

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ
BEFORE THE HONORABLE TIMOTHY R. VOLKMANN, JUDGE

THE PEOPLE OF THE)
STATE OF CALIFORNIA,)
)
Plaintiff,)
)
vs.)
)
BRENT ELLIOTT ADAMS,)
FRANKLIN CRUZ ALCANTARA,)
CAMERON STEPHENS LAURENDEAU)
& GABRIELLA CELESTE)
RIPLEYPHIPPS,)
)
Defendants.)

No. F22197,
F22689, F22698 & F22198

COPY

REPORTER'S TRANSCRIPT OF PROCEEDINGS

March 11, 2013

APPEARANCES:

For the People: REBEKAH YOUNG,
Assistant District Attorney

For Defendant Adams: LISA MCCAMEY,
Attorney at Law

For Defendant Alcantara: JESSE RUBEN,
Alternate Public Defender

For Defendant Laurendeau: ALEXIS BRIGGS,
Attorney at Law

For Defendant Ripleyhipps: BRYAN HACKETT,
Attorney at Law

Official Court Reporter: DEANNA PFAFF
CSR No. C-11352

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1 Santa Cruz, California

March 11, 2013

2 P R O C E E D I N G S

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4 THE COURT: We're going to call various matters:
5 People versus Mr. Alcantara, Mr. Adams, Ms. Ripleyhipps and
6 Mr. Laurendeau. These matters are on for 995 motions.

7 If counsel could offer their appearances I would
8 appreciate it.

9 MS. YOUNG: Rebekah Young for the People.

10 MS. MCCAMEY: Good afternoon, Your Honor. Lisa
11 McCamey on behalf of Brent Adams, who is present in the
12 audience.

13 MR. RUBEN: Jesse Ruben appearing with
14 Mr. Alcantara who I'm going to go look for.

15 MS. BRIGGS: Good afternoon, Your Honor. Alexis
16 Briggs for Mr. Laurendeau, who is present and in the
17 audience.

18 MR. HACKETT: Good afternoon, Judge. Bryan
19 Hackett for Gabriella Ripleyhipps, who is present in the
20 audience.

21 THE COURT: All right. So let me make certain I
22 know who I'm working with here. Who is Mr. Adams?

23 DEFENDANT ADAMS: (Indicating.)

24 THE COURT: Thank you very much.

25 Ms. Ripleyhipps.

26 DEFENDANT RIPLEYPHIPPS: (Indicating.)

1 THE COURT: Thank you.

2 Mr. Laurendeau. Am I pronouncing that correctly?

3 DEFENDANT LAURENDEAU: Yes.

4 THE COURT: Thank you. And you are Mr. Alcantara?

5 DEFENDANT ALCANTARA: Yes, Your Honor.

6 THE COURT: All right. The matters are on for a
7 motion to dismiss pursuant to Penal Code Section 995.

8 Have you made your appearance?

9 MS. YOUNG: I'm sorry, Your Honor, I did. Rebekah
10 Young for the People.

11 THE COURT: Thank you very much. I will represent
12 to counsel and to the parties and any other interested
13 individuals I've read these files in their entirety. I have
14 read the briefs and the opposition and the replies. I have
15 read the preliminary examination transcript which is two
16 volumes. It was approximately 365 pages but I've read those
17 line by line. I have read the case law cited and I won't
18 represent to you I've read every single case that was cited
19 throughout every single brief but I'll represent that I've
20 read several of the cases concerning this matter and I
21 pulled a couple in front of me. One includes People versus
22 Nguyen, N-g-u-y-e-n, and I am ready to proceed concerning
23 these motions. I'll offer my tentative and the basis for
24 the tentative and I'll allow counsel to indicate anything
25 that they wish to place on the record, however, I would
26 appreciate if counsel would only offer information that I

1 haven't already read. I've read everything. Please don't
2 repeat the arguments that are offered within the paperwork.

3 MS. BRIGGS: I just wanted to clarify. Did you
4 also review the video and the exhibits that were submitted?

5 THE COURT: I haven't seen the video.

6 MS. BRIGGS: Okay.

7 THE COURT: I've only looked at the written
8 documentation that is within this 14-inch stack. All right.

9 MS. BRIGGS: Thank you, Your Honor.

10 THE COURT: As to Ms. Ripleyhipps, the first
11 concern raised by your counsel Mr. Hackett was regarding the
12 issue of the trespass allegation. From the Court's review
13 of the preliminary transcript it appeared that there was
14 satisfactory evidence from a circumstantial evidence
15 perspective to deny the motion in relationship to
16 Ms. Ripleyhipps on trespass. My tentative ruling is based
17 on the following factors: There were a series of references
18 to Ms. Ripleyhipps' involvement in this matter: Page 19,
19 line 22 she indicates she is going to go back to the group
20 and that she's serving as a spokesperson; page 28, line
21 24 -- and I'm referring to the preliminary transcript --
22 preliminary examination transcript. At page 28, line 24 she
23 advised occupants were still leaving; page 29, line 22 she
24 advised that occupants were still going to leave; page 35,
25 line 7 she advised that the group was planning on leaving;
26 page 35, line 12 she advised the group was cleaning up the

1 mess; page 36, line 2 that the group was still cleaning up.
2 All of those references support the preliminary examination
3 Judge's finding from a circumstantial evidence perspective
4 that Ms. Ripleyhipps was involved in from a trespass
5 perspective.

