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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SANTA CRUZ

11 THE PEOPLE OF THE STATE OF CALIFORNIA,
12 Plaintiff,

13 -vs-

14 BRENT ADAMS, GABRIELLA RIPLEYPHIPPS, and
15 CAMERON LAURENDEAU
16 Defendants.

Case # F22197, F22198
and F22698

**PEOPLE'S RESPONSE TO
DEFENDANTS' § 995 MOTION**

Date: 3/11/13
Time: 1:30 p.m.
Dept: 3
Event: 995 MOTION

OVERVIEW

17 _____On January 7 and 8, 2013, Judge Burdick presided over the
18 preliminary hearing in this case and four defendants were held to
19 answer at the end of the proceeding -- Brent Adams, Gabriella
20 Ripleyphipps, Cameron Laurendeau and Franklin Alcantara. These four
21 defendants were held to answer on Counts 2 and 4 of the Complaint
22 (now Counts 1 and 2 of the Information). Defendants Adams,
23 Ripleyphipps and Laurendeau have each filed a separate § 995 motion
24 challenging Judge Burdick's holding order. For the Court's
25 convenience, the People have consolidated their response to these
26 motions. Defendant Alcantara has not filed a § 995 motion.

§ 995 STANDARD OF REVIEW

27 Penal Code § 995 provides that the information must be set
28 aside if the defendant has been "committed without reasonable or
probable cause." Because the statute does not draw the distinction

1 between offense and enhancement, the California Supreme Court in
2 People v. Superior Court (Mendella) (1983) 33 Cal.3d 754, held that
3 an enhancement may properly be challenged by a motion to dismiss
4 under § 995. As noted above, § 995 provides that an information
5 "shall be set aside" if the defendant has been "committed without
6 reasonable or probable cause." Probable cause exists if a person of
7 ordinary caution or prudence would be led to believe and
8 conscientiously entertain a strong suspicion of the guilt of the
9 accused. Rideout v. Superior Court (1967) 67 Cal.2d 471, 474.
10 However, in determining a motion brought pursuant to § 995, neither
11 the superior court nor the appellate court may reweigh the evidence
12 or substitute its judgment for that of the committing magistrate as
13 to the weight of the evidence or credibility of witnesses. People
14 v. Block (1971) 6 Cal.3d 239, 245; People v. Hall (1971) 3 Cal.3d
15 992, 996; People v. Plengsangtip (2007) 148 Cal.App.4th 825, 835.
16 "'And if there is some evidence in support of the information, the
17 court will not inquire into the sufficiency thereof.' [Citation.]"
18 People v. Block, supra; Rideout v. Superior Court, supra, 67 Cal.2d
19 at 474. Thus, an information should be set aside only when there is
20 a total absence of evidence to support a necessary element of the
21 offense charged. People v. Superior Court (Jurado) (1992) 4
22 Cal.App.4th 1217, 1226; Somers v. Superior Court (1973) 32
23 Cal.App.3d 961, 963. "[A]lthough there must be some showing as to
24 the existence of each element of the charged crime [citation] such
25 a showing may be made by means of circumstantial evidence supportive
26 of reasonable inferences on the part of the magistrate." Williams
27 v. Superior Court (1969) 71 Cal.2d 1144, 1148. "Every legitimate
28 inference that may be drawn from the evidence must be drawn in favor

1 of the information." Rideout v. Superior Court, supra, 67 Cal.2d at
2 474; Caughlin v. Superior Court (1971) 4 Cal.3d 461, 464-465; People
3 v. Superior Court (Jurado), supra, 4 Cal.App.4th at 1226. In short,
4 an information should not be set aside pursuant to § 995 if there
5 is some rational ground for assuming the possibility that an offense
6 has been committed and the accused is guilty of it. People v.
7 Slaughter (1984) 35 Cal.3d 629, 637; People v. Hall, supra, 3 Cal.3d
8 at 996; Rideout v. Superior Court, supra.

