IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

IN AND FOR THE APPELLATE DIVISION

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. KEVIN PERELMAN, Defendant and Appellant,	No. BR 053990

APPEAL FROM THE JUDGEMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

APPELLANTS OPENING BRIEF

Los Angeles Superior Court Case No. 7VW04099
Honorable Eric P. Harmon, Judge

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I was Attacked by 90% of worldwide

The Entire Jury knew who I was because I'm 10 time more Known then Donald trump from these Gov murder ops.

Why ever Argue unless to try to make me look crazy from statements on website BEFORE trial

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but my 100's of Police reports aren't Important and Buried

STATEMENT OF THE CASE

The People filed a Misdemeanor complaint as Case No. 7VW04099. CT 1 (footnote). The People moved to join this complaint with the complaint they filed in Case No. 7VW05190. The Court granted said motion. CT 29.

The People filed an amended Misdemeanor complaint in accordance with the courts ruling on the consolidation motion. The Counts alleged in the amended complaint were:

> Count One: On or about March 21, 2017 through August 2, 2017 the defendant violated Penal Code (footnote) Section 370 and 372.
>
> Count Two: On or about May 18, 2017 the defendant violated Section 422 with the victim of said charge being Terrance Scroggin.
>
> Count Three: On or about May 9, 2017 the defendant violated Los Angeles Municipal Code Section 66.25.
>
> Count Four: On or about April 28, 2017 the defendant violated Los Angeles Municipal Code Section 66.25.
>
> Count Five: On or about March 21, 2017 the defendant violated Los Angeles Municipal Code Section 66.25.
>
> Count Six: On or about August 3, 2017 through September 20, 2017 the defendant violated Section 370 and 372.
>
> Count Seven: On or about August 18, 2017 the defendant violated Section 242 with the victim of said charge being Bailey Barnard.
>
> Count Eight: On or about September 20, 2017 the defendant violated Los Angeles Municipal Code Section 28.01.
>
> Count Nine: On or about March 6, 2018 the defendant violated Los Angeles Municipal Code Section 28.01.1.

CT 63-66.

The defendant was arraigned and plead not guilty to the charges. CT 68-69.

On May 14, 2018 the prosecution requested the charges in Count 3,4 and 5 be dismissed. The Court granted this request. CT 76. The jury trial commenced on this same date. CT 77.

On May 17, 2018 the defendant made a motion for a judgment and acquittal pursuant to 1118.1. The court denied said motion. CT 82-83.

The defendant submitted special jury instructions. CT 84. The defendant objected to the jury instructions the court had advised it would give to the jury. The special jury instructions requested by the defendant were denied and the objection to the jury instructions by the defendant were overruled.

On May 21, 2018 the jury found the defendant guilty of Count One, Count Two, Count Six, Count Seven, Count Eight, Count Nine. CT 134-136.

On May 21, 2018 the court sentenced the defendant to:

Count One: 36 months of summary probation, 52 week mental health treatment, force and violence conditions, fines and fees.

Count Two: 36 months of summary probation, 30 days in County Jail consecutive, 52 week mental health treatment, force and violence conditions, stay away orders and fines and fees.

Count Six: Sentence stayed pursuant to Section 654.

Count Seven: 36 months of summary probation, 90 days in County Jail consecutive, 52 week mental health treatment, force and violence conditions, restitution, fines and fees.

completed + more plus proof of dialogs on my website

moved to maximum Sec pitchess Wayside

Judicial terror ops with sheriff & + inmates together

Pitchess Wayside is Prison - not Jail

Count Eight: Stayed pursuant to Section 654.

Count Nine: Stayed pursuant to Section 654.

On May 23, 2018 the defendant filed a timely notice of appeal and request for bail pending appeal. CT 147.

STATEMENT OF FACTS

For the past several years, the defendant and appellant – Kevin Perelman – has operated and managed a website that details a worldwide conspiracy against his well-being. As Perelman explains it, his website is intended to "create awareness of what is going on and explain that everything these people have been told isn't true about me." RT 663. Perelman believes that "literally" half of the world knows where Perelman lives and uses "cryptic tactics" to disrupt his life. RT 928, 933. Several people have allegedly defamed, slandered, and abused him in furtherance of this conspiracy. RT 946. His local neighborhood watch is allegedly organized against him. RT 669.

