

FILED

JAN 18 2013

ALEX CALVO, CLERK  
BY  
DEPUTY, SANTA CRUZ COUNTY

COPY

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CRUZ

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

vs.

BRENT ADAMS,  
DESIREE FOSTER,  
BECKY JOHNSON  
ROBERT NORSE KAHN  
GABRIELLA RIPLEY-PHIPPS,  
FRANKLIN ALCANTARA, and  
CAMERON LAURENDEAU

Defendants.

Case Nos. F22197, F22191, F22194,  
F22196, F22198, F22689 and F22698

ORDER IMPOSING SANCTIONS  
PURSUANT TO CCP § 177.5

This matter came on regularly for hearing by the Court on January 7, 2013, in Department 6, the Honorable Judge Paul Burdick presiding, pursuant to Orders to Show Cause issued by this Court on August 20, 2012, and on January 4, 2013. Deputy District Attorney Rebekah W. Young appeared on her own behalf, and on behalf of the Santa Cruz County District Attorney, having been previously directed to show cause why monetary sanctions

1 should not be imposed against her and/or her employer, for her violations of the Court's  
2 previously issued discovery orders. Defendants' appeared with each of their attorneys of  
3 record.

4 The Court reviewed and considered all of the relevant papers, minute orders and  
5 Memorandum of Points and Authorities filed by the parties in support of and in opposition to  
6 the issuance of sanctions. Having considered the arguments of counsel and having evaluated  
7 the explanations of Deputy District Attorney Young for her failure to comply with the Court's  
8 order, the Court summarizes the circumstances which require the issuance of this order as  
9 follows:  
10

- 11 1. The District Attorney filed its complaint against these seven defendants and four other  
12 individuals on February 7, 2012, charging each with one count of felony conspiracy  
13 (Penal Code § 182(a)(1)), one count of felony vandalism (Penal Code § 594(b)(1)) and  
14 two counts of misdemeanor trespass (Penal Code §§ 602(m)(o)) for their activities  
15 which occurred between November 30, 2011, and December 4, 2011, at the vacant  
16 Wells Fargo Bank building located at 75 River Street in downtown Santa Cruz. The  
17 charged defendants were part of a group of over one hundred citizens who marched to  
18 the bank building as part of nationwide protest activities occurring in the fall and winter  
19 of 2011 known as the "Occupy Movement".  
20
- 21 2. Each of the defendants were arraigned on various dates during the month of February  
22 2012 and each requested court appointed counsel because of their indigent status, with  
23 the exception of Robert Norse Kahn and Cameron Laurendeau who retained private  
24 counsel. The Court appointed separate counsel for each defendant, utilizing the public  
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1 defender, the two contracted alternate public defender law firms and six other attorneys  
2 on the courts approved conflict list.

3 3. Ms. Young was the Deputy District Attorney assigned from the District Attorney's  
4 office to prosecute the cases. She appeared on behalf of the District Attorney at each  
5 arraignment and at each hearing date on all cases related to these proceedings.  
6

7 4. At the initial arraignment for each defendant Assistant District Attorney Young  
8 provided defense counsel with an initial discovery packet which consisted of discs  
9 containing the written police reports of the Santa Cruz Police Department officers who  
10 witnessed the events leading to the "occupation" of the bank building and who  
11 conducted investigations after the initial entry by the protester's into the building.  
12 Evidence admitted at two earlier preliminary hearings, involving four of the other  
13 charged defendants (not involved in the instant proceedings), established that some fifty  
14 to seventy five people entered the building at various times throughout the protest  
15 including curious onlookers, a Santa Cruz City Council member and a Santa Cruz  
16 Sentinel newspaper photographer.  
17

18 5. During the month of March 2012 counsel for each defendant served ADA Young with  
19 their informal discovery requests including among other things "any and all video tapes  
20 of the scene, the alleged incident, including surveillance tape videos of the incident".  
21 The requests also demanded production of any and all photographs taken by Santa Cruz  
22 law enforcement personnel concerning the incident, the entry into the building, the  
23 occupation of the building and the ensuing damage to the property.  
24

25 6. Assistant District Attorney Young was aware that Officer Winston of the Santa Cruz  
26 Police Department videotaped the protest march as it traveled to the bank. She was also  
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1 aware that Detective Williams continuously videotaped events occurring at the building  
2 for a period of hours commencing at 4:00p.m. on November 30, 2011. She was also  
3 aware that Officer Hedley and/or Detective Williams and other Santa Cruz Police  
4 Department officers videotaped events depicting persons entering and exiting the  
5 building at various times on December 1, 2012, after the building was first posted with  
6 written notices that persons remaining in the building would be deemed trespassers by  
7 the owner of the property, and at various times thereafter until the building was vacated.  
8

