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6 Attorney for Defendant
7 CAMERON LAURENDEAU

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CRUZ**

10 PEOPLE OF THE STATE OF CALIFORNIA, 11 Plaintiff, 12 vs. 13 CAMERON LAURENDEAU, 14 Defendant.	Case No. F22698 NOTICE OF MOTION AND MOTION TO SET ASIDE INFORMATION (Cal. Pen. Code §995) Date: March 11, 2013 Time: 1:30 p.m. Dept: 3
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15 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT
16 ATTORNEY FOR THE COUNTY OF SANTA CRUZ:

17 PLEASE TAKE NOTICE that on the day and at the time indicated above, or as soon
18 thereafter as the matter may be heard, defendant CAMERON LAURENDEAU, by and through
19 counsel, will and hereby does move to dismiss the Information, alleging one count of Penal Code
20 section 594(b)(1), felony vandalism, and one count of Penal Code section 602(o), misdemeanor
21 trespass and refusing to leave private property.

22 This motion is made pursuant to California Penal Code section 995 on the ground that the
23 defendant has been committed without reasonable or probable cause. Defendant contends that
24 the prosecution failed to establish sufficient evidence of the charged offenses. This motion is
25 predicated on the files and records in this case, the following memorandum of points and
26 authorities, and any evidence which shall be adduced at the hearing on this motion.

27 Dated: February 20, 2013

Respectfully submitted,

28 
ALEXIS WILSON BRIGGS
Attorney for Defendant
CAMERON LAURENDEAU

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15 MEMORANDUM OF POINTS AND AUTHORITIES

16 STATEMENT OF THE CASE

17 On February 7, 2012, a complaint was filed charging Mr. Laurendeau, and ten co-
18 defendants with a felony violation of Penal Code section 182(a)(1) (conspiracy) with the target
19 crimes being trespass (misdemeanor violations of Penal Code sections 602(m) and (o)) and
20 vandalism (misdemeanor violation of Penal Code section 594(b)(2) and felony violation of Penal
21 Code section 594(b)(1). He is also charged with felony vandalism, in violation of Penal Code
22 section 594(b)(1) as well as misdemeanor trespass, in violation of Penal Code sections 602(m)
23 and (o). Two co-defendants proceeded to preliminary hearing in March 2012 wherein count 2
24 (felony vandalism) was dismissed, the remainder of the charges were dismissed pursuant to a
25 motion to set aside the information pursuant to Penal Code Section 995. Four co-defendants,
26 including Mr. Laurendeau, proceeded to preliminary hearing in April 2012, and all charges were
27 dismissed as to all four defendants. The district attorney re-filed charges against Mr. Laurendeau
28 and co-defendant Alcantara in May 2012, who joined the remaining five co-defendants for a
preliminary hearing held on January 7th and 8th, 2013.

1 After the preliminary hearing, Mr. Laurendeau and three co-defendants were held to
2 answer on count 2 (felony vandalism, Penal Code section 594(b)(1)) and count 4 (trespass and
3 refusing to leave, Penal Code section 602(o)). On January 22, 2013, ADA Rebekah Young filed
4 an information alleging violations of those statutes against Mr. Laurendeau and three co-
5 defendants. On February 1, Mr. Laurendeau was arraigned on the information.

6 Defense asserts the following errors:

- 7 (1) No testimony was provided to indicate the owners of the building, rather than the
8 leaseholder Well Fargo, authorized the police activity, contrary to the requirements of
9 Penal Code section 602(o);
- 10 (2) No testimony was provided to indicate the state of the building prior to the
11 occupation, therefore probable cause was lacking as to whether the alleged vandalism
12 occurred after November 30 (i.e. as a consequence of trespass);
- 13 (3) No testimony was provided to indicate that Mr. Laurendeau refused to leave the
14 building after being asked to leave by law enforcement.

15 STATEMENT OF FACTS

16 The following facts are taken from the Reporter's Transcript (hereinafter "RT") of the
17 preliminary hearing and admitted exhibits.¹ ADA Young asserted at the outset of the preliminary
18 hearing that only Lieutenant Richard's testimony was being offered to establish probable cause
19 as to Mr. Laurendeau. (RT 5:24-26.)