Perelman has never operated the website for business purposes and never made "a single penny: off the site's operation. RT 683, 957. He has never attempted to make any money from it. RT 949. He has never even caused any commercial advertisement to appear on the site. RT 957. Simply put, Perelman operates this website for only one reason: create awareness of the worldwide conspiracy against him. RT 663, 956.

In order to allow the world to know about the worldwide conspiracy against

him he has caused cards to be printed that are the size of business cards, which contain the address of the website and his name on the cards. As a result, he never created the cards for any financial gain; he printed and distributed them solely to have individuals review his website, where there is specific information about the worldwide conspiracy against him. RT 954-958

He distributes these cards by offering them to individuals, placing them on cars and placing them in locations, sometimes on the ground, where individuals will see them and pick them up and then go to his website. This often results in individuals confronting him about his behavior which often results in negative interactions. RT 954-958

Linda Cannon testified that during the period of March 2017 to March 2018 she noticed hundreds of business cards all over the neighborhood, her complex, and the park. She also witnessed the defendant throw hundreds of business cards out of the top of his car. RT 307-313.

Terrance Scroggins testified that on May 18, 2017 he found numerous cards associated with the defendant in front of the complex he lived in. He was disgusted and knocked on the door of the defendant, who also lived in his complex. No one answered. Later that day he observed the defendant walking in the neighborhood and throwing cards on the ground. He then confronted the defendant and the defendant said "If you try to do this one more time, I will slice you open."

Scroggins admitted that he has PTSD and takes an anger management course. RT 320-347.

Brittany Duffy testified shortly after she moved into the Met she noticed cards all over the place that were associated with the defendant. She became a vigilante and took them off cars. She saw him putting them on cars and drop them while he was walking. RT 358-365.

Officer Sean Dinse testified that he is a senior lead officer for the Los Angeles Police Department part of his assignment is with neighborhood watch. He has received numerous complaints concerning the cards associated with Kevin Perelman found in the neighborhood. Officer Dinse has had discussions concerning Kevin Perelman with Terrace Scorggins, Brigette Duffy and Linda Cannon. RT 370-379

Bailey Barnard testified that he has seen numerous cards in the neighborhood. One day while he was driving home he received a phone call from his wife complaining about seeing the cards. While driving he spotted Kevin Perelman dropping cards on the street. He decided to confront Kevin. He stopped his car and approached Kevin on foot. He engaged in a conversation with him. He realized shortly after he commenced the conversation that Kevin had mental issues. Kevin started to walk away from him and Barnard followed him. Barnard followed him until they were in front of Kevin's complex. At that point a physical

altercation occurred between Kevin and Barnard. RT 603-623.

The defendant testified that he causes the cards to be disturbed as his response to the worldwide conspiracy against him. RT 954. The defendant stated that he distributes the cards in various ways. That he has dropped cards on the ground. He drops the cards on the ground when someone gets really aggressive, in a threatening manner saying "You better not do this" or something to that effect. RT 955.

He also testified that the purpose he distributes the cards on the ground to get people to know what is going on. RT 956. He further distributes the cards so that what is going on to him will be in the history books. That he distributes the cards so that the world knows about the worldwide conspiracy against him. RT 956.

The defendant further testified that the website is *not* for a commercial purpose. RT 683. That he has not made a single penny off the website. He has not caused advertisement to be placed on the website. Furthermore, he has never contacted anyone to give money to the website because of the traffic to the website. RT 957. He has never done anything on a commercial or business basis in website. RT 957. He has never done anything on a commercial or business basis. RT 957

ARGUMENT

The First Amendment of the United States Constitution states that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const., amend I. The "freedom of speech" applies against state and municipal law through the Fourteenth Amendment's Due Process Clause. U.S. Const., amend XIV, *Gitlow v. New York*, (1925) 268 U.S. 652 . As a consequence, when an individual is criminally charged for violating either state or municipal law, the court must be sure to properly instruct the jury on defendant's First Amendment rights whenever necessarily. In this case, such instructions were necessary; and since the jury was not instructed on First Amendment rights, Perelman's convictions must be reversed. In addition there was improper vouching and the sentence imposed constituted cruel and unusual punishment.

