



County of Santa Cruz⁰⁰²⁷

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GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

Agenda November 2, 1999

To: Board of Supervisors

Re: Claim of Stephen Albert All, No. 900-045

Original document and associated materials are on file at the Clerk to the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

- X 1. Deny the claim of Stephen Albert All, No. 900-045 and refer to County Counsel.
2. Deny the application to file a late claim on behalf of _____ and refer to County Counsel.
3. Grant the application to file a late claim on behalf of _____ and refer to County Counsel.
4. Approve the claim of _____ in the amount of _____ and reject the balance, if any, and refer to County Counsel.
5. Reject the claim of _____ as insufficiently filed and refer to County Counsel.

RISK MANAGEMENT

BY Janet McKinley

COUNTY COUNSEL

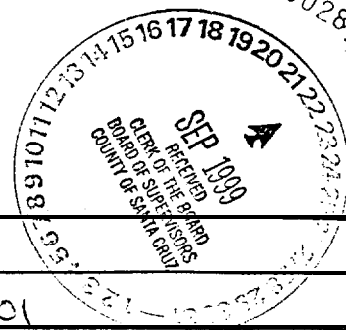
By Samuel Torres, Jr.

cc: Mark Tracy, Sheriff-Coroner

CLAIM AGAINST THE COUNTY OF SANTA CRUZ
(Pursuant to Section 9 10 et Seq., Govt. Code)

900-045

TO: BOARD OF SUPERVISORS
COUNTY OF SANTA CRUZ
ATTN: Clerk of the Board
Governmental Center
701 Ocean Street, Santa Cruz, CA 95060



1. Claimant's Name: Stephen Albert All
Address: P.O. Box 1401
Santa Cruz, CA 95061-1401
Phone No: 458-2110
P.O. Box to which notices are to be sent: 1401
2. Occurrence: False arrest, false imprisonment, civil rights violations (Lit 4th 5th amendment)
Date: 3/23/1999 Place: Encinal Street, Santa Cruz Emotional distress
Circumstances of occurrence or transaction giving rise to claim: See attached declaration
This claim against County is in reference to Sheriff's Deputies and Jail personnel
4. General description of indebtedness, obligation, injury, damage or loss incurred so far as is now known:
Loss of work emotional distress, false arrest, false imprisonment
5. Name(s) of public employee(s) causing injury, damage or loss, if known: Deputy McConnell may or may not be correct name, Christine Allegratti (Jail Supervisor)
6. Amount claimed now. unknown at present
Estimated amount of future loss, if known. \$ " " "
TOTAL \$ _____
7. Basis for above computations: NA
8. If the amount churned is over \$10,000, indicate the court of jurisdiction:
_____ Municipal Court Santa Cruz _____ Superior Court

CLAIMANT'S SIGNATURE: [Signature]

Note: Claim must be presented to Clerk, Board of Supervisors, within six (6) months after the act which occasioned the injury.

Americans with Disabilities Act questions or requests for accommodations may be directed to the ADA Coordinator at 454-2962 (TDD 454-2 123).

DECLARATION

I, STEPHEN ALBERT ALL IV, declare:

1. I am a Citizen of the State of California and the United States of America, and the Presumed Defendant in this action.

2. I was stopped in my car in the private property parking lot of my employer by Officer A. Martin of the Santa Cruz Police Department on March 23, 1999, at approximately 8:50 AM. Officer Martin asked me for my driver's license (I have continuously held a valid California driver's license since 1979, automobile registration (my automobile is registered with the State of California) and proof of automobile insurance (I had valid and current automobile insurance at the time of arrest).