6 As to Mr. Adams regarding the issue of trespass,
7 it appears that he acknowledges the trespass but for
8 purposes of the record page 22, line 22 references Mr. Adams
9 stacking trash cans; page 25, line 25; page 29, line 10
10 there's a reference to seeing Mr. Adams on December 1st;
11 page 66, line 20, a reference to seeing Mr. Adams at the
12 building; page 68, line 13 saw Mr. Adams at the building;
13 page 120, line 7 saw Mr. Adams going in and out of the
14 building.

15 As to Mr. Laurendeau: Page 28, line 2 he was
16 advised to leave the building; page 63, line 23 and 24
17 there's a reference to him being inside the building; page
18 169, line 8 a reference to Mr. Laurendeau being inside the
19 building.

20 As to Mr. Alcantara -- am I pronouncing that
21 correctly -- Alcantara -- on page 65, line 11 there is a
22 reference that Mr. Alcantara was seen several times at the
23 subject address; page 79, line 2 that he hopped on a desk
24 and was twisting a video camera inside the building.

25 So from the Court's perspective the tentative is
26 to deny the motion to dismiss as to all four defendants in

1 relationship to the trespass. I will respectfully submit it
2 appeared that the major tussle in this matter was concerning
3 the vandalism charge and the focus appears to be on whether
4 this vandalism was a reasonably foreseeable result and in
5 particular whether vandalism was a natural and probable
6 consequence of the target crime with the target crime being
7 the trespass and I'll represent to the four defendants and
8 to the five attorneys in this matter I'm obviously reading
9 from paperwork. These are notes I put together regarding my
10 review of all of this documentation.

11 As counsel are aware for purposes of preliminary
12 examination proof -- in terms of the proof standard
13 foreseeability it is relatively low and as I said I've read
14 many of these cases but I'm focussing on People versus
15 Nguyen for a moment, 21 Cal Appellate 4th 518 and I'm
16 reading from page 521: The issue does not turn on the
17 defendant's subjective state of mind but depends upon
18 whether under all of the circumstances presented a
19 reasonable person in the defendant's position would have or
20 should have known that the charged offense was a reasonably
21 foreseeable consequence of the act aided and abetted by the
22 defendant.

23 So, again, was vandalism a natural and probable
24 consequence of that trespass? It appears from my review of
25 the 350 pages of preliminary transcript testimony that the
26 preliminary examination Judge found that vandalism was

1 reasonably foreseeable and it appears from my review of the
2 evidence that that Judge based his decision upon the global
3 circumstances concerning this matter which including the
4 following: The size of the crowd -- that's referenced on
5 page 81, line 6; the fact that the buildings were locked up
6 initially, which is on page 95, line 23 and I believe on
7 page 109, line 2; the amount of time that individuals stayed
8 within the building which is throughout this transcript; the
9 failure of individuals to immediately vacate the structure
10 which is throughout that transcript; the immediate stacking
11 of furniture, the covering of windows and the blocking of
12 doors which is in Volume 1, page 73, lines 3 through 23 and
13 the emotionally charged condition of the crowd which is
14 asserted on page 82, line 2. Taking into account all of
15 those factors the Court found that vandalism was reasonably
16 foreseeable based upon those conditions and was reasonably
17 foreseeable as a natural and probable consequence of the
18 target crime of trespass. From this Court's perspective
19 that appears to be an appropriate decision. My tentative
20 ruling is to deny the motion to dismiss as to the vandalism
21 theory of recovery in relationship to all four of these
22 defendants.

23 So my tentative is to deny the motions in
24 relationship to both causes of action as it relates to all
25 four of the defendants. I've indicated the reasons why I
26 feel that way. If there's anything that counsel wish to add

1 to the record that is not within the paperwork I'm happy to
2 hear it at this time. I'll go left to right.

3 Mr. Ruben, I know you simply joined in this matter
4 but if there's anything you want to state.

5 MR. RUBEN: There is, Your Honor. I kind of hear
6 again and again that people are adopting this logic pattern
7 that requires this huge jump, the idea that all that we're
8 looking at is whether felony vandalism is a natural and
9 probable consequence of your own trespass. And I wanted to
10 clarify with the Court that there is in fact no evidence
11 that Mr. Alcantara in your view was -- directly perpetrated
12 any felony vandalism. Is that accurate? There's no
13 evidence?