I. ISSUES PRESENTED

Did the trial court properly instruct the jury on the law so that Perelman's right to free speech under the First Amendment of the United State Constitution were not violated? Answer: No, the jury instructions in Perelman's trial violated the First Amendment. In addition there was improper vouching and the sentence imposed constituted cruel and unusual punishment.

II. SUMMARY OF ARGUMENT

This Court should reverse the convictions of Perelman under counts 1, 6, 8, and 9 because the trial court failed to properly instruct the jury on Perelman's First Amendment rights, which may have led to the jury convicting Perelman for

conduct that is protected by the First Amendment, failed to grant a proper request under 1118.1, there was improper vouching and an improper sentence.

III. THE COURT FAILED TO INSTRUCT THE JURY PROPERLY CONCERNING COUNTS 8 AND 9 AS WELL AS IMPROPERLY DENYING THE DEFENDANTS MOTION PURSUANT TO SECTION 1118.1.

The trial courts denial of the defendant's motion pursuant to Section 1118.1 as well as not properly instructing the jury on the law regarding counts 8 and 9 – distribution of a handbill – infringed upon the defendant's rights to free speech under the First Amendment of the United States Constitution.

A. Perelman's distribution of cards happened in a traditional public forum.

Regarding the First Amendment's speech protections, there are three general zones of protection. First, there is the "traditional public forum," i.e., "places which by long tradition or by government fiat have been devoted to assembly and debate," such as "streets and parks." *Perry Education Assn. v. Perry Local Educators' Assn.*, (1983) 460 U.S. 37, 45. Speech in traditional public forums enjoy the highest level of First Amendment protection. *Perry Education Assn.*, 460 U.S. at 45.

Second, there is the "limited public forum," i.e., "public property which the state has opened for use by the public as a place for expressive activity." *Ibid.* Examples of a limited public forum include a school board meetings or a municipal theater. *City of Madison Joint School District v. Wisconsin Public Employment Relations Comm'n*, (1975) 429 U.S. 167 (1976); *Southeastern Promotion, Ltd. V. Conrad*, 420 U.S. 546 . Speech in limited public forums enjoy less First Amendment protection than traditional public forums. *Perry Education Assn.*,460 U.S. at 45-46.

Third, there is "[p]ublic property which is not by tradition or designation a

forum for public communication," such as a post office. *Ibid* at 46. Speech in these forums usually enjoy no First Amendment protection because "the State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." *United States Postal Service v. Greenburgh Civic Ass'n*, (1981) 453 U.S. 114, 129.

Here, Perelman was convicted under LAMC section 28.01 and 28.01.1 for placing his cards onto cars parked along sidewalks; there cannot be any doubt that this activity happened in a traditional public forum. It is axiomatic that the sidewalks of public streets – like the streets Perelman was walking as he placed the cars onto parked cars – are traditional public forums. *E.g., Hague v. CIO*, (1939) 307 U.S. 496, 515 ("Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.").

Since, Perelman's conduct obviously took place in such a forum, we now turn to whether his placing of noncommercial cards onto the cars is First Amendment-protected speech. If it is, then the First Amendment affords such speech its highest level of protections against governmental interference.

B. The First Amendment's guarantee of the right to free speech includes the right to place non-commercial cards onto cars parked along sidewalks.

If there is a single form of speech the courts have most-clearly declared received First Amendment protections, it may very well be the distribution of leaflets. In *Lovell v. City of Griffin*, the Court explained why leafletting is stringently protected by the First Amendment:

> The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in

our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. *Ibid* (1938) 303 U.S. 444, 452

As covered in the following subsection, the First Amendment does not necessarily leave the states powerless in regulating any aspect of the distribution of leaflets; in any event, the underlying principle of *Lovell* holds strong. *E.g., Citizens United v. Federal Election Cmm'n*, (2010) 558 U.S. 310, 335.

The importance of leafletting was analyzed in *Klein v. City of San Clemente*, (9th Cir. 2009) 584 F.3d 1196. The *Klein* court took up the issue of whether a San Clemente "anti-litter ordinance," which prohibited one from placing any commercial or noncommercial advertisement upon any vehicle, likely violated the First Amendment. *Klein*, 584 F.3d at 1199. The court held that the ordinance likely violated the First Amendment because of its sanction against leafletting on cars was unlimited in scope:

> We note that preventing a *marginal* quantity of litter is not a sufficiently significant interest to restrict leafletting. . . . So the City must show not only that vehicle leafletting can create litter, but that it creates an abundance of litter significantly beyond the amount the City already manages to clean up. *Ibid* at 1203 (citation and quotation marks omitted).

