

Robbed by Kern County Sheriff's Deputies
Testimony by Alexandra Wilson

§ 11 – Officers violated
Fraud, Conspiracy, and Hate Crime Statutes

Persons involved in the **grand theft** of our property did so by **fraud** (see *18 PEN § 484 theft by fraud* on page 153). It is my true belief based upon the demeanor of the officers and circumstantial evidence that the fraud was *intentional*. “Constructive fraud” statutes are included on the following page, however, for the purpose of comparison and to be enforced if the court sees them to be more fitting to match the crime.

Intentional fraud and deceit occurs when the perpetrator uses deceit (falsification of important facts) to convince the victim to rely on the false facts. Then the victim reasonably relied on and was harmed by the deceit. ¹

CIV PART 3 § 1709 (deceit, liability for)

One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

CIV PART 3 § 1710 (deceit, definition of)

A deceit, within the meaning of the last section, is either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact;.... ²

2 CIV § 3294 (treble damages for oppression, fraud, or malice)

- (a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or **malice**, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.
- (c) As used in this section, the following definitions shall apply:
 - (1) “Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.
 - (2) “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.
 - (3) “Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. ³

1 **Matthew. B. Tozer, Attorney at Law – California Lawyer, “FRAUD AND MISREPRESENTATION LAW IN CALIFORNIA” ©2013, 2018:** http://www.christian-attorney.net/fraud_deceit_misrepresentation_california.html

2 **California Legislative Information:** http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=3.&title=&part=3.&chapter=&article=

3 **California Legislative Information:** http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?

Constructive fraud (aka *negligent misrepresentation*) occurs when the perpetrator misrepresents to the victim that an important false fact is true. The perpetrator may have honestly believed that the false representation is true. Yet, the perpetrator had no reasonable grounds for believing the representation was true when he or she made it; and he or she intends that victim rely on the representation. The victim must reasonably rely on and be harmed by the false representation.⁴

1 CIV § 1573 (constructive fraud, defined)

Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,
2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.⁵

According to ***Fox v. Pollack (1986) 181 Cal. App. 3D 954, 962***, the tort *negligent misrepresentation* requires that each and all of the following elements be proved (***Fox v. Pollack (1986) 181 Cal. App. 3D 954, 962***):

- (1) a misrepresentation of a past or existing material fact – deputies**
misrepresented Kevin Byrd and Rachel Smith's **lawful possession** as “trespassing”. Deputies. The **code compliance inspector** misrepresented the conditions of the restroom we were building via fabricating a “surfacing sewage” charge (*pages 136 137*).
- (2) without reasonable grounds for believing it to be true – we informed**
deputies that Kevin and Rachel were in lawful possession and that they were in the process of acquiring **title by prescription** in accordance with **1 CIV § 1007 (title by prescription through occupancy)**; we offered to show them the declaration of claim and property tax bill in Kevin's name (*pages 41–45 and 146*). If officers were skeptical about the validity of Kevin or Rachel's claim or of the legitimacy of the of our **right of possession**, it was incumbent upon them to perform an investigation. If they were improperly advised or commanded to perform the actions they did that day, the adviser and/or commanding officer(s) are principals in the crime according to **2 PEN § 31 (aiding and abetting)**.
- (3) with intent to induce another’s reliance on the fact misrepresented –**
deputies intended the State of California to rely on facts they misrepresented, and for the D.A. And others concerned in the prosecution to rely on misrepresented facts.

[sectionNum=3294&lawCode=CIV](#)

4 **Matthew. B. Tozer, Attorney at Law – California Lawyer, “FRAUD AND MISREPRESENTATION LAW IN CALIFORNIA” ©2013, 2018:** http://www.christian-attorney.net/fraud_deceit_misrepresentation_california.html

5 **California Legislative Information:** http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1573&lawCode=CIV

Constructive fraud continued:

Additionally, deputies intended the public to rely on the misrepresented facts that were published in the newspaper and online shortly after we were falsely arrested.

- (4) **ignorance of the truth and justifiable reliance thereon by the party to whom the misrepresentation was directed** – the State kept me **falsely imprisoned** (see *8 PEN § 236 false imprisonment on page 147*) as a result of reliance upon officers' misrepresentations. On Facebook members of the public falsely accused us of trespassing based upon their reliance on the officers' reports and subsequent Sheriff's weekly report.
- (5) **damages** – besides suffering approximately 12½ hours of **false imprisonment** each, Kevin and I had the majority of our personal property permanently and forcibly withheld from us as a result of use of the force and **criminal threats** made by the officers. Personal property and other losses include:
- large furniture and appliances;
 - many smaller movable items;
 - 7 months of labor invested into repairing, improving, and cultivating the property;
 - materials (e.g. lumber, soil, paint, stain) invested into repairs and improvements;
 - crops (see § 6 on pages 81–111);
 - Kevin's claim on 2232 Commercial Ave;
 - **Rachel's** claim on 2233 Angler Ave;
 - the **continuing injury** of suffering homelessness including hardships therein resulting from the officers' actions;
 - suffering undue disdain and lack of support from members of the public who relied on the officers' false reports;
 - years of labor required to convey *the complexities and nuances of the law (Book I) and our experience in relation to the law (this book)*.