9 **COUNTS 2 AND 4 OF THE COMPLAINT**

10 Count 2 of the Complaint charged the defendants with Felony
11 Vandalism, in violation of Penal Code § 594 (b) (1). With respect to
12 this offense, the People proceeded under an aiding and abetting
13 theory of liability. In order to be held as liable as a principal
14 to a crime, an aider and abettor must intend to commit the offense
15 or to encourage or facilitate its commission. People v. Beeman
16 (1984) 35 Cal.3d 547, 560.

17 Aider and abettor liability comes in two forms. First, an aider
18 and abettor is liable for the perpetrator's target crime when he
19 acts with knowledge of the criminal purpose of the perpetrator and
20 with the intent to have the target crime committed. People v.
21 Prettyman (1996) 14 Cal.4th 248, 259. Second, an aider and abettor
22 is liable for any *other* crimes committed by the perpetrator that
23 were the natural and probable consequence of the target crime. Id.
24 at 260 (emphasis added). See People v. Durham (1969) 70 Cal.2d 171,
25 181 (an aider and abettor "is not only guilty of the particular
26 crime that to his knowledge his confederates are contemplating
27 committing, but he is also liable for the natural and reasonable
28 consequences of any act that he knowingly aided or encouraged").

1 A defendant's liability for any other crimes committed in
2 addition to the target crime "is measured by whether a reasonable
3 person in the defendant's position would have or should have known
4 that the ... offense was a reasonably foreseeable consequence of the
5 act aided and abetted." People v. Medina (2009) 46 Cal.4th 913, 920
6 (citation and internal quotation marks omitted). See People v.
7 Nguyen (1993) 21 Cal.App.4th 518, 531 ("The determination whether
8 a particular criminal act was a natural and probable consequence of
9 another criminal act aided and abetted by a defendant requires
10 application of an objective rather than subjective test. This does
11 not mean that the issue is to be considered in the abstract as a
12 question of law. Rather, the issue is a factual question to be
13 resolved by the jury in light of all of the circumstances
14 surrounding the incident. Consequently, the issue ... depends upon
15 whether, under all of the circumstances presented, a reasonable
16 person in the defendant's position would have or should have known
17 that the charged offense was a reasonably foreseeable consequence
18 of the act aided and abetted by the defendant") (citations and
19 internal quotation marks omitted).

20 The standard of foreseeability is necessarily a low one,
21 consistent with the bright line test that "any person concerned in
22 the commission of a crime, however slight that concern may be, is
23 liable as a principal in the crime." Id. (holding that forced sexual
24 penetration with a foreign object could be a foreseeable consequence
25 of tanning salon robbery). Foreseeable consequences need not be
26 immediate, see, e.g., People v. Bringhurst (1923) 192 Cal. 748
27 (murder of police officer during traffic stop was natural and
28 probable consequence of robbery committed three days earlier), or

1 consented to. See, e.g., People v. Brigham (1989) 216 Cal.App.3d
2 1039 (aiding and abetting liability found where one member of
3 professional "hitman" duo unpredictably killed a bystander, despite
4 being told by his partner that there was a police officer nearby and
5 that the bystander was not their intended target).

6 In this case, the target crime was trespass.¹ And the ensuing
7 vandalism was a natural and probable consequence of the target
8 crime. Thus, there are three possible ways a defendant could be held
9 liable for the vandalism: (1) they personally committed an act of
10 vandalism; (2) they aided and abetted the vandalism; or (3) they
11 aided and abetted the trespass, and the vandalism was a natural and
12 probable consequence of the trespass. See also CALCRIM No. 402.

