

ACTIVITY EVALUATION FORM FOR CALIFORNIA MCLE

Please complete and return to Provider (Please Print)

Provider Name: Ventura County District Attorney's Office Provider Number: 1130

Title of Activity: Brief Writing

Date(s) of Activity: September 30, 2016

Time of Activity: 9:30 - 11:00 am

Location of Activity: HOJ: Room 308 Ventura, CA

Please indicate your evaluation of this course by completing the table below

Question	Yes	No	Comments
Did this program meet your educational objectives?	<input type="checkbox"/>	<input type="checkbox"/>	
Were you provided with substantive written materials?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the course update or keep you informed of your legal responsibilities?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the activity contain significant professional content?	<input type="checkbox"/>	<input type="checkbox"/>	
Was the environment suitable for learning (e.g., temperature, noise, lighting, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	

Please rate the instructor(s) of the course below

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
Michelle Contois, Deputy District Attorney	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

Top portion of form to be completed by the MCLE Provider

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Total California MCLE Credit Hours for the above activity are 1.50, including the following sub-field credits:

- Legal Ethics _____
- Elimination of Bias in the Legal Profession _____
- Prevention, Detection and Treatment of Substance Abuse/Mental Illness that Impairs Professional Competence _____

Bottom portion of form to be completed by the Attorney after participation in the above-referenced activity

By signing below, I certify that I participated in all, or some*, of the activity described above and am therefore entitled to the following MCLE credit hours -

Total California MCLE Credit Hours 1.50, including the following sub-field credits

Legal Ethics _____

Elimination of Bias in the Legal Profession _____

Prevention, Detection and Treatment of Substance Abuse / Mental Illness that Impairs Professional Competence _____

(You may not claim credit for sub-fields unless the Provider is granting credit in those areas and you participated in those portions of the activity)

Print Your Name _____

Your California State Bar Number _____

Signature _____

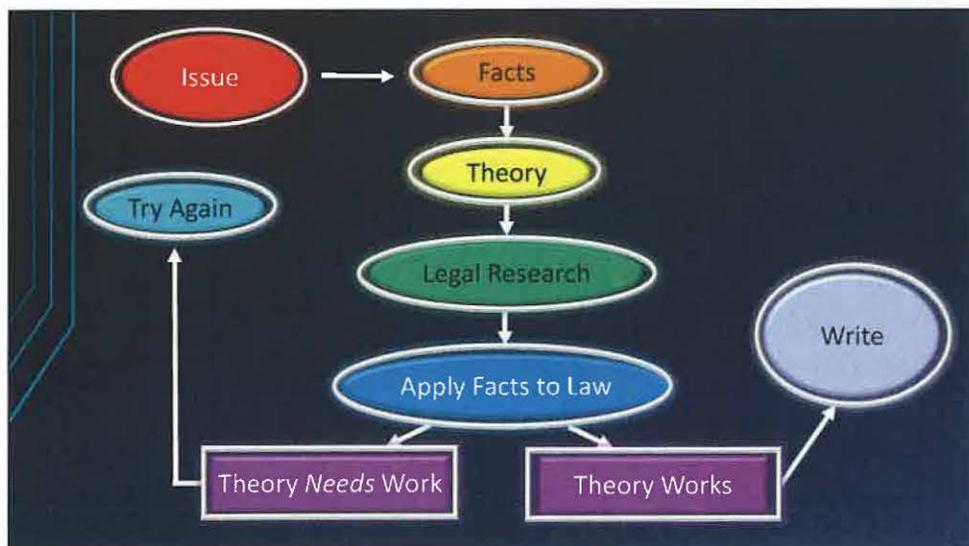
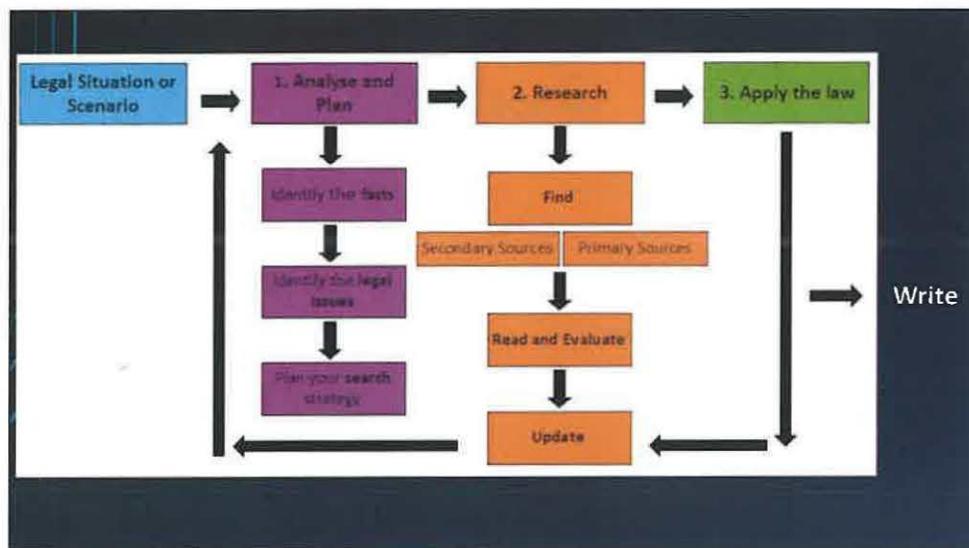
* partial participation hours must be pro-rated

