

TEXT OF ORAL ARGUMENT

Your Honor, the Irvine Police committed malicious prosecution, violating CA Gov't. Code Section 9149.22(c), which prohibits public employees from malicious prosecution. CA Gov't Code Section 815.2(a) makes Defendant [i.e. public entities] liable for acts of their employees. [CA Civil Procedure Section 128.5(a) allows a judge to order reimbursement for attorney fees incurred from bad faith actions.] By prosecuting me in bad faith, Defendant cost me \$5,000.00 in attorney fees [Exhibits retainer with Matthew Kaestner and canceled check dated 4/12/02]. They wrongfully charged me with a violation of CA Penal Code 653(m), making annoying phone calls. [Refer to Case No. IR02HM00216.] [CA Civil Procedure 1021.7; malicious prosecution is a prosecution not done in good faith. See definition from *Sheldon Appel Co. v. Albert & Olier*, 254 Cal.Rptr. 336, and 47 Cal.3d 863 (1989) and *Crowley v. Katleman*, 34 Cal.Rptr.2d 386, and 8 Cal.4th 666 (1994).]

1. Prosecution was commenced at the direction of Defendant because the Irvine police filed the complaint initiating prosecution of this groundless prior case [Exhibits statement from Investigator Cristal Hayes, Badge Number 5293, on 12/13/01 in DR 01-19823, and Complaint for Case IR02HM00216, charging me with violation of CA Penal Code 653(m)].

2. Prosecution was pursued to a legal termination in my favor because the D.A. moved to dismiss the charge [Exhibit Docket Report for prior Case IR02HM00216]. The D.A.'s unilateral dismissal is considered a legal termination in my favor, per the case of *Fuentes v. Berry* [38 Cal.App.4th 1800, 45 Cal.Rptr.2d 848].

3. Prosecution was brought without probable cause because the Irvine Police NEVER CONTACTED ME to determine if I was making the calls. Their so-called evidence was two phone traps on my home phone, when I was at work. [Exhibits Phone Trap Log in Irvine Police Report DR 01-19823, letters from Quang Luu and Larry Wong, page 3 of Sprint Phone Bill dated 11/10/01, and Production LRU Test Results Form for FCC.] They prosecuted on victim's receipt of postcards without any evidence showing that they came from me [No fingerprints or handwriting analysis in Irvine Police Report DR 01-19823]. They never tried to determine if the voice on the evidence tape was my voice [Exhibit DA Tape]. Per *Puryear v. Golden Bear Insurance Company* [66 Cal.App.4th 1188, 78 Cal.Rptr.2d 507 (1988)], there is no probable cause without evidence as to **WHO did it.**

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TEXT OF ORAL ARGUMENT (Continued from Page 1)

3. (Continued from Page 1, "brought without probable cause") Also, I noticed that the evidence tape was tampered with. [It repeated the same calls multiple times. The tape contained calls with the exact same date and time stamp over and over again. And the date and time and content reported by the victim for allegedly obscene phone calls did not match most dates and times of calls on the tape. See Exhibits Study of District Attorney Tape, Irvine Police Report DR 01-19823, and DA Tape.] And they prosecuted me for calls of the nature of someone munching potato chips, a child playing with a toy, and inaudible mumbling [No obscene language and no threats in Exhibit DA Tape].

4. Prosecution was initiated with malice because the Irvine Police NEVER CONTACTED ME [Exhibit IPD Report DR 01-19823 says nothing of any IPD personnel contacting me.]. I first became aware of the charges against me **only** through a letter from the D.A.'s office notifying me of my arraignment [Exhibit letter from D.A. dated 12/27/01.]. Per the criteria of *Baker v. Gawthorne* [82 Cal.App.2d 496, 186 P.2d 981 (1947)], one can infer malice from their refusal to do their research before filing the complaint.

