

1 Bryan J. Hackett
2 **SBN 262367**
3 289 Water Street
4 Santa Cruz, CA 95060
5 Telephone: (831) 295-3513
6 Facsimile: (831) 789-1831

7 Attorney for Defendant
8 Gabriella Celeste Ripleyhipps

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SANTA CRUZ
12

13 PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: F22198
14 Plaintiff,)
15 vs.) **RESPONSE TO MOTION IN**
16 Gabriella Celeste Ripleyhipps,) **OPPOSITION TO MOTION TO SET**
17 Defendant) **ASIDE THE INFORMATION UNDER**
) **CALIFORNIA PENAL CODE §995 :**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT THEREOF**
)
) Date: March 11, 2013
) Time: 1:30 p.m.
) Dept.: 3

18
19 **I.**
20 **THE GOVERNMENT’S CASE FAILS TO ESTABLISH ESSENTIAL ELEMENTS OF**
21 **THE CRIMES CHARGED UNDER ANY ONE OF ITS THREE THEORIES**

22 The Prosecution, in its moving papers lays out three potential ways one could be guilty
23 of the vandalism: 1) they personally committed an act of the vandalism; 2) they aided and
24 abetted the vandalism; and 3) they aided and abetted the trespass, and the vandalism was a
25 natural and probable consequence of the trespass. (People’s Response, p. 8, ll. 12-16.) This
26 response will address those three theories in turn.
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1 **A. Gabriella Ripleyhipps Committed no Act of Vandalism.**

2 Nobody disputes that there was no evidence whatsoever offered, or even speculated
3 upon, that Ms. Ripleyhipps committed any acts of vandalism. The first of the Government's
4 theories can be disregarded out of hand in its entirety.

5 **B. No Evidence Was Set forth to Establish the Necessary Elements of Aiding and**
6 **Abetting the Vandalism as Pertains to Ms. Ripleyhipps.**

7 According to the People's Response to Defendants' 995, "...an information should be
8 set aside only when there is **a total absence of evidence to support a necessary element of**
9 **the offense charged.**" *People v. Superior Court (Jurado)* (1992) 4 Cal.App.4th 1217, 1226,
10 cited at p. 2, ll. 19-22 in the People's Response (**emphasis added.**) The People's brief goes
11 on to cite *In Re Juan G.* (2003) 112 Cal.App.4th 1 for the proposition that, "[a]mong the
12 factors which may be considered in determining aiding and abetting are presence at the crime
13 scene, companionship, and conduct before and after the offense." (People's Response, p. 6, ll.
14 17-20.) It bears mentioning that the "crime scene" for the vandalism was **inside the building**,
15 precisely the place the People's evidence failed to ever place Ms. Ripleyhipps. Moreover,
16 one cannot accompany someone when the two people are in different places, as Ms.
17 Ripleyhipps and the direct perpetrator of the vandalism clearly were. Further, there is little
18 or no evidence of what Ms. Ripleyhipps' conduct was before the alleged trespass, but the
19 evidence clearly established her conduct after the alleged trespass was designed and directed
20 towards a speedy and peaceful **EXIT** from the building for all of those inside. Finally, it
21 becomes nonsensical to speak of "before" and "after" the actual vandalism, as there was no
22 evidence of when it actually occurred, or if it even occurred during the period of time in
23 question. (RT, 1/8/13, pp. 195-6.)
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1 All of those factors are ultimately neither here nor there when this Court considers
2 that, regardless of what factors *may* be considered, the People have the burden of establishing
3 at least some modicum of evidence on each and every necessary element of the crime
4 charged, in the case of this particular theory, aiding and abetting vandalism. Those elements
5 are as follows:

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

CALCRIM 401

14 First, it was never established who committed the vandalism, or when it was actually
15 committed. Ergo, the People's case fails to establish any evidence of who the perpetrator
16 was, or that he or she committed the crime, thus failing to meet their burden on the first
17 element. Not one iota of evidence was established to indicate that Ms. Ripleyhipps knew the
18 unidentified, mystery perpetrator, let alone that she knew that he or she intended to do
19 anything whatsoever. Accordingly, the People have failed to meet their burden on the second
20 element. As to element three, we don't know when the crime of vandalism was committed, so
21 it becomes impossible to state what anyone did before or during said commission. Moreover,
22 there was no evidence whatsoever offered as to Ms. Ripleyhipps' intent to aid and abet
23 anyone in the commission of any vandalism. As such, the People failed to meet their burden
24 on the third element. Finally, the defendant's words and conduct, it was well established at
25 the Preliminary Hearing, were designed to facilitate the smooth and trouble free exit from the
26 building by all of those inside. If her words and conduct aided and abetted anything, they
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1 aided and abetted the Santa Cruz Police Department's efforts to achieve a smooth and
2 painless exit from the building. (RT, 1/7/13, pp. 50-1.) So, the People failed to meet their
3 burden on the fourth and final element, as well. As a result, and in accordance with the case
4 of *Jurado, supra*, 4 Cal.App.4th at 1226, cited in the People's response papers, this charge
5 should be set aside due to the total absence of evidence on each and every element alleged.
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7 **C. No Evidence Was Set Forth to Establish that Ms. Ripleyhipps Aided and**
8 **Abetted Anyone's Commission of a Trespass, Nor Was it the Ruling of the Trial**
9 **Court; the Vandalism Cannot be Seen as a Natural and Probable Consequence of**
10 **the Trespass**

