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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA  
BEFORE THE HONORABLE THANG NGUYEN BARRETT, JUDGE  
DEPARTMENT NO. 84

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THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
Plaintiff,	)	
v.	)	CASE NO. BB833050
JOSEPH ANTHONY CIAMPI,	)	<u>CHARGES:</u>
Defendant.	)	F(001) PC 69
	/	

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PRELIMINARY EXAMINATION  
REPORTER'S TRANSCRIPT OF PROCEEDINGS  
DECEMBER 5, 2008  
VOLUME 3  
PAGES 109 - 123

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APPEARANCES:

FOR THE PEOPLE: JAVIER ALCALA  
Deputy District Attorney

FOR THE DEFENDANT: DAVID J. BEAUVAIS  
Attorney at Law

OFFICIAL COURT REPORTER: HEATHER J. BAUTISTA  
CSR No. 11600

1 Palo Alto, California

December 5, 2008

2 PROCEEDINGS

3 THE COURT: Returning to the continuing  
4 preliminary examination. This is the matter of People v.  
5 Joseph Ciampi. Case number BB833050.

6 And, Counsel, please state your appearance for our  
7 record.

8 MR. BEAUVAIS: Good morning, Your Honor. David  
9 Beauvais on behalf of the defendant, Mr. Ciampi, who is  
10 present in court.

11 MR. ALCALA: Actually, good afternoon, but Javier  
12 Alcala on behalf of the People.

13 THE COURT: Thank you. And are you ready to  
14 proceed, Mr. Beauvais?

15 MR. BEAUVAIS: Yes, Your Honor.

16 THE COURT: Please call your next witness.

17 MR. BEAUVAIS: Your Honor, we will rest at this  
18 time.

19 THE COURT: Okay. Now, there have been some  
20 exhibits marked on behalf of the defense. Are you moving  
21 those into evidence?

22 MR. BEAUVAIS: Yes, Your Honor. I would move them  
23 into evidence.

24 THE COURT: A, I think that's the -- is it the  
25 9-1-1 call?

26 MR. BEAUVAIS: Yes, Your Honor.

27 THE COURT: Okay. So A and B. Any objection?

28 MR. ALCALA: No.

1 THE COURT: Without objection, Defense Exhibit A  
2 and Exhibit B are admitted.

3 (Defendant's Exhibits A and B, previously marked  
4 for identification, were received in evidence.)

5 THE COURT: Any rebuttal evidence on behalf the  
6 People?

7 MR. ALCALA: No.

8 THE COURT: Any comments?

9 MR. ALCALA: On the motion, you mean, or --

10 THE COURT: On both; yes, the motion. Let's start  
11 with the motion to suppress.

12 MR. ALCALA: The only comment that I have is that  
13 counsel, in his moving papers, does not cite a case that I  
14 believe is close to our facts, and I note that, for example,  
15 on page seven, he -- in his argument, he says that the  
16 officers forced the defendant out of the van, and it's on  
17 the last paragraph, line 22, and then on page nine, for  
18 example, when he makes a conclusion that they compelled the  
19 defendant to do something they didn't.

20 I would argue to the Court they never forced the  
21 defendant to do anything. They were -- he was inside the  
22 van. He could have stayed inside the van, but he chose to  
23 come out, and I don't see any case that I could find that  
24 says that the officers' actions were somehow to the point of  
25 forcing the defendant to do anything.

26 He came out on his own. When he came out on his  
27 own and he got confrontational with the police, they noticed  
28 what reasonably could have been under the influence

1 symptoms, and even the defense's own expert they called said  
2 that the agitation, scabs, fighting, were all symptoms that  
3 could lead one to conclude that someone was under the  
4 influence.

5           So I think the rum of the case is when the  
6 defendant came out, is that some police action to do it or  
7 come out on his own volition? If he came out on his own  
8 volition, then at that point, the police had reasonable  
9 suspicion to at least detain him to further investigate.

10           THE COURT: Mr. Alcala, if I could ask you to stop  
11 for a minute. Yes; go ahead. Thank you.

12           MR. ALCALA: So if the defendant came out on his  
13 own volition, I was saying, then at that point when the  
14 officers right away noticed the symptoms -- they described  
15 the defendant's confrontation, agitation -- they suspect  
16 under the influence.

17           Now -- and at that point, they have reason to  
18 detain the defendant, and the fact that he jumps back into  
19 the van just further adds to their suspicion, so at that  
20 point they have a right to detain him.

21           I think the rum of the case is him exiting the  
22 van; whether that's attributable to some illegal police  
23 contact that forced him to do that or did he come out on his  
24 own, and I don't find a case -- I wish I did have a case one  
25 way or the other, and there was -- the defense doesn't cite  
26 one that's even close to this.

