

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

BRENT ADAMS,
FRANKLIN ALCANTARA,
GABRIELLA RIPLEYPHIPPS,
CAMERON LAURENDEAU,
Petitioners,

No: _____

v.

THE SUPERIOR COURT OF
SANTA CRUZ COUNTY
Respondent,

Santa Cruz County
Superior Court
No. F22197, F22689,
F22198, F22698
Honorable Paul Burdick
(831) 420-2300

THE PEOPLE OF THE STATE
OF CALIFORNIA
Real Party in Interest.

TEMPORARY STAY
REQUESTED
Trial Readiness
Conference: 5/9/13
Jury Trial: 5/13/13
Dept. 6

PETITION FOR WRIT OF PROHIBITION

After Denial of Motion to Set Aside Information

Pursuant to Penal Code § 995

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TABLE OF CONTENTS

	Page
PETITION FOR WRIT OF MANDATE.....	1
TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
PETITION FOR WRIT OF PROHIBITION (STATEMENT OF FACTS).....	4
VERIFICATION.....	20
MEMORANDUM OF POINTS AND AUTHORITIES; ARGUMENT	
I. PETITIONERS RIPPLEYPHIPPS AND LAURENDEAU CANNOT BE HELD TO ANSWER FOR A VIOLATION OF PENAL CODE SECTION 602(O) IN THE ABSENCE OF EVIDENCE THAT THEY REFUSED TO LEAVE THE BUILDING.....	21
II. PETITIONERS CANNOT BE HELD TO ANSWER ON THE FELONY VANDALISM CHARGE ON THE THEORY THEIR TRESPASS AS DIRECT PERPETRATORS WERE THE NATURAL AND PROBABLE CONSEQUENCE OF AIDING AND ABETTING VANDALISM.....	23
III. THE RESPONDENT COURT ERRED IN DENYING THE PETITIONERS' MOTIONS TO SET ASIDE THE INFORMATION PURSUANT TO PENAL CODE SECTION 995.....	26
CONCLUSION.....	29
CERTIFICATE OF COMPLIANCE.....	31
PROOF OF SERVICE.....	32,33
EXHIBITS A-Q.....	34-

TABLE OF AUTHORITIES

Cases	Page
<u>People v. Medrano</u> (1978) 18 Cal.App.3d 198.....	21
<u>In re Bacon</u> (1955) 240 Cal. App. 2d 34, 49.....	21
<u>People v. Valdez</u> (2012) 55 Cal.4th 82, 148-149.....	24
<u>People v. Prettyman</u> (1996) 14 Cal.4th 248, 267.....	24, 27,28
<u>People v. Favor</u> (2012) 54 Cal.App.4th 868, 874.....	24
<u>Pizano v. Superior Court</u> (1978) 21 Cal.3d 128, 133.....	25
<u>Jones v. Superior Court</u> (1971) 4 Cal.3d 660, 664.....	25
<u>Walker v. Superior Court</u> (1980) 107 Cal.App.3d 884, 888-890.....	25
<u>People v. Olguin</u> (1994) 31 Cal.App.4th 1355, 1366-67.....	26,28
<u>People v. Beeman</u> (1984) 35 Cal.3d 547.....	27
<u>People v. Croy</u> (1985) 41 Cal.3d 1.....	27
<u>People v. Culuko</u> (2000) 78 Cal.App.4th 307.....	28
Statutes	
Penal Code	
§ 602(o).....	21,22,25
CALCRIM	
§ 401.....	23,24

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THE PEOPLE OF THE STATE
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Real Party in Interest.

PETITION FOR WRIT OF PROHIBITION

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE
JUSTICES OF THE CALIFORNIA COURT OF APPEAL, SIXTH
APPELLATE DISTRICT:

Petitioners, BRENT ADAMS, FRANKLIN ALCANTARA,
GABRIELLA RIPLEYPHIPPS, and CAMERON LAURENDEAU,
defendants a criminal prosecution filed in Santa Cruz County Superior
Court under case numbers F22197, F22689, F22198, and F22698,
respectively, hereby respectfully seeks this Court's Writ of Prohibition
directed to Respondent Court, and by this verified petition the following
facts and causes are set forth for the issuance of the writ:

I

Petitioners are named in identical Informations filed in Santa
Cruz Superior Court on January 22, 2013, as to Petitioner Adams (under
case number F22197), Petitioner Alcantara (F22689), and Petitioner

Rippleyhipps (F22198), and on February 1, 2013, as to Petitioner Laurendeau (F22698). All Informations arise out of the same facts and allege:

(Count 1) Penal Code section 594(b)(1), vandalism, a felony;

(Count 2) Penal Code section 602(o), trespass and refusing to leave private property, a misdemeanor.

(Exh. A, Information as to Petitioner Adams, filed January 22, 2013; Exh. B, Information as to Petitioner Alcantara, filed January 22, 2013; Exh. C, Information as to Petitioner Ripleyhipps, filed January 22, 2013; Exh. D, Information as to Petitioner Laurendeau, filed February 1, 2013.)

II

Respondent is the Superior Court of the State of California for the County of Santa Cruz. The People of the State of California, by their attorney Bob Lee, District Attorney of Santa Cruz County, are the Real Party in interest, hereinafter "Real Party."

All the proceedings about which this petition is concerned have occurred within the territorial jurisdiction of Respondent Court and of this Court.

III

The following statement of facts is taken from the preliminary hearing transcripts, held on January 7 and 8, 2013. The preliminary hearing transcripts are delineated as follows: January 7, 2013 proceedings (hereinafter "V1" for Volume 1); January 8, 2013 (hereinafter "V2" for Volume 2). (Exh. E, Reporter's transcript of proceedings, January 7, 2013; Exh. F, Reporter's transcript of proceedings, January 8, 2013.)