The Irvine Police has a repeating pattern of NEVER CONTACTING US [me and my wife] regarding past incidents in which we were accused of committing crimes. Had they done so, they would have learned that we could not have committed them [Exhibits IPD reports DR 00-23319, DR 01-02842, and DR 01-18508, and Exhibits plane ticket receipts, MDA Travel Authority, and Marriott Hotel receipt]. In addition, we have NO CRIMINAL RECORD, but apparently the Irvine Police believes we are criminals. We filed a police report against a violent next-door neighbor, who attempted to batter my wife, vandalized our property, and has a criminal record from an arrest made by the Irvine Police. But when we made repeated requests that the Irvine Police contact this neighbor, they REFUSED. [Exhibits our copy of DR 02-06198, and complaint and Docket Report for Case No. 99HM03522]. Per CA Gov't Code 6254(f) [qv], we are entitled to a proper copy of this police report, which would include a statement from the suspect, had the Irvine Police contacted him. But when we repeatedly requested a proper copy of this police report, the Irvine Police refused to give us one. Instead, they gave us a copy that contains ONLY OUR OWN NARRATIVE. [Exhibit our letters dated 9/19/02, 9/27/02, and 10/18/02, and letter from Lt. Sam Allevato dated 9/25/02]. [Exhibit our copy of DR 02-06198, stamped "controlled document".]

We have documentation substantiating all our claims if your Honor would like to see them.

END OF ORAL PRESENTATION

POSSIBLE CHALLENGES

DON'T BE INTIMIDATED BY THEM. REMEMBER YOU STAND ON TRUTH. GET ANGRY AT THEIR UNJUST ACTIONS AGAINST YOU!

1. **The judge does not let me speak.** **Answer:** Your honor, may I finish presenting my case? Is it not my *right* to present my case?

2. **City of Irvine claims I presented my claim to them too late.** **Answer:** According to the case of *County of Los Angeles v. Superior Court* [91 Cal.App.4th 1303, 111 Cal.Rptr.2d 471 (2001)], I can and did file within one year of this cause of action. This case establishes that a trial court has broad discretion in ruling on a petition for relief from statutory requirement of presenting public entity with damage claim within six months of claim's accrual, as long as the issue is whether the late claim was presented within a reasonable time - less than a year after the cause of action accrues. I sent my claim to the City of Irvine by certified mail on 4/24/03 and 5/24/03. I filed their form, along with my application for leave to present claim, on 6/23/03, in accordance with CA Gov't. Code Section 911.4(a) and (b). It does not matter if I presented my damage claim to the City of Irvine past the six-month time limit. According to CA Civil Code Section 340, my time limit for filing this present action is within one year of the Defendant's cause of action, which is tolled to 6/28/02. See CA Government Code Section 945.3 for tolling.

2a. **They rule EARLY in the trial to dismiss my case JUST BECAUSE I filed too late.** **Answer:** Thank you very much, Your "Honor" I will pass on what happened at this hearing to Copwatch, Twisted Badge, and other related web sites.

3. **Irvine claims that they did have probable cause because the District Attorney took the case.** **Answer:** The Irvine Police had no probable cause because, per *Puryear v. Golden Bear Insurance Company* [66 Cal.App.4th 1188, 78 Cal.Rptr.2d 507 (1988)], a case or charge cannot be considered to have probable cause, or be legally tenable, if the accuser has no evidence as to **WHO did it**. Secondly, per *Lucchesi v. Giannini* [158 Cal.App.3d 777, 205 Cap.Rptr 62 (1984)], the prosecuting attorney's opinion means nothing if his/her client is **acting in bad faith**, which the Irvine Police was doing here, by not doing their factual research because they did not contact me. Thirdly, why did the D.A. move to dismiss the case six months later, **after discovery**? [Exhibit Docket Report for prior Case IR02HM00216]. *Sheldon Appel Company v. Albert & Olier* [254 Cal.Rptr. 336, 47 Cal.3d 863 (1989)] quotes Chief Justice William Howard Taft to establish that, "The question is not whether [the accuser] thought the facts to constitute probable cause, but whether the court thinks they did." Tenability is a question of law for a court to decide.