27           That's on the issue of motion to suppress.

28           I'll submit it on the preliminary examination, but

1 I think we've met the burden of the basic elements of 69.

2 Thank you.

3 THE COURT: Thank you. And I guess in a way, the  
4 issues of the motion to suppress and with regard to whether  
5 there should be a holding order is the same in that whether  
6 the conduct of the officers was lawful. Do you agree?

7 MR. ALCALA: I agree, because if the Court finds  
8 that it was unlawful conduct by the officer, then they  
9 weren't -- I'm missing one of the elements that's Penal Code  
10 §69, but if the Court thinks that what they did was not  
11 unlawful, then they were lawfully detaining him, and 69  
12 would apply because assuming they were doing the lawful  
13 investigation, then the defendant violently resisting them  
14 by striking them would be a PC 69.

15 THE COURT: Thank you. Mr. Beauvais?

16 MR. BEAUVAIS: Thank you, Your Honor. Well, I  
17 think the Court doesn't have a lot of disputed facts before  
18 it. I think that for the most part, testimony has been  
19 roughly consistent as much as you could expect in describing  
20 a situation that's changing dynamically.

21 But I do have to say that on a number of levels,  
22 these officers were engaged in flagrant misconduct in their  
23 treatment of Mr. Ciampi.

24 First, they're called to the scene for what is  
25 essentially a call to soothe a neighbor who is upset that  
26 Mr. Ciampi is parked lawfully in a vehicle on a public  
27 street, not violating any ordinance, but whose presence  
28 makes another household member uncomfortable, who doesn't

1 even happen to be at home at the time.

2           The police go out on that call. I don't see  
3 anything necessarily wrong with the police going out on that  
4 call, but everything that happens after that is illegal.

5           First, they accuse Mr. Ciampi of violating a  
6 nonexistent ordinance. They accuse him of parking overnight  
7 when it's ten o'clock in the morning. They knock on his,  
8 um, van --

9           THE COURT: Is that illegal so far?

10          MR. BEAUVAIS: Well, I think it goes a lot to  
11 explain both the officers' intentions to insist upon  
12 contacting Mr. Ciampi no matter what, making up reasons for  
13 a contact, um, trying to force him out of the van by saying,  
14 "We think you violated this ordinance," I think, is implicit  
15 in that comment.

16          The fact that Mr. Ciampi had exhibited in many  
17 ways an expectation of privacy by covering up his windows  
18 with cardboard, by closing the door immediately when Agent  
19 Wagner opened it, by telling the officers to go away, and  
20 the officers testified they had no legitimate basis to  
21 believe that he was involved in any criminal activity at  
22 that time, and then they used the ruse to get him out of the  
23 van of pretending that they were calling for a tow truck.

24          And that is not a legitimate ruse. That is  
25 totally illegal. Officer --

26          THE COURT: Do you -- I'm not sure whether you  
27 cited a case for the proposition. So you're saying that the  
28 use of the ruse --

1 MR. BEAUVAIS: Right.

2 THE COURT: -- is illegal?

3 MR. BEAUVAIS: He had, at that point, a  
4 Constitutional right not to be bothered by these officers,  
5 to not come out of his van. It was illegal for them to  
6 threaten him with towing the van, and I cited the crime that  
7 would be committed if they did. It would be a carjacking.

8 And if they were going to tow the van, he would  
9 have to come back. They're not going to tow a van with him  
10 inside, so they were going to force him out, no matter what.

11 So police, first of all, make up an ordinance, and  
12 then they commit an illegal threat, and I cite cases for it,  
13 for that. I cited cases for, um, the proposition that  
14 police officers who misrepresent that he has a warrant and  
15 then obtains consent to enter, violating the Fourth  
16 Amendment, that's *Bumpers v. North Carolina*.

17 I cited another case, a California case, which  
18 talked about coercion cannot be used to vitiate a  
19 Constitutional right.

20 This was coercive. This man was homeless. They  
21 knew he was homeless when they arrived on the scene. He had  
22 all of his property in the vehicle. They noted it was  
23 cluttered. They knew he was living in that van.

24 The Mr. Alsman had told them that he was living in  
25 that van, and they knew his vulnerability and they forced  
26 him out of the van, exploiting that vulnerability and  
27 exploiting this illegal ruse.

28 Once he got outside, they supposedly made their

1 observations about him being under the influence, which we  
2 dispute, particularly with respect to the pupils and the  
3 agitation because his pupils were measured by -- by Mr.  
4 Heller, who said they were normal.

5           And then we have Officer Burger saying they  
6 weren't normal, and agitation is certainly understandable  
7 because it's attributable to the police officers' violation  
8 of his rights and forcing him out of the van and then  
9 immediately making accusations that -- they hardly take a  
10 breath before they're accusing him of being a drug addict.