Therefore, even though the City had an interest in limiting the amount of litter on its streets due to vehicle leafletting, this interest probably did not justify a general ban against such leafletting. *Ibid* at 1203-04.

For First Amendment purposes, it is impossible to distinguish between the leafletting at-issue in *Klein* and Perelman's placing of cards onto cars parked along the sidewalk. Both involve placing non-commercial information onto another's car, which may or may not end up being discarded on the street. Further, both instances involve speech in a traditional public forum. As a result, Perelman's placing of cards onto cars was protected speech under the First Amendment.

This is important But doesn't talk about Soft defense makes it look like a Political agend

C. LAMC Section 28.01 and Section 28.01.1 own text acknowledges the long-established precedent that the First Amendment authorizes cities to sanction forms of nuisance-creating speech, which limits the scope of its prohibition against car handbilling.

Of course, the courts have not interpreted the First Amendment to prohibit *every* governmental regulation of speech in traditional public forums:

For the state to enforce a content-based exclusion [in a traditional public forum] it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. *Perry Education Assn.*, 460 U.S. at 45 (citations omitted)

As a result, there have been several instances where the courts have found that the government properly circumscribed free speech within a traditional public forum. *E.g., Schneider v. Town of Irvington*, 308 U.S. 147, 160-61 (1939) (The First Amendment does not "deprive a municipality of power to enact regulations against throwing literature broadcast in the streets."); *Kovacs v. Cooper*, (1948) 336 U.S. 77 (ordinance banning use of "loud and raucous" trucks in public places was constitutional); *City Council v. Taxpayers for Vincent*, (1984) 466 U.S. 789 (ordinance prohibits the placing of signs onto utility pools was constitutional)

Amongst the most significant dichotomies the Supreme Court established for protected speech under the First Amendment is the level of protections between commercial and noncommercial speech. Simply put, noncommercial speech receives more protection under the First Amendment than commercial speech. *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, (1976) 425 U.S. 748, 770-73 ; *see also Metromedia v. City of San Diego*, (1981) 453 U.S. 490 (ordinance prohibiting "outdoor advertising display signs" to maintain "appearance of the City" did *not* offend the First Amendment insofar as commercial speech but

violated the First Amendment regarding noncommercial speech). As the Supreme Court explained in the case *Ohralik v. Ohio State Bar Assn.*:

> Expression concerning purely commercial transactions has come within the ambit of the [First] Amendment's protection only recently. In rejecting the notion that such speech is wholly outside the protection of the First Amendment, we were careful not to hold that it is wholly undifferentiable from other forms of speech. We have not discarded the common-sense distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech. . . . Rather than subject the First Amendment to such a devitalization, we instead have afforded commercial speech a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, while allowing modes of regulation that might be impermissible in the realm of noncommercial expression. 436 U.S. 447, 455-56 (1978) (footnote, citations, and quotation marks omitted).

Consequently, "[t]he government may ban forms of communication more likely to deceive the public than to inform it, or commercial speech related to illegal activity." *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 563-64 (citations omitted).

Except Endless Proof on Website

This distinction between commercial and noncommercial speech is not only relevant to LAMC section 28.01 and 28.01.1's and application against Perelman's conduct: it is codified in the text of the ordinance. Put another way, LAMC section 28.01 and 28.01.1's own text expressly limits its reach to commercial speech. As explained earlier in this brief, subsection (a) of LAMC section 28.01 is a sweeping sanction against handbilling a car:

> No person shall distribute or cause or dissect the distribution of any handbill to passengers on any streetcar or throw, place or attach any handbill to or upon any vehicle. LAMC section 28.01(a).

Although these subsections alone clearly applies to both commercial and noncommercial speech, the notes of section 28.01 make clear that subsection (a) is intended to sanction the handbilling of cars only regarding commercial advertising:

The freedom of press guaranteed by the First Amendment of the Federal Constitution, and made applicable to the states by the Fourteenth Amendment has no application to the distribution of hand-bills on the streets for purely commercial advertising. . . A City ordinance making it unlawful to deposit advertising matter in or on motor vehicles parked on streets does not violate the constitutional guaranties of freedom of speech and of the press and does not constitute an arbitrary and unreasonable restraint on the conduct of a lawful business. LAMC section 28.01 (citations omitted).

