

Probable Cause to Arrest

“[P]robable cause is the sum total of layers of information and the synthesis of what the police have heard, what they know, and what they observed as trained officers.”¹

Sometimes it’s easy to determine whether there is probable cause to arrest a suspect, as when officers find his notarized confession, or there is so much incriminating evidence in his house that it has to be hauled off in an eighteen wheeler. But in most cases, probable cause is based on just a few bits and pieces of information or physical evidence, each of which is only mildly to moderately incriminating. In these cases, officers can frequently be observed scratching their heads as they ponder the question: Is it enough?

To answer that question, officers must first understand the principles of probable cause, and how to determine whether the evidence at hand is sufficiently reliable to be taken into account. We covered both of those subjects in the Spring 2008 edition. Now we are ready to classify and examine the various circumstances that officers typically rely on in establishing probable cause to arrest and reasonable suspicion to detain.

Although the primary objective of this article is to explain how these circumstances are assessed by the courts, it may also be useful in situations where officers are required to disclose all of the circumstances they considered in deciding to arrest or detain a particular suspect. Because those decisions must usually be made quickly and on-the-spot, it can be difficult for officers to recall every circumstance that was included in the mix. So, if and when it becomes necessary to do so, officers may find that the information in this article will help jog their memory.

But before we start, we want call attention to a couple of points from the Spring edition that should be kept in mind. First, in determining whether probable cause exists, officers and judges must consider the totality of circumstances; i.e., the convincing force of the information as a whole.² As the Tenth Circuit explained in *United States v. Cantu*, “[W]e do not view each supporting fact or episode in isolation. While one fact alone may not support a finding of probable cause, a cumulative assessment may indeed lead to that conclusion.”³

Second, because most arrests and detentions are based on multiple circumstances, each additional piece of incriminating evidence—each “coincidence of information”⁴—will result in an exponential increase in the odds of having probable cause or reasonable suspicion.

Description Similarities

If victims or witnesses saw the perpetrator, and if he was a stranger to them, probable cause and reasonable suspicion will often be based on similarities between the physical, clothing, and/or vehicle descriptions they gave to officers, and the appearance of the suspect or his vehicle. This circumstance is particularly important when the crime had just occurred, especially when the crime was robbery or burglary. But, as we will now discuss, something more than a “mere resemblance” will ordinarily be required to arrest, or even detain.⁵

PHYSICAL APPEARANCE: The relevance of a similarity between the physical appearance of the perpetrator and the suspect depends mainly on, (1) the number of corresponding characteristics (e.g., height,

* **NOTE:** Because of space limitations, some case citations were omitted from the footnotes. For complete citations, see the article in POINT OF VIEW ONLINE or the chapters on probable cause in *California Criminal Investigation*.

¹ *U.S. v. Edwards* (5th Cir. 1978) 577 F.2d 883, 895.

² See *Illinois v. Gates* (1983) 462 U.S. 213, 230-1; *United States v. Sokolow* (1989) 490 U.S. 1, 9.

³ (10th Cir. 2005) 405 F.3d 1173, 1177. ALSO SEE *People v. Pranke* (1970) 12 Cal.App.3d 935.

⁴ *Ker v. California* (1963) 374 U.S. 23, 36.

⁵ See *Grant v. Long Beach* (9th Cir. 2002) 315 F.3d 1081, 1088 [“[M]ere resemblance to a general description is not enough to establish probable cause.”]; *People v. Carlos M.* (1990) 220 Cal.App.3d 372, 381-2 [“A vague description does not, standing alone, provide reasonable grounds to detain all persons falling within that description.”].

weight, build, age, race, hair color and style, facial hair), and (2) whether any of these characteristics were distinctive (e.g., a tattoo of Albert Einstein).⁶ As the court explained in *United States v. Jackson*, “[W]hen the points of similarity are less unique or distinctive, more similarities are required before the probability of identity between the two becomes convincing.”⁷

CLOTHING: Similar or matching attire is often significant, especially if the crime occurred so recently that it was unlikely the perpetrator had time to change. Again, a similarity is much more significant if it was distinctive; e.g., a jacket with shiny red hood,⁸ a red 49er baseball cap worn backwards,⁹ a bright orange shirt,¹⁰ a soccer-style bag with double handles.¹¹

VEHICLE SIMILARITIES: The relevance of a corresponding vehicle description also depends on the number of shared characteristics, and whether any were distinctive; e.g., mag wheel on the right side,¹² “unique” paint job,¹³ corresponding partial license number.¹⁴ But even a fairly general match becomes noteworthy if the car was spotted near the crime scene, or if one of the occupants resembled the perpetrator, or if there was some other reason to connect the vehicle to the crime.¹⁵

For example, in *People v. Taylor*¹⁶ LAPD officers received a report of a cat burglary that had just occurred. The time was 4:45 A.M. Within five min-

utes, officers were at an intersection about three blocks from the house when they saw a man in a yellow van driving in a direction away from the scene. They knew that a yellow van had been used in other cat burglaries in the area, and that the race of the driver of the van was the same as the race of the perpetrator. So they detained him, and the court ruled it was justified, saying, “An objective perception of events should have indicated to reasonable men that the detention and questioning of defendant was not only appropriate, but necessary to the proper discharge of their duties.”