Testimony of Lieutenant Larry Richard

Lt. Richard testified that on November 30, 2011, he was working as a patrol watch commander. (RT V1 48:5-15.) On December 1, 2011,

Lt. Richard was tasked with the duty of negotiating with protesters occupying 75 River Street in Santa Cruz, and posting no trespassing fliers he had created. (RT V1 49:3-19.) Deputy Chief Steve Clark had notified Lt. Richard that the owners wanted the people out of the building. Part of Lt. Richard's job was to provide cell phones to individuals to facilitate negotiations regarding an exit strategy. (RT V1 104:11-26; 64:1-10; 109:14-16.) Lt. Richard's job was to talk to people on the inside about exiting the building. (RT V1 108:8-10.)

The fliers were posted on each of the exterior doors. (RT V1 53:2-5.) While posting fliers, defendant Brent Adams came out of the building to speak to Lt. Richard regarding what he was doing. Lt. Richard gave Mr. Adams a cell phone to begin negotiations. Mr. Adams made it clear he was not the voice of the group, and did not promise to take the cell phone into the building. (RT V1 56:25-26; 57:1-17; 106:19-23; 107:20-22; 108:19-22; 109:17-20.) When told he was violating Penal Code section 602(o), Mr. Adams responded to the effect of, "I don't know that." (RT V1 108:1-7.) Mr. Adams was the first person Lt. Richard engaged to give a phone to. (RT V1 108:11-18.) Lt. Richard never saw Mr. Adams again, inside or out of the building, after this interaction. (RT V1 110:18-24.) Lt. Richard never had contact with anyone on that cell phone. (RT V1 57:22-25; 61:1-9.)

Lt. Richards met with codefendant Gabriella RipleyPhipps later that evening at the Santa Cruz Police Department, to discuss the exit plan for the group. Lt. Richard told Ms. RipleyPhipps that the group needed to leave the building immediately based on the owner's wishes; that they were trespassing, and he wanted to know their exit strategy. (RT V1 59:9-26; 60:1-7.) Ms. RipleyPhipps, who identified herself as a spokesperson for the group, said she needed to go back to the group and discuss the plan. (RT V1 61-67.) At approximately 10:21 p.m., Lt. Richard called Ms. RipleyPhipps's cell phone, whereupon he was

informed the group was not immediately leaving and wanted more negotiations. (RT V1 61:10-25.)

Lt. Richard testified that at approximately 3:36 or 3:37 p.m. on Friday, December 2nd, he posted flyers on the exterior of the building at 75 River Street to provide notice that “Anyone on this property is trespassing in violation in Section 602 of the Penal Code which may include any of its subsections.” (RT V1 63:7-24). He testified that the posting was videotaped. (RT V1 64:2-4.) According to his testimony, he spoke with an individual later identified as Cameron Laurendeau and informed him that he needed to leave immediately. (RT V1 64:5-7; 65:10-13.)¹

Lt. Richard testified that on December 2nd Mr. Laurendeau was inside the building, watching what law enforcement was doing (i.e. posting notices), that he exited the building at that time, and that he did not have any knowledge of Mr. Laurendeau re-entering the building after that point. (RT V1 100:21-26; 100:1-2). Lt. Richard testified that the notices posted the previous day were no longer on the doors Mr. Laurendeau used to exit the building. (RT V1 140:3-12).

Lt. Richard also contacted Ms. RipleyPhipps again on her phone. Lt. Richard was told the group was still meeting and discussing their plans. Lt. Richard told her they needed to leave immediately and they were trespassing. (RT V1 69:15-26; 70:1-4.) Lt. Richard contacted Ms. RipleyPhipps again later that evening, and was told since the power went out they were going to meet again the next morning to discuss their plans. (RT V1 70:24-26; 71:1-15.)

On December 3, 2011, Lt. Richard went back to 75 River Street

¹ The video depicting the posting, which was submitted as an exhibit and was played in full in the courtroom, showed that none of the prior notices (other than one flyer located on a utility access door) remained on the building when law enforcement arrived on December 2nd. In the video a bystander asks Lt. Richard, “Where are we supposed to go? Where are we supposed to go?” Mr. Laurendeau says to that individual, “Now’s not the time.”

to post more fliers. At that time, Lt. Richard contacted Ms. RipleyPhipps outside the building and again told her she was trespassing and asked for her exit strategy. Ms. RipleyPhipps was in the company of a gentleman who called himself Kelly, and was later identified as Daniel Walters. Mr. Walters told Lt. Richard there was damage inside the bank. (RT V1 73:5-26; 74:1-26; 75:1-11.) Later that afternoon Lt. Richard spoke again to Ms. RipleyPhipps. She stated the group needed 24 hours to leave the bank and they wanted time to clean up. (RT V1 75:12-26; 76:1-12.) On December 3, 2011 Lt. Richard had personal contact with Ms. Ripleyphipps but it was outside the building. He did not see where she went, and he never saw her in the building before or after that conversation. (RT V1 91:5-14.) At approximately 10:15 p.m., Lt. Richard went back to the building and it was vacant. (RT V1 77:7-18.)

Lt. Richard had no personal knowledge as to whether Ms. RipleyPhipps was in the building during these conversations. (RT V1 71:17-25; 72:1-15.) It was repeatedly established that any and all telephone exchanges had between the police and Ms. Ripleyphipps were conducted on a phone other than the phone that they sent in the building. (RT V1 88.) Indeed, Lt. Richard testified that he could not confirm who was on the other end of the phone he called on December 1st at 10:21. (RT V1 88: 15-21.) He conceded that her role was to take the information Lt. Richards gave her and to convey it to the people inside the bank through whatever means at her disposal, including via cellphone. (RT V1 89:17.) Despite initially testifying on direct examination that he could “visualize” Ms. Ripleyphipps inside the building while she was on the phone with him, the Lt. Richard clarified upon request that he was visualizing her “in his head’ not “with his eyes.” (RT V1 72.)