Research and Writing Tips for Prosecutors

Michelle J. Contois

September 30, 2016

Process

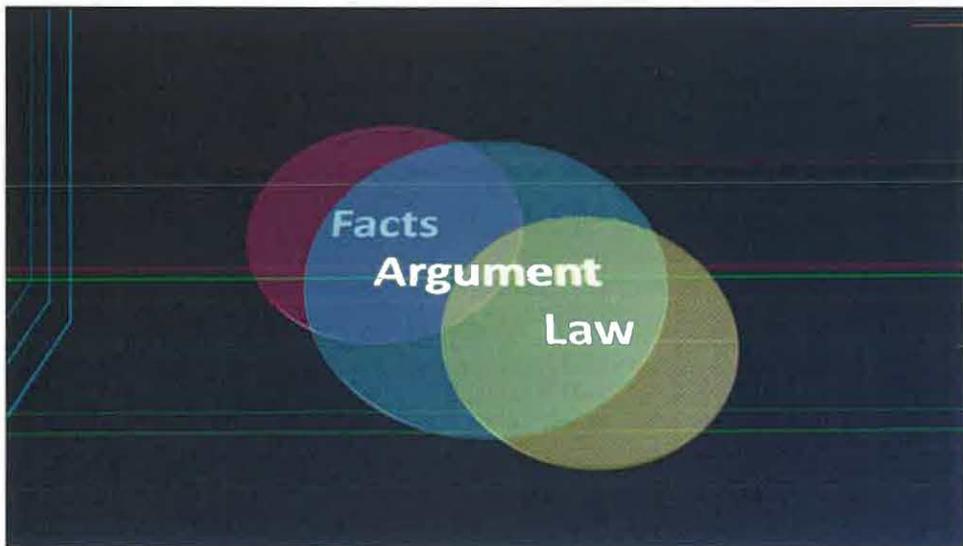


Madman

Architect

Carpenter

Judge



Final Product

Introductory Paragraph

- Very Short
- What You Want
- Why You Should Get It



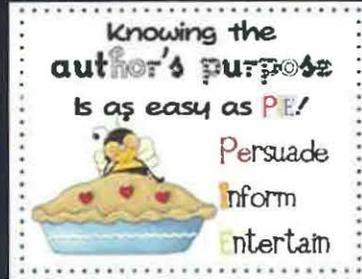
FACTS

- Tell YOUR Story
- Non-Argumentative
- Support Your Arguments

Two Ways to Convince Reader to Rule for Your Client

PERSUADE AND PROVIDE

- Use Equities to Persuade the Court to **Want** to Rule For You
- Use Authorities to Show how the Court **CAN** Rule For You



Demonstrate and Demand



- Demonstrate Your Position is the Only Lawful Course of Action
- Politely **Demand** the Court Act Lawfully