These notes are essential to preserving the constitutionality of section 28.01(a); without them, section 28.01(a) as well as 28.01.1 would plainly violate the First Amendment for its overbreadth. *See Hague v. CIO*, (1939) 307 U.S. 496, 515 ("Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens."); *Lovell*, 303 U.S. at 452.

Since LAMC section 28.01 and 28.01.1 sanctions extend only to commercial speech, the jury convicted Perelman for violating it without being convinced that he placed his cards onto parked cars for commercial purposes. Yet, the jury instructions failed to inform the jury of the ordinance's critical distinction between commercial and noncommercial speech. (CT 80-81). As a result, this Court should hold that the trial court's jury instructions regarding the count under section 28.01 and 28.01.1 were insufficient to protect Perelman's First Amendment rights.

D. The trial court failed to properly instruct the jury that Perelman could not be convicted under LAMC 28.01 and 28.01.1 for placing non-commerical cards onto parked cards.

The trial court's jury instructions failed to inform the jury of Perelman's First Amendment rights because they failed to explain that LAMC section 28.01

and 28.01.1 is intended to sanction commercial speech. As was explained above, section 28.01's text makes clear that its sanctions apply only toward "purely commercial speech." LAMC section 28.01 and 28.01.1 (citations omitted). However, the jury instructions made absolutely no mention of this limitation, which renders them sorely inadequate.

The jury instructions for section 28.01 went as follows:

To prove that the Defendant is guilty of [distribution of a handbill, in violation of Los Angeles County Municipal Code section 28.01(a)], the People must prove that the Defendant distributed or caused or directed the distribution of *any* handbill to passengers on a street car, placed or attached *any* handbill to or upon any vehicle. RT 979-80.

The jury instruction for section 28.01.1 was similar. Clearly, the jury instructions informed the jury that *any* handbill distribution onto a car violated section 28.01(a); however, section 28.01's entire text clearly establishes that section 28.01(a) sanctions only "purely commercial" handbill distribution. The same argument applies to section 28.01.1

The defendant objected to these instructions. RT 918-925. Furthermore the defendant requested a special instruction that stated:

SPECIAL JURY INSTRUCTION NO. 2

An item that is not for a commercial or business purpose does not constitute a handbill.

or in the alternative

An item that is not for commercial or business purpose but is distributed for the purpose of engaging in free speech does not constitute a handbill. RT 918.

Thus, it is clear that the evidence presented about Perelman's card-distributing was noncommercial speech, and yet the jury convicted him of violating section 28.01(a) and 28.01.1 because it was unaware of the ordinance's scope. This Court should reverse Perelman's conviction for violating section

28.01(a) and 28.01.1 because the jury instructions for this count undermined the First Amendment. Furthermore the trial court should have granted defendant's Motion pursuant to Section 1118.1, this court should reverse the conviction on these grounds as well.

IV. THE COURT FAILED TO INSTRUCT THE JURY PROPERLY CONCERNING COUNTS ONE AND SIX AS WELL AS IMPROPERLY DENYING THE DEFENDANTS MOTION PURSUANT TO SECTION 1118.1.

The trial courts denial of the defendant's motion pursuant to Section 1118.1, as well as not properly instruct the jury on the law regarding counts 1 and 6 – creating a public nuisance – infringed upon the defendant's rights to free speech under the First Amendment of the United States Constitution.

A. Perelman's distribution of cards in a public place, whether onto cars or upon the ground, happened in a traditional public forum.

There are three general zones of First Amendment protection for speech; depending on the zone, either more or less forms of speech are protected. First, the "traditional public forum" provides speech the highest level of protection. *Perry Education Assn.*, 460 U.S. at 45. Second, the "limited public forum" provides speech a moderate level of protection. *Id.* at 45-46. Lastly, "[p]ublic property which is not by tradition or designation a forum for public communication" provides speech almost no First Amendment protection. *Greenburg Civic Ass'n*, 453 U.S. at 129.