Testimony of sergeant Michael Harms

Sgt. Harms testified that on November 30,2011, at approximately

6:30 p.m., he took a group of approximately 20 officers to 75 River Street to secure some open doors and engage in 'crowd control." (RT V1 112:21-26; 113:1-9; 145:5-17; 150:23-26; 151:1-10.) Sgt. Harms had been told that the property owners said whoever was in the building was trespassing and they asked the police to have them leave. (RT V1 114:24-26; 115:1-2.) Sgt. Harms was aware that the doors to the bank had been opened earlier a few hours earlier, and people had been freely coming and going from the bank prior to his arrival, while approximately 15 police officers were on scene. (RT V1 149:9-26; 150:1-11; 152:17-23.) Sgt. Harms and his group of 20 additional officers arrived in riot gear, including helmets, face masks, exposed batons, and shields. (RT V1 154:16-26; 155:1-14.) At some point after Sgt. Harm's group arrived, the other 15 officers also donned riot gear. (RT V1 158:11-25.) When Sgt. Harms's group arrived, he observed approximately 150 people gathered outside the building near the sidewalk. (RT V1 112:17-26; 113: 1-2.) Sgt. Harms testified that his group of officers in riot gear got "a response" from the protesters. (RT V1 160:15-22.) Sgt. Harms approached the open doors with five other officers, while 10 to 20 officers faced the crowd gathered on the sidewalk area. (RT V1 162: 13-26; 163:1-3.)

Sgt. Harms noted that the doors appeared to have been barricaded by furniture and "things" stacked up in front of them. Some window also appeared to be covered with cardboard. (RT V1 114:3-6.) Sgt. Harms then testified that actually when he arrived, the doors were "open."

Sgt. Harms and his crew walked up to the doors to secure them open. Sgt. Harms then addressed a group of about 20 to 25 people inside the building regarding the fact they "broke into the bank," including Mr. Adams. (RT V1 115:3-13; 117:5-13; 128:9-15.) Sgt. Harms stated that within "a minute or within five minutes" a large desk was "shoved" in front of the doors by a group of people. (RT V1 114:7-13; 164:15-18.)

Mr. Adams was approximately five feet inside the building, and Sgt. Harms observed Mr. Adams as part of the group pushing a desk or bookshelf in front of the doors. (RT V1 116:4-19; 126:11-18.) Mr. Adams reminded Sgt. Harms that they had negotiated in the past, and told him to contact "Gabby." (RT V1 116:20-26; 117:1-4.) At this point more things were being stacked in front of the doors. (RT V1 118:14-26; 118:1-11.) Sgt. Harms testified he was continuing to talk and trying to make contact with everyone. (RT V1 118:23-26; 119:1-3.) Sgt. Harms acknowledged that during this interaction there was a lot of yelling and chanting, with the protesters using bullhorns to communicate. (RT V1 165:15-22.) Sgt. Harms said he was able to communicate with people inside the bank, he acknowledged that he heard "a lot of loud things" while he was there, including music, yelling, and chanting, and there could have been a problem with what he heard. (RT V1 161:1-21; 166:3-9.) Sgt. Harms stated the conversation he had with Mr. Adams happened within seconds. (RT V1 167:20-23.)

Mr. Adams did not have a bullhorn when he allegedly yelled something to the crowd of protesters 40 to 50 feet away. (RT V1 174:20-26.) However other people in the crowd with bullhorns were giving instructions to the protesters. (RT V1 175:3-8.)

Sgt. Harms also recognized codefendant Frank Alcantara on top of the desk, twisting a camera attached to the inside of the building. (RT V1 119:9-26; 120:1-8.)

At one point, approximately 150 to 200 people on the sidewalk began advancing towards the doors and shouting back and forth to the people in the bank, 40 to 50 feet away. Sgt. Harms alleged that Mr. Adams was directing this group to secure the doors. (RT V1 122:3-20.) Sgt. Harms described the group on the sidewalk as emotionally charged, angry and hostile. (RT V1 123:2-6.) Soon thereafter, Sgt. Harms and his group withdrew. (RT V1 123:22-26; 83:1-3.)

Ms. Ripleyhipps was not among the people he saw or spoke to inside the building. (RT V1 138.) When Sgt. Harms ultimately did make contact with Ms. Ripleyhipps, sometime later, she was in the parking lot, not inside the building. (RT V1 140.) In fact, to Sgt. Harms's knowledge she was "never in the building, but on the sidewalk or front lawn or parking lot." (RT V1 141: 20-23.)

Testimony of Detective Michael Hedley

On November 30, 2011, Det. Hedley was assigned to go to 75 River Street regarding a planned protest. He and Det. Damon Williams arrived just before 4:00 p.m., and stationed themselves on the River levee across from the bank. (RT V1 194:18-26; 195:1-9; 229:12-21.) Shortly after they arrived, the officers saw the protesters arrive at the bank. Immediately they saw a group of 40 to 50 people coming and going from inside the bank, carrying wood furniture and pallets. (RT V1 196:1-13; 197:1-12.) When Det. Hedley first arrived, it was his impression the doors of the bank were unlocked. (RT V1 131:15-18; RT V2 271:23-26; 272:1-5.) The number of protesters "kept growing," up to approximately 100 people, as the officers kept watch on the building. Members of the public were moving freely in and out of the bank (RT V1 197:8-12; 224:5-8; RT V2 273:5-11.) In the November 30, 2011 video, Det. Hedley identified Brent Adams exit and enter the building with 7 or 8 plastic trashcans. Det. Hedley observed Mr. Adams put a trashcan outside by a tree. (RT V1 204:14-22; 206:13-24; RT V2 276:17-26; 277:1-3; 278:1-9.)