Order in the Brief

- Chronological
- **Build up Arguments**
- Best Arguments First

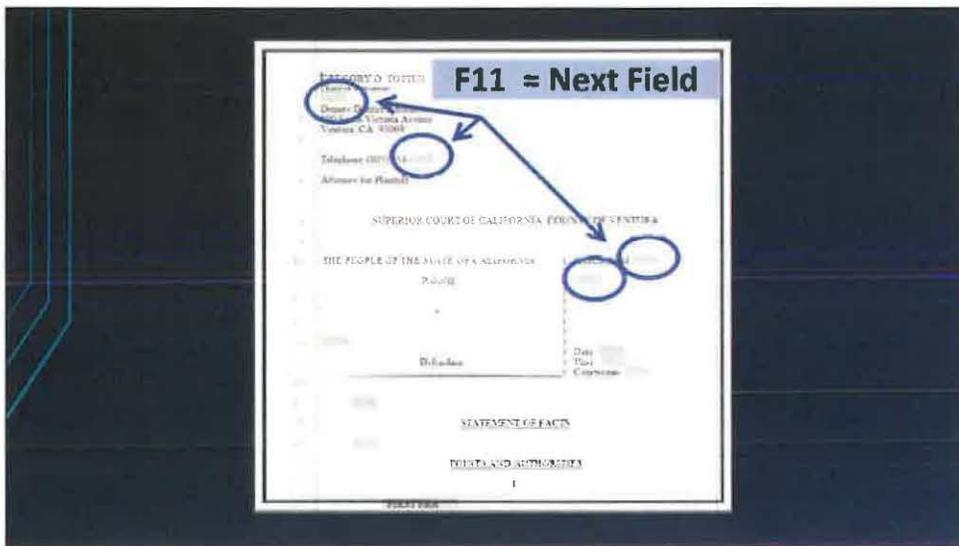
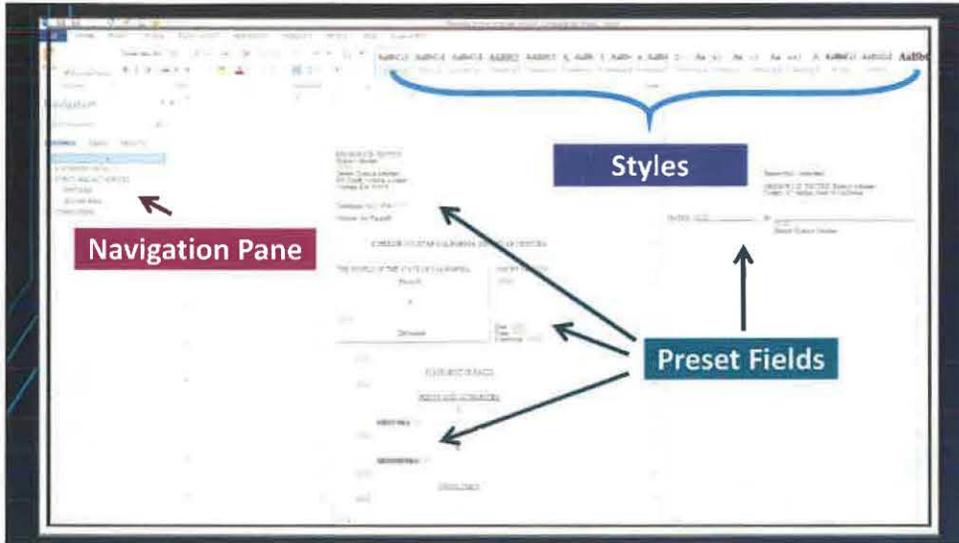