14 THE COURT: Let me go back to my notes regarding
15 Mr. Alcantara. Page 79, line 2. Mr. Alcantara is defined
16 by the officer as being -- hopping up on a desk that was
17 thrust in front of the doors and was twisting a video camera
18 that was up in the upper corner above the door.

19 MR. RUBEN: Later in the preliminary hearing
20 another officer showed a picture actually and described
21 those cameras as being affixed in the drywall with three
22 screws. I asked that officer if Mr. Alcantara had wanted to
23 remove the camera if he had simply held onto it and raised
24 both of his feet would that have done it and he said yes.
25 So I would offer to you that is not evidence of a felony
26 vandalism. I would submit to the Court whether it's

1 evidence of a trespass and that is not my issue.

2 But I'm asking the Court is there direct evidence
3 of Mr. Alcantara committing a felony vandalism because if
4 there isn't then we have to look at what is the causation of
5 the felony vandalism. That's the actual question here is
6 causation.

7 THE COURT: What I'm understanding -- and you tell
8 me if you respectfully disagree with my view, but as I
9 understand it there are three different did bases upon which
10 he people can proceed. One is if they have direct evidence
11 of vandalism, okay. I don't see direct evidence of
12 vandalism at least within this transcript other than if they
13 chose something concerning hopping up the top of a desk and
14 trying to twist a video camera. Then the second theory is
15 that they can show that he aided and abetted in the
16 vandalism. And then the third theory is whether through the
17 aiding and abetting in the target crime of trespass he can
18 be responsible for the natural and probable consequences of
19 the target crime and I sense that that's where Judge Burdick
20 was focussing.

21 MR. RUBEN: So I would completely agree and what
22 happened though is that we jumped right to the end analysis
23 of natural and probable consequences. This normally is
24 where most of the argument is; right? You have two guys,
25 one is the wheelman, one robs the liquor store and you're
26 talking about whether the death that occurs later is a

1 natural and probable consequence of being the getaway
2 driver, et cetera, et cetera. What you don't normally see
3 is that there's absolutely no evidence of any relationship
4 between the wheelman and the robber. There is no evidence
5 of any knowledge of -- that the wheelman had any knowledge
6 of what the robber is going to do because those things are
7 kind of given to an aider and abetter theory of liability
8 and they're usually very present. So there is a whole skip
9 step of analysis and to prove an aider and abetter theory of
10 liability, really what you have to prove and -- is that
11 Mr. Alcantara -- I'm looking specifically at CALCRIM number
12 402.

13 THE COURT: That was also referenced in the moving
14 papers not by you but by other folks.

15 MR. RUBEN: And what I would -- thankfully I
16 joined. What I would point out is that there are a couple
17 of showings that are necessary for an aider and abetter.
18 One is that the aider and abetter had an agreement and that
19 there was actually aiding and abetting that occurred, that
20 there was some act that Mr. Alcantara did that aided and
21 abetted another person in commission of a crime. He is not
22 going to aid and abet himself I offer to you; right? So
23 aiding and abetting classically would be things like being
24 the wheelman; right? You are the getaway driver. There's
25 any number of a ways you can aid and abet; right? But you
26 have to have your helping another person, the actual

1 perpetrator, commit the crime then the natural and probable
2 consequences is when you have an unintended crime; right?
3 And that's what you see in 402, the target and nontarget
4 offenses.

5 So if Mr. Alcantara was charged with aiding and
6 abetting, for instance, occupation maybe that's something
7 that we could talk about if he held the door open or
8 something and there was evidence of that. But you need to
9 have a co participant and you need to have a nontarget crime
10 to even apply the natural and probable consequences'
11 doctrine. So when you don't have a co participant and a
12 nontarget crime, what you're really struck with is actual
13 straight causation, Your Honor, and if you look at CALCRIM
14 number 240, that's going to be the language that almost
15 gets -- almost makes their case make sense, the ruling make
16 sense because Judge Burdick said that there was no direct
17 evidence -- and I paraphrase -- that Mr. Alcantara committed
18 any direct felony vandalism, however, the records supported
19 the inference that the felony vandalism was a natural and
20 probable consequence of his own trespassing.

21 So if you looked at 240 what you see there -- and
22 I've actually added the words that I think you would add.
23 First of all, I would note the instructional duty: If
24 causation is at issue, right, in this case what caused the
25 felony -- the vandalism, caused the damage? We don't really
26 know. So I offer to you that causation is at issue;

1 correct? So if causation --

2 THE COURT: I'm not agreeing or disagreeing. I'm
3 just listening to you at this point, so --

4 MR. RUBEN: If causation is at issue the Court has
5 a sua sponte duty to instruct on approximate causation and
6 the instruction would go something like this: An act, here
7 the trespass, causes the vandalism if the vandalism is the
8 direct, natural and probable consequence, not the natural
9 and probable consequence but it's got to be all three to be
10 the actual -- to have a causal link between your act and the
11 final product. So you have to be the direct, natural and
12 probable consequence of the trespass. And the vandalism --
13 this is what I like -- would not have happened without the
14 act. So you would have to successfully argue that had
15 Franklin Alcantara not trespassed none of this would have
16 happened; he was the key player and that just lacks any
17 credibility whatsoever. I mean it's not true.