\ “In its generic sense, constructive fraud comprises all acts, omissions and concealments involving a breach of legal or equitable duty, trust, or confidence, and resulting in damage to another... Constructive fraud exists in cases in which conduct, although not actually fraudulent, ought to be so treated – that is, in which such conduct is a constructive or quasi fraud, having all the actual consequences and all the legal effects of actual fraud.” (*Estate of Arbuckle (1950) 98 Cal. App. 2d 562, 568; See also Santa Cruz v. McLeod (1961) 189 Cal. App. 2d 222, 234.*)

2 CIV § 3294 (exemplary damages aka punitive damages)

- (a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, **fraud**, or **malice**, the plaintiff, in addition to the **actual damages**, may recover damages for the sake of example and by way of punishing the defendant.
- (b) An employer shall not be liable for **damages** pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.
- (c) As used in this section, the following definitions shall apply:
 - (1) “Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.
 - (2) “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.
 - (3) “Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. ⁶

6 California Legislative Information: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=3294.&article=3.&highlight=true&keyword=%22actual%20malice%22

Officers violated Hate Crime statutes:

My legal name is Alexandra Wilson and my gender is female. Although **Kern County Sheriff's** have run my license on more than one occasion (*including the day before – see page 135*), **Deputy Ruiz** repeatedly and pointedly called me “Alexander,” “Mr. Wilson,” and “he” (*see page 144*) in a manner so as to knowingly agitate and demean me.

I am concerned officers will deny their motivation, however it would be dishonest of me to pretend their actions were not motivated by prejudice toward me because I'm transgender. Kern County is home to many people who possess prejudiced views toward LGBT+ people in general; it was a daily hardship I endured, and Deputy Ruiz and Shin's demeanors matched those of people whom have similar negative views toward LGBT+ people.

Because Deputy Ruiz violated **7 PEN § 146(b)** (*illegal seizure of property*) via taking Kevin's phone after commanding me to stop filming the officers' illegal actions (*see page 145*), I do not have video evidence to corroborate my above statements, however within the ARREST REPORT Deputy Ruiz filed (*page 149*) he refers to me several times as a “male” in defiance to the State's position, my medical condition, and my blatant persona.

11.6 PEN § 422.55 (*hate crimes, definition of*)

For purposes of this title, and for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

- (a) “Hate crime” means a criminal act committed, in whole or in part, because of one... the following actual or perceived characteristics of the victim:
 - (2) Gender.
 - (6) Sexual orientation.
 - (7) Association with a person or group with one or more of these actual or perceived characteristics.
- (b) “Hate crime” includes, but is not limited to, a violation of **Section 422.6**.

11.6 PEN. § 422.6 (*hate crimes, punishment for*):

- (a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in **subdivision (a) of Section 422.55**.
- (b) (*Not relevant to this case.*)
- (c) Any person convicted of violating subdivision (a) or (b) shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed

five thousand dollars (\$5,000), or by both the above imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance....

- (d) Conduct that violates this and any other provision of law, including, but not limited to, an offense described in Article 4.5 (commencing with Section 11410) of Chapter 3 of Title 1 of Part 4, may be charged under all applicable provisions. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, and the penalty to be imposed shall be determined as set forth in Section 654.⁷

422.56. (definitions)

For purposes of this title, the following definitions shall apply:

- (a) "Association with a person or group with these actual or perceived characteristics" includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of "hate crime" under paragraphs (1) to (6), inclusive, of subdivision (a) of Section 422.55.
- (c) "Gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.
- (d) "In whole or in part because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic. This subdivision does not constitute a change in, but is declaratory of, existing law under *In re M.S.* (1995) 10 Cal.4th 698 and *People v. Superior Court (Aishman)* (1995) 10 Cal.4th 735.
- (h) "Sexual orientation" means heterosexuality, homosexuality, or bisexuality

422.57 (gender, definition is uniform throughout the code):

For purposes this code, unless an explicit provision of law or the context clearly requires a different meaning, "gender" has the same meaning as in Section 422.56.⁸

⁷ **California Legislative Information:** http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=422.6.&lawCode=PEN

⁸ **California Legislative Information:** http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=11.6.&part=1.&chapter=1.&article=

Officers violated Criminal Conspiracy statutes:

7 PEN § 184 (conspiracy, what constitutes)

No agreement amounts to a conspiracy, unless some act, beside such agreement, be done within this state to effect the object thereof, by one or more of the parties to such agreement and the trial of cases of conspiracy may be had in any county in which any such act be done. ⁹

7 PEN § 183 (criminal conspiracies)

No conspiracies, other than those enumerated in the preceding section, are punishable criminally.

7 PEN § 182 (types of criminal conspiracies, punishment for)

(a) If two or more persons conspire:

- (1) To commit any crime.
- (2) Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.
- (3) Falsely to move or maintain any suit, action, or proceeding.
- (4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises.
- (5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

They are punishable as follows:

When they conspire to commit any... felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony. If the felony is one for which different punishments are prescribed for different degrees, the jury or court which finds the defendant guilty thereof shall determine the degree of the felony the defendant conspired to commit. If the degree is not so determined, the punishment for conspiracy to commit the felony shall be that prescribed for the lesser degree.....

If the felony is conspiracy to commit two or more felonies which have different punishments and the commission of those felonies constitute but one offense of conspiracy, the penalty shall be that prescribed for the felony which has the greater maximum term.

When they conspire to do an act described in paragraph (4), they shall be punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that imprisonment and fine.

⁹ **California Legislative Information:** http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=184.&highlight=true&keyword=conspiracy

When they conspire to do any of the other acts described in this section, they shall be punishable by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that imprisonment and fine....

All cases of conspiracy may be prosecuted and tried in the superior court of any county in which any overt act tending to effect the conspiracy shall be done.

(b) Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