13 Generally, "an aider and abettor will 'share' the perpetrator's
14 specific intent when he or she knows the full extent of the
15 perpetrator's criminal purpose and gives aid or encouragement with
16 the intent or purpose of facilitating the perpetrator's commission
17 of the crime." People v. Beeman (1984) 35 Cal.3d 547, 560 (citations
18 omitted). However, under the natural and probable consequences
19 doctrine, an aider and abettor need only share an intent to
20 facilitate the commission of the *target* crime. People v. Montes
21 (1999) 74 Cal.App.4th 1050, 1056 (emphasis added). If that hurdle
22 is met, the critical issue becomes whether there was "a close
23

24 ¹ Count 4 of the Complaint alleged a violation of Penal
25 Code § 602(o). In order to violate this subsection, a defendant
26 must refuse or fail to leave land, real property, or structures
27 belonging to another and not open to the general public, upon being
28 requested to leave by a peace officer at the request of the owner,
and upon being informed by the officer that he or she is acting at
the request of the owner. See Cal. Pen. Code § 602(o).

1 connection between the target crime aided and abetted and the
2 offense actually committed." Prettyman, 14 Cal.4th at 269.

3 The natural and probable consequences doctrine is based on the
4 recognition that those who aid and abet should be held responsible
5 for the harm they have naturally, probably, and foreseeably put in
6 motion. Id. at 259. "It follows that a defendant whose liability
7 is predicated on his status as an aider and abettor need not have
8 intended to encourage or facilitate the particular offense
9 ultimately committed by the perpetrator." People v. Croy (1985) 41
10 Cal.3d 1, 12 fn.5. "His knowledge that an act which is criminal was
11 intended, and his action taken with the intent that the act be
12 encouraged or facilitated, are sufficient to impose liability on him
13 for any reasonably foreseeable offense committed as a consequence
14 by the perpetrator. It is the intent to encourage and bring about
15 conduct that is criminal, not the specific intent of the target
16 offense" which must be found by the jury. Id.

17 "Among the factors which may be considered in determining
18 aiding and abetting are presence at the crime scene, companionship,
19 and conduct before and after the offense." In re Juan G. (2003) 112
20 Cal.App.4th 1, 5 (citation omitted). However, a person who aids and
21 abets the commission or attempted commission of a crime need not be
22 present at the scene of the crime at all. See CALCRIM No. 401
23 ("Someone aids and abets a crime if he or she knows of the
24 perpetrator's unlawful purpose and he or she specifically intends
25 to, and does in fact, aid, facilitate, promote, encourage, or
26 instigate the perpetrator's commission of that crime. If all of
27 these requirements are met, the defendant does not need to actually
28 have been present when the crime was committed to be guilty as an

1 aider and abettor.")² See also CALCRIM No. 3400 (if defendant aided
2 and abetted or conspired to commit charged offense, then defendant
3 is guilty even if not present when crime was committed).

4 **DEFENDANT RIPLEYPHIPPS**

5 Defendant Ripleyhipps contends that she cannot be held to
6 answer on Count 4 because there was no evidence she was ever in the
7 building. However, there is ample, undisputed, evidence that
8 Ripleyhipps served as the group's spokesperson or "point person."
9 See RT 1/7/13 at pp. 18-36. Her role was to speak with Santa Cruz
10 Police Lt. Larry Richards, who served as the department's
11 negotiator, and relay messages from the police back to the group
12 inside the building. See id. at p. 19. The following exchange best
13 summarizes Lt. Richards' repeated interactions with Ripleyhipps:

14 Q: And what did you tell Miss Ripleyhipps during this particular
15 conversation?

16 A: During this conversation essentially the same thing from all
17 my conversations; that the group needed to leave the building
18 immediately; that the they were trespassing. We wanted to know
19 what their exit strategy was at the time and we wanted to do
20 it safely.

21 Q: And as the kind of negotiator with Santa Cruz PD, are you using
22 kind of the same script each time you negotiate with the group?

23 A: That is correct.

24 ² Conversely, a defendant may be convicted under the
25 natural and probable consequences doctrine even if the target crime
26 is not committed at all. See People v. Ayala (2010) 181 Cal.App.4th
27 1440, 1443. "An aider and abettor may be liable where he
28 intentionally aids one criminal act but the perpetrator actually
commits some other, more serious criminal act that is reasonably
foreseeable." Id. (fatal shooting was a natural and probable
consequence of a planned physical attack by multiple gang members
upon perceived rival gang members even though the shooting occurred
at the start of the confrontation and no assault with fists,
baseball bats, knives, or other weapons preceded the shooting).