18 It goes on to describe what a natural and
19 reasonable consequence is, what a reasonable person would
20 know to happen and so on, but it comes back to this
21 fundamental theory of aider/abettor liability. It's not a
22 one person thing. You have to aid and abet another person.
23 You have to establish that relationship with evidence. You
24 have to establish that an act actually did aid and abet
25 them. You have to establish a target crime that was -- that
26 was at least gone after if not completed and you have to

1 establish a nontarget crime. But you can't aid and abet
2 yourself in a target crime and then establish accessorial
3 liability for an unintended consequence of somebody else who
4 cannot be identified, where there is no evidence to show
5 whatsoever that there was an act that did aid or abet them
6 or what it might have been. We're just completely mish
7 mashing two causal relationships. As the Court said
8 yourself there's only three ways that you can do this;
9 right? You can do it with direct evidence. There is not.
10 Or you can do it as an aider and abetter. Who did he aid
11 and abet and what -- and how did he? Or he can do it as an
12 aider and abetter and there's a nontarget offense that was a
13 natural and probable consequence. Well, you still have to
14 figure out who he aided and abetted, how he did it and how
15 it helped them and we can't identify that person, we can't
16 identify that act and we can't identify how it helped the
17 person that we can't identify. We just jump right to the
18 end and said it's natural and probable consequence.

19 THE COURT: All right. Thank you very much.

20 Mr. Hackett.

21 MR. HACKETT: Thank you, Judge. Bryan Hackett on
22 behalf of Ms. Ripleyhipps. I do join in Mr. Ruben's
23 evaluation of causation. I think that is the key here and
24 I'm concerned --

25 THE COURT: I appreciate your brevity in that
26 regard.

1 MR. HACKETT: I'm concerned with the use of the
2 word target crime in Your Honor's tentative ruling numerous
3 times at least more than once because I think that -- what
4 happened here is in essence the trial court put the cart
5 before the horse. What essentially -- and I'm reading from
6 Volume 2, page 143 roughly lines 21 and 22 where the Court
7 says he aids and abets the vandalism by his active trespass.
8 That's in response to a question Ms. McCamey asked him. He
9 then goes on later in the holding order against my client to
10 say all of the reasons that I've previously expressed. So
11 that seems to be the catchall idea here that in the Court's
12 view the defendant aids and abets the vandalism by his or
13 her own active trespass. And I think that similar to what
14 Mr. Ruben was arguing that's not aiding and abetting in
15 natural and probable consequence's theory. One needs to aid
16 and abet in the target crime. The Judge did not say that
17 Ms. Ripleyhipps aided and abetted in the target crime and
18 that the natural and probable consequences of that target
19 crime were this foreseeable other crime committed by
20 somebody else, this unknown perpetrator as Mr. Ruben put it.

21 The idea that one can aid and abet the vandalism
22 merely by personally actively committing a misdemeanor
23 trespass skips an enormous step of causation there as to
24 paraphrase Mr. Ruben that this idea that -- as Your Honor
25 pointed out that there will be three theories: Direct
26 evidence of felony vandalism as I submit in my brief there's

1 no evidence of any vandalism by my client, so that theory
2 doesn't apply to her.

3 The second theory that they propose is that she
4 somehow aided and abetted the vandalism, and I join in all
5 of Mr. Ruben's and all of co-counsel's arguments regarding
6 that theory.

7 And then three as Your Honor pointed out, aided
8 and abetted this target crime and then we go to the natural
9 and probable consequence theory.

10 I submit that without a target crime the latter
11 half of that evaluation is unnecessary. We do not have any
12 evidence that anyone aided and abetted in the commission of
13 the trespass and it wasn't the Judge's ruling. So I think
14 it's important to recognize that while there may have been a
15 variety of theories proffered by the People in their
16 response to the numerous 995s, the Judge's holding order and
17 factual findings at the prelim will govern the scope of this
18 hearing and he states: He aids and abets the vandalism by
19 his active trespass.