Similarly, in *Chambers v. Maroney*¹⁷ four men robbed a gas station in Pennsylvania. One of them wore a green sweater, another wore a trench coat. They all fled in a vehicle described only as a “blue compact station wagon.” About an hour later, officers spotted four men in such a vehicle approximately two miles from the crime scene. So they stopped them and noticed that one was wearing a green sweater and another wore a trench coat. Consequently, they arrested all four and searched the car. Although there was nothing distinctive about the perpetrators’ car, the Supreme Court noted that it and the suspects’ car shared three characteristics: color, size, and style. In addition, the car was near the crime scene and there were four men inside. And when the officers saw the green sweater and trench coat, they obviously had probable cause.

⁶ See *People v. Fields* (1984) 159 Cal.App.3d 555, 564 [“The description [included] several unique distinguishing features—sex, height, race, age, and attire.”]; *People v. Brian A.* (1985) 173 Cal.App.3d 1168, 1174 [“The descriptions significantly matched as to age, height, weight, sex, race, and the bag being carried.”]; *People v. Marquez* (1992) 1 Cal.4th 553, 578 [suspect “resembled the composite drawing”]; *People v. Morgan* (1989) 207 Cal.App.3d 1384, 1389 [composite sketch]; *People v. Guillebeau* (1980) 107 Cal.App.3d 531, 553-4 [similar shoe soles]; *People v. Carpenter* (1997) 15 Cal.4th 312, 364 [similar shoe soles]; *People v. Hill* (2001) 89 Cal.App.4th 48, 55 [similar medallion and scar]; *People v. Joines* (1970) 11 Cal.App.3d 259, 264 [bandage on left hand].

⁷ (2nd Cir. 2004) 368 F.3d 59, 64.

⁸ *People v. Brian A.* (1985) 173 Cal.App.3d 1168, 1174. ALSO SEE *People v. Anthony* (1970) 7 Cal.App.3d 751, 763 [“bluish” jacket].

⁹ *People v. Soun* (1995) 34 Cal.App.4th 1499, 1524-5. ALSO SEE *People v. Flores* (1974) 12 Cal.3d 85, 92 [“distinctive” hat].

¹⁰ *U.S. v. Thompson* (D.C. Cir. 2000) 234 F.3d 725.

¹¹ *People v. Brian A.* (1985) 173 Cal.App.3d 1168, 1174.

¹² *People v. Brooks* (1975) 51 Cal.App.3d 602, 605. ALSO SEE *People v. Orozco* (1981) 114 Cal.App.3d 435, 440 [“a cream, vinyl top over a cream colored vehicle”]; *People v. Amick* (1973) 36 Cal.App.3d 140, 145 [both were dark stake-bed trucks].

¹³ *People v. Flores* (1974) 12 Cal.3d 85, 92. *People v. Hillery* (1967) 65 Cal.2d 795, 804 [black and turquoise 1952 Plymouth].

¹⁴ See *People v. Soun* (1995) 34 Cal.App.4th 1499, 1522; *People v. Watson* (1970) 12 Cal.App.3d 130, 134-5.

¹⁵ See *People v. Chandler* (1968) 262 Cal.App.2d 350 354 [both vehicles were blue compact station wagons; plus the car was stopped on a logical escape route]; *People v. Huff* (1978) 83 Cal.App.3d 549, 557 [armed robbers described as two male blacks in older model blue pickup truck]; *People v. Weston* (1981) 114 Cal.App.3d 764, 774-5 [defendant who matched the description of the robbery getaway driver—about 20 years old, 6’2”, thin build—was spotted in the getaway car four days later].

¹⁶ (1975) 46 Cal.App.3d 513, 520.

¹⁷ (1970) 399 U.S. 42.