Keep it



- Spelling
- **Grammar**
- Formatting

Formatting Tools



Heading Styles

Heading Styles

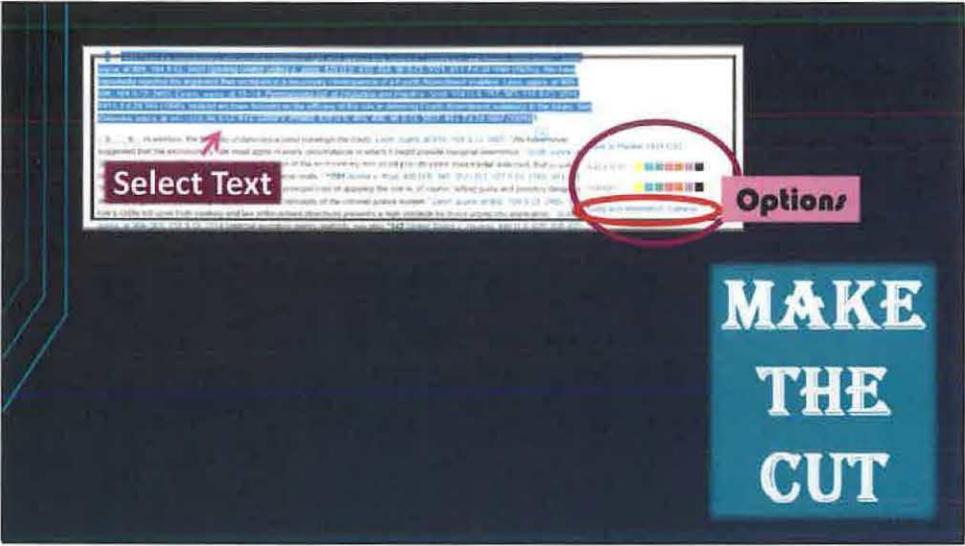
SEARCHES CONDUCTED IN OBJECTIVELY REASONABLE RELIANCE ON BINDING APPELLATE PRECEDENT OR STATUTE ARE NOT SUBJECT TO EXCLUSION

The Good Faith Exception Applies Where Police Officers Rely on Case Law

Cut and Paste from Westlaw Next

This screenshot shows the Westlaw Next interface. At the top, a file explorer window displays options: Email, Print, Download, and Audio. A red arrow points from a pink box labeled "Delivery on Next" to the "Print" option. Below this, the "End of Document" window is visible, with a red circle around the "Preferences" button. A red arrow points from a red box labeled "Set Preferences" to the "Preferences" button. To the right, a "Page Layout" dialog box is open, showing various settings for page layout, footnotes, and links.

This screenshot shows the "Preferences" window in Westlaw Next. The "Citations" tab is selected. On the left, "Citation Format" is set to "Customize", "Citation Style" is set to "Legal Briefs", and "Citation Formatting" has "Include Footnote" checked. On the right, under "Parallel Citations", the "Include only one citation per author to cited" option is selected and circled in blue. A green arrow points from a green box labeled "Set Citation Style" to the "Citations" tab. In the bottom right corner, a blue box contains the text "SET IT UP" in white capital letters.



GREGORY D. TOTTEN
District Attorney
MICHELLE J. CONTOIS
Deputy District Attorney
800 South Victoria Avenue
Ventura, CA 93009

Telephone (805) 654-3078

Attorney for Plaintiff/Respondent/Appellant

VENTURA
SUPERIOR COURT
FILED

SEP 07 2016

MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA
APPELLATE DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff/Respondent,

v.

ABRAHAM FIGUEROA,

Defendant/Appellant.

COURT NO. 2015024898

RESPONDENT'S BRIEF

ISSUE ON REVIEW

Does the record support the court's conclusion that appellant's detention was supported by reasonable articulable suspicion?

STATEMENT OF THE CASE

Early Sunday morning, July 19, 2015, Ventura County Sheriff's Department dispatch received a call reporting a cock fight in a remote agricultural area of Piru, California. The call came in at 6:39 a.m.

Deputy Jonathan Carver responded. From the main road Deputy Carver had to travel about a mile south, and then another mile west – which was the only way he could travel – along dirt roads located on the large property. (RT 9:9-26.) The only business on the property was a tree nursery which was closed on Sunday morning. (RT 13:19-25.) There were some structures that “looked like residences” along the long dirt access road. (RT 13-14.)