On December 1, 2011, Det. Hedley was filming Lt. Richard as he placed no trespassing signs on the outside doors of the building. Det. Hedley observed Mr. Adams exit the building and speak to Lt. Richard. (RT V2 279:19-24; 281:18-26; 282:1-4; 283:7-9.) Mr. Adams told Lt. Richard that they had tried to talk to the police the night before, and the police had refused to speak to him. (RT V2 283:16-26; 284:1-9.) Lt.

Richard responded that he did not know that. (RT V2 284:10-12.)

On cross examination, Det. Hedley testified that Mr. Laurendeau did not re-enter the building after observing officers posting the notices and being informed by Lt. Richard that remaining in the building would be unlawful. (RT V2 270:3-7.)

Det. Hedley returned on December 4, 2011 to document the condition of the premises. (RT V1 210:14-19.) He noticed plywood pieces and personal items in front of the bank, signs covering the inside of the windows, furniture stacked up against the doors, and graffiti on the "For Rent" sign outside the building. (RT V1 211:3-16.) Inside the building, Det. Hedley noticed graffiti on some of the walls and elevator, some security cameras had been removed or disconnected, many handwritten protest signs on the walls, some garbage, and some broken cabinets and a broken ladder leading to the roof. (RT V1 212:22-26; 213:1-24; 220:3-9.) Det. Hedley stated there were also "rules" posted inside the building, one of them being "no vandalism." There was also a list of supplies needed, including window cleaner, brooms, rags, sponges, and trash bags. (RT V2 288:14-19; 289:8-23.) Det. Hedley stated there were several areas in the bank where the graffiti appeared to have been painted over with beige paint, and areas where it appeared someone had tried to scrub the graffiti off the walls. (RT V2 290:7-24; 291:7-13.)

Det. Hedley acknowledged he had no way of knowing who painted graffiti the walls, moved furniture in the building, or otherwise caused damage inside the bank. (RT V1 217:15- 16; 225:19-24; 237:3-17.)

Det. Hedley further testified that none of the hundreds of still photos taken depicted Ms. Ripleyhipps inside the building at 75 River Street. (RT V2 343-444.) He could only confirm that when he went to the bank on December 2nd she was not there. (RT V2 269.) Despite

one piece of disputed testimony by Det. Hedley that he had seen Ms. Ripleyhipps walking into or out of the building at some point during review of the video tapes, he could not pinpoint where in the video. (RT V2 301.) Det. Hedley conceded that he had “no independent recollection of seeing Ms. Ripleyhipps during this ‘real time’.” (RT V2 302.) Upon vehement objection from Petitioner RipleyPhipps, the magistrate made a ruling that there “is no videotape depicting her coming into the building or going out of the building.” (RT V2 305:20-22.)

Testimony of Officer William Winston

On November 30, 2011, Officer Winston was assigned to observe the activity of a planned march. (RT V2 304:13-25.) Officer Winston testified that he saw Mr. Adams during the march going west down Water Street and then going in and out of the building at 75 River Street. (RT V2 333:6-26.) After Officer Winston arrived at the bank, he had a conversation outside the bank with Mr. Adams, wherein Mr. Adams told Officer Winston he had made the banner that was actively being hung outside the bank by other people, and misspelled the word "occupy." (RT V2 334:2-26; 371:18-26; 372:1-15.) Officer Winston had no idea when the sign was made, or when the misspelling of "occupy" was corrected. (RT V2 234:17-23; 372:16-26; 373:1-6.) After this conversation, Officer Winston saw Mr. Adams inside the bank, but did not know what he was doing. (RT V2 235:1-7.)

Testimony of Detective DaVid Gunter

Det. Gunter was assigned the task of getting an estimate of the damage caused during the occupation of 75 River Street from November 30, 2011 through December 3, 2011. (RT V2 259:16-20.) Det. Gunter spoke to a Laicia Bucher, who was the regional property manager for Wells Fargo Bank (RT V2 259:21-26; 260:1-3.) Ms. Bucher received estimates from six different companies that estimated the damage to be

approximately \$23,000.00. (RT V2 260:4-24.) No testimony was provided regarding the last time any representatives of the bank had been inside the property prior to November 30. On redirect, Real Party attempted on to establish whether the doors were locked prior to November 30. (RT V2 265:6-9.) Although the magistrate upheld an objection that the question was outside the scope of direct, it also stated, "I'm treating this as if the doors were locked." (RT V2 265:10-13.)

Defense Exhibits

The defense was informed of the magistrate's holding order prior to being permitted to complete the evidence. During the magistrate's ruling, an authenticated copy of Petitioner Laurendeau's time sheet was submitted which clearly showed Petitioner Laurendeau was clocked into work prior to any announcements on November 30, 2011 and within 15-20 minutes after his conversation with Lt. Richard. (Exh. G., Preliminary Hearing Defense Exhibit A; RT V1 172:3-7.)

Ruling on the Preliminary Hearing Evidence

Initially, the magistrate stated he had not heard sufficient evidence to conclude there was reasonable cause to believe that there was an agreement to establish a conspiracy as alleged in Count 1 of the Complaint. The magistrate made factual findings that there was a planned march to banks in downtown Santa Cruz and foreclosed property, that during the course of the march, someone somehow gained entry into 75 River Street, and a "spontaneous" event ensued where people entered the building without the consent of the owner. (RT V2 383:10-22; 386:18-24.)

The magistrate found that the evidence was insufficient to infer that there was an agreement to trespass; when the building became open people "spontaneously" entered. (RT V2 383:23-26; 392:13-26.) The magistrate concluded that based on all of the evidence, he could not infer there was an agreement to go into the building, occupy it, and stay

there even after being given trespass warnings by law enforcement. (RT V2 393:7-15.)

As to the Penal Code section 602(m) charge alleged in Count 3, the magistrate did not issue a holding order based on the fact it appeared the trespass was a "transient coming and going," and no one was removed from the building. (RT V2 385:12-17.)