CORRESPONDING NUMBER: As illustrated in *Chambers*, if there were two or more perpetrators, and if the crime had occurred recently, the odds of having reasonable suspicion or probable cause increase significantly if, in addition to a general physical resemblance, the number of detained suspects matched the number of perpetrators.¹⁸ As the court explained in *People v. Brian A.*,

Where there were two perpetrators and an officer stops two suspects who match the descriptions he has been given, there is much greater basis to find sufficient probable cause for arrest. The probability of there being other groups of persons with the same combination of physical characteristics, clothing, and trappings is very slight.¹⁹

For example, in *People v. Craig* the court ruled that officers had grounds to detain three robbery suspects minutes after the crime occurred because, even though they “did not perfectly match the general description given,” their descriptions were “substantially the same, and coincided in the discernible factors (race, sex, build, number).”²⁰

Similarly, in *People v. Lynette G.* the court ruled that the detentions of four teenage girls were lawful mainly because “[f]our girls had been at the scene of the robbery; four girls ran away together; four girls were seen together, shortly after the robbery and in its immediate vicinity; three of the girls admittedly fitted the description of three [perpetrators].”²¹

DISCREPANCIES: The courts understand that witnesses may inadvertently provide officers and 911 operators with inaccurate descriptions of suspects and their cars.²² As the Court of Appeal observed, “Crime victims often have limited opportunity for

observation; their reports may be hurried, perhaps garbled by fright or shock. More garbling may occur as the information is relayed to the police broadcaster and from the broadcaster to the field.”²³

The courts also know that some discrepancies in the colors of cars and clothing will occur naturally, especially at night. As the D.C. Circuit pointed out:

[I]t is easy to imagine confusing a dark blue-and-white car for a black-and-white car after night has fallen. This much will be obvious to anyone who has dressed before daybreak and arrived at the office wearing mismatched socks.²⁴

For these reasons, officers may allow room for the types of discrepancies they have come to expect. “It is enough,” said the Court of Appeal, “if there is an adequate conformity between the description and fact to indicate to *reasonable* officers that detention and questioning are necessary to the proper discharge of their duties.”²⁵ Here are some examples of discrepancies that were deemed insignificant:

- 1970 Oldsmobile ith license 276AFB was described as a 1965 Oldsmobile or Pontiac with license 276ABA²⁶
- Cadillac with license 127AOQ was described as a Cadillac with license 107AOQ²⁷
- 1959 Cadillac with license XQC335 described as a 1958 or 1959 Cadillac with a partial plate OCX²⁸
- two-door car was described as a four-door²⁹
- green car was described as gray³⁰
- silver van was described as light blue³¹
- white 1961 Chevy with four occupants described as a white 1962 Chevy with three occupants³²
- black-over-gold Cadillac was described as a light brown vehicle, maybe a Chevy³³

¹⁸ See *People v. Joines* (1970) 11 Cal.App.3d 259, 263 [two perpetrators and two suspects “narrowed the chance of coincidence.”]; *People v. Soun* (1995) 34 Cal.App.4th 1499, 1518 [six perpetrators, six suspects in car].

¹⁹ (1985) 173 Cal.App.3d 1168, 1174.

²⁰ (1978) 86 Cal.App.3d 906, 911.

²¹ (1976) 54 Cal.App.3d 1087, 1092.

²² See *U.S. v. Abdus-Price* (D.C. Cir. 2008) 518 F.3d 926, 930.

²³ *People v. Smith* (1970) 4 Cal.App.3d 41, 48.

²⁴ *U.S. v. Abdus-Price* (D.C. Cir. 2008) 518 F.3d 926, 930.

²⁵ *People v. Smith* (1970) 4 Cal.App.3d 41, 48-9.

²⁶ *People v. Jones* (1981) 126 Cal.App.3d 308, 313-4.

²⁷ *People v. Weston* (1981) 114 Cal.App.3d 764, 775, fn.5.

²⁸ *People v. Watson* (1970) 12 Cal.App.3d 130, 134-5.

²⁹ *People v. Brooks* (1975) 51 Cal.App.3d 602, 605.

³⁰ *People v. Adams* (1985) 175 Cal.App.3d 855, 861.

³¹ *People v. Bittaker* (1989) 48 Cal.3d 1046, 1076.

³² *People v. Smith* (1970) 4 Cal.App.3d 41, 48.

³³ *People v. Rico* (1979) 97 Cal.App.3d 124, 132.

Still, some disparities may be too substantial to ignore. For example, in *Williams v. Superior Court*³⁴ the court ruled the detention of a robbery suspect was plainly unlawful because he was 20 years older and five inches taller than the perpetrator.