At the end of his two-mile traverse, Deputy Carver found cars parked in the nursery rows (RT 9:24-26) and when the deputies approached people began to run away. (RT 10:11-15.) In the area from where the people had been running, Deputy Carver saw evidence of cock fighting: roosters in boxes and cages, and two loose roosters who were fighting each other. (RT 11:1-14.) At 7:19 a.m., Sergeant Sparks who had responded with Deputy Carver, radioed dispatch for backup and noted that there were “subjects running” from the bird fighting area. (RT 13:10-14, 17:9-14.)

Deputy Duran responded to Sergeant Sparks call and got to the nursery by 7:24 a.m. (RT 17, 18:19-20.) Deputy Duran took the only road that vehicles could travel upon – the same dirt road Deputy Carver had used. (RT 20:14-18.) Deputy Duran saw two vehicles traveling toward the highway at 45 – 50 miles per hour down the dirt road. (RT 20:23 – 21:5.)

Deputy Duran stopped appellant’s vehicle to ascertain if he had been involved in the illegal activity. (RT 21:22-27.) Appellant lied to Deputy Duran in response to the first question put to him – and admitted being involved in the illegal bird fighting after the third question. (RT 22-23.)

Judge Ryan Wright found that Deputy Duran was on scene within four minutes of the call for backup – which was akin to a second report of criminal activity. (RT 28-29.) Judge Wright further found the crime scene was in a remote area, early in the morning with no open businesses and that Deputy Duran had been told that people and vehicles were fleeing. (RT 34:6-12.)

Appellant filed a timely notice of appeal and now contests the reasonableness of his detention.

POINTS AND AUTHORITIES

I.

STANDARD OF REVIEW

Exclusion of evidence is a remedy of last resort which must be applied with great circumspection. (*Herring v. United States* (2009) 555 U.S. 135, 140 [129 S.Ct. 695, 700, 172 L.Ed.2d 496], quoting *Hudson v. Michigan* (2006) 547 U.S.

586, 591 [126 S.Ct. 2159, 2163, 165 L.Ed.2d 56].) A court should approach a motion to suppress “mindful of the limitations of the judicial function in controlling the myriad daily situations in which policemen and citizens confront each other on the street.” (*Terry v. Ohio* (1968) 392 U.S. 1, 12 [88 S.Ct. 1868, 1875, 20 L.Ed.2d 889].) Any analysis of Fourth Amendment reasonableness requires “balancing the need to search [or seize] against the invasion which the search [or seizure] entails.” (*Terry, supra*, 392 U.S. at p. 21 [citations omitted].)

With these principles in mind, a trial court considering a motion to suppress must do three things: (1) find the historical facts; (2) select the applicable rule of law; and (3) apply the law to the facts to determine whether the law was violated. (*People v. Williams* (1988) 45 Cal.3d 1268, 1301 [248 Cal.Rptr. 834, 756 P.2d 221].) On appeal a trial court’s resolution of fact is reviewed under the deferential substantial-evidence standard. (*People v. Williams, supra*, 45 Cal.3d at p. 1301.) A trial court’s selection of the rule of law, as well as its application of the law to the facts, is reviewed de novo. (*People v. Williams, supra*, 45 Cal.3d at p. 1301.) “[A] reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.” (*Ornelas v. United States* (1996) 517 U.S. 690, 699 [116 S.Ct. 1657, 1663, 134 L.Ed.2d 911].)

The issue here is mixed and depends in part on the facts existing at the time of the detention. As to the facts, this court must “view the record in the light most favorable to the trial court’s ruling, deferring to those express or implied findings

of fact supported by substantial evidence.” (*People v. Jenkins* (2000) 22 Cal.4th 900, 969 [95 Cal.Rptr.2d 377, 997 P.2d 1044].) Judge Wright’s comments on the evidence in this case indicate the court accepted the deputies’ testimony as credible and specifically believed the area was remote and that Deputy Duran, aware of the illegal bird fighting, arrived on scene within five minutes of Sergeant Spark’s call for backup.

Whether the articulated facts were sufficient to provide a reasonable suspicion sufficient to briefly detain appellant to investigate his possible involvement in criminal activity is a legal question, and is reviewed independently.

II.