11           Of course, it's not illegal to be a drug addict;  
12 it's only illegal to be under the influence of drugs. If he  
13 were a drug addict, he would be not be committing any crime.  
14 That's *Robinson v. California*. It's the status effect  
15 that's illegal, so he was not under the influence by way of  
16 agitation, nor pupils.

17           I think the Court should disbelieve Officer  
18 Burger's testimony about the pupils.

19           And this is why the making up of the statute or  
20 ordinance is important. This is why the ruse is important:  
21 Because now the being under the influence is yet another  
22 pretext to get him out of there. These officers don't want  
23 him there. They're on Mr. Alsman's side of this. They  
24 don't have a lot to work with, so they make it up as they go  
25 along; try to force him out of there.

26           Now, what happens next? He's calling his lawyer.  
27 That's not me, for the record. He's calling his lawyer.  
28 They use taser force to try to get him out of the van. They



1 threaten him with the taser to get him out of the van.

2 That's illegal.

3           They pull him out of the van. That contact is  
4 illegal.

5           They -- well, to use Officer Burger's term, they  
6 braced him up against the fence. That's illegal.

7           And they tased him, and that's illegal.

8           All of their impressions about him being under the  
9 influence should be suppressed, but the Court can also  
10 decide that he was not under the influence or no reasonable  
11 police officer could think that he was.

12           And I -- besides the authorities that I cited to  
13 the Court in my moving papers, I wanted to also bring to  
14 Court's attention the case of, um, *In Re: Michael V.*, V, as  
15 in *Victor*, at 10 Cal 3d. 676 on page 681, where -- this is  
16 the California Supreme Court. It is no crime in this state  
17 to nonviolently resist the unlawful action of police  
18 officers.

19           "Although flight combined with other facts may  
20 sometimes provide probable cause for arrest, where it is a  
21 direct response to unlawful police action, it becomes  
22 tainted and cannot be so used."

23           And why I think this is important is in evaluating  
24 the conduct at the fence, because the police officers  
25 already engaged in illegal behavior at the time that he  
26 supposedly attempts to get away or attempts to flee, so the  
27 California Supreme Court authority on this is directly on  
28 point; that that's not conduct which --

1 THE COURT: Do you cite the case as Cal.App?

2 MR. BEAUVAIS: I'm sorry. Did I? 10 Cal 3d.

3 THE COURT: Cal.

4 MR. BEAUVAIS: 676, 681.

5 Now, um, the other issue is whether or not the  
6 officers were acting in the performance of their duties at  
7 the time of the melee and where a crime -- even if the  
8 defendant's conduct is illegal, if the crime itself has, as  
9 an element, that the police be acting in the performance of  
10 their duties, then the defendant cannot be convicted of such  
11 an offense.

12 Just to quote the language of the -- of this case,  
13 this is --

14 THE COURT: I think Mr. Alcala agrees with you on  
15 the legal point that --

16 MR. BEAUVAIS: Right.

17 THE COURT: -- in order for the charge of Penal  
18 Code §69 to be sustained, the People must have proved that  
19 the conduct of the police officers was lawful.

20 MR. BEAUVAIS: Right. And I would just take it a  
21 step further and say Mr. -- it's very clear in the evidence  
22 that Mr. Ciampi does not threaten the officers, does not act  
23 violently toward the officers until he's tased, at which  
24 point we have officers being struck and all of that  
25 testimony.

26 And I would just simply point out, as I did in  
27 my -- I think the *Lacefield* case that I cited in my memo,  
28 that when a defendant is met by unlawful force or excessive

1 force by a police officer, he has a right to self-defense.

2 So I suppose that issue should also be aplay in  
3 this, notwithstanding any other issues.

4 And then I would submit it on that, Your Honor.

5 THE COURT: Thank you. Let me ask, Mr. Alcala --

6 MR. ALCALA: Um-hum.

7 THE COURT: -- when Mr. Ciampi went back into the  
8 van, is it lawful conduct to try to get him out with a taser  
9 or at least the threat of using taser?

10 MR. ALCALA: I think so, because they were -- yes,  
11 the answer is yes, because, um, first of all, they weren't  
12 using it; they were just using it as a tool for their  
13 safety. The officer testified to make sure there was no one  
14 else there, wasn't reaching for a weapon, but at that point,  
15 they have a right -- is my argument, they have a right to  
16 detain him to further their investigation, and so the taser  
17 is just a tool, just like pulling your handgun to your side.

18 I don't see it's going to escalate it. Anyone --  
19 they're trying to detain him, and they're trying to convey  
20 that they mean business, but if I answered your question, I  
21 wanted to just answer a couple from the defense.

22 I think the defense is mixing a lot of things up  
23 here, and I think it's pretty simple, actually.

24 The issue is did they have a right to detain him  
25 at the very first point when they met him? I think at that  
26 point when he jumps out of the van and he confronts the  
27 police officers. When they get to that point, did the  
28 police officers have a right to be there and detain him at

1 that very moment? At that very moment is when they said  
2 right away they noticed the scabs, the agitation, the  
3 confrontationalism. They were thinking under the influence  
4 when they mentioned the 11550.