3. I identified myself to Officer Martin with my valid and current United States passport. When it became apparent to me that he intended to complete the Officer's portion of a Notice to Appear for an alleged Vehicle Code infraction (expired license registration), I presented to him and asked him to sign a Peace Officer Notification Form (attached). This briefly notifies the officer that I am a citizen of the State of California, waive no rights, do NOT refuse to sign a Notice to Appear as described in Penal Code section 853.5, but instead wish to exercise the exception contained therein, and hence request to be taken to the magistrate as is clearly provided for in Vehicle Code section 40302. Additionally, the Notification Form advises that should a magistrate not be available (unlikely on a Tuesday morning around 10 AM), a violation of Penal Code 810, there is no provision in Vehicle Code 40307 nor Penal Code 853.5 nor Penal Code 853.6 for Officer Martin or any "officer in charge of a jail" to hold, jail, or detain me in custody for an infraction. It further advises that: Penal Code 4030(g) (1), (2) specifically provide that: "...no person arrested and held on an infraction shall be confined in the general jail population." This form is clearly written on one page, and includes two pages of photocopied points and authorities from California Statutes: Vc § 40302, 40307 and PC § 19(c), 145, 810, 853.5, and 853.6. I made an additional oral request and then demand that Officer Martin "take me to the magistrate."

0030

1 4. Officer Martin never signed, did not indicate to me full understanding, nor
2 returned to me the Peace Officer Notification Form. I do recall him saying something like
3 "that's not the way it works in this County" or words to that effect. I may have said that
4 there was a recent appellate court decision (Henry v. County of Shasta (9516704 9th U.S.
5 Circuit Court of Appeals)) that upheld my request statewide, and that the County of Santa
6 Cruz and all law enforcement jurisdictions therein had been put on notice to this effect just
7 several months previous by the office of my attorney. Officer Martin, being on a motorcycle,
8 then radioed to his superior officer, Sergeant Andrew V. Crain.

9 5. Sergeant Crain arrived shortly thereafter, gave me his business card, and when I
10 mentioned to Officer Martin that I wished to present to Sergeant Crain the Peace Officer
11 Notification Form, Sergeant Crain said "I've heard enough" and rather gruffly clicked a set
12 of handcuffs on me. Taking place in full view of the front windows of my office building, my
13 colleagues at the local telecommunications software company where I am employed watched this
14 scene with horror and panic. I was never read any rights or advised that I may remain
15 silent. When I asked "With what specific charges am I being arrested?" I was met with either
16 silence or "Refusal to sign a traffic ticket." Nobody could give me any statutory derivation
17 of this "crime" and when I protested that I was not refusing, but merely asking for my
18 legally-protected right to be brought before a magistrate this was met with silence. I was
19 placed in a transport vehicle to Santa Cruz County Jail, the driver (another SCPD Officer
20 whose name or badge number I do not recall) answered my questions and statements with a curt
21 "That is your legal opinion."

22 6. I was checked into (NOT booked into) the jail, my possessions were inventoried,
23 and at the same time that I was being separated from my backpack, which contained a blank
24 Writ of Habeas Corpus, I requested that specific paperwork so that I may fill it out. Deputy
25 McConnell (I believe this is his correct name, but I am not positive) of the Santa Cruz
26 County Sheriff took away my Writ, my backpack that contained additional legal paperwork, and
27 while saying "you can fill out all the paperwork you want to in here" (self-contradicting, as
28 he just took it from my possession) slammed me into "Waiting Room #1," essentially a jail

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1 cell. Again, I was not booked, and so nobody who I subsequently phoned, including my
2 attorney. could reach me. Instead, they were told "we have no record of him being here as he
3 has not been booked." When I tried to ask the deputy for what crime I was being arrested and
4 jailed, he could not produce a satisfactory answer from the paperwork, muttering to himself
5 "it seems like only a bunch of traffic infractions."