- 9 7. In a police report dated December 16, 2011, Santa Cruz Police Officer Hedley, who was  
10 assigned to do the follow up investigation of the case, confirmed that he utilized  
11 photographs and his review of the Santa Cruz Police Department videos in his attempt  
12 to identify specific individuals involved in the protest who entered the building.  
13
- 14 8. On March 14, 2012, a preliminary examination date was set for April, 16, 2012, with a  
15 confirmation date set for April 13, 2012, for hearing of the preliminary examination of  
16 defendants Kahn and Johnson.  
17
- 18 9. On March, 19, 2012, counsel for defendant Laurendeau served Assistant District  
19 Attorney Young with an informal discovery request pursuant to Penal Code § 1054.1  
20 which, among other things, included a request for "an electronic copy of a video  
21 recorded by Santa Cruz Police Department Officer Hedley on December 2, 2011....".  
22
- 23 10. On April 11, 2012, counsel for Kahn filed a motion to compel discovery with  
24 supporting declaration. That declaration established that despite numerous informal  
25 discovery requests made pursuant to Penal Code § 1054.1, Assistant District Attorney  
26 Young failed to produce and provide the videotapes in the possession of the District  
27 Attorney and the Santa Cruz Police Department.  
28

1 11. On April 13, 2012, the hearing to confirm the preliminary examination was conducted  
2 and the defendants' discovery motion was heard. Ms. Young appeared on behalf of the  
3 District Attorney. **The discovery motion was unopposed. The Court granted the**  
4 **motion and orally ordered Ms. Young to produce all items referenced in the**  
5 **discovery motion and specifically ordered the production of all photographs and**  
6 **all video tapes taken by the Santa Cruz Police Department which in any manner**  
7 **related to the alleged occupancy of the premises between November 30, 2012, and**  
8 **December 4, 2011.** Ms. Young was ordered to produce these items on or before May  
9 18, 2012, to all defense counsel in all cases. A discovery compliance review date was  
10 set for May 18, 2012. The preliminary examination date of April 16, 2012, was  
11 continued in the cases related to the defendants' Kahn and Johnson because new  
12 counsel substituted in that day for Kahn and counsel for Johnson requested additional  
13 time to review discovery which had been provided by Ms. Young just days prior. The  
14 matter was reset for preliminary examination on May 29, 2012, with a confirmation  
15 date of May 25, 2012. The Court then emphasized to Ms. Young that all photographs  
16 and all videotapes had to be produced by May 18, 2012, so that counsel would have a  
17 meaningful opportunity to cross examine witnesses at the preliminary hearing  
18 concerning the identity of the alleged offenders.

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22 12. On April 20, 2012, a preliminary hearing confirmation conference was heard relative to  
23 defendants' Adams, Alcantara, Foster, Laurendeau, Ripley-Phipps, Rector and Wilson.  
24 Counsel for Adams, Foster and Ripley-Phipps moved to continue the April 23, 2012,  
25 preliminary examination based upon unavoidable conflicts in their calendars. Those  
26 motions were granted and the preliminary examination date for those three defendants  
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1 was continued to May 29, 2012, to be joined with the preliminary hearing of defendants  
2 Kahn and Johnson. The preliminary hearing was confirmed for defendants Alcantara  
3 (Case #F22183), Laurendeau (Case #F22189), Wilson (Case #F22187) and Rector  
4 (Case #F19755). On that same date, the Friday before the Monday preliminary  
5 examination, Ms. Young produced to defense counsel nine CD's containing hundreds of  
6 Santa Cruz Police Department photographs and multiple hours of videos.  
7

8 13. On April 23, 2012, the preliminary examination was conducted in the cases against  
9 Alcantara, Laurendeau, Rector and Wilson. Ms. Young presented the District Attorneys  
10 evidence. Detective Gunter of the Santa Cruz Police Department testified for the  
11 prosecution. He testified as to the identity of the charged defendants and whether they  
12 were seen entering the building based upon his review of videos which were taken by  
13 the other officers, rather than his personal observations. One of the videos on which he  
14 based his testimony and identification of the various defendants had not been previously  
15 produced to defense counsel. At the conclusion of the preliminary examination this  
16 Court concluded that there was insufficient evidence to hold any of those four  
17 defendants to answer on any of the charged offenses.  
18