20 So if we're going to try and find a theory to fit
21 into that round hole so to speak, you know, the square peg
22 that goes in there -- I guess it's theory two, that my
23 client somehow aided and abetted the vandalism via her own
24 active trespass. That was the Judge's rule. And I just
25 submit to this Court that that's not aiding and abetting
26 theory. There is no aiding and abetting of the target crime

1 which results in natural and probable consequences. There
2 is this individual doing one thing that while foreseeably,
3 you know, perhaps in a dictionary definition -- dictionary
4 definitions are not legal definitions and there's a
5 framework and an analysis that the Court needed to do and
6 needs to do regarding how the aiding and abetting theory or
7 theories apply. Do we have a target crime where the
8 elements established that Ms. Ripleyhipps -- okay, element
9 one of aiding and abetting the intending crime pursuant to
10 CALCRIM 401: One, the perpetrator committed the crime. We
11 don't know who the perpetrator was. We don't know when the
12 vandalism was committed. It was established at the hearing
13 that nobody knew. The People's own witness testified I
14 didn't check it the week before; I didn't check it the month
15 before.

16 Number two, the defendant knew that the
17 perpetrator intended to commit the crime. How does my
18 client -- how is it proven that my client knows what an
19 unknown perpetrator, this mystery vandal was going to do
20 when we don't even know who he or she was or when it was
21 done.

22 Three, before and during the commission of the
23 crime the defendant intended to and abet the perpetrator in
24 committing the crime. If Your Honor is establishing her
25 intent through circumstantial evidence I respectfully
26 disagree, but I think more importantly we need to back up

1 and think before and during the commission requires a time
2 frame, one that was never clarified and never specified and
3 never proven which I think, again, obviates the latter half
4 of that analysis on element three.

5 And then element four, the words and conduct did
6 in fact aid and abet the perpetrator's commission of the
7 crime. Putting aside we don't know who the perpetrator was,
8 putting aside we don't know when the crime was committed,
9 the evidence ad nauseam was established at the hearing that
10 Ms. Ripleyphipps' behavior was relegated to relaying
11 messages between the police and whoever was in the building
12 to get out and eventually the officers even stated --
13 testified on the record that their joint efforts to
14 facilitate a smooth and painless transition and exit of
15 whoever was in the building were ultimately successful and
16 everybody got out. So how that gets turned on its head to
17 be heard aiding and abetting the commission -- aiding and
18 abetting rather the commission of a trespass that preceded
19 her name even being mentioned in the case -- I don't know
20 who she aids and abets a trespass that happens before she so
21 much has says if I can help give me a message and I'll send
22 it in to them.

23 And I just need to -- of the three theories that
24 were offered by the People and I think iterated by the
25 Court, none of them fit either the Court's ruling below or
26 the evidence established at the prelim and I think it's

1 important to realize that there's a very specific step by
2 step analysis that the Court would have to undergo and the
3 People would have to established if we have a target crime
4 that needs to be established and it needs to be established
5 that the aiding and abetting of that target crime was proven
6 and then we consider whether the natural, foreseeable
7 consequences theory applies to the vandalism, but I don't
8 think we ever need to get to that second part of the
9 analysis when we're just sort of leaping there by saying
10 well, you know, I could have seen this coming. That's not
11 the legal analysis that needs to have been undergone below
12 and that's why the motion to dismiss was filed on behalf of
13 my client.

14 THE COURT: Thank you, sir.

15 Ms. Briggs.

16 MS. BRIGGS: Good afternoon, Your Honor.

17 THE COURT: Good afternoon.

18 MS. BRIGGS: I join in the motions filed by
19 Ms. McCamey and Mr. Hackett regarding the issues of
20 vandalism and I don't think I included that in my writing.

21 THE COURT: I'm presuming that you're all joining
22 in everything. So that's absolutely fine.

23 MS. BRIGGS: Just making a record as they say.

24 THE COURT: Absolutely fine.

25 MS. BRIGGS: This Court just articulated that the
26 finding regarding vandalism was based on global

1 circumstances and all of those cited: The size of the
2 group, the time in the building, the locked entrance, all of
3 those global circumstances that the Court listed -- not
4 immediately vacating -- occurred when my client was shown at
5 the preliminary hearing to have not been present. There is
6 an unverified photograph that the People's witness asserted
7 was taken on November 30th. The background of that
8 photograph shows a bright blue sky. The announcements made
9 by Sergeant Harms were made at night.

10 THE COURT: I remember you cross-examining about
11 the bright blue sky.

12 MS. BRIGGS: Yes.

13 THE COURT: I read that.

14 MS. BRIGGS: The evidence -- the exhibit that was
15 submitted during the trial Court's ruling was regarding
16 Mr. Laurendeau's work schedule. So it's not merely that
17 there's no evidence that he was present for that initial
18 burglary notice, it's that there was affirmative evidence that
19 he was not present at that first verbal notice and therefore
20 not present for these global circumstances that you cite
21 that should have made the vandalism a foreseeable
22 consequence.