1 Q: And did you also discuss the trespass posting flyers that you
put up earlier that day?

2 A: Yes.

3 Q: What did you tell them?

4 A: That that was their warning for the trespassing section that
was needed to begin with.

5 Q: Did you also discuss the property owners standpoint on their
occupation?

6 A: Yes. That they wanted them to leave immediately.

7 Q: And what was Miss Ripleyphipps' response to you?

8 A: That she needed to go back to the group and discuss the plan.

9 Q: Did she identify her role within the group?

10 A: That she was essentially the spokesperson for the group with
the police department at that time.

10

11 Id. at p. 19, ln. 1-26.

12 However, as noted above, there are three possible ways a
13 defendant could be held liable for the vandalism: (1) they
14 personally committed an act of vandalism; (2) they aided and abetted
15 the vandalism; or (3) they aided and abetted the trespass, and the
16 vandalism was a natural and probable consequence of the trespass.
17 Thus, there is simply no requirement that any particular defendant
18 enter the building as long as it can be shown that the defendant
19 aided and abetted the entry made by others. Here, Ripleyphipps
20 negotiated on site and was, according to Ripleyphipps herself,
21 designated as the person who would relay messages to those inside
22 the location and determine when their exit would take place and
23 under what circumstances. Furthermore, Ripleyphipps was well aware
24 the vandalism had taken place -- she delayed the group's exit until
25 their clean up attempts could be completed. Id. at p. 35, ln. 10-12
26 and p. 36, ln. 1-6.³

27

28 ³ Although Ripleyphipps contends that it is unknown when
the vandalism took place, it is undisputed that the building was

1 Ripleyphipps could have negotiated over the phone from another
2 location altogether and still be deemed as aider and abettor. See
3 CALCRIM No. 401 ("Someone aids and abets a crime if he or she knows
4 of the perpetrator's unlawful purpose and he or she specifically
5 intends to, and does in fact, aid, facilitate, promote, encourage,
6 or instigate the perpetrator's commission of that crime. If all of
7 these requirements are met, the defendant does not need to actually
8 have been present when the crime was committed to be guilty as an
9 aider and abettor.") As an organizer and leader of the group,
10 Ripleyphipps clearly facilitated and promoted their occupation of
11 the building. Because she aided and abetted the group's trespass,
12 Ripleyphipps is as liable as a principal; she is as responsible as
13 those who entered and remained in the building after being expressly
14 told to leave by the police.

15 Furthermore, the vandalism that ensued is a natural and
16 probable consequence of that trespass. As noted by Judge Burdick,
17 the fact that the occupiers put up a sign inside the building
18 instructing others not to commit vandalism tells us that not only
19 was vandalism foreseeable, it was in fact foreseen by the occupiers.
20 Even if the vandalism, although inevitable, was unintended, the
21 defendants can still be held responsible for the crime. When
22

23 locked prior to the group's occupation. Also, it seems unlikely
24 that the group would have deigned to clean a mess that existed
25 before they entered the building or would have somehow failed to
26 inform the police that they found it in such a condition upon
27 entering the building. Furthermore, a good portion of the graffiti
28 referenced the "Occupy" movement and much of the damage (such as
the fresh human waste left behind) could only be the direct result
of many people occupying the building shortly before the police
were able to enter the building.