5           So how did they get to that point? They got to  
6 that point because of what the police were doing right  
7 outside the van. Now, in his moving papers, counsel keeps  
8 referring to it is the police officers forcing the defendant  
9 to do it; yet, in his argument, he refers to what is trying  
10 to force, so actually forcing him, of course, would have  
11 been illegal, but trying to, I don't think; and I think  
12 that's what we have here.

13           They were trying to get him out, not by force, but  
14 just trying to get him out. They were unsuccessful, and so  
15 the defendant decided on his own volition to jump out of the  
16 van, and once he does and the -- when they see him and the  
17 way he's acting, they have a moment right then to detain  
18 him, and the fact that the defendant tries to run away, that  
19 shouldn't defer the officers from throwing their hands up  
20 and leaving.

21           They have a right to pursue, detain him, and  
22 finish their investigation. Unfortunately, the whole thing  
23 takes place in about a minute. From the very second they  
24 meet the defendant, it's confrontation, and the fight is on,  
25 and the whole thing ends with the tasing, so --

26           I thought the facts were pretty much undisputed,  
27 but I would say the police officers did not know the  
28 defendant was living in the van, and counsel says that they

1 somehow knew his vulnerability, but actually, I don't think  
2 they knew who he was, and I'm not sure what that is, but I  
3 think what the police officers did was completely reasonable  
4 under the circumstances.

5           And if you step away and look at the entire  
6 picture of what they did, it doesn't rise to the level where  
7 the offense -- they committed some kind of illegal action.  
8 What they did was, under the circumstances, reasonable.

9           THE COURT: What if Mr. Beauvais is correct; that  
10 legally, the use of the ruse in this instance was illegal?

11           MR. ALCALA: If he was correct on that, then the  
12 police officers were not executing their lawful duty, and  
13 you'd have to deny the holding, grant the motion.

14           THE COURT: Okay. But you're contending that  
15 their use of the ruse in this case was lawful?

16           MR. ALCALA: Yes, and I don't see any case out  
17 there that says it's not.

18           THE COURT: Okay. Thank you. Mr. Beauvais?

19           MR. BEAUVAIS: I just wanted to make a couple of  
20 points that I failed to mention. One is that he was never  
21 told that he was under arrest, and he was never told that he  
22 was detained.

23           THE COURT: Also, Mr. Beauvais, on the motion to  
24 suppress, what exactly do you wish to suppress?

25           MR. BEAUVAIS: I am seeking to --

26           THE COURT: You cannot suppress the ultimate  
27 arrest. You cannot suppress the defendant's actions.

28           MR. BEAUVAIS: What I'm seeking to suppress, the

1 officers' observations of Mr. Ciampi being under the  
2 influence; that's what I'm seeking to suppress because the  
3 evidence was clear that they had no basis for that at all  
4 until he stepped out of the van.

5 THE COURT: The first time he step out of the van?

6 MR. BEAUVAIS: Right.

7 THE COURT: And so that goes back to whether the  
8 use of the ruse was legal or not.

9 MR. BEAUVAIS: Correct.

10 THE COURT: Okay. Is the matter submitted?

11 MR. BEAUVAIS: Yes, Your Honor.

12 MR. ALCALA: Yes.

13 THE COURT: Okay. Counsel, I will take this  
14 matter under submission. I want to review the transcript of  
15 the hearing again, and I will continue this matter. I'm  
16 going to specially set this matter, and I will continue it  
17 to November 17th at nine o'clock -- I'm sorry. December  
18 17th at nine o'clock in this department for my decision.

19 Thank you very much.

20 MR. ALCALA: Thank you.

21 MR. BEAUVAIS: Thank you.

22 (Whereupon, the Court recessed.)

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1 STATE OF CALIFORNIA        )  
                                  )  
2 COUNTY OF SANTA CLARA    )

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5           I, HEATHER J. BAUTISTA, HEREBY CERTIFY THAT:

6           The foregoing is a full, true, and correct  
7 transcript of the testimony given and proceedings had in the  
8 above-entitled action taken on December 5, 2008; that it is  
9 a full, true, and correct transcript of the evidence offered  
10 and received, acts and statements of the Court, also all  
11 objections of counsel, and all matters to which the same  
12 relate; that I reported the same in stenotype to the best of  
13 my ability, being the duly appointed and acting official  
14 stenographic reporter of said Court, and thereafter had the  
15 same transcribed into typewriting as herein appears.

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17

          Dated:    January 20, 2009

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Heather J. Bautista, C.S.R.  
Certificate No. 11600

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24 ATTENTION:  
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