REASONABLE AND ARTICULABLE SUSPICION SUPPORTED APPELLANT’S DETENTION

A temporary detention requires a reasonable suspicion the person detained *may* be involved in criminal activity. Reasonable suspicion must be supported by articulable facts rather than inchoate suspicion or hunch but demands far less than is required for probable cause to arrest. (*United States v. Sokolow* (1989) 490 U.S. 1, 7 [109 S.Ct. 1581; 1585, 104 L.Ed.2d 1]; *Terry, supra*, 392 U.S. 1, 22.)

A suspect may be detained “based on information received through ‘official channels.’” (*People v. Brown* (2015) 61 Cal.4th 968, 983 [190 Cal.Rptr.3d 583, 595, 353 P.3d 305, 315–16].) “[W]here law enforcement authorities are cooperating in an investigation . . . the knowledge of one is

presumed shared by all.” (*Illinois v. Andreas* (1983) 463 U.S. 765, 771, fn. 5 [103 S.Ct. 3319, 3324, 77 L.Ed.2d 1003].) “It is well settled in California officers can make arrests based on information and probable cause furnished by other officers.” (*People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1553 [70 Cal.Rptr.2d 341].) Of course the arresting or detaining officer’s reliance on the other officer’s information must be reasonable, and to establish this, the basis for the first officer’s information must be established. (*Ibid.*) Here, Deputy Duran was acting on information received by Sergeant Spark’s call for backup – which included Sergeant Spark’s first hand observations that individuals involved in illegal bird fighting were fleeing the scene.

Appellant complains that Deputy Duran lacked certainty when he detained appellant – that he was detained “to ascertain if they were, in fact, part of that illegal activity, that bird fighting.” (RT 21:22-27.) Appellant asserts that because there were structures that “looked like residences” somewhere along the dirt road, his detention could not be justified. Appellant is wrong.

In determining the validity of a detention, the court must consider the totality of the circumstances. (*United States v. Sokolow, supra*, 490 U.S. at pp. 8-9; see also *United States v. Arvizu* (2002) 534 U.S. 266, 277-278 [122 S.Ct. 744, 753, 151 L.Ed.2d 740].) It is immaterial that there might be a possible innocent explanation for the activity witnessed by the police officer. Even innocent behavior will frequently provide a showing of reasonable cause to detain. (*United States v. Sokolow, supra*, 490 U.S. at pp. 9-10.) “What is required is not the

absence of innocent explanation, but the *existence* of ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” (*People v. Glaser* (1995) 11 Cal.4th 354, 373 [45 Cal.Rptr.2d 425, 902 P.2d 729], citing *Terry, supra*, 392 U.S. at p. 21.)

That Deputy Duran was not certain of appellant’s involvement is not dispositive. “The purpose of the detention is to resolve the ambiguity by allowing the officer to briefly investigate further.” (*People v. Brown, supra*, 61 Cal.4th at pp. 985–986.) “[T]he determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124–125 [120 S.Ct. 673, 676, 145 L.Ed.2d 570].)

An officer “who lacks the precise level of information necessary for probable cause to arrest” is not constitutionally required to “simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response. [Citation.] A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.” (Citations.)

(*People v. Brown, supra*, 61 Cal.4th at p. 986.)

Appellant correctly notes that being in a high crime area is not enough, by itself, to justify a detention. But “officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation.” (*Illinois v. Wardlow, supra*, 528 U.S. at pp. 124–125.)

Among the relevant characteristics here were the remoteness of the crime scene and the single route of egress. Appellant's speed, 45-50 MPH on a dirt road, was also a relevant factor as was the circumstance that appellant was not traveling alone. In this remote area, with no open business, early on a Sunday morning, two vehicles were roaring down a dirt road toward the only exit from the scene of a crime whose participants had been flushed out by deputies only minutes before.

The detention was reasonable. "Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." (*Illinois v. Wardlow, supra*, 528 U.S. at pp. 124–125.)

CONCLUSION

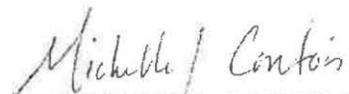
The record supports Judge Wright's order denying appellant's motion to dismiss. Therefore, the order denying appellant's motion to suppress should be upheld.