6 7. After several hours, while I assembled out of toilet paper the words "I demand a
7 Writ of Habeas Corpus" to be placed in reverse on the window of the cell door, I was released
8 from Waiting Room #1 and brought before Deputy Christine Allegretti sitting behind a glass
9 window to be "interviewed." She began with "I realize that you are 'trying to make some kind
10 of legal point here, but if you insist on seeing a judge it will take until Thursday, perhaps
11 as long as 72 hours." There were one or two jail guards or Deputies behind me trying to stay
12 out of my sight who I clearly felt were there to intimidate me or physically restrain me if
13 necessary, which it was not. While I was inwardly very angry, I was outwardly only very
14 polite though firm in my legal standing, and continuing insistence to be brought before a
15 magistrate. Deputy Allegretti insisted that "while the wheels of justice grind, they do not
16 move so quickly because you demand it." I reminded her that the words "immediate" and
17 "demand" are in the statutes with regards to being brought before a magistrate, reminded her
18 that she may be guilty of conspiring to commit a misdemeanor (Penal Code § 145) and that I
19 could find no other interpretation, 72 hours or other, besides "immediate" for that word.
20 She then called me either a "smart-aleck" or "smart-ass" (I don't recall which) and asked me
21 if I wanted to be released on my own recognizance (O. R.) or introduced into the general jail
22 population. When I further reminded her that Penal Code 4030 provides that I cannot be
23 introduced into the general jail population for any infraction for which I was being wrongly
24 detained, she replied that must mean I wanted to O. R. As a public employee and Jail
25 Supervisor who "interviews" detainees, one can assume that Deputy Allegretti would know this
26 statute well. I replied that if O. R. meant I had to sign something, then I could not do it,
27 as that would take me out of common law and place me into public law, and again demanded to
28 be brought before a magistrate. This made her angry, and she began to motion to the guard(s)

1 behind me to come closer, which was not necessary. I quickly stated that I had never been in
2 jail before, so I could use her assistance in making the best choice. This softened her
3 somewhat, but not by much. With this intimidation and threat of continued incarceration, and
4 just having saved myself some apparently rough treatment and my very own set of orange
5 clothing, she essentially bullied me into saying that I wanted to O. R.

6 8. With this oral declaration of my willingness to O. R. under illegal (and so
7 notified) threatening circumstances, and still not having been booked, I was then rewarded
8 with introduction to a much larger cell, commonly known as the "drunk tank." (As the other
9 inmates shared their alleged crimes: assault and battery, malicious mischief, controlled
10 substance possession, etc. I was laughed at for allegedly having "expired vehicle
11 registration.") I was in this cell for an additional four or five hours, at which point
12 Deputy McConnell brought me back to the glass window / booking area. I had now been in jail
13 the entire workday, and was just now being booked. I replied to Deputy McConnell that I did
14 not consent to having my fingerprints and photographs taken, and that there was a case in
15 Mississippi which found that unlawful taking of such under false pretense was deemed to be
16 theft from the defendant. This did not stop the Deputy from illegally taking my photograph
17 and fingerprints.

18 9. Deputy Allegretti did not consent to my placing the notation "signed under
19 protest, extortion and duress" beneath the signature on my O. R. form, which I wished to do.
20 Given the circumstances under which this signature was obtained, I strenuously object to and
21 refuse to stipulate to any removal from common law this document may provide. I was released
22 from jail approximately eight hours after being falsely arrested for nothing more serious
23 than alleged traffic infractions.

24 10. As promised on that form, my attorney and I appeared before Referee Mulligan on
25 April 13, 1999. We stated that I refused to stipulate to the jurisdiction of that court, as
26 the Referee was not a duly-sworn magistrate as defined by Penal Code § 807, 808. The Referee
27 stated that it was his understanding that he had jurisdiction in traffic matters. We stated
28

1 hat this was a matter at common law which had NO jurisdiction and that if he was forcing us
2 o, we would disqualify him under CCP 170.6. He essentially invited us to do so and we did.

3 11. My attorney and I appeared before Commissioner Cloud on May 26, 1999. I stated
4 hat I had been trying to move the court for a probable cause hearing before a duly-sworn
5 magistrate as defined by Penal Code § 807, 808, but she was not such a magistrate. We again
6 refused to stipulate to her jurisdiction, and she 'kicked the case upstairs."

7 12. My attorney and I appeared before Judge Danner on September 1, 1999. We moved
8 the court for a Probable Cause Hearing which was granted for September 24, 1999.