20 Lt. Richard testified that at approximately 3:36 or 3:37 p.m. on Friday, December 2nd, he
21 posted flyers on the exterior of the building at 75 River Street to provide notice that "Anyone on
22 this property is trespassing in violation in Section 602 of the Penal Code which may include any
23 of its subsections." (RT1 22:7-24). He testified that the posting was videotaped. (RT1 23:2-4.)
24 According to his testimony, he spoke with an individual later identified as Cameron Laurendeau
25 and informed him that he needed to leave immediately. (RT1 23:5-7; 24:10-13.)

26
27
28 ¹ The Reporter's Transcript is provided in three parts. Defense will refer to each portion as follows: RT1 for January 7, 2013; RT2 for the morning session on January 8, 2013; and RT3 for the afternoon session on January 8, 2013.

1 Lieutenant Richard testified that on December 2nd Mr. Laurendeau was inside the
2 building, watching what law enforcement was doing (i.e. posting notices), that he exited the
3 building at that time, and that he did not have any knowledge of Mr. Laurendeau re-entering the
4 building after that point. (RT1 59:21-26; 59:1-2). Lieutenant Richard testified that the notices
5 which had been posted the previous day were no longer on the doors which Mr. Laurendeau used
6 to exit the building. (RT1 58:3-12).

7 Despite ADA Young's statement to the contrary, she did illicit testimony from Officer
8 Hedley regarding Mr. Laurendeau's presence on December 2nd. (RT 163:24-164:1.) On cross
9 examination, he also testified that Mr. Laurendeau did not re-enter the building after observing
10 officers posting the notices and being informed by Lt. Richard that remaining in the building
11 would be unlawful. (RT2 16:3-7.)

12 The flyers posted indicated that law enforcement was authorized by the owner to act on
13 their behalf. (People's Preliminary Hearing Exhibit 2.) However, Lt. Richard testified that the
14 authorization was provided by "officials" at Wells Fargo. (RT 54:17-23.) Wells Fargo was the
15 leaseholder rather than the owner of the building.

16 No testimony was provided regarding the last time any representatives of the bank had
17 been inside the property prior to November 30. ADA Young attempted on redirect of Detective
18 Gunter, who testified regarding the cost of repairs, to establish whether the doors were locked
19 prior to November 30. (RT2 11:6-9.) Although the court upheld the objection that the question
20 was outside the scope of direct, it also stated, "I'm treating this as if the doors were locked."
21 (RT2 11:10-13.)

22 The video depicting the posting, which was submitted as an exhibit for the court to
23 review in full and which was played in the courtroom, showed that none of the prior notices
24 (other than one flyer located on a utility access door) remained on the building when law
25 enforcement arrived on December 2nd. The video evidence is independent from the testimony by
26 officers of its content; however the court's holding order (summarized below) appears to rely on
27 the erroneous testimony by law enforcement summarizing Mr. Laurendeau's comments rather
28 than the video itself. In the video a bystander asks Lt. Richard, "Where are we supposed to go?"

1 Where are we supposed to go?" Mr. Laurendeau says to that individual, "Now's not the time."
2 (Video submitted as an exhibit, file marked 00085.MTS.)

3 Defense was informed of the court's holding order prior to being permitted to complete
4 the evidence. During the court's ruling, an authenticated copy of Mr. Laurendeau's time sheet
5 was submitted which clearly shows Mr. Laurendeau was clocked into work prior to any
6 announcements on November 30 and within 15-20 minutes after his conversation with Lt.
7 Richard. (Defense Exhibit A; RT3 131:3-7.)

8 The court's holding order as to Mr. Laurendeau was based upon its view that video
9 evidence showed him "coming into the building and going out of the building on the first and
10 second." (RT3 145:15-17.) Additionally, that he was depicted "directing persons not to provide
11 information to law enforcement about the group's plans." (RT3 145:20-23.) When asked to
12 reiterate, the court merely recounted Lt. Richard's testimony regarding Mr. Laurendeau's
13 presence on December 2nd. (RT3 146:17-23.)

14 STATEMENT OF THE LAW

15 I. Standard of Review

16 An information (or individual counts therein) must be set aside if the defendant has been
17 "committed without reasonable or probable cause." (§ 995, subd. (a)(2)(B).) In order for a
18 defendant to be put on trial for a particular offense, the preliminary hearing must present "such a
19 state of facts as would lead a man of ordinary caution or prudence to believe and conscientiously
20 entertain a strong suspicion" that he committed that crime. (*People v. San Nicolas* (2004) 34
21 Cal.4th 614, 654, internal citation and quotation marks omitted.) The court should set aside an
22 information if there is no "rational ground for assuming the possibility that an offense has been
23 committed and the accused is guilty of it." (*Ibid.*)