Respectfully submitted,

GREGORY D. TOTTEN, District Attorney
County of Ventura, State of California

DATED: September 7, 2016

By:


MICHELLE J. CONTOIS
Deputy District Attorney

CERTIFICATE OF WORD COUNT

This document was prepared using Microsoft Word. Using the word count tool provided with the software I have determined that this document contains 1,749 words.

Dated: September 7, 2016

By: 
MICHELLE J. CONTOIS
Deputy District Attorney

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

I, Pamela Booker, say that:

I am a citizen of the United States, over the age of 18 years, a resident of the County of Ventura, and am not a party to the above-entitled action; my business address is 800 South Victoria Avenue, Ventura, California; on September 7, 2016, I served RESPONDENT'S BRIEF on:

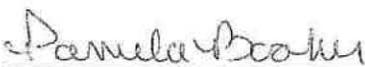
Honorable Ryan Wright
Judge of the Superior Court
Ventura County

Office of the Public Defender
Ben Maserang, D.P.D.
c/o Reception Desk
800 S. Victoria Ave.
Ventura, CA 93009

by personal service.

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

Executed on September 7, 2016 at Ventura, California.



PAMELA BOOKER

1 **STATEMENT OF FACTS**

2 On Sunday, July 19, 2015, Ventura County Sheriff Deputy Jonathan
3 Carver was dispatched at 6:40 a.m. “in the unincorporated area near Piru on a call of
4 cock fighting.” (RT: 8, ll. 11-16.) The officer testified that he and other officers drove
5 onto the property of a very large tree nursery that was not open for business. (RT: 13, ll.
6 19-25.) They had to locate where the cockfighting was on that property. (RT: 9, ll. 4-5.)
7 The property was so large that after they found it the officer noted the location of the
8 cockfighting using the GPS coordinates. (RT: 9, ll. 11-13.) To find the scene of
9 cockfighting, they drove the driveway and then several miles on dirt roads past some
10 residences. (RT: 9, ll. 9-11; 14, l. 1.) At one point, the road forked. (RT: 9, ll. 21-22.)
11 Then they found five to ten vehicles parked on the right. (RT: 10, l. 23.)

12 A group of people were to the left in an area of trees or shrubs where the
13 officers could not quite see. (RT: 10, ll. 11-13.) The minute the officers stopped their
14 vehicles people started running. (RT: 10, ll. 13-14.) Approximately 25 people were
15 fleeing. (RT: 12, l. 23.) After walking into the area where the people had been, Deputy
16 Carver saw numerous roosters, cages, and what appeared to be a cockfighting ring. (RT:
17 10, l. 26 - 11, l. 5.) There were a total of 39 roosters; two were loose on the ground
18 fighting each other. (RT: 11, ll. 6-11.) The deputy heard Sergeant Sparks, who was on
19 scene, put out a call on the radio for assistance. (RT: 11, ll. 24-26.) Sergeant Sparks
20 radioed at 7:19 a.m. and 45 seconds, “several subjects running.” (RT: 13, ll. 10-15.)
21 Deputy Carver did not testify that he saw people flee in their vehicles or that other
22 deputies on scene radioed that people were fleeing in vehicles. (RT: 7-14.)

23 Deputy Robert Duran arrested Mr. Figueroa. (RT: 16, ll. 11-23.) The
24 deputy testified that he heard Sergeant Sparks radio for assistance. (RT: 16, ll. 4-5.) He
25 heard Sparks say people were running. (RT: 17, ll. 15-17.) Sparks advised “they
26 observed numerous subjects in the area of this illegal bird fighting activity and that there
27 were so many subjects out there that they needed assistance out there.” (RT: 17, ll. 10-
28 13.) Sergeant Sparks did not give them instructions: “There was really no instruction at

1 that time. Just that they needed assistance back there so that's why we responded to
2 assist." (RT: 21, l. 28 - 22, l. 7.)

3 Deputy Duran and his partner, Deputy Lamar, went to the area to assist.
4 (RT: 16, ll. 5-8.) Deputy Duran had never been there before; the only thing he knew
5 about the location was that it was a nursery in a remote section of the county. (RT: 16,
6 ll. 26-28.) He testified over objection that from what he saw there was only one road to
7 get to and from that location. (RT: 20, ll. 12-18.)