23 THE COURT: Go ahead. I'm just tracking my notes
24 in relationship to your representation. Go ahead.

25 MS. BRIGGS: The other issue -- and I had hoped
26 that the Court would review the video evidence specifically

1 because I think that assists the Court in becoming more
2 clear on the issue of the Judge conflating the evidence as
3 to trespass for each of the many defendants that have come
4 across the trial Court's desk in the last year, that there
5 was an initial two defendant preliminary hearing and then
6 there was a larger preliminary hearing. All charges were
7 dismissed and the Judge did hear testimony regarding my
8 client and then we came back with these four and --

9 THE COURT: And I won't mislead anybody. I have
10 not read any transcript of any other case. I've only read
11 the transcript of this case.

12 MS. BRIGGS: No. I'm discussing the fact that
13 ultimately what we're dealing with aside from the vandalism
14 issues again which I join and I just want to enunciate that
15 he was not present for the circumstances this Court just
16 described is that there isn't any circumstantial evidence
17 that supports that Mr. Laurendeau was provided notice and I
18 did mention in my filing that the amended statute makes the
19 particularized type of notice very clear that what this
20 Court articulates as the basis for the trespass is that he
21 was inside the building that he was told to leave, that he
22 was inside the building and inside -- in these transcripts
23 it's clear that by the time he is told to leave by
24 Lieutenant Richard and by observing the posting of the
25 flyers on December 2nd he never reenters the building and.
26 Once again it's not that there is a lack of evidence that he

1 reentered the building, it's that there is affirmative
2 evidence in the form of his work history of his time sheet
3 that within 10, 15 minutes he started a lengthy shift. So
4 it wasn't that they merely didn't stick around to see if he
5 went back in, there is affirmative evidence that he did
6 heed. The only time there's evidence that he received the
7 notice that's required by the statute is that he left and
8 did not reenter the building.

9 THE COURT: All right. Thank you.

10 Ms. McCamey.

11 MS. MCCAMEY: Initially, Your Honor, Your Honor is
12 correct that I'm joining in the arguments and the motions
13 filed by my co-counsel and I particularly join in
14 Mr. Hackett's argument that a lot of -- I will save the
15 Court's time because I was going to make a lot of the same
16 arguments, but where we need to start and even under -- I
17 know the Court is relying heavily on People versus Nguyen,
18 1993 21 Cal.App.4th 518.

19 THE COURT: I've read various cases but Nguyen had
20 what I felt was a particular clause that is particularly
21 applicable to this scenario. Go ahead.

22 MS. MCCAMEY: Okay. But what Nguyen makes clear
23 as every case makes clear that deals with natural -- it
24 starts out with aiding and abetting and then goes into the
25 natural and probable consequence is that -- and I'll quote
26 here from page -- I think it's 531 Nguyen -- the question to

1 be resolved by the jury in light is all of the circumstances
2 surrounding the incident, the issue depends on whether all
3 of the circumstances presented a reasonable person in the
4 defendant's position would have or should have known that
5 the charged offense which in this case would be vandalism,
6 the nontarget offense, was a reasonably foreseeable
7 consequence of the act aided and abetted by the defendant
8 which would be the target offense.

9 So it comes back to whether or not the nonparty
10 offense is reasonably foreseeable of this other act aided
11 and abetted. And that's what didn't make sense about Judge
12 Burdick's ruling because he made specific factual findings
13 in Volume 2 of the preliminary hearing transcripts on page
14 129, 138 and 139 and 132 --

15 THE COURT: Just give me one moment here.

16 MS. MCCAMEY: Sure.

17 THE COURT: Go ahead.

18 MS. MCCAMEY: -- that the entry into 75 River
19 Street -- and I would respectfully disagree with any
20 argument that this building was locked up. I think the
21 evidence presented was that nobody knew all of the officers
22 who arrived that those doors became open. They don't know
23 how. There was no signs of forced entry. So really there's
24 absolutely no evidence as to when those doors became
25 unlocked. There was a flyer that was presented about going
26 to a completely different location, a foreclosed home, and

1 that is why based on those facts that were presented at the
2 preliminary hearing that Judge Burdick came to the
3 conclusion that this was a spontaneous event where people
4 started entering the building because the doors were open.
5 He also found that the evidence was insufficient to infer
6 that there was an agreement to trespass and he found that
7 the building was open and people spontaneously walked in.
8 He could not have inferred that there was an agreement to go
9 into the building.

10 So that factual finding is fatal. And then he
11 says when I asked him I think directly that Mr. Adams acted
12 alone. He said that all of these defendants acted alone.
13 They weren't aiding and abetting each other. There's no
14 evidence of any discussion between them about doing this
15 particular -- if the Court believes -- to do this trespass.
16 He acted alone. And you cannot take a person acting alone
17 and then say that there's a reasonable, foreseeable
18 consequence to that.

19 Mr. Adams must have been aiding and abetting and
20 either as a direct perpetrator or as an aider or abetter but
21 he still must have been working with somebody else and there
22 is not a case dealing the issue of aiding and abetting or
23 natural and probable consequences that does not have the
24 confederate identified and that's because you have to share
25 their intent. You have to know what they're planning to do
26 and you have to aid and facilitate them in that plan.

