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FILED
ORANGE COUNTY SUPERIOR COURT

JAN 18 2011

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF ORANGE**
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10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA,
12 Plaintiff,
13 vs.
14 JAMES OWENS (DOB: 12/23/46) AND
SHANNON R. ELLIS (DOB: 11/21/69),
15 Defendants.
16

Case No. 10NM10777
IN LIMINE MOTION 1 OF 1
PEOPLE'S MOTION IN LIMINE TO
EXCLUDE EVIDENCE; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF
Trial Date: January 18, 2011

17
18 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

19 **PLEASE TAKE NOTICE** that the People of the State of California, respectfully requests by
20 motion in limine that Defendants be excluded from presenting any evidence related to the following:

- 21 1. Subsequent remedial measures being taken by Defendants; and
22 2. Any reference to or mention of claim of harassment by the City of Fullerton.
23

24 This motion will be based upon this notice and the attached Memorandum of Points and
Authorities.
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I.**

3 **EVIDENCE THAT CONFUSES THE ISSUES OR MISLEAD THE JURY MAY BE**
4 **EXCLUDED**

5 Generally, "[t]he purpose of the motion [in limine] is to avoid the obviously futile attempt to
6 unring the bell in the event a motion to strike is granted in the proceedings before the jury. The scope
7 of such motion is any kind of evidence which could be objected to at trial, either as irrelevant or
8 subject to discretionary exclusion as unduly prejudicial." Clemens v. Am. Warranty Corp., 193 Cal.
9 App. 3d 444, 451 (1987) (internal quotations omitted) (quoting Hyatt v. Sierra Boat Co., 79 Cal.
10 App.3d 325, 337 (1978); 3 Witkin, Cal. Evidence (3d ed. 1986), at p. 1969; Evid. Code, § 352.).
11 Furthermore, "[t]he usual purpose of motions in limine is to preclude the presentation of evidence
12 deemed inadmissible and prejudicial by the moving party. A typical order in limine excludes the
13 challenged evidence and directs counsel, parties, and witnesses not to refer to the excluded matters
14 during trial." Kelly v. New West Federal Savings, 49 Cal. App. 4th 659, 669 (1996). Such motions
15 also "permit more careful consideration of evidentiary issues than would take place in the heat of
16 battle during trial. They minimize side-bar conferences and disruptions during trial, allowing for an
17 uninterrupted flow of evidence. Finally, by resolving potentially critical issues at the outset, they
18 enhance the efficiency of trials and promote settlements." Id. at 670.

19 Evidence Code §352 states that the court in its discretion may exclude evidence if its probative
20 value is substantially outweighed by the probability that its admission will (a) necessitate undue
21 consumption of time or (b) create substantial danger of undue prejudice, or confusing the issues, or of
22 misleading the jury.

23 James Owens and Shannon R. Ellis ("Defendants") are the owners of the home located at 2400
24 Olive Avenue (the "Property") in the City of Fullerton (the "City"). On 5/17/10 the City received a
25 complaint stating that trees growing from the Property were encroaching in public right of way. The
26 Property is a corner house and the trees were interfering with the sidewalks on two streets. A visual
27 inspection was conducted on 5/19/10 and it confirmed the facts of the complaint: The trees on the

1 Defendants' Property were encroaching into the public right of way. The trees originated from the
2 Defendants' back and front yard and they hung down approximately four feet above the grade of the
3 sidewalk off of Paula Avenue and Olive Avenue. The City provided the Defendants with written
4 Notice of Violation on or about 5/20/10. A second inspection was conducted on 6/7/10. No remedial
5 action had been taken and the trees continued to encroach upon the public right of way. An
6 Administrative Citation was issued on 6/7/10.

7 The City received additional complaints regarding overgrown weeds and the continued
8 encroachment in the public right of way on 6/10/10. A third inspection was conducted on 6/24/10 to
9 confirm that the facts alleged in the complaint. It was observed during the inspection that there were
10 overgrown weeds and the trees continued to encroach upon the public right of way, a second
11 Administrative Citation was issued on 6/24/10.

12 A visual inspection was conducted on 7/8/10. It was observed that the trees and weeds
13 continued to encroach upon the public right of way and a third Administrative Citation was issued on
14 7/8/10.

15 A follow up inspection was conducted on 7/15/10. It was observed that no remedial measures
16 had been taken by the Defendants.

17 As a follow up, visual inspections were conducted on the following dates after 7/15/10:

18 7/20/10

19 7/21/10

20 7/22/10

21 7/26/10

22 7/27/10

23 Similar to all prior inspections, the Defendants had not taken any remedial action and the trees
24 and weeds continued to encroach upon the public right of way. Throughout these inspections, the
25 Defendants refused to speak the Community Preservation Officers who inspected the Property even
26 though the Defendants were present at the Property.

27 The People anticipate Defendants' basic argument in this criminal proceeding is that the City is
28

1 simply harassing them.

2 It is the People's position as follow:

- 3 1. Any evidence of remedial measures should be excluded; and
- 4 2. Any evidence, reference or inference to the issue of harassment by the City should be
- 5 excluded at trial.

6 These issues should be excluded because they are irrelevant as to whether or not the Defendants are
7 guilty for the crimes for which they are charged – they are not an element of the crime nor are they
8 legitimate affirmative defenses.

9 Whether the Defendants have taken measures to remedy the violations for which they are
10 charged does not take away the fact that violations did occur on the date of charge. Further, it would
11 be highly prejudicial to the People if the Defendants were allowed to characterize the performance of
12 the City's Community Preservation Officers to follow up and complete the tasks for which they are
13 assigned as harassment.

14 The presentation of these issues will necessitate undue consumption of time and create undue
15 prejudice, confuse the issues, and mislead the jury.

16 **II.**

17 **CONCLUSION**

18 For the reason stated above, it is respectfully submitted that this Court grant the People's
19 request that:

- 20 1. Any evidence of remedial measures should be excluded; and
- 21 2. Any evidence, reference or inference to the issue of harassment by the City should be
- 22 excluded at trial.

23 Dated: 1/17/11

JONES & MAYER

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25
26 By: 

Michael Q. Do
Attorneys for the People of the State of California