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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 17, 2008
VOLUME 4
PAGES 124 - 133

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APPEARANCES:

FOR THE PEOPLE:	ANNE SEERY 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 17, 2008

2 PROCEEDINGS

3 THE COURT: Good morning, ladies and gentlemen.
4 Welcome to Department 84. Calling the matter of People v.
5 Joseph Ciampi. Case number BB833050. And, Counsel, please
6 state your appearances.

7 MS. SEERY: Anne Seery for the People.

8 THE COURT: Thank you.

9 MR. BEAUVAIS: David Beauvais appearing on behalf
10 of Mr. Ciampi, who is present.

11 THE COURT: Thank you. And, Counsel, this matter
12 is here for the -- for the Court's decision with regard to
13 the motion to suppress and also with regard to whether Mr.
14 Ciampi is to be held to answer on the charge.

15 And -- but before we proceed, I have informally
16 notified you in chambers this morning, but I'd like to
17 formally place on the record that the Court had received a
18 letter which I have not read. My clerk, Ms. O'Hagin
19 informed me that it was received on December the 12th, 2008,
20 and since I have not read the letter, I don't know the
21 actual date of the letter or whether it -- what it is about,
22 whether it addresses any substance of this case.

23 I assume it is related to this case because my
24 clerk placed the letter under a blank cover with the court
25 file for this case, so -- and also put a note with the case
26 name and case number on top of the blank cover.

27 So what I will do is I will ask my clerk to place
28 the letter in a sealed envelope in the -- to be placed in

1 the court file and to send the sender of the letter a note
2 informing that person that the Court is not permitted to
3 receive ex parte communications and that the letter has been
4 placed in a sealed envelope in the court file.

5 Are counsel in agreement with that procedure and
6 do you wish to make any comments? Counsel?

7 MR. ALCALA: No, Your Honor.

8 MR. BEAUVAIS: I have nothing to add to what the
9 Court said, Your Honor.

10 THE COURT: Thank you.

11 And with regard to the decision in this matter,
12 defendant contends that the ruse used by the officer to have
13 his van towed for illegal overnight sleeping in his van was
14 unlawful and that the force used on him was excessive.

15 The evidence was that officers were dispatched to
16 the location of defendant's van following a complaint by the
17 homeowner that Mr. Ciampi was living out of his van. It
18 should be noted that although Officer Temores and Officer
19 Burger testified that they were dispatched to the location
20 on a complaint of the defendant looking at the homeowner's
21 wife and daughter in a way which made them uncomfortable,
22 that was not the actual complaint.

23 Indeed, the 9-1-1 tape indicates that the
24 complaint was that Mr. Ciampi's presence scared the
25 homeowner's wife. Indeed, at one point during
26 cross-examination, Officer Temores acknowledged that he was
27 not dispatched to a call of a man giving someone else
28 strange looks, but it was a call of a man in a vehicle

1 making the wife and daughter uncomfortable.

2 And it is not disputed that Agent Wagner and
3 Officer Temores initially tried to make a consensual contact
4 with Mr. Ciampi. A consensual contact necessarily means
5 that defendant can refuse to talk to the officers.

6 The officers had a right to initiate a consensual
7 contact, and defendant had a right to withhold the consent,
8 which defendant did.

9 Agent Wagner and Officer Temores then, in effect,
10 tried to deny or circumvent defendant's right not to talk to
11 the officers by accusing him of sleeping in the car
12 overnight on the public street, in violation of a Palo Alto
13 city ordinance. And then Officer Temores pretended to call
14 a tow truck to tow away defendant's van, prompting defendant
15 to come out of his van.

16 The evidence is that such an overnight sleeping
17 ordinance did not exist. Officer Burger testified that he
18 was not aware of such an ordinance. In fact, the police
19 dispatcher even informed the homeowner that overnight
20 sleeping in the car was not a law violation in Palo Alto.

21 And the People, who bear the burden of proof, have
22 not contended that such an ordinance existed. Officer
23 Burger testified that Palo Alto did have an ordinance
24 limiting parking on the street to 72 hours, and Officer
25 Temores testified that Agent Wagner threatened to tow
26 defendant's van for overnight parking.

27 The recording of Agent Wagner's words, however,
28 shows that she accused him of sleeping in the car overnight

1 on the public street, not overnight parking.

2 Moreover, there is no evidence that defendant was
3 illegally parked. Officer Temores testified he was not sure
4 that overnight parking was prohibited at that particular
5 location where the van was. There was no evidence of any
6 parking violation at that location.

7 Even if the 72 hours parking ordinance was
8 applicable, it would be a violation only after 72 hours of
9 continuous parking. Also, parking overnight would not be in
10 violation if it did not exceed 72 hours. In fact, the
11 homeowner himself advised dispatch, the police dispatch,
12 that defendant was technically lawfully parked.

13 In any event, the evidence is clear that the
14 threat was to tow away defendant's car for overnight
15 sleeping, not for overnight parking.

16 It is also not disputed that the police resorted
17 to a ruse to get defendant to come out of his van after he
18 expressly refused to do so. The issue now, then, is whether
19 the ruse was lawful.