Peace Officer Notification Form

You are hereby advised that I, Stephen Albert All, am a resident and citizen of the state of California; as such I am entitled to all rights and protections granted by the Vehicle Code, Penal Code and the Constitution of the State of California and the Constitution of the United States. I shall waive none of these rights except by specific written waiver.

Further, you are hereby advised that:

1) I do not and shall not refuse to sign a "Notice to Appear" as described in Penal Code section 853.5; however, I wish to exercise the exception contain therein, and hence,

2) I request to be taken to the magistrate as provided for in Vehicle Code section 40302. Should you delay taking me before a magistrate, you may be guilty of a misdemeanor per PC 145.

Further, **be advised that** should a magistrate **not be available, a violation** of PC **810**, there is no provision in VC 40307 nor PC 853.5, nor PC 853.6 for you or the **officer in charge** of the jail to hold, jail, or detain me in custody for an **infraction**. Further, be advised that PC **4030(g)(1)**, (2) specifically provides **that**

".....**no** person arrested and held on an **infraction shall** be confined in the general jail population...."

Subsequently, as I cannot be taken into custody for an infraction, there is **no** provision in VC **22651(h)(1)** for my vehicle to be removed or stored and I do not consent to impoundment of my property. If I am taken into custody, I request the opportunity to make arrangements to secure my own property.

Should you not release me, I am entitled to and hereby request a **public** defender without undue delay as provided in **PC 19(c)**. I also wish to petition the Superior Court of this county for a Writ of **Habeus** Corpus and request your assistance in filing such a petition.

Any violation of the above codes may subject you to criminal and/ or civil action in a court of law where you may be found personally liable.

Without agreeing, confirming, or admitting guilt, I have read and understand the above statements.

Officer's signature _____

Badge number _____ date: _____ time: _____

If I am not under arrest, I wish to leave.

Citations for Misdemeanors

PC

853.5. Except as otherwise provided by law, in any case in which a person is arrested for an offense declared to be an infraction, the person may be released according to the procedures set forth by this chapter for the release of persons arrested for an offense declared to be a misdemeanor. In all cases, except as specified in Sections 40302, 40303, 40305, and 40305.5 of the Vehicle Code, in which a person is arrested for an infraction, a peace officer shall only require the arrestee to present his driver's license or other satisfactory evidence of his identity for examination and to sign a written promise to appear. If the arrestee does not have a driver's license or other satisfactory evidence of identity in his or her possession, the officer may require the arrestee to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the promise to appear. This thumbprint or fingerprint shall not be used to create a data base. Only if the arrestee refuses to sign a written promise, has no satisfactory identification, or refuses to provide a thumbprint or fingerprint may the arrestee be taken into custody.

(Amended Sec. 1, Ch. 93, Stats. 1995. Effective January 1, 1996.)

Mandatory Appearance

40302. Whenever any person is arrested for any violation of this code, not declared to be a felony, the arrested person shall be taken without unnecessary delay before a magistrate within the county in which the offense

VC

charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made in any of the following cases:

(a) When the person arrested fails to present his driver's license or other satisfactory evidence of his identity for examination.

(b) When the person arrested refuses to give his written promise to appear in court.

(c) When the person arrested demands an immediate appearance before a magistrate.

(d) When the person arrested is charged with violating Section 23152. Amended Ch. 53, Stats. 1982. Effective February 18, 1982, by terms of an urgency clause.

PC

§ 145. Officer delaying to take arrested person before magistrate

DELAYING TO TAKE PERSON ARRESTED BEFORE A MAGISTRATE.
Every public officer or other person, having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of 3 misdemeanor. (Enacted 1872.)

PC

§ 810. Availability of magistrate when court not in session: assistance of custodial officer; telephone call

(a) The presiding judge of the superior court, the presiding judge of each municipal court in a county, and the judge of each justice court in a county, shall, as often as is necessary, meet and designate on a schedule not less than one judge or the superior court, municipal court or justice court to be reasonably available on call as a magistrate for the setting of orders for discharge from actual custody upon bail, the issuance of search warrants, and for such other matters as may be deemed appropriate, at all times when a court is not in session in the county.