1 There's no evidence as to who committed this vandalism.

2 So we don't even get to the place with the
3 evidence presented and the factual findings by the Court
4 that Mr. Adams was in any way aiding and abetting in a
5 trespass and, therefore, we cannot get to the natural and
6 probable consequences. It all requires an aiding and
7 abetting theory at the onset. There has to be -- even in
8 Nguyen -- that the defendant is aided and abetted in the
9 target offense and we just don't have that here. It's not
10 enough as the Court is aware that mere presence at a scene
11 is enough for an aiding and abetting theory and I can cite
12 you to cases on that: People versus Campbell 1994 24
13 Cal.App.4th 402. It's just not enough to be present and I
14 think that factual finding in and of itself doesn't get us
15 to natural and probable consequences and we have to start
16 there in order to get there.

17 I would also add in terms of vandalism and I'll
18 quote from People versus Prettyman, which I know was cited
19 in everyone's briefs, that it's rarely --

20 THE COURT: I did read that case. It was cited in
21 everyone's brief.

22 MS. MCCAMEY: It's rarely ever true that an aider
23 and abetter can become liable for the commission of a very
24 serious crime committed by the aider and abetter's
25 confederate where the target offense contemplated by aiding
26 and abetting was trivial.

1 Now I'm not conceding at all and I just argued
2 that my client was not aiding and abetting anybody; he was
3 acting alone. But even if this Court were to find there was
4 some aiding and abetting, we're talking about a trespass.
5 That is a trivial crime. A vandalism of thousands and
6 thousands of dollars is a serious crime and I would ask the
7 Court to consider that aspect of Prettyman. There's
8 absolutely no case that says that you can get from a
9 trespass to a felony of hundreds of thousands of dollars to
10 vandalism. I think we're making again an unreasonable leap
11 in terms of natural and probable consequences. But my main
12 argument is that my client did not aid and abet and as such
13 there can be no natural and probable consequence.

14 THE COURT: Thank you very much.

15 Ms. Young.

16 MS. YOUNG: Your Honor, unless the Court has
17 specific questions for the People I would submit on the
18 evidence.

19 THE COURT: What's your position as to the
20 significance or insignificance of Ms. Briggs' argument as to
21 Mr. Laurendeau not being present once he initially left the
22 building?

23 MS. YOUNG: That is neither here nor there.

24 THE COURT: I'm sorry?

25 MS. YOUNG: That is neither here nor there. It
26 was -- he went to hang out there. At some point everybody

1 left. They had to. As far as I know no one -- no one is
2 still there. It had to happen for every person who was
3 charged or remains uncharged in this crime. The testimony
4 that you had at the prelim though and summarized in Judge
5 Burdick's findings is that it wasn't a first that --

6 THE COURT: It wasn't a what? I'm sorry.

7 MS. YOUNG: I'm sorry. I didn't finish my
8 thought. I apologize. First that he was present watching
9 the officers as they posted the no trespassing signs and
10 second that that simply was not a -- his presence there
11 wasn't a one time occurrence. That he had been seen on more
12 than the day which is videotaped within the building. Those
13 were Judge Burdick's findings and it was -- that was --
14 given findings his determination that he should be held to
15 answer on the charges on which he was held to answer was
16 correct.

17 THE COURT: What's your response regarding the
18 argument offered by all four individuals to your right that
19 it's simply an unreasonable leap to go to the position that
20 the vandalism was a natural and probable consequence of the
21 trespass in this circumstance?

22 MS. YOUNG: I do need to correct Ms. McCamey.
23 It's -- the dollar figure is about -- I want to say about
24 25,000, not hundreds of thousands.

25 THE COURT: I thought initially there was a claim
26 of hundreds of thousands of dollars and then it was reduced

1 to about \$23,000.

2 MS. YOUNG: Twenty-three. Thank you. And I think
3 you correctly pointed out how one can lead to the other
4 which is both the size of the group, the fervor of the
5 group, the -- the outside nature of both of those things
6 could very easily lead to the vandalism and it did that you
7 saw in this case. And -- again, I don't want to repeat
8 points that I made in my papers but it was in fact foreseen
9 that this could happen with a group of this magnitude
10 especially I think given the length of time that they were
11 within the building and the -- and the number of rooms that
12 they occupied, the -- they were in it for the long haul. I
13 mean Ms. Ripleyhipps was their negotiator and contrary to
14 Mr. Hackett's opinion she delayed that exit. It wasn't
15 simply the cops throwing them out of the building. That's
16 not what happened. So whenever you've got that size of a
17 group that length of time within the building you're going
18 to get exactly what you did get in this case which is felony
19 vandalism, not misdemeanor vandalism.