19  
20 14. On May 4, 2012, Assistant District Attorney Young refiled the cases against defendants  
21 Alcantara, and Laurendeau bearing the present case numbers.  
22

23 15. On May 18, 2012, the previously set discovery compliance hearing was held. Defense  
24 counsel represented that Ms. Young still had not produced the video from the dash-cam  
25 recorder of Officer Winston and videos taken during Officer Winston's assignment at  
26 the scene on November 30, 2011. The Court ordered that those videos as well as all  
27 others be provided prior to the May 25, 2012, confirmation conference.  
28

1 16. On May 25, 2012, the preliminary examination confirmation conference was held in the  
2 cases against defendants Adams, Johnson, Kahn and Ripley-Phipps. At that time all  
3 counsel moved to continue the preliminary examination set for May 29, 2012, on the  
4 grounds that Ms. Young had violated the Court's discovery order of April 13, 2012, and  
5 May 18, 2012, by failing to produce all videotapes. The motion to continue the  
6 preliminary examination was granted and Ms. Young was again ordered to produce **all**  
7 videos and deliver them to **all** defense counsel.  
8

9 17. On July 20, 2012, the refiled cases of defendants Alcantara and Laurendeau were  
10 consolidated with the cases of defendants Adams, Foster, Kahn, Johnson and Ripley-  
11 Phipps for purposes of the preliminary examination. The matters were set for  
12 confirmation conference on August 17, 2012, and preliminary examination on August  
13 20, 2012. At that time Ms. Young was asked by the Court whether all discovery had  
14 now been produced and all photographs and videos provided to defense counsel. She  
15 responded that everything had been produced and there was "nothing new" to produce.  
16 All counsel were directed to be prepared to proceed with the preliminary examination  
17 on August 20, 2012. Thereafter the Court took measures to set its calendar light for the  
18 week of August 20, 2012, for the purpose of conducting the preliminary examination of  
19 the seven defendants which was estimated to require three full court days.  
20  
21

22 18. At the confirmation conference on August 17, 2012, all counsel complained that Ms.  
23 Young had again failed to comply with the discovery orders of April 13, May 18 and  
24 May 25, 2012. Specifically, they asserted that Ms. Young had again failed to produce  
25 the critical videos taken by Detective Williams which had been utilized to establish the  
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1 identity of the offending protesters. All seven defendants requested a continuance of  
2 the preliminary examination until the previously ordered discovery was produced.

3 19. Rather than continuing the preliminary examination the Court ordered Ms. Young to  
4 deliver all the videos by 4:00 p.m. that day (August 17, 2012) to all defense counsel and  
5 directed her to show cause why sanctions should not be issued against her and the  
6 district attorney's office for its violation of the discovery orders previously issued. The  
7 Court informed Ms. Young that it was considering issuing an order dismissing the  
8 action because this was at least the third time the discovery orders had been violated.

9  
10 20. At the order to show cause hearing on August 20, 2012, Ms. Young appeared with  
11 supervising District Attorney David Sherman and District Attorney Bob Lee. The Court  
12 was persuaded that an order for dismissal would be excessively harsh and would  
13 unfairly deprive the People of an opportunity to address criminal wrongdoing. Both  
14 Mr. Sherman and Mr. Lee suggested that monetary sanctions should be considered  
15 instead. Ms. Young did not argue or suggest that she did not violate the discovery  
16 orders. Instead she explained that the violation was inadvertent resulting from  
17 "technological difficulties" which caused her to be unable to fully download all of the  
18 photographs and videos from the police department hard drive. She justified her failure  
19 to produce duplicates of the videos to counsel by claiming that the videos were  
20 uploaded to a You Tube channel to which the defendants were directed. In her brief  
21 filed with the court on the morning of the order to show cause hearing she cited  
22 authority which questioned whether the defendants were entitled to pre preliminary  
23 hearing discovery – ignoring that the discovery orders had already been issued pursuant  
24 to the authority of Penal Code § 1054.  
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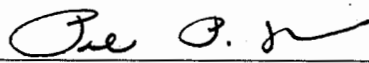
- 1 21. Because all of the videos were a critical component in determining the identity of the  
2 offenders and whether the charged defendants committed any of the alleged offenses,  
3 the Court was persuaded that it had no alternative but to continue the preliminary  
4 hearing yet again for the district attorneys violation of the discovery orders. In so doing  
5 significant court resources were squandered because three days of the court's time had  
6 been set aside for the purpose of hearing the preliminary examination as set.  
7
- 8 22. After considering Ms. Young's explanations for her violations of the Court's orders of  
9 April 13, May 18 and May 25, 2012, the Court was satisfied that Ms. Young had not  
10 acted with the intent to gain an advantage or to prejudice the defendants. However, the  
11 Court did conclude that she acted negligently in failing to retrieve and produce the  
12 videos as directed, that there was no good cause for the violations and her failure to  
13 comply as directed was without substantial justification.  
14
- 15 23. The Court was extremely frustrated that a new date would have to be selected for the  
16 preliminary examinations requiring the accommodation of scheduling conflicts for  
17 seven different defense counsel. By the time all available dates were explored the  
18 earliest date available to the Court and all counsel was four months later on January 7,  
19 2013. Rather than imposing monetary sanctions in the heat of the moment, the Court  
20 believed that further deliberation was necessary. Accordingly the Court directed  
21 counsel to file briefs concerning the Court's authority to issue monetary sanctions and  
22 whether such sanctions would be appropriate against Ms. Young and the district  
23 attorney's office. Hearing on the sanction issue was scheduled for the date of  
24 preliminary examination on January 7, 2013.  
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1 24. Ms. Young filed a brief on the morning of the hearing again suggesting that as a matter  
2 of law the district attorney had no obligation to provide discovery prior to the  
3 preliminary examination. Her position again ignored that the Court had ordered her to  
4 provide the discovery. Further, her response to the order to show cause demonstrated a  
5 lack of insight or concern about the degree to which her violations disrupted court  
6 scheduling, the schedules of defense counsel and the interests of the defendants and the  
7 community in achieving a prompt resolution of the cases.  
8