(b) The officer in charge of 3 jail, or 3 person he designates, in which an arrested person is held in custody shall assist the arrested person or his attorney in contacting the magistrate on call as soon as possible for the purpose of obtaining release on bail.

(c) Any telephone call made pursuant to this section by an arrested person while in custody or by such person's attorney shall not count or be considered as a telephone call for purposes of Section 851.5 of the Penal Code. (Added by Stats. 1973, c. 956, § 1502, § 1.)

PC

0036

Punishment for Infractions

19c. An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him unless he is arrested and not released on his written promise to appear, his own recognizance, or a deposit of bail.

(Added Ch. 1192, Stats. 1968, Operative January 1, 1969.)

Application of Provisions

PC

853.6. (a) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the person is released, the officer or superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or superior shall prepare a written notice to appear in a court.

CONTINUES

Magistrate Unavailable

VC

40307. When an arresting officer attempts to take a person arrested for a misdemeanor or infraction of this code before a magistrate and the magistrate or person authorized to act for him is not available, the arresting officer shall take the person arrested, without unnecessary delay, before:

(a) The clerk of the magistrate who shall admit him to bail in accordance with a schedule fixed as provided in Section 1269b of the Penal Code, or

(b) The officer in charge of the most accessible county or city jail or other place of detention within the county who shall admit him to bail in accordance with a schedule fixed as provided in Section 1269b of the Penal Code or may, in lieu of bail, release the person on his written promise to appear as provided in subdivisions (a) through (f) of Section 853.6 of the Penal Code.

Whenever a person is taken into custody pursuant to subdivision (a) of Section 40302 and is arrested for a misdemeanor or infraction of this code pertaining to the operation of a motor vehicle, the officer in charge of the most accessible county or city jail or other place of detention within the county may detain the person arrested for a reasonable period of time, not to exceed two hours, in order to verify his identity.

Amended Ch. 593, Stats. 1974, Effective January 1, 1975.

Jailed driver can pursue suit

SAN FRANCISCO (AP) — Likening a Shasta County motorist's experience to an episode in Arlo Guthrie's song "Alice's Restaurant," a federal appeals court reinstated a lawsuit claiming the man was stripped and held in a padded cell on suicide watch for nearly 10 hours because he refused to sign a traffic ticket.

Rolland R. Henry was stopped by a highway patrolman in May 1993 for driving with broken tail lights. He refused to sign a line on the ticket promising to appear in court and instead told the officer he had the right under state law to appear immediately before a magistrate, said the 9th U.S. Circuit Court of Appeals.

According to Henry's suit, quoted by the court, the officer said no magistrate was available that night and that Henry would be jailed unless he signed the ticket. When he persisted, he was handcuffed and driven to the county jail in Redding.

What followed, according to Henry's description, was compared by the court to an incident in "Alice's Restaurant," Guthrie's anti-war ballad of the 1960s, in which Guthrie was jailed for throwing garbage into a closed city dump. He was put in a cell by Officer Obie, who took away his belt; when Guthrie asked why, Obie replied, "Kid, we don't want any hangings."

Henry said he was questioned at the jail by a deputy and a nurse, told them he had

no medical problems and refused to answer any more questions. He was taken to a hospital for an examination, then returned to jail and placed in a "safety cell," a bare, padded, unheated room with no sink, a urine smell and a hole in the floor instead of a toilet.

The charges

against

Rolland R.

Henry were

dismissed at

trial.

He said he was put on suicide watch, with checks every 15 minutes, and at one point was taken naked, in full view of male and female guards and inmates, to the booking area where he again refused to sign. He was then returned to the cell and told by a deputy that he would be kept there indefinitely until he signed a statement, he said.

Henry said he then signed the statement, which he was not allowed to read, and was told he would be brought back to the cell if he refused to answer all questions.

He was brought before a court commissioner after almost 10 hours in the cell and released without bail, the court said. The charges were dismissed at trial.

The appeals court voted 2-1 Tuesday to reinstate Henry's suit.