It should also be noted that the courts will not uphold a detention or arrest that resulted from an officer's failure to remember significant descriptive details that were disseminated over the police radio or during briefing. Thus, the California Court of Appeal observed:

While officers should not be held to absolute accuracy of detail in remembering the numerous crime dispatches broadcast over police radio, [a]n investigative detention premised upon an officer's materially distorted recollection of the true suspect description is [unlawful].³⁵

As for detentions that occur just after the crime was committed, two other things should be noted about discrepancies. First, even though no one saw a getaway car, officers may usually infer that the perpetrators used one. Thus, if the suspect was inside a vehicle when he was detained or arrested, the fact that the perpetrator was last seen on foot is not necessarily a discrepancy.³⁶

Second, because victims and witnesses might not have seen all the perpetrators, a variation between the number of perpetrators and suspects is not considered significant.³⁷

Suspect's Location

The courts have consistently ruled that officers may not detain or arrest a person merely because he was at or near a public place in which criminal activity is prevalent.³⁸ Still, the suspect's location can become highly relevant when considered in light of other circumstances. In the words of the U.S. Supreme Court, "[O]fficers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation."³⁹

NEAR THE CRIME SCENE: A person's presence at or near the scene of a crime—whether shortly before, during, or just after the crime occurred—becomes highly relevant if there was some independent reason to suspect him. Here are some examples:

- The suspect was the only pedestrian in the vicinity of the burglary that occurred ten minutes earlier, and his explanation of why he was in the area was unbelievable.⁴⁰
- A burglary in progress call at 3 A.M. Although no suspect or vehicle description was given, an officer stopped a car leaving the area less than two minutes later because there were no other cars or pedestrians in the area.⁴¹
- Officers who had just heard gunshots from less than a block away stopped a car leaving the area at a "relatively fast pace."⁴²

³⁴ (1985) 168 Cal.App.3d 349, 360. ALSO SEE *People v. Johnson* (1990) 220 Cal.App.3d 742, 750 [six inch height discrepancy].

³⁵ *Williams v. Superior Court* (1985) 168 Cal.App.3d 349, 361.

³⁶ See *People v. Anthony* (1970) 7 Cal.App.3d 751, 761 ["It is a well-known fact that automobiles are frequently a facility for the perpetration of crime and an aid in the escape of criminals."]; *People v. Overten* (1994) 28 Cal.App.4th 1497, 1505 ["Law enforcement can reasonably anticipate that a car will be employed to facilitate escape from a crime scene regardless whether one was reported."]; *People v. Joines* (1970) 11 Cal.App.3d 259, 263 ["That there was an automobile with an apparent 'get-away' driver was to be expected even though it had been reported that the [robbery] suspects had fled the crime scene on foot."].

³⁷ See *People v. Coffee* (1980) 107 Cal.App.3d 28, 33-4 ["[I]t is a matter of common knowledge that holdup gangs often operate in varying numbers and combinations, and the victim of a robbery does not always see all of the participants."]; *People v. Chandler* (1968) 262 Cal.App.2d 350, 354 ["It is common knowledge that frequently, perhaps more often than not, where an automobile is used as a robbery getaway car, one or more persons remain in the vehicle."].

³⁸ See *Brown v. Texas* (1979) 443 U.S. 47, 52 ["[T]hat appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct."]; *Ybarra v. Illinois* (1979) 444 U.S. 85, 91.

³⁹ *Illinois v. Wardlow* (2000) 528 U.S. 119, 124. ALSO SEE *United States v. Brignoni-Ponce* (1975) 422 U.S. 873, 884 ["Officers may consider the characteristics of the area in which they encounter a vehicle."]; *People v. Souza* (1994) 9 Cal.4th 224, 240 ["An area's reputation for criminal activity is an appropriate consideration in assessing whether an investigative detention is reasonable under the Fourth Amendment."]; *U.S. v. Diaz-Juarez* (9th Cir. 2002) 299 F.3d 1138, 1142 ["While Diaz's presence in a high-crime area cannot alone provide reasonable suspicion [the officer] could consider this fact in forming reasonable suspicion."].

⁴⁰ *People v. Juarez* (1973) 35 Cal.App.3d 631, 635 ["Presence in the general area of a recent burglary accompanied by an explanation of doubtful veracity constitutes cause to [detain]."].

⁴¹ *People v. Conway* (1994) 25 Cal.App.4th 385, 390.

⁴² *U.S. v. Bolden* (5th Cir. 2007) 508 F.3d 204, 206.