20 THE COURT: Thank you. This matter is submitted
21 at this time. I appreciate the argument of counsel.
22 There's a relatively of low threshold for holding an
23 individual over for trial. I appreciate the information
24 offered by all five attorneys and in particular the
25 information offered by the four defense attorneys.
26 Certainly it's argument that potentially is applicable at

1 the time of trial but it's not going to be persuasive in
2 relationship to my tentative ruling. I'm going to adopt my
3 tentative ruling. I'm going to deny the motions to dismiss.
4 Do we have --

5 MS. YOUNG: We do have a trial date, Your Honor.

6 THE COURT: We will confirm the trial readiness
7 and the trial dates at this point. There was I -- want to
8 find the pleading so I specifically define how that was
9 done. There was a request for clarification regarding an
10 order that Judge Burdick submitted. I'm not going to offer
11 any clarification.

12 MS. YOUNG: No. It's been done, Your Honor.
13 Thank you.

14 MR. RUBEN: Judge, can I take advantage of all of
15 us being here? The presently set trial dates I don't think
16 would probably be appropriate for you to adjust given it's
17 not going to be in your court but I'm presently set for an
18 attempted murder trial in custody with Frankie Ayala that
19 I've been told that I will not receive an offer on. So I'm
20 letting everybody know.

21 MS. YOUNG: Do you want to change the dates?

22 MR. RUBEN: I don't think we can right now. I
23 mean --

24 MS. BRIGGS: Your Honor, perhaps a status date
25 back in front of Judge Burdick would be the most prudent
26 next step done.

1 MR. RUBEN: The problem is is that there's so many
2 people involved that I end up wasting -- I mean Ms. Briggs
3 is driving here from San Francisco each time.

4 THE COURT: When is it set for trial?

5 MR. BRISCOE: It's set for -- May 9th is the trial
6 readiness conference date and there will be some pretrial
7 motions as well. So it may be prudent for us to come
8 back --

9 MR. RUBEN: Can we just --

10 THE COURT: Yes. Just one at a time, please.
11 What did you want to say Ms. Briggs.

12 MS. BRIGGS: That was it, just to set it for a
13 status.

14 THE COURT: When did you want to have it set for a
15 status?

16 MS. BRIGGS: Early April perhaps.

17 THE COURT: That's fine with this Court.
18 What date did you want?

19 MR. RUBEN: The firs week of April.

20 THE COURT: April 8th at 8:15 for a setting.

21 MS. BRIGGS: Is it possible to set it for the
22 afternoon, Your Honor?

23 THE COURT: No. We will have to do it in the
24 morning.

25 MS. BRIGGS: Okay. That's fine, Your Honor.

26 THE COURT: Does that work for you, Ms. Young.

1 MS. YOUNG: It does. Thank you.

2 THE COURT: Ms. McCamey?

3 MS. MCCAMEY: Yes.

4 THE COURT: Mr. Hackett?

5 MR. HACKETT: It does work for me, Your Honor.

6 THE COURT: Mr. Ruben.

7 MR. RUBEN: Could we waive our clients' presence?

8 THE COURT: As far as I'm concerned your clients
9 do not have to appear on April 8th for a status at 8:15 and
10 we'll confirm the trial readiness and trial dates at this
11 point. What's the estimate as to length for the trial on
12 this matter?

13 MS. BRIGGS: Your Honor, previously the District
14 Attorney has indicated one week but given the length of
15 every single preliminary hearing I don't believe that that
16 is realistic.

17 THE COURT: You folks are looking at eight days or
18 so?

19 MS. BRIGGS: At least.

20 THE COURT: I'm supposed to begin a homicide trial
21 tomorrow where we have the actual trial begin on April 8th
22 in light of all of the pretrial motions. That has a six to
23 eight-week estimate. So if it's on the short end of the
24 estimate we may be finished by then at least for this
25 Court's purposes. I don't know what's going on in
26 Department 6 or 7 at this point but just to give folks a

1 head's up in that regard.

2 All right. Anything further from the People's
3 perspective?

4 MS. YOUNG: No, Your Honor. Thank you.

5 THE COURT: Ms. McCamey.

6 MS. MCCAMEY: Nothing further, Your Honor.

7 THE COURT: Ms. Briggs.

8 MS. BRIGGS: Nothing further, Your Honor.

9 THE COURT: Mr. Hackett.

10 MR. HACKETT: Nothing further.

11 THE COURT: Mr. Ruben.

12 MR. RUBEN: Thank you, Judge.

13 THE COURT: Thank you very much. I thank everyone
14 for your attention and patience throughout this matter. I
15 appreciate your interest.

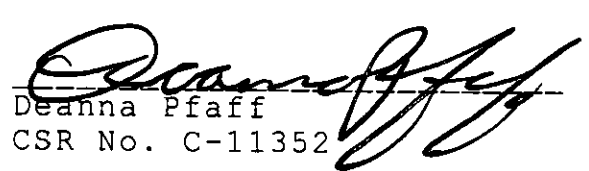
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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF SANTA CRUZ)
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5

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