11 First of all, this theory flies directly in the face of the Judge's ruling at the Preliminary
12 Hearing. Judge Burdick ruled that one Aided and Abetted the vandalism by way of
13 personally committing the trespass. That ruling was not based on any evidence of the
14 elements of aiding and abetting, and thus must be reversed. The Judge ruled that the entry
15 into the building was a fluid, spontaneous event; unplanned. Thus, it is impossible to say that
16 Ms. Ripleyhipps, or anyone else, knew the perpetrator was going to commit the trespass
17 when the perpetrator himself/herself did not know it. Thus, the People failed to meet their
18 burden on the second element of aiding and abetting.
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21 As to the third and fourth elements, the People's response states that one can aid and
22 abet the trespass without ever entering the building, "as long as it can be shown that the
23 defendant aided and abetted the entry made by others." (People's Response, p. 8, ll. 17-19.)
24 Again, it was established time and again at the Preliminary Hearing that Ms. Ripleyhipps
25 relayed messages back and forth between the Police and whomever was in the building, in an
26 effort to **FACILITATE AN EXIT NOT AID AND ABET AN ENTRY**. There was simply
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1 no evidence set forth to establish the necessary elements of aiding and abetting anyone's
2 entry. The People point to the fact that Ms. Ripleyhipps "negotiated on site," but fails to
3 acknowledge the fact that any and all conversations Ms. Ripleyhipps had with law
4 enforcement were **AFTER** the alleged entry by others, and designed to facilitate a smooth and
5 painless exit. Next, the Prosecutor makes the leap of intuition that Ms. Ripleyhipps "was
6 well aware the vandalism had taken place – she delayed the groups exit until their clean up
7 attempts could be completed." (People's Response, p. 8, ll. 23-26.) First, Ms. Ripleyhipps,
8 in the words of the People's own witness was "just the messenger." (RT, 1/7/13, p. 48.)
9 There was never any evidence that she had the power or control to delay anything, but rather
10 only the ability to relay the Police's message to the people inside, and the messages from the
11 people inside back to the Police. Second, to be aware that the people inside were cleaning up
12 and to be aware that vandalism had occurred are two completely separate and distinct things.
13 I clean up my house weekly, but have yet to encounter any vandalism in my living room.
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16 The Prosecutor alleges in her Response papers that Ms. Ripleyhipps was "an
17 organizer and leader of the group [who] clearly facilitated and promoted their occupation of
18 the building." (People's Response, p. 9, ll. 9-11.) There was no evidence whatsoever that
19 Ms. Ripleyhipps organized **ANYTHING**; rather, the Court ruled that this entry into the
20 building was a fluid, spontaneous event, this unplanned and unorganized. Furthermore, at the
21 risk of repeating myself, the evidence clearly established that Ms. Ripleyhipps attempted to
22 help facilitate a smooth, painless exit, **NOT AN ENTRY**. None of these emotionally charged
23 statements, "well aware of vandalism", "delayed the group's exit", "organizer", and "leader"
24 amount to anything more than puffery. They are not evidence of any one of the necessary
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1 elements on the aiding and abetting they purport to establish. The People failed to meet their
2 burden **BASED ON THE EVIDENCE.**

3 If there was no evidence of aiding and abetting the trespass, it is irrelevant whether the
4 vandalism was a natural and probable consequence thereof. Nonetheless, all of the reasons
5 that the vandalism was not established as a natural and probable consequence of the trespass
6 are set forth in the Motion to Set Aside the Information and need not be repeated here.
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8 **II.**

9 **CONCLUSION**

10 For any and/or all of the reasons set forth above, any and all arguments set forth in the
11 preceding Motion to Set Aside the Information, any and all arguments laid out in either of the
12 co-defendants' motions or responses (which Ms. Ripleyhipps hereby joins in and adopts as
13 her own as they apply to her), all the papers and records in this case, and any argument to be
14 presented at the hearing on these motions, the Information should be set aside pursuant to
15 *Penal Code §995.*
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19 Dated: March 7, 2013

20 Respectfully Submitted,

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23 Bryan J. Hackett
24 Attorney for Defendant
25 Gabriella Celeste Ripleyhipps
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PROOF OF SERVICE

I, Bryan J. Hackett, personally served this RESPONSE TO PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO SET ASIDE THE INFORMATION PURSUANT TO *PENAL CODE* SECTION 995

on the 7th day of March, 2013, upon the following:

1. Santa Cruz County District Attorney
701 Ocean Street, 2nd Fl.
Santa Cruz, CA 95060
2. Superior Court of Santa Cruz County
701 Ocean Street, Rm. 120
Santa Cruz, CA 95060

I am a United States Citizen over the age of eighteen, and am employed by The Law Office of Bryan J. Hackett in the County of Santa Cruz, California.

Dated this 7th day of March 2013.