With regard to the Penal Code section 602(o) charge alleged in Count 4, the magistrate found that Petitioners were at 75 River Street on "multiple days," and were present in the building after it was announced that the agents of the bank had given law enforcement the authority to order people out and they were being asked to leave or they would be found in violation of trespassing laws. (RT V2 384:1-8.)

The magistrate then found that the Penal Code section 594 allegation in Count 2 was a natural and probable consequence of the trespass. (RT V2 384:9-14.) Specifically, the Court held that the Petitioners were "direct perpetrator [s]," or "directly" violated Penal Code section 602(o), and their conduct "had the natural and probable consequence of aiding and abetting a vandalism charge." In other words, the Court held that the Petitioners aided and abetted the vandalism by their "active trespass." (RT V2 393:1-20; 396: 19-26; 397:1-16.)

IV

On February 21, 2013, Petitioner Laurendeau filed a Notice of Motion and Motion to Set Aside the Information pursuant to Penal Code section 995. (Exh. H.) On February 25, 2013, Petitioners Adams and Ripleyhipps also filed motions pursuant to Penal Code section 995. (Exh. I and Exh. J.) On February 28, 2013, Petitioner Alcantara filed a notice of joinder to the co-defendant's motions. (Exh. K.) Real Party filed a response on March 4, 2013. (Exh. L.) On March 5, 2013, Petitioner Laurendeau filed a reply. (Exh. M.) On March 6, 2013,

Petitioner Adams filed a reply. (Exh. N.) On March 7, 2013, Petitioner Ripleyhipps filed a reply. (Exh. O.)

V

On March 11, 2013, a hearing was held on Petitioners' 995 motions. All Petitioners joined in each other's 995 motions and reply motions. The Respondent Court denied Petitioners' Penal Code section 995 motions in their entirety. (Exh. P, Reporter's Transcript of Proceedings, March 11, 2013; Exh. Q, Minute Order of Proceedings on March 11, 2013.)

VI

Petitioner is particularly aggrieved by Respondent Court's actions, which will result in irreparable damage to Petitioners in that Petitioners will be forced to proceed to trial absent a legal holding order. Petitioners' contentions in this regard are more fully set forth in the accompanying points and authorities which are incorporated herein by reference.

VII

Petitioners have no other plain, speedy or adequate remedy at law. Direct appeal does not lie from Respondent Court's order. The sole remedy is by petition for extraordinary writ. Petition for extraordinary writ is contemplated by statute. (Penal Code § 999a.)

No other petition for a writ has been made by, or on behalf of, these Petitioners relating to this matter.

VIII

Respondent Court should be restrained from further proceedings for the reason that:

Petitioners were held to answer without reasonable and probable cause, therefore Respondent Court acted in excess of its jurisdiction in denying Petitioners' joined motions to set aside the information.

IX

The next court date is set for April 8, 2013, for status. The matter is also set for Trial Readiness Conference on May 9, 2013, and for Jury Trial on May 13, 2013.

X

The following documents reflecting the above-described proceedings are attached hereto and incorporated herein by reference:

Exhibit "A": Information for Petitioner Adams, filed January 22, 2013;

Exhibit "B": Information for Petitioner Alcantara, filed January 22, 2013;

Exhibit "C": Information for Petitioner Ripleyhipps, filed January 22, 2013;

Exhibit "D": Information for Petitioner Laurendeau, filed February 1, 2013

Exhibit "E": Reporter's Transcript of Proceedings, January 7, 2013.

Exhibit "F": Reporter's Transcript of Proceedings, January 8, 2013.

Exhibit "G": Petitioner Laurendeau's authenticated time sheet.

Exhibit "H": Petitioner Laurendeau's Notice of Motion and Motion to Set Aside the Information, filed February 21, 2013.

Exhibit "I": Petitioner Adams's Notice of Motion and Motion to Set Aside the Information, filed February 25, 2013.

Exhibit "J": Petitioner Ripleyhipps's Notice of Motion and Motion Set Aside the Information, filed February 25, 2013.

Exhibit "K": Petitioner Alcantara's Notice of Joinder to the co-defendant's motions, filed February 28, 2013.

Exhibit "L": Real Party's Opposition to Petitioners' Penal Code section 995 motions, filed March 4, 2013.

Exhibit "M": Petitioner Laurendeau's Response to Real Party's Opposition to 995 motion, filed March 5, 2013.

Exhibit "N": Petitioner Adams's Response to Real Party's Opposition to 995 motion, filed March 6, 2013.

Exhibit "O": Petitioner RipleyPhipps Response to Real Party's Opposition to 995 motion, filed March 7, 2013.

Exhibit "P": Reporter's Transcript of Proceedings, March 11, 2013;

Exhibit "Q": Minute Order of Proceedings on March 11, 2013.

XI

Respondent court should be restrained from further proceedings for the reason that:

Petitioners were held to answer without reasonable and probable cause in that the evidence failed to establish:

- (1) When the alleged vandalism occurred, or who committed the alleged vandalism;
- (2) That the owners of the building, rather than the leaseholder, authorized police activity, as required by Penal Code section 602(o);
- (3) That Ms. Rippleyphipps ever entered the building;
- (4) That Mr. Laurendeau ever refused to leave the building after being notified, either verbally or through posted signs, by law enforcement;
- (5) That Petitioners aided and abetted the vandalism as a natural and probable consequence of their direct perpetration of a trespass.


WHEREFORE petitioner respectfully prays:

A peremptory writ of prohibition issue restraining the respondent court, its officers and agents and all persons acting by and through its orders from taking any further steps or proceedings, including trial, in the above-captioned criminal action against petitioner, or that an alternative writ of prohibition issue directing and requiring respondent court to act as set forth above, or in the alternative, to show cause before this Court at a specified time and place why it should not be absolutely and forever restrained from taking any further proceedings against or making any other orders affecting petitioner in the proceedings described until further order of this Court; and that


A stay of proceedings issue restraining respondent court from proceeding on this action until all matters before this Court are terminated; and that

Petitioner be granted such other and further relief as may be appropriate and just.