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4. **Irvine says they did have probable cause to prosecute because IPD Report DR 01-19823 discusses obscene phone calls where the victim is called a f***ing b***h whore, phone traps to my phone, and postcards. Answer:**

The Irvine Police evidence never established if it was I who made those calls. And their own evidence tape [Exhibits Study of District Attorney Tape and DA Tape] does not contain any annoying calls. If the Irvine Police contacted me, they would have discovered that I was at work when the phone trap claims two calls came from our home phone to the victim's phone. [Exhibits letters from Quang Luu and Larry Wong, page 3 of Sprint Phone Bill dated 11/10/01, and Production LRU Test Results Form for FCC] The Irvine Police never established that the derogatory postcards came from me when they recommended the case for prosecution. The police report [DR 01-19823] contains false statements about me, such as that I am unemployed or on medication, and unsubstantiated speculative gossip the victim heard about me, such as I damage property or make excessive noise. So this is not credible. Per *Puryear v. Golden Bear Insurance Company* [66 Cal.App.4th 1188, 78 Cal.Rptr.2d 507 (1988)], there is no probable cause, and therefore a case or charge is not legally tenable, if the accuser has **no evidence as to WHO did it.**

5. **They claim that SOMEONE at my home must have made those two calls.**

Answer: Had the Irvine police CHECKED it out, they would have learned that I was at work. [If anyone asks who made the calls, answer, "I don't know. I was not at home."] And my wife was at the Marriott Hotel in Long Beach [Exhibit receipt for tee-shirt from hotel gift shop]. No one else lived in our home.

6. **They say I was stalking the victim and made many calls, not just two.**

Answer: There is hardly any concordance between victim's statements regarding calls and the D.A. tape. If the police had CONTACTED me, they would have learned that the victim's allegations are false. [The victim made many false claims, such as that I am unemployed and I take medication.]

7. **They claim that this is not malicious prosecution because the case was dismissed without trial or demonstration that I was innocent. Answer:**

Actually, per the case of *Fuentes v. Berry* [38 Cal.App.4th 1800, 45 Cal.Rptr.2d 848], a voluntary unilateral dismissal of the charge, such as the District Attorney did in the prior case [Exhibit Docket Report for prior Case IR02HM00216], is considered a termination in my favor.

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8. **The judge returns an unfavorable verdict and finds for the City of Irvine.** **Answer:** OK, Your Honor; I will pass on what happened at this hearing to Copwatch, Twisted Badge, and other related web sites.

9. **They say I tampered with the D.A. tape.** **Answer:** Try a tape test: it will show that if I erased any of the tape, it will make a different sound than the one you have.

10. **You did not furnish the Irvine Police with all the evidence proving your innocence, so they acted in good faith.** **Answer:** I had no idea that there even was a case against me for making annoying phone calls until I received my letter of arraignment from the District Attorney on 12/27/01. After my arraignment, I tried contacting the Irvine Police and was referred to Cristal Hayes, but she refused to talk to me about the case! How can the Irvine Police Department say they acted in good faith when they **never even attempted** to contact or question the suspect? This is per the standard *Baker v. Gawthorne* [82 Cal.App.2d 496, 186 P.2d 981 (1947)]: incomplete factual research implies bad faith and malice.

11. **Irvine brings up past cases and says, "We got a lot of complaints about the Lahams, accusing them of vandalism and other disturbances of the peace, so we knew they had to be the ones making those calls."** **Answer:** None of the accusations made against us were ever substantiated, because had they CONTACTED us, they would have learned from hard evidence that we could not have committed those crimes. For instance, three Irvine Police reports show clearly that the Irvine Police never bothered to investigate if the charges against us were true. And we have hard evidence that they were false.

In Report DR 01-02842, a neighbor believed TEN MONTHS after her car was vandalized that we did it and accused us of other vandalism. She asked the Irvine Police NOT to contact us! Ofcr Velarde, badge #294, wrote up the report and never contacted us, even though a crime took place.

Had Ofcr Miller, badge #5278, who wrote report DR 00-23319 accusing us of vandalism, contacted us, he/she would have learned via our plane and hotel receipts [Exhibits qv] that we were on a business trip in Washington State when that crime occurred.

Had Ofcr Clanin, badge #296, who wrote report DR 01-18508 accusing us of vandalism, contacted us, he/she would have learned via hotel receipts [Exhibits qv] that we were on a weekend trip when that crime occurred.