20 Generally speaking, ruses by police are not, per
21 se, illegal and may even be considered as necessary tools
22 for the police to use for the protection of the public.
23 Many crimes and many criminals would not be detected if it
24 were not for the police employing a ruse such as undercover
25 work.

26 Both the Supreme Court and Court of Appeals,
27 however, have held that there are limits to ruses employed
28 by the police.

1 First, in the case of *People v. Reeves*, 1964, 61
2 Cal. 2d. 268, the California Supreme Court suppressed the
3 narcotics seized because the police had lured -- had lured
4 the defendant out of his hotel room by having the hotel
5 manager falsely telling him that there was a registered
6 letter for him at the front desk.

7 The Supreme Court wrote that, and I quote, "It is,
8 of course, highly commendable that law enforcement officials
9 should desire that all persons violating the law should be
10 arrested and punished, but it is of even greater importance
11 that in seeking to attain that highly desirable aim, law
12 enforcement officials should not trample upon or disregard
13 fundamental Constitutional rights. The end does not justify
14 the means when the desire to punish the law breaker runs
15 afoul of Constitutional rights. It is the former that must
16 give way," end of quote.

17 A more recent case close to the facts at bar may
18 be found at *People v. Reyes*, 2000 at 83 Cal. App.4th. 7.

19 In that case, the police was conducting a
20 narcotics investigation and employed a ruse to get the door
21 of the apartment to open so they could ask to search anyone
22 who came outside.

23 So a plain clothes officer approached the
24 apartment and asked the defendant if he owned the white
25 truck parked outside. The defendant answered, "Yes. Why,"
26 and the plain clothes officer falsely told the defendant
27 that he had hit the defendant's truck.

28 Hearing this, the defendant walk outside, where he

1 was accosted by officer in full raid gear. The defendant
2 gave consent to search his person, and narcotics were found
3 in his shirt pocket.

4 The Court of Appeals held that the consent was
5 clearly the product of the tainted police conduct, which was
6 the ruse. Nothing -- strike that. Noting that the law
7 does -- noting that the law does tolerate certain types of
8 deception, the Court of Appeal found that the police went
9 too far because the lure was one that almost no one, crooked
10 or not, would refuse. Anyone, upon hearing that his or her
11 parked car had been hit, would go out to see.

12 Third, the Courts have held that the ruses must
13 pose no threats to the honest citizen; only those
14 predisposed to criminal behavior. For example, an
15 undercover police officer asking to buy drugs from a
16 suspected dealer poses no threats to the honest citizen,
17 only to the drug dealer, because the honest citizen will
18 have no drugs to sell or would refuse to sell or would even
19 call the police.

20 Here, not only the police accused Mr. Ciampi of a
21 violation of a nonexistent ordinance, but pretended to call
22 a tow truck to tow away his van on the basis of that
23 nonexistent violation. That would certainly get anyone,
24 crooked or not, to come out of the van.

25 It can be said that infringement here was even
26 more serious than in the two cases cited, *Reeves* and *Reyes*.
27 In those two cases, the officers had information of
28 narcotics activities and were investigating criminal

1 activities.

2 Here, at the point of initial contact, Mr. Ciampi
3 was not even suspected of criminal activities, and the
4 police were simply performing a service call at the request
5 of a residence.

6 Also, unlike Reeves and Reyes, Mr. Ciampi had
7 already expressly refused to talk to the police, as he had
8 the right to do so at that point, and the police ruse was
9 specifically designed to circumvent Mr. Ciampi's right not
10 to submit to a consensual encounter.

11 This particular ruse used by the police, under
12 this particular set of circumstances, was unlawful. As
13 everything else flowed from this unlawful ruse in a matter
14 of less than two minutes, also, the motion to suppress is
15 granted, and there is no basis for holding Mr. Ciampi to
16 answer on the charge of Penal Code §69.

17 And as the People correctly agree that a finding
18 that the ruse was unlawful would be determinative of the
19 case, the Court need not address the remaining issue raised
20 by the defense as to whether excessive or unreasonable force
21 was used to detain Mr. Ciampi which would give rise to a
22 right of self-defense.

23 So the Court need not address that issue.

24 Mr. Ciampi, please stand. There being
25 insufficient evidence to hold Mr. Joseph Anthony Ciampi to
26 answer on the felony offense charged in the Complaint,
27 namely: Count 1, Penal Code §69, resisting or deterring an
28 officer, the Court will order that the defendant not be held

1 to answer on that charge.

2 And do both parties stipulate that the exhibits
3 may be returned to the parties introducing them?

4 MR. BEAUVAIS: Yes, Your Honor.

5 MR. ALCALA: Yes.

6 THE COURT: Thank you. And the Complaint -- so
7 the motion to suppress is also granted. I think I already
8 said that earlier, and the Complaint is -- the Complaint is
9 dismissed, and, Mr. Ciampi, you are discharged. Court is
10 adjourned.

11 (Whereupon, the Court recessed.)

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1 STATE OF CALIFORNIA)
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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 17, 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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 Dated: January 20, 2009

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

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24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
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27 MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE
A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT
28 ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR
PERSON."