1 determining if an unplanned crime was a natural and probable
2 consequence of a conspiracy to commit the intended crime, the issue
3 is not whether the defendant "*actually* foresaw the additional crime,
4 but whether, judged objectively, the unplanned crime was *reasonably*
5 *foreseeable.*" People v. Zielesch, (2009) 179 Cal.App.4th 731, 739
6 (internal citations and quotation marks omitted) (emphasis in
7 original). "To be reasonably foreseeable the consequence need not
8 have been a strong probability; a possible consequence which might
9 reasonably have been contemplated is enough[.]" Id. (internal
10 citations and quotation marks omitted). See, e.g., People v. Kaufman
11 (1907) 152 Cal. 331 (defendant who conspired to commit burglary
12 necessarily conspired to protect other members of group from arrest
13 or detection while going to and returning from scene of proposed
14 burglary, and that shooting death of officer who encountered the
15 group after abandoned burglary plot was natural and probable
16 consequence of this unlawful enterprise).

17 Here, the vandalism was reasonably foreseeable. The sheer
18 number of group members who took over the property as well as the
19 length of time those members remained within the building after the
20 takeover made subsequent destruction of the property a reasonably
21 possible, if not highly probable, consequence. Moreover, the
22 destruction in this case served a distinct purpose -- much like a
23 street gang's graffiti, the vandalism in this case marked the
24 group's territory; it allowed the organization to claim the building
25 as their own, which was the ultimate point of the occupation.
26 Furthermore, it is inconceivable that the group members personally
27 responsible for the vandalism would have damaged the property unless
28 they felt safe doing so; unless they felt that their fellow

1 trespassers would support their conduct. Those who commit crimes do
2 not bring along for the ride innocent, unknowing witnesses; they do
3 not allow others to view their crimes (or their aftermath) unless
4 they believe the others are comfortable with, and supportive of, the
5 enterprise and will protect their identities and nature of the
6 offense from the police.

7 As correctly noted by Judge Burdick, Wawanesa v. Matlock (1997)
8 60 Cal. App.4th 583 is inapposite. In this civil case, a minor and
9 his friend had trespassed onto a private storage facility where
10 telephone poles were stacked. The friend accidentally dropped a
11 lighted cigarette between the logs, starting a fire. The minor had
12 provided the cigarette. The insurance company paid damages and then
13 sued the minor and his father for contribution. The court held that
14 "the concatenation between [the minor's] initial act of giving [the
15 friend] a packet of cigarettes and the later fire is simply too
16 attenuated to show the fire was reasonably within the scope of the
17 risk created by the initial act." Id. at 588. Although the natural
18 and probable consequence doctrine can be applied to a trespass case,
19 the court held that, given the specific facts of this particular
20 case, "*this* fire was not the probable consequence of the trespass."
21 Id. at 590 (emphasis in original).

22 This fact-specific civil case is simply inapplicable here.
23 There is little to no attenuation between the initial trespass and
24 ensuing vandalism. Indeed, it began to take place almost
25 simultaneously. See, e.g., RT /7/13 at p. 73, 76 (describing
26 furniture being stacked against doors and windows soon after entry
27 and cardboard blocking the windows). Judge Burdick did not create
28 bold and unsupported law in the area of trespasser liability;

1 rather, he simply followed the law and applied it correctly to the
2 particular facts of this case -- just as the court did in Wawanesa.

3 **DEFENDANT ADAMS**

4 Defendant Adams first contends that because the court found
5 that he was "direct perpetrator" of the trespassing charge, he
6 cannot be found to have aided and abetted a trespass, the natural
7 and probable consequence of which was a felony vandalism. Thus, he
8 cannot be charged with felony vandalism. See Adams § 995 Motion at
9 12-13. Notably, People v. Culuko (2000) 78 Cal.App.4th 307 addressed
10 a similar issue. In Culuko, the defendants (the mother and boyfriend
11 of a child who was beaten to death) were charged with felony child
12 abuse and murder. Jurors were instructed that if: (1) one defendant
13 aided and abetted the commission of felony child abuse by the other;
14 (2) the defendant who committed felony child abuse committed murder;
15 and (3) murder was a natural and probable consequence of the
16 commission of the crime of felony child endangerment, then the aider
17 and abettor was guilty of murder. Id. at 313. On appeal, the parties
18 submitted supplemental briefs addressing the question of whether
19 each defendant was a perpetrator of felony child abuse, rather than
20 an aider and abettor, so that the natural and probable consequences
21 doctrine did not apply. Id. at 329. The court determined that "the
22 jury could have found that the defendants were both liable for
23 felony child abuse as perpetrators." Id. at 330. "Even if so, each
24 of them could be liable, under the natural and probable consequences
25 doctrine, for a murder perpetrated by the other."