Dated:




LISA K. MCCAMEY
Attorney for Petitioner
BRENT ADAMS



JESSE D. RUBEN
Attorney for Petitioner
FRANKLIN ALCANTARA



BRYAN J. HACKETT
Attorney for Petitioner
GABRIELLA RIPLEYPHIPPS



ALEXIS WILSON BRIGGS
Attorney for Petitioner
CAMERON LAURENDEAU

VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CRUZ)


I, LISA K. MCCAMEY, declare as follows:

I am an attorney duly licensed and admitted to practice law before all courts of the State of California, and I am the attorney of record for Petitioner Adams in the above-entitled proceeding.

I have read the foregoing Petition for Writ of Prohibition and Request for Temporary Stay, and I know the contents thereof. All of the matters stated therein are based upon my own knowledge, except as to those matters which are stated therein on information and belief, and as to those matters, I believe them to be true.

I make this verification because the facts set forth in this Petition for Writ of Prohibition and Request for Temporary Stay are within my knowledge, and where applicable, are within my information and belief, and as attorney for Petitioner Adams herein. I am more familiar with such facts and information than is Petitioner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 21, 2013, in the City of Santa Cruz, Santa Cruz County, State of California.



LISA K. MCCAMEY, Attorney at Law

POINTS AND AUTHORITIES

I

PETITIONERS RIPPLEYPHIPPS AND LAURENDEAU CANNOT BE HELD TO ANSWER FOR A VIOLATION OF PENAL CODE SECTION 602(O) IN THE ABSENCE OF EVIDENCE THAT THEY REFUSED TO LEAVE THE BUILDING

Under subsection (o) of Penal Code section 602, trespass requires that the defendant failed to leave upon being requested to leave by law enforcement at the request of the owner and that the law enforcement is acting at the request of the owner. (*See e.g. People v. Medrano* (1978) 78 Cal.App.3d 198.) Although requests via public address system may suffice, there must be some indication that all trespassers hear the request. (*See e.g. In re Bacon* (1955) 240 Cal. App. 2d 34, 49.)

The law for Penal Code section 602(o) requires more than circumstantial indications that the defendant "was not welcome." Under a prior formulation of 602(o), it was sufficient to prove that "the surrounding circumstances are such as to indicate to a reasonable man that such person has no apparent lawful business to pursue; is guilty of a misdemeanor." (Cal Pen. Code §602 (1983 Amendment); see also *In re Bacon*, *supra*, 240 Cal.App.2d at 48.) This is not the current law, however, which is purposefully specific regarding the content of the notice. If it was merely required that it be clear that the defendant was "not welcome," then the old formulation would be sufficient. Clearly, congress amended the subsection for the purpose of requiring more particularized notice.

There was not one piece of evidence offered that placed Petitioner Ripleyhipps within the building at any point during the period of alleged trespass. It was not even established that she was personally present in any of the meetings that presumably occurred inside the building at 75 River Street. Indeed, and as stated above, the only reference to the meetings being had was by Lt. Richards who stated

that he had no knowledge of Petitioner Ripleyhipps actually being involved in the discussions of plans that presumably went on inside the building. (RT V1 90:7-17.) Therefore, a holding order under Penal Code section 602(o) is not supportable by any evidence as to Petitioner Ripleyhipps.

On November 30th, announcements were made, but there is direct evidence that Petitioner Laurendeau had already begun his work-shift by the time those announcements were made. (Exh. G.) No evidence was presented that Petitioner Laurendeau was anywhere near 75 River during the time between the announcements on November 30th until the video capturing his alleged presence on December 2nd. The video evidence shows that all of the previously posted flyers had been removed except for one located on a set of utility doors located away from the points of exit and entry. Therefore, there is no evidence that Petitioner Laurendeau saw any of those notices.

Moreover Respondent Court apparently conflates evidence in its holding order, which states, “[Laurendeau]’s seen coming into the building and going out of the building on numerous occasions over the first and second.” (RT V2 399:13-17.) There was simply no evidence or testimony of any kind relating to Petitioner Laurendeau on December 1st. Additionally, the testimony relating to December 2nd indicated that he was present inside the building, observed the notices being posted, exited the building, was verbally notified by law enforcement, and then left the premises. There is no evidence of coming and going on numerous occasions.

The Respondent Court’s reliance on a generalized sense that the building was not open to the public is simply inadequate under this statute. (RT V2 383:16-22.) The only evidence presented that Petitioner Laurendeau was informed as required by the statute relates to December 2nd, at which time he left and was not seen again near or inside the

building. Indeed, evidence was presented which established he began his work-shift within 15-20 minutes after that notice by law enforcement.

When asked by the reviewing court what her response was to the evidence that Petitioner Laurendeau did refuse to leave after being provided proper notice by law enforcement, the prosecutor lamely replied, "At some point everybody left. They had to. As far as I know no one – no one is still there. " (Exh. P, RT 507:25-26, 508:1-2.)

Finally, and fatal to this allegation as to all Petitioners but wholly ignored by the reviewing court, Penal Code section 602(o) requires authorization by the building owners, rather than the leaseholders. Here, Wells Fargo was the leaseholder and no testimony was elicited which established the Wells Fargo representative as being the spokespeople for the building owners.

II

PETITIONERS CANNOT BE HELD TO ANSWER ON THE FELONY VANDALISM CHARGE ON THE THEORY THEIR TRESPASS AS DIRECT PERPETRATORS WERE THE NATURAL AND PROBABLE CONSEQUENCE OF AIDING AND ABETTING VANDALISM

To hold Petitioners to answer, the magistrate must find that the Real Party provided evidence establishing each and every element of the crime charged under their theory of liability. The elements for aiding and abetting are as follows:

1. The perpetrator committed the crime;
 2. The defendant knew that the perpetrator intended to commit the crime;
 3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime;
- AND

4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime.