24 II. There is No Probable Cause to Hold Mr. Laurendeau to Answer for a Violation of Penal 25 Code Section 602(o)

26 Under subsection (o) of Penal Code section 602, trespass requires that the defendant failed to
27 leave upon being requested to leave by law enforcement at the request of the owner *and that the law
28 enforcement is acting at the request of the owner.* See e.g. *People v. Medrano* (Cal.App.3d Dist,
1978) 18 Cal.App.3d 198. Although requests via public address system may suffice, there must be

1 some indication that all trespassers hear the request. See e.g. *In re Bacon* (Cal. App. 1st Dist., 1955)
2 240 Cal. App. 2d 34, 49.

3 On November 30th, announcements were made, but there is direct evidence that Mr.
4 Laurendeau had already begun his work-shift by the time those announcements were made. (Defense
5 Exhibit A.) No evidence was presented that Mr. Laurendeau was anywhere near 75 River during the
6 time between the announcements on November 30th until the video capturing his alleged presence on
7 December 2nd. The video evidence shows that all of the previously posted flyers had been removed
8 except for one located on a set of utility doors located away from the points of exit and entry. (See
9 Video Exhibit, 00085.mts.) Therefore, there is no evidence that Mr. Laurendeau saw any of those
10 notices. The court's reliance on a generalized sense that the building was not open to the public is
11 simply inadequate under this statute. The only evidence presented that Mr. Laurendeau was informed
12 as required by the statute relates to December 2nd, at which time he left and was not seen again near
13 or inside the building. Indeed, evidence was presented which established he began his work-shift
14 within 15-20 minutes after that notice by law enforcement.

15 III. Mr. Laurendeau Cannot be Held Liable for Vandalism Where There is No Evidence of
16 Criminal Intent

17 The court held Mr. Laurendeau to answer on the vandalism charge on the theory that it
18 was the natural and foreseeable consequence of the misdemeanor trespass. Therefore, it
19 necessarily hinges on evidence establishing the elements of the trespass which fails for the
20 reasons discussed above.

21 The natural and foreseeable consequence theory requires that there be proof of intent to
22 aid. The charges alleging conspiracy and alleging an aiding and abetting theory of continuous
23 occupation (under Penal Code section 602(m)) have been dismissed twice at preliminary hearing.
24 Therefore, given the obedience of the law enforcement's written and oral notice on December
25 2nd, there is no evidence alleging any intent to commit, aid, or abet any criminal offense
26 including vandalism.

27 At most, there is evidence of mere presence, perhaps motivated by curiosity as the court
28 speculated at Mr. Laurendeau's first preliminary hearing, which is wholly insufficient for
criminal liability under a theory of aiding and abeting.

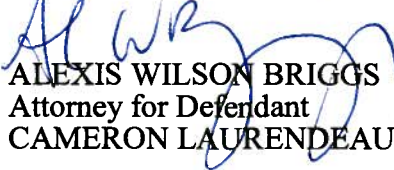
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CONCLUSION

For the foregoing reasons, the preliminary hearing failed to contain some evidence to support each element of the charged offense. The court's conclusions as to Mr. Laurendeau are speculative and based upon a mischaracterization of the evidence as well as testimony which directly contradicted video evidence before the court. Therefore, defendant requests an order setting aside the information and dismissing the remaining charges against Mr. Laurendeau.

Dated: February 20, 2013

Respectfully submitted,


ALEXIS WILSON BRIGGS
Attorney for Defendant
CAMERON LAURENDEAU

PROOF OF SERVICE

The undersigned declares:

I am a citizen of the United States. My business address is 506 Broadway, San Francisco, California 94133. I am over the age of eighteen years and not a party to the within action.

On the date set forth below, I caused a true copy of the within:

NOTICE OF MOTION AND MOTION FOR TO SET ASIDE INFORMATION (\$995)

to be served on the following parties in the following manner:

Mail Fax Personal Service Overnight Courier

Rebekah Webb Young
Santa Cruz District Attorney
701 Ocean Street, Room 200
Santa Cruz, CA 95060

to be served on the following parties in the following manner:

e-Mail Fax Personal Service Overnight Courier

Lisa McCamey
Attorney at Law
lisa.mccamey@sbcglobal.net

Bryan Hackett
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Jesse Ruben
Attorney at Law
jruben@psdlaw.com

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on February 20, 2013, at San Francisco, California.



ALEXIS WILSON BRIGGS