Since traditional public forums include streets and parks generally open to the public, *see Perry Education Assn.*, 460 U.S. at 45, and Perelman distributed his cards on public streets and sidewalks, there can be no doubt that Perelman's alleged public nuisances happened in a traditional public forum. Therefore, Perelman's card distribution may be charged as a public nuisance only if none of the alleged distribution falls within First Amendment-protected speech.

B. The allegations against Perelman for committing a public nuisance for distribution of non-commercial cards in a public place is protected by the First Amendment.

In this case, Perelman was charged and convicted for two counts of committing a public nuisance; the conduct that Perelman is being charged for here clearly includes his distribution of non-commercial cards. However, this kind of conduct is protected by the First Amendment; therefore, Perelman cannot be convicted on public nuisance charges for any conduct that constitutes the exercise of free speech.

It is worth revisiting the seminal case *Lovell v. City of Griffin* for why exactly Perelman's exercise of his first amendment rights, which included card-distribution is protected speech :

> The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. (1938) 303 U.S. 444, 452.

Thus, the Supreme Court explained that the distribution of noncommercial information by any form of leaflet – regardless of whether the information is erroneous – is absolutely protected by the First Amendment. It follows that Perelman cannot be charged for his card distribution, as this speech is absolutely protected.

Further, as this brief explained earlier, Perelman's cards are clearly meant for noncommercial purposes; this fact affords his speech the highest of First Amendment protection, in contrast to the lesser protection afforded to commercial speech. *See Ohralik*, 436 U.S. at 455-56.

The First Amendment undoubtedly protects Perelman's card distribution onto parked cars for non-commercial purposes, and therefore cannot be convicted

for such conduct. However, the trial court failed to incorporate this legal information into the jury instructions, therefore causing the jury to convicted Perelman for something he cannot be convicted for. The trial court failed to realize that all of the conduct that according to the prosecution constituted a public nuisance was Perelman exercising his first amendment rights. As such it was erroneous to deny the motion pursuant to Section 1118.1.

C. The trial court failed to properly instruct the jury that one is not committing a public nuisance when they are exercising their First Amendment rights.

The jury instructions on the public nuisance charges completely ignored the fact that First Amendment rights were at stake.

The defense objected to these jury instructions. RT 905-914. The defense also submitted special instructions on the issue as well that the court denied. RT 915. The special instructions submitted were as follows:

SPECIAL JURY INSTRUCTION NO. 1

The exercise of free speech cannot be considered to be injurious to health, or be indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, to constitute being a public nuisance.

The problem with the instructions the court gave is not what they state; rather, it is what they fail to state. Nowhere is it made clear that one cannot be charged of a public nuisance for distributing noncommercial speech, as is protected by the First Amendment.

Since the instructions fail to provide the jury any guidance on First Amendment precedent, the jury convicted Perelman for committing a public nuisance by distributing his cards. Such speech would appear to satisfy each of the

above elements to a public nuisance. However, as has been made clear, even conduct that satisfies the elements of public nuisance can nonetheless constitute First Amendment-protected speech.

In conclusion the jury convicted Perelman of committing a public nuisance, and yet such a conviction violates the First Amendment. This Court should reverse his conviction for violating the public nuisance statute because the jury instructions for counts 1 and 6 undermined the First Amendment and the charges should have been dismissed by granting the motion pursuant to 1118.1.

V. THE PROSECUTOR IMPROPERLY VOUCHED FOR A WITNESS.

The Prosecutor stated the following in her closing argument:

"And at that point Mr. Scroggins, who I have to say was one of the most brutally honest witnesses I have ever come across told….." (RT 988)

The defense objected citing that this was "vouching." The court overruled the objection. (RT 988).

A prosecutor is prohibited from vouching for the credibility of witnesses or otherwise bolstering the veracity of their testimony by referring to evidence outside the record" (*People v. Frye* (1998) 18 Cal.4th 894, 971; *People v. Anderson* (1990) 52 Cal.3d 453, 479 (Anderson); see also *People v. Turner* (2004) 34 Cal.4th 406, 433), and such conduct is improper even if the district attorney acted in good faith and inadvertently. (*People v. Bolton* (1979) 23 Cal.3d 208, 213-214; *People v. Hill* (1998) 17 Cal.4th 800, 822-823.)