CALCRIM 401

Additionally:

[A] person who aids and abets a confederate in the commission of a criminal act is liable not only for that crime (the target crime), but also for any other offense (nontarget crime) committed by the confederate as a 'natural and probable consequence' of the crime originally aided and abetted." [Citation omitted.]" (People v. Valdez (2012) 55 Cal.4th 82, 148-149.)

The evidence must show that the defendant, (1) with knowledge of the confederate's unlawful purpose, and (2) with the intent of committing, encouraging, or facilitating the commission of any target crime(s), (3) aided, promoted, encouraged, or instigated the commission of the target crime(s); whether (4) the defendant's confederate committed an offense other than the target crime(s); and whether (5) the offense committed by the confederate was a natural and probable consequence of the target crime(s) that the defendant encouraged or facilitated. (People v. Prettyman (1996) 14 Cal.4th 248, 267.)

"The latter question is not whether the aider and abettor *actually* foresaw the additional crime, but whether, judged objectively, it was *reasonably* foreseeable. [Citation.], [Citation.] Liability under the natural and probable consequences doctrine 'is measured by whether a reasonable person in the defendant's position would have or should have known that the charged offense was a reasonably foreseeable consequence of the act aided and abetted.' [Citation.] [Citations omitted.]" (People v. Favor (2012) 54 Cal.App.4th 868, 874. Italics in original.)

Initially, it was never established who committed the vandalism, or when it was actually committed. Ergo, the Real Party's case fails to establish any evidence of who the perpetrator was, or that he or she committed the crime, thus failing to meet their burden on the first element.

Not one iota of evidence was established to indicate that Petitioners knew the unidentified, mystery perpetrator, let alone that any of them knew that he or she intended to do anything whatsoever. Accordingly, Real Party failed to meet its burden on the second element.

As to element three, there is no evidence of when the crime of vandalism was committed, so it becomes impossible to state what anyone did before or during said commission. Moreover, there was no evidence whatsoever offered as to the Petitioners' intent to aid and abet anyone in the commission of any vandalism. As such, Real Party failed to meet their burden on the third element.

Finally, the Petitioners' words and conduct, are wholly defined by the holding orders for misdemeanor trespass under Penal Code 602(o). Therefore, as to Petitioner Rippleyhipps and Petitioner Laurendeau, this element fails as well. Regardless, a mere misdemeanor trespass and refusal to leave, committed as principals, cannot be relied upon to establish aiding and abetting where all other elements fail.

The holding order as to Count 1 rests entirely on whether a Petitioners may aid and abet felony vandalism solely insofar as the natural and probable consequence of Petitioners' misdemeanor trespass and refusal to leave. The magistrate made clear and unambiguous factual findings that the Petitioners were "direct perpetrators" of the trespassing charge, and that they acted alone and "spontaneously." This factual finding is fatal to the charge that they aided and abetted a trespass, the alleged natural and probable consequence of which was a felony vandalism. (Pizano v. Superior Court (1978) 21 Cal.3d 128, 133; Jones v. Superior Court (1971) 4 Cal.3d 660, 664; Walker v. Superior Court (1980) 107 Cal.App.3d 884, 888-890.)

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III

THE RESPONDENT COURT ERRED IN DENYING THE PETITIONERS' MOTIONS TO SET ASIDE THE INFORMATION PURSUANT TO PENAL CODE SECTION 995

The Respondent Court held that the holding order as to count 1 was based upon:

...the global circumstances concerning this matter which including [sic] the following: The size of the crowd – that's referenced on page 81, line 6; the fact that the buildings were locked up initially, which is on page 95, line 23 and I believe on page 109, ln 2; the amount of time that individuals stayed within the building which is throughout this transcript; the failure of individuals to immediately vacate the structure which is throughout that transcript; the immediate stacking of furniture, the covering of windows and the blocking of doors which is in Volume 1, page 73, lines 3 through 23 and the emotionally charged condition of the crowd which is asserted on page 82, line 2. Taking into account all of those factors the Court found that vandalism was reasonably foreseeable based upon those conditions and was reasonably foreseeable as a natural and probable consequence of the target crime of trespass. (Exh. P, RT 489:2-18.)

None of the conduct above, other than the failure to immediately vacate the structure, provides elements of the "target" crime for which the Petitioners were held to answer. The magistrate held that felony vandalism was the natural and foreseeable consequence of the spontaneous, *temporary misdemeanor trespass* by the Petitioners, individually, and as "direct perpetrators." This is wholly untenable as a legal theory and utterly fails where no perpetrators of the non-target (i.e. foreseeable) crime are identified or alleged to have been known to any of the Petitioners.

Even though a direct perpetrator and aider and abettor can be equally liable for the natural and probable consequences of a target crime (People v. Olguin (1994) 31 Cal.App.4th 1355, 1366-67), the direct perpetrator and/or aider and abettor still must have acted with

knowledge of his confederate's unlawful purpose, and with the intent of committing, encouraging, or facilitating the commission of any target crime(s). (People v. Prettyman, supra, 14 Ca1.4th 248, 267.) Of the hundreds of people who entered and exited 75 River Street over the course of three days, no "confederate" was ever identified in relation to the Petitioners. Likewise, no evidence was ever presented that would establish petitioners had knowledge of anyone else's unlawful purpose insofar as it was "spontaneous."

More importantly, such spontaneous action and generalized description of the circumstances fall well below the required evidence of specific intent to encourage or facilitate the target crime by any one of the hundreds of unidentified people who entered the building. To the contrary, the evidence established that the doors were already open when people started to "spontaneously" pour into the building and engage in the other non-criminal (i.e. non-target crime) conduct relied on by the reviewing court. The magistrate made the specific factual finding that the entering of 75 River Street was a "spontaneous event" by all Petitioners, thereby finding that there was no plan or knowledge on the part of Petitioners, or anyone else. Lastly, there was absolutely no evidence presented regarding who committed the vandalism, and/or when it occurred.