8 Deputy Duran stated he reported that he saw a sedan traveling on the dirt
9 road toward them at 45 to 50 mph and a red truck traveling behind it. (RT: 20, ll. 24-27;
10 21, ll. 3-5.) He described the sedan as traveling at "high speed," he did not indicate
11 either it or the red truck was driving unsafely or in violation of the Vehicle Code. (RT:
12 20, ll. 24-25; 21, ll. 12-16.) Both he and Deputy Lamar, who was driving behind Duran,
13 radioed that vehicles were trying to flee the area. (RT: 17, ll. 18-20 [Duran radioed]; 18,
14 ll. 21-25 [Lamar radioed at 7:24 a.m.]; 20, l. 25- 21, l. 1 [Lamar driving behind Duran].)
15 Duran and the sedan passed one another and he made a traffic stop on a red truck that
16 was 150 feet or so behind it. (RT: 20, ll. 26-28.)

17 The deputy said he stopped the truck, "Well, because again we were
18 responding to assist with stopping illegal activity out there. So, people that were there,
19 we didn't know if they were involved or not so basically we were going to stop and
20 detain people to ascertain if they were, in fact, part of that illegal activity, that bird
21 fighting." (RT: 21, ll. 22-27.)

22 Deputy Duran stated he stopped the truck by "pull[ing] up to where he
23 couldn't get past me." (RT: 22, ll. 12-15.) The deputy got out of his vehicle and asked
24 Mr. Figueroa to get out of the truck. (RT: 22, ll. 15-19.)

25 He told Mr. Figueroa he was stopping him "because we had a report of
26 illegal activity in the area and I asked him what his business was there." (RT: 22, ll. 22-
27 24.) Mr. Figueroa stated he was an employee of the nursery. (RT: 22, ll. 25-26.) The
28 deputy then asked Mr. Figueroa for his employer's name and phone number so he could

1 verify this. (RT: 23, ll. 1-3.)

2 Mr. Figueroa then stated he worked at the Piru post office and not at the
3 nursery. When questioned further, he stated “he was there to see the birds.” (RT: 23, ll.
4 8-12.)

5 Deputy Duran put Mr. Figueroa in the back of the patrol car, drove to
6 assist Deputy Lamar with another vehicle he [Lamar] had stopped, and then drove to
7 where Sergeant Sparks was located, to regroup and finish up the call. (RT: 23, ll. 17-24;
8 24 ll. 2-8.)

9 After the deputy read Mr. Figueroa a *Miranda* advisement, Mr. Figueroa
10 said he was there to watch the bird fighting. (RT: 24, ll. 23-25.) Deputy Duran told him
11 he was under arrest and cited him. (RT: 24, l. 27 - 25, l. 2.)

12 13 **Argument and Ruling in the Trial Court**

14 The defense noted the deputy who stopped Mr. Figueroa had never been to
15 the area before and the deputies who found evidence of cockfighting saw people running
16 away, but had seen no evidence Mr. Figueroa was involved in that. (RT: 26, ll. 12-19.)
17 Citing [*People v. Perrusquia* (2007)] 150 Cal.App.4th 228 and *Illinois v. Wardlow*
18 [(2000) 528 U.S. 119], the defense contended, “Even recent, specific crimes, without
19 additional factors specific to the defendant, are not sufficient for reasonable suspicion.
20 Reasonable suspicion cannot be based solely on factors unrelated to the defendant, such
21 as criminal activity in the area.” (RT: 26 l. 20 - 27 l. 2.)

22 Defense counsel argued there were no factors specific to the defendant that
23 justified a traffic stop:

24 “That’s exactly what we have here. [¶] The deputy himself
25 said he told Mr. Figueroa that he stopped him because of
26 criminal activity in the area. That is not enough. That is not
27 enough to satisfy the Fourth Amendment. [¶] He also
28 testified that he was going to stop people whether he knew
they were involved or not. That came from the deputy’s
mouth himself. And he said that he was going to detain