As the United States Supreme Court has explained, a prosecutor's vouching for the credibility of witnesses creates the danger his or her comments "can convey the impression that evidence not presented to the jury, but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant's right to be tried solely on the basis of the evidence presented to the jury." (*United States v. Young* (1985) 470 U.S. 1, 18-19.) Statements of the prosecutor relating to

the credibility of the People's witnesses must consist of "argument from facts in the record directed to the credibility of witnesses, not the personal statement of the prosecutor vouching for their credibility." (*People v. Sully* (1991) 53 Cal.3d 1195, 1235)

The proper remedy when vouching occurs is for a declaration for a mistrial. For the appellate courts have found that a ruling in favor of the defendant cannot be cured by an admonition to the prosecutor and jury but would requires a declaration of a mistrial. As such this court should reverse the conviction.

When a defendant is deprived of his right to continue a trial before a particular tribunal because of misconduct designed to provoke a mistrial, the deprivation is so unjustified that society's interest in the punishment of those properly found guilty must yield to a discharge of the accused. However, when the intent of the deprivation is not so evident, it is the defendant's and society's interest in a fair trial that is primarily affected, and the remedy of a new trial is sufficient to vindicate both. The public interest in convicting those guilty of crimes is too important an interest to be subordinated to a concept of a prosecutor's recklessness. (See *Burks v. United States* (1978) 437 U.S. 115.)

The evidence concerning this count was the defendant's testimony and the complaining witness' testimony. Thus it was a credibility judgement. Since the prosecutor stated the witness was one of the most creditable witness she had ever come across, this statement was not harmless, could not be cured by an admonition by the court, and requires reversal.

VI. THE SENTENCE IMPOSED IN THIS CASE WAS CRUEL AND UNUSUAL PUNISHMENT.

The facts are clear in this case that the defendant did not provoke either situation that he was convicted of that constituted criminal threats or assault. Instead others confronted him and provoked him into doing the acts that he was

Correct and I was and am Brutalized 18/42 yrs all day + night Stranger after Stranger

Everything in Secret is beyond Cruel + Unusual Gov illegal ops. but wax this is worded looks bad

convicted of committing. It is clear that the defendant is in need of therapy to educate him how to avoid negative interactions with others. Incarceration is not where he will receive such education. But this court chose incarceration for the sole purpose of punishing an individual who has a mental illness.

For the court stated:

"Like I said, I'm sympathetic to the mental health issue, and I am interested in him, as you put it, co-existing and integrating back into society, but at a certain point, that's not my problem. Part of my job is to punish. We've come to this point now; due to his actions he deserves to be punished." RT 1247

The legislature has made clear through its enactment of mental health diversion and other mental health related legislation, that it prefers treatment over incarceration. The sentencing court failed to take this into consideration, and as such the sentence imposed in this case constitutes a violation of the Eighth Amendment as cruel and unusual punishment, for it is punishing the mentally ill and not providing treatment. As such the sentence in this matter should be vacated.

VII. CONCLUSION

For the reasons stated in this brief, the relief requested should be granted. The errors that occurred in this case rise to said request.

Respectfully submitted,

Dated: January 7, 2019

Seymour I. Amster
Attorney for Appellant/Defendant

CERTIFICATION OF COMPLIANCE

Under Rule 8.883 (c) of the California Rule of Court, I hereby certify that this brief contains 6,414 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare this brief.

Dated: January 7, 2019

Seymour I. Amster
Attorney for Appellant/Defendant

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I. am employed if the aforesaid County of Los Angeles, State of California, I am over the age of eighteen years and not a party to this action, my business address is : 18017 Chatsworth Street, Suite 337, Granada Hills, Ca. 91344.

On 02/07/19 I served the foregoing:

APPELLANT OPENING BRIEF

on the interested parties in this action by placing a true copy thereof ,in a sealed envelope with postage thereon fully prepaid, in the United States mail at Granada Hills, Ca. addressed as follows:

Los Angeles City Attorney	Honorable Eric Harmon
200 North Main Street	C/O Clerk of the Superior Court
500 City Hall East	111 North Hill Street
Los Angeles, Ca. 90012	Los Angeles, Ca. 90012

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on 02/07/19.

Seymour I. Amster
Attorney for Appellant/Defendant