In every case cited by Real Party in its opposition to Petitioners' 995 motions, whether the defendant is charged as a direct perpetrator or an aider and abettor, a conviction is only upheld if the evidence is clear that the defendant knew his confederate(s), had knowledge of the crime his confederate(s) planned to commit, and the defendants all acted together in committing and facilitating each other in the target offense. (See e.g., People v. Beeman (1984) 35 Ca1.3d 547; People v. Prettyman, supra, 14 Ca1.4th 248, 267; People v. Croy (1985) 41 Ca1.3d 1 [evidence insufficient to establish as a matter of law that, even assuming

appellant knew of the perpetrator's unlawful intent, he aided them with the intent of facilitating the commission of a robbery].)

In People v. Culuko (2000) 78 Cal.App.4th 307, the evidence established that the codefendants acted together in committing child abuse, the natural and probable consequences of which was a murder. The defendant lived with the codefendant mother, took care of the baby, and at times, was left alone with the baby, and was watching the baby on the day of it's death. In addition, the jury was instructed that the codefendants could be convicted as aider and abettors, or as direct perpetrators. (Id. at 323, 334.) In People v. Olguin, supra, Cal.App.4th 1355, Olguin was arrested and charged with his identified codefendants, Mora and Hilario, for their joint act of confronting a rival gang member, leading to a murder. The evidence was clear that Olguin and his identified codefendants shared the intent to commit the target crime, and facilitated and encouraged each other in that crime, the natural and probable consequences of which was a murder.

Finally, “[t]o trigger application of the “natural and probable consequences” doctrine, there must be a close connection between the target crime aided and abetted and the offense actually committed.” (Prettyman, supra, 14 Cal.4th at 269.) As counsel for Petitioner Adams raised at the hearing (Exh. P, RT: 506:22-26; 507:1-13), the Prettyman Court stated:

In People v. Solis, supra, 20 Cal.App.4th at page 272, the court stated that an aider and abettor can ‘become liable for the commission of a very serious crime’ committed by the aider and abettor's confederate even though ‘the target offense contemplated by his aiding and abetting may have been trivial.’ **Rarely, if ever, is that true.** Murder, for instance, is *not* the ‘natural and probable consequence’ of ‘trivial’ activities. To trigger application of the “natural and probable consequences” doctrine, there must be a **close connection** between the target crime aided and abetted and the offense actually committed. (Ibid. Italics in original, emphasis added.)


Here, the four petitioners are being held to answer for felony conduct leading to an alleged \$23,000.00 of damage based solely on the allegation that they were direct perpetrators of misdemeanor trespass which consisted of "refusing to leave." Such a holding runs directly counter to the magistrate court's order dismissing allegations relating to the occupation theory of trespass, initially charged under Penal Code section 602(m) and dismissed at every preliminary hearing, insofar as it is a direct finding against the elements which establish ongoing occupation of the building to assist further crimes, or even aiding and abetting others to occupy the building.

CONCLUSION

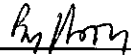
For the reasons stated above, Petitioners respectfully urge this court to issue a Peremptory Writ of Prohibition directed to the Respondent Santa Cruz County Superior Court commanding that court to set aside and vacate its order holding Petitioners to answer under Count 1, felony vandalism, as a natural and probable consequence of the direct perpetration of temporary trespass. Additionally, Petitioners Ripleyhipps and Laurendeau urge this court to issue a Peremptory Writ of Prohibition directed to the Respondent Santa Cruz County Superior Court commanding that court to set aside and vacate its order holding the Petitioners to answer under Count 2, misdemeanor trespass and refusing to leave in the absence of entry by Petitioner Ripleyhipps and the absence of refusal to leave following notification.

Respectfully submitted,

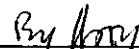
By: *Lisa K. McCamey*
LISA K. MCCAMEY
Attorney for Petitioner
BRENT ADAMS



JESSE D. RUBEN
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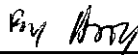


ALEXIS WILSON BRIGGS
Attorney for Petitioner
CAMERON LAURENDEAU

CERTIFICATE OF COMPLIANCE
PURSUANT TO CALIFORNIA RULES OF COURT,
RULE 14, SUBDIVISION (c)(1)

I certify that the attached petition for writ of mandate contains
8043 words according to the word count of the computer program used
to prepare the document.

DATED: March 21, 2013



LISA K. MCCAMEY
Attorney for Petitioner
BRENT ADAMS

PROOF OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States and I am over the age of eighteen years and not a party to the within-entitled action.

That on March 25, 2013, I caused a copy of the within:
PETITION FOR WRIT OF MANDATE, REQUEST FOR
TEMPORARY STAY, and attached EXHIBITS to be served addressed
as follows:

Bob Lee, District Attorney
Santa Cruz County District Attorney's Office
701 Ocean Street
Santa Cruz, California 95060
(831) 454-2400

The Honorable Paul Burdick
Santa Cruz County Superior Court
Judge's Chambers
701 Ocean Street
Santa Cruz, CA 95060
(831) 420-

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of March, 2013, at Santa Cruz, California.

PROOF OF SERVICE BY MAIL

I, the undersigned, declare:

I am a citizen of the United States and I am over the age of eighteen years and not a party to the within-entitled action.

That on March 25, 2013, I caused a copy of the within:
PETITION FOR WRIT OF PROHIBITION; REQUEST FOR
TEMPORARY STAY, and attached EXHIBITS to be served by U.S.
mail, addressed as follows:

Attorney General's Office
California Department of Justice
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of March, 2013 at Santa Cruz, California.
