consequences of which was a murder.

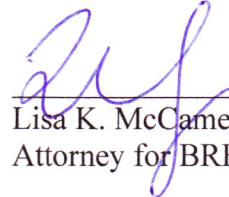
14 As stated in Mr. Adams moving papers, absolutely no evidence was presented regarding
15 which individual or individuals of the hundreds of people who spontaneously entered 75 River
16 Street committed the alleged acts of vandalism, and/or when within (or outside of) the three day
17 occupation the vandalism occurred. No evidence was presented that Mr. Adams planned to act,
18 or did act with any specific other confederate in committing a trespassing, or that he had the
19 specific intent to aid any specific confederate. Quite to the contrary, the magistrate made a
20 specific factual finding that this was a "spontaneous" act on Mr. Adams's part, which is
21 contrary to the specific intent required to aid and facilitate a confederate to commit the target
22 crime. This factual finding is fatal to any theory that Mr. Adams aided and abetted an
23 unidentified confederate to commit a trespass.

1 **CONCLUSION**

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

4 Dated: March 6, 2013

Respectfully Submitted,

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7 Lisa K. McCamey
8 Attorney for BRENT ADAMS
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1 **PROOF OF SERVICE**

2 I, the undersigned, declare:

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

5 That on March 6, 2013, I caused a copy of the within: RESPONSE TO OPPOSITION
6 TO MOTION TO SET ASIDE COUNT ONE OF THE INFORMATON PURSUANT TO
7 PENAL CODE SECTION 995; POINTS AND AUTHORITES to be served addressed as
8 follows:

9 Rebekah Young
10 Deputy District Attorney
11 Santa Cruz County District Attorney's Office
12 701 Ocean Street, Room 200
13 Santa Cruz, CA 95060

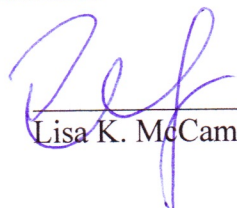
14 That on March 6, 2013, I caused a copy of the within: RESPONSE TO OPPOSITION
15 TO MOTION TO SET ASIDE COUNT ONE OF THE INFORMATON PURSUANT TO
16 PENAL CODE SECTION 995; POINTS AND AUTHORITES to be served via email
addressed as follows:

17 Alexis Briggs, Attorney at Law
18 Alexis@Pier5Law.com

19 Bryan Hackett, Attorney at Law
bhackettesq@gmail.com

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

23 I declare under penalty of perjury that the foregoing is true and correct.
24 Executed this 6th day of March, 2013 at Santa Cruz, California.

25 
Lisa K. McCamey