26 In so holding, the court cited to People v. Olguin (1994) 31
27 Cal.App.4th 1355 and followed its reasoning. In Olguin, defendants
28 Olguin, Mora, and Hilario, all members of the same gang, encountered

1 several members of a rival gang, including victim Ramirez. Id. at
2 1366-1367. After an initial verbal confrontation, Mora punched
3 Ramirez in the face, knocking him down. Ramirez got up and started
4 walking toward the defendants. Olguin then shot and killed Ramirez.
5 Id. at 1367. Both Olguin and Mora were found guilty of second degree
6 murder. Id. 1366. On appeal, Mora argued the natural and probable
7 consequences doctrine did not apply to him because he was the
8 perpetrator of the target assault on Ramirez. Id. at 1375. The
9 appellate court disagreed: "The flaw in Mora's reasoning is that a
10 perpetrator of an assault and an aider and abettor are equally
11 liable for the natural and foreseeable consequences of their crime.
12 Both the perpetrator and the aider and abettor are principals, and
13 all principals are liable for the natural and reasonably foreseeable
14 consequences of their crimes ... " Id. at 1376. "In fact, this case
15 aptly demonstrates the folly of Mora's position. If it were adopted,
16 Hilario, who did nothing but stand by and watch, could be convicted
17 of murder if the jury were convinced he was there to back up his
18 homeboys and thereby encouraged Olguin and Mora in the assault on
19 Ramirez. But Mora, who actually perpetrated the assault, would
20 escape liability on the basis that he was the party who initiated
21 the action. Fortunately, that is not the law. Mora was a principal
22 in the assault on Ramirez and therefore responsible for the natural
23 and probable consequences of that assault." Id.

24 The reasoning of Olguin and Culuko are applicable here.
25 Defendant Adams argues that because he personally and clearly
26 trespassed into the building, he cannot be held liable for the
27 ensuing vandalism. Adams is responsible for the vandalism whether
28 he committed the trespass as a principal or as an aider or abettor.

1 Wisely, California case law does not allow direct perpetrators of
2 a target offense to escape liability for the natural and probable
3 consequences of their crimes while those who aid and abet the target
4 offense are held responsible for the foreseeable results of those
5 crimes. Indeed, adopting such a position would yield absurd results.

6 **DEFENDANT LAURENDEAU**

7 Defendant Laurendeau contends that he cannot be held liable for
8 the initial trespass and thus cannot be held liable for the ensuing
9 vandalism. Laurendeau was photographed on the roof of the building
10 on November 30, 2011, see RT 1/8/13 at p. 57, and was seen inside
11 the building on December 2, 2011, after Santa Cruz Police had issued
12 verbal warnings to leave the premises and trespass warnings in the
13 form of trespass flyers had been posted on the building's door and
14 windows. See, e.g., RT 1/7/13 at p. 163-164. As Judge Burdick
15 reasonably noted at the end of the preliminary hearing, it was
16 abundantly clear that the those inside the building on or after
17 November 30 were not welcome there. For those reasons, and as
18 discussed above, Laurendeau must also be held liable for the natural
19 and probable consequences of his target offense -- namely, the
20 felony-level vandalism that ensued.

21 **CONCLUSION**

22 _____For the foregoing reasons, the People respectfully request that
23 the defendants' § 995 motions be denied.

24 Dated: 3/4/13

Respectfully submitted,

25 BOB LEE
26 DISTRICT ATTORNEY

27 _____
28 REBEKAH W. YOUNG
ASSISTANT DISTRICT ATTORNEY