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12. **Irvine/Judge says this wrongful prosecution is the District Attorney's fault, not Irvine's fault.** **Answer:** The Irvine Police initiated this prosecution, and did so in bad faith because they never had any evidence against me. Per *Lucchesi v. Giannini* [158 Cal.App.3d 777, 205 Cal.Rptr 62 (1984)], the City of Irvine is liable for malicious prosecution for acting in bad faith with the District Attorney. And because their malicious prosecution caused me **economic damages** - a verifiable monetary loss of \$5,000 in attorney expenses - as defined in CA Civil Code Section 1431.2(b) (1) - the landmark case of *Aetna Health Plans of California v. Yucaipa-Calimesa Joint Unified School District* [72 Cal.App.4th 1175, 85 Cal.Rptr.2d 672] interprets CA Civil Code Sections 1431 [Result of Proposition 51] that the **liability is JOINT and SEVERAL.**

13. **The judge asks, "About your allegedly violent next-door neighbor: How do you know he is a criminal? And why should the Irvine Police be more suspicious of him than of you?"** **Answer:** Our violent next-door neighbor has a criminal record, and we do not. On 9/24/03, we learned that this violent next-door neighbor's full name is Sean Robert Norton, and that on 5/8/99 the Irvine Police, in particular an Officer Hutchcraft, arrested him for being under the influence of Methamphetamine, per IPD Report DR 99-05576 [qv]. On 9/30/99, he pleaded guilty; see the Docket Report for Case No. 99HM03522 [qv].

14. **The judge asks, "But it sounds like the Irvine Police just don't bother to follow up on complaints. Aside from not getting the police report the way you want, why do you say this business with you neighbor shows bias?"** **Answer:** We continually requested their assistance and they continually refused to render any. A restraining order was out of the question because we shared the same stairwell to our front and only doors with this violent next door neighbor. Because the Irvine Police refused to do their job, we moved out of duress on 4/16/03. We accumulated emergency moving costs of \$2,392.64 per hotel and storage invoices [Exhibit qv and summary sheet].

On 4/5/02 we filed police report DR 02-06198 [Exhibit qv] against the violent next door neighbor who tried to batter my wife, vandalized our property and continued to harass us. We found a photo on our car warning that our car was going to be vandalized or stolen. We repeatedly contacted the Irvine Police for assistance. An Ofcr Peasley refused to contact the violent next door neighbor. Ofcrs William Russell and Hung warned us that WE would get arrested if we didn't stop harassing the violent next door neighbor! We elicited one last cry for help but the Irvine Police refused respond.

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15. **The judge asks for more details on the D.A. tape. Answer:** I did not find any messages of "f***ing b***h" or "f***ing b***h whore" on the D.A. tape. What I found, other than sounds of munching potato chips and a child playing with a toy, was inaudible mumbling which I could not make out. I also found a call with a date and time stamp of "Friday 6:45 PM" is repeated twice on this tape, with the exact same mumbling tones. Also, another call with a date and time stamp of "Saturday 6:42 PM" is repeated, with the same mumbling tones. And a date and time stamp of "Sunday 6:32 PM" is repeated, with the exact same slow mumbling tones. And no one at the Irvine Police ever tried to compare my voice with the mumblers' voice on the D.A. tape.

16. **The judge asks, "What did you do to resolve this claim against the Irvine Police? Did you ever present your claim to the city?" Answer:** I sent a complaint via letters dated 4/24/03 and 5/24/03, both by certified mail, to the City of Irvine. These two letters described how the Irvine Police Department committed malicious prosecution against me, **in violation of California Government Code Section 9149.22(c), and presented my claim of \$5,000.00 for attorney fees to defend myself against that wrongful charge. I also submitted a claim-for-damages form in person on 6/23/03. My claim was denied in a letter dated 6/19/03 from the City of Irvine. The 6/19/03 letter DID NOT EVEN ADDRESS the issue of malicious prosecution or police misconduct. The City of Irvine assigned a file number of S 139440 PC to my claim.**