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SEP 14 1998

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF LOS ANGELES

11 ANTHONY MARIO ASSENZA,	)	CASE NO. BC 115813
	)	
12 Plaintiff/Petitioner,	)	DATE: SEPTEMBER 25, 1998
	)	TIME: 9:30 A.M.
13 vs.	)	DEPT: 14
	)	
14 CITY OF LOS ANGELES, et al.,	)	DEFENDANTS AND/OR RESPONDENTS
	)	BRIEF PURSUANT TO THE COURT'S
15 Defendants/Respondents.	)	ORDER OF AUGUST 19, 1998
	)	

17 Defendants and/or Respondents respectfully submit the  
 18 following points and authorities in accordance with the Court's  
 19 August 19, 1998 "Briefing Order RE: 25 September 1998 Hearing"

20 A. ABUSE OF DISCRETION STANDARD:  
 21 SUBSTANTIAL EVIDENCE RULE

22 Defendants concur with the Court's analysis of the  
 23 controlling question at beach - that is, whether substantial  
 24 evidence supports the decision of the Chief of Police that the  
 25 applicants had not shown good cause of the issuance of their  
 26 permits.

27 "If the right affected is not a 'fundamental  
 28 vested' right. . . , the substantial evidence test

COPY

1 applies on judicial review of adjudicatory 2  
2 decisions by legislatively created agencies  
3 of statewide jurisdiction and adjudicatory  
4 decisions by local agencies. Strumsky v.  
5 San Diego County Employees Retirement Ass'n  
6 (1974) 11 C3d 28, 44, 112 CR 805, 816; Bixby  
7 v. Pierno (1971) 4 C3d 130, 93 CR 234. For  
8 example, applications for licenses, permits,  
9 or governmental benefits do not generally  
10 involve fundamental vested rights." California  
11 Administrative Mandamus, 2nd Ed. (Cont. Ed.  
12 Bar 1989) section 4.138, page 184.

13 In the instant case the applicants have sought the issuance  
14 of a one year permit to carry a concealed weapon pursuant to Penal  
15 Code section 12050, and in accordance with the Amended Judgment of  
16 Declaratory Relief, filed February 4, 1998. They have not pointed  
17 this Court to any fundamental vested right but instead make  
18 reference to a general constitutional right to defend ones life and  
19 liberty and to pursue and obtain safety. Plaintiff's point to no  
20 authority whatsoever in support of a claim that the carrying of  
21 concealed weapons is a vested fundamental right and if their  
22 assertion were correct, it would constitute an argument that Penal  
23 Code section 12050 is invalid, and not that the Chief of Police was  
24 required to issue a permit.

25 B. "GOOD CAUSE": ELEMENTS; PROOF

26 1. "Convincing" evidence or "convincing" proof is  
27 analogous to, as Petitioners recognize, a standard of proof which is  
28 between a preponderance of evidence and proof beyond a reasonable

1 doubt, as discussed in Addington v. Texas (1979) 441 U.S. 418, 423,  
2 99 S.Ct. 1804, 1808. In California, that standard has been said to  
3 require "a finding of high probability. The evidence must be so  
4 clear as to leave no substantial doubt. It must be sufficiently  
5 strong to command the unhesitating assent of every reasonable mind."  
6 In re David C. (1984) 152 Cal.App.3d 1189, 1208; it is "evidence of  
7 such convincing force that it demonstrates, in contrast to the  
8 opposing evidence, a high probability of the truth of the fact(s)  
9 for which it is offered as proof." BAJI 2.62, California Jury  
10 Instructions Civil, West Publishing Co. (Eighth Edition, 1994).

11           2. "Clear and present danger to life or great bodily  
12 injury" may be analyzed as requiring two interrelated elements.  
13 Much as in First Amendment and fair trial cases, it is a description  
14 of what must be proved and involves both an element of certainty and  
15 immediacy. The courts in this state have concluded that the term  
16 refers to more than just a "reasonable" likelihood". See Brian w.  
17 v. Superior Court (1978) 20 Cal.3d 618, 624. It involves both  
18 substantiality and immediacy. The term "clear" means "plain,  
19 evident, free from doubt or conjecture". Black's Law Dictionary  
20 (6th Ed. 1990) p. 250. The term present means "now existing; at  
21 hand". Black's Law Dictionary (6th Ed. 1990) p. 1183. The concept  
22 embodies that which is not doubtful or remote. American Civil  
23 Liberties Union v. Board of Education (1961) 55 Cal.2d 167, 179,  
24 citing Justice Rutledge's opinion in Thomas v. Collins (1944) 323  
25 U.S. 516, 530, 65 S.Ct. 315, 89 L.Ed. 430.