9 Therefore the Court finds and rules as follows:

- 10 1. Assistant District Attorney Young knowingly violated the orders of the Court of April  
11 13, May 18 and May 25, 2012, by failing to timely provide all photographs and videos  
12 in her possession and control to all defense counsel;  
13  
14 2. Her violations were committed without good cause and substantial justification;  
15  
16 3. The violations caused substantial disruption to the scheduling and conduct of business  
17 of the court resulting in wasted judicial resources and inconvenience to the parties,  
18 counsel and the community.  
19  
20 4. Pursuant to California Code of Conduct Procedure § 177.5 the Court hereby orders  
21 Assistant District Attorney Rebekah Young and/or her employer the District Attorney  
22 of Santa Cruz County to pay the sum of \$500 to the Superior Court of California,  
23 County of Santa Cruz by depositing its check with the Clerk of the Court on or before  
24 February 22, 2013.

25 DATED: 1/18/2013

26   
27 PAUL P. BURDICK  
28 Judge of the Superior Court

1 SUPERIOR COURT OF CALIFORNIA

2 COUNTY OF SANTA CRUZ

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4  
5  
6 THE PEOPLE OF THE STATE OF  
7 CALIFORNIA,

8 Plaintiff,

9 vs.

10 BRENT ADAMS,  
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13 ROBERT NORSE KAHN  
14 GABRIELLA RIPLEYPHIPPS,  
FRANKLIN ALCANTARA, and  
CAMERON LAURENDEAU

15 Defendants.

Case Nos. F22197, F22191, F22194,  
F22196, F22198, F22689 and F22698

*Certificate of Mailing*

16  
17 I, ALEX CALVO, Clerk of the Superior Court of the State of California for the County  
18 of Santa Cruz, and not a party to the within action, hereby certify that on **January 22, 2013**, I  
19 served copies of the attached ORDER TO IMPOSE SANCTIONS PURSUANT TO CCP §  
20 177.5 by depositing the enclosed in sealed envelopes with the postage thereon fully prepaid, in  
the United States Post Office at Santa Cruz, California, addressed as follows:

21 Rebekah W. Young, ADA  
22 Office of the District Attorney  
23 701 Ocean Street, Room 200  
24 Santa Cruz, CA 95060  
*Via: DA Pick up box Room 120*

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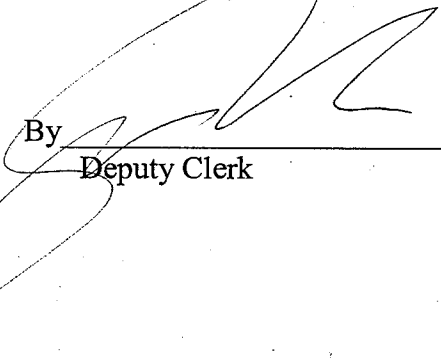
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DATED: 1/22/13

ALEX CALVO, Clerk

By   
Deputy Clerk