

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

5
6 ---o0o---

7 THE PEOPLE OF THE STATE OF)
8 CALIFORNIA,)
9 Plaintiff,)
10 v.) CASE NO. BB833050
11 JOSEPH ANTHONY CIAMPI,) CHARGES:
12 Defendant.) F(001) PC 69
13 _____/

14
15 ---o0o---

16 PRELIMINARY EXAMINATION
17 REPORTER'S TRANSCRIPT OF PROCEEDINGS
18 DECEMBER 5, 2008
19 VOLUME 3
20 PAGES 109 - 123

21
22 ---o0o---

23 APPEARANCES:

24 FOR THE PEOPLE: JAVIER ALCALA
Deputy District Attorney

25 FOR THE DEFENDANT: DAVID J. BEAUVAIS
Attorney at Law

26
27
28 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.)

23

24

25

26

27

28

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

3
4

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.

16
17

 Dated: January 20, 2009

18
19

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

20
21
22
23

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

26 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT
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."