#### 26                           C. COURT-APPOINTED EXPERT

27           The question of whether an administrative agency abused its  
28 discretion in denying a permit to carry a concealed weapon is one

1 which this Court has quite rightly determined is one which is  
2 subject to the "substantial evidence" test. Under that test the  
3 Court does not review the decision of the agency de novo but instead  
4 looks to the evidentiary basis of an agency's decision and considers  
5 all of the evidence in the administrative record to determine  
6 whether, in light of those facts, there was an abuse of discretion.  
7 See Bixby v. Pierno (1971) 4 Cal.3d 130. However, the Court is not  
8 the trier of fact but is instead reviewing the record to reach a  
9 conclusion of law - that is, whether there is, in light of the  
10 entire record, substantial evidence which would support the  
11 conclusions of the administrative agency. County of San Diego v.  
12 Assessment Appeals Board No. 2 (1983) 148 Cal.App.3d 548, 555.  
13 See California Administrative Mandamus, 2d Ed. (Cont. Ed. Bar 1989)  
14 sections 4.161-4.163, pages 205-207 and sections 14.24-14.27,  
15 pages 4.61-4.63.

16           Because the issue before this Court is an issue of law,  
17 i.e. whether substantial evidence supports the findings of the  
18 agency below, it is not the subject of expert testimony. "[I]t is  
19 thoroughly established that experts may not give their opinions on  
20 matters which are essentially within the province of the court to  
21 decide'" Sheldon Appel Co. v. Albert & Olikier (1989) 47 Cal.3d 863,  
22 884 (citations omitted). In that malicious prosecution action the  
23 trial court had permitted, over objection, attorney's to be called  
24 as expert witnesses and to give their opinions as to whether a  
25 reasonable attorney could conclude under the facts that certain  
26 claims asserted in a legal action were tenable. The Supreme Court  
27 concluded that the issue of whether the attorney who filed the  
28 claims acted reasonably (i.e. his action was supported by


1 substantial evidence) was a question of law and that expert evidence  
2 was inadmissible on such a question. The court cited with approval  
3 the language quoted above from Carter v. City of Los Angeles (1945)  
4 67 Cal.App.2d 524, 528. In that case the court concluded that in  
5 determining whether the City properly laid off various employees,  
6 the trial court erred in admitting expert testimony on the subject  
7 because the question of whether the City acted reasonably was one  
8 for the court and the admission of such evidence was reversible  
9 error.

10           The issue here is not whether an expert may testify as to  
11 matters which may constitute an ultimate fact, but rather whether an  
12 expert may testify as to matters which constitute a question of law.  
13 The question before this Court is not whether the plaintiffs have  
14 good cause under Penal Code section 12050 but whether substantial  
15 evidence supports the determination of the Chief of Police, i.e.,  
16 did the Chief of Police act unreasonably. Because this is a  
17 question of law, experts may not offer an opinion on the subject and  
18 such testimony would not constitute substantial evidence. Downer v.  
19 Bramet (1984) 152 Cal.App.3d 837, 841.

20 Dated: September 14, 1998

Respectfully submitted,

21 JAMES K. HAHN, City Attorney  
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**PROOF OF SERVICE  
(VIA VARIOUS METHODS)**

I, the undersigned, say I am over the age of 18 years and not a party to the within action or proceeding My business address is 1800 City Hall East, 200 North Main Street, Los Angeles, California 90012

On September 14, 1998, I served the foregoing documents described as

**DEFENDANTS AND/OR RESPONDENTS BRIEF PURSUANT  
TO THE COURT'S ORDER OF AUGUST 19, 1998**

on all interested parties in this action by placing copies thereof enclosed in a sealed envelope addressed as follows

**BURTON C. JACOBSON  
WILLIAM ARTHUR CRAWFORD  
Beverly Hills Law Building  
424 South Beverly Drive  
Beverly Hills, California 90212-4414**

**BY MAIL** - I deposited such envelope in the mail at Los Angeles, California, with first class postage thereon fully prepaid I am readily familiar with the business practice for collection and processing of correspondence for mailing Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit, and/ or

**BY PERSONAL SERVICE** - ( ) I delivered by hand, or (X) I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5 00 p m on the date specified above

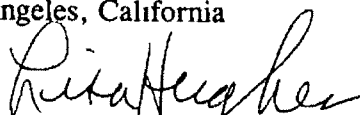
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**BY OVERNIGHT COURIER** - I deposited such envelope in a regularly maintained overnight courier parcel receptacle prior to the time listed thereon for pick-up Hand delivery was guaranteed by the next business day

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 14, 1998, at Los Angeles, California

  
\_\_\_\_\_  
LISA HUGHES