- At about 12:45 A.M., officers detained a man two blocks from the scene of a murder that had just occurred; the man's description matched that of the killer by age, race, height, build, and jacket.⁴³

ON A LOGICAL ESCAPE ROUTE: Officers may be able to predict a perpetrator's escape route based on their training, experience, and knowledge of traffic patterns in the area. If so, it would be significant that the suspect was traveling along that route if his distance from the crime scene and the elapsed time were consistent with flight by the perpetrator.⁴⁴ Some examples:

- At about 4 A.M. two men robbed a gas station in Long Beach. Two officers "proceeded to a nearby intersection, a vantage point which permitted them to survey the street leading from the crime scene to a freeway entrance, a logical escape route." A few minutes later they saw a car traveling on the street and it was occupied by two men who fit the description of the robbers.⁴⁵
- At about 3 A.M., within a few minutes after a gas station was robbed in Santa Ana, an officer spotted a car "in the immediate vicinity"; it was the only car he saw, and it was "traveling away from the scene of the crime on a likely escape route."⁴⁶
- At about 8 P.M. two men robbed a motel in Coronado, which is an island in San Diego Bay with only two bridges. The police radio transmitted a very general description of the suspects, but no vehicle description. Within minutes, an officer who was watching one of the bridges saw a car occupied by two men, and they matched the general description.⁴⁷
- Just after a gang-related drive-by shooting, LAPD officers found the perpetrators' vehicle abandoned. They had reason to believe that the occupants fled on foot. A gang officer figured the

shooters would return to their neighborhood "by a route which avoided the territories of rival and hostile gangs," and he knew their "most logical route." Along that route, he detained several young men who were wearing the colors of the perpetrators' gang.⁴⁸

WITHIN PERIMETER: A suspect's presence within a police perimeter is relevant, especially if the perimeter was fairly tight, and it was set up quickly after the crime occurred. Thus, in *People v. Rivera* the court ruled that officers had probable cause to arrest two men suspected of having just broken into an ATM machine because, among other things, the officers "had given chase and kept the suspects under almost continuous observation. [The arresting officer] knew that 10 surveillance units and at least 10 other patrol cars, with their lights flashing, had formed a perimeter to contain the suspects."⁴⁹

HIGH CRIME AREA: The term "high crime area" is commonly used to describe a neighborhood or beat in which criminal activity is prevalent. But because most of the people who live in these areas are law-abiding citizens, a person's presence there does not qualify as a significant circumstance. Said the Court of Appeal, "It is true, unfortunately, that today it may be fairly said that our entire nation is a high crime area where narcotic activity is prevalent. Therefore, such factors, standing alone, are not sufficient to justify interference with an otherwise innocent-appearing citizen."⁵⁰

Still, a suspect's presence in a such a place will become highly relevant if he was engaging in conduct that is associated with the particular type of criminal activity that is prevalent there.⁵¹ As the court explained in *People v. Limon*, "While a person cannot be detained for mere presence in a high crime area without more, this setting is a factor that can lend meaning to the person's behavior."⁵² Or, to

⁴³ *People v. Atmore* (1970) 13 Cal.App.3d 244, 246.

⁴⁴ See *People v. Jones* (1981) 126 Cal.App.3d 308, 314 [suspect was "traveling in a direction consistent with escape from the scene"]; *People v. McCluskey* (1981) 125 Cal.App.3d 220, 226-7 ["the suspect's car was traveling in a direction consistent with the suspect's involvement in the robbery"]; *People v. Chandler* (1968) 262 Cal.App.3d 350, 354 [suspect's car "was traveling away from the robbery on one of the nearest available exits from [the crime scene]."]; *U.S. v. Burhoe* (1st Cir. 2005) 409 F.3d 5, 10.

⁴⁵ *People v. Joines* (1970) 11 Cal.App.3d 259, 262-5.

⁴⁶ *People v. Anthony* (1970) 7 Cal.App.3d 751, 761.

⁴⁷ *People v. Overten* (1994) 28 Cal.App.4th 1497, 1505.

⁴⁸ *People v. Superior Court (Price)* (1982) 137 Cal.App.3d 90, 96.

⁴⁹ (1992) 8 Cal.App.4th 1000, 1009.

⁵⁰ *People v. Holloway* (1985) 176 Cal.App.3d 150, 155. ALSO SEE *Maryland v. Buie* (1990) 494 U.S. 325, 334, fn.2.

⁵¹ See *U.S. v. Cortez* (1981) 449 U.S. 411, 419; *U.S. v. Arvizu* (2002) 534 U.S. 266, 277.

⁵² (1993) 17 Cal.App.4th 524, 532.

put it another way, “[T]he character of the area in terms of the officer’s familiarity with activities there and the right time factor combine to provide the environment in which conduct of the defendant must be judged.”⁵³

For example, if drugs are commonly sold on the street in the area, it would be highly relevant that officers saw the suspect engaging in hand-to-hand transactions, or flagging down cars, or doing any of the other things that drug sellers in the area commonly do.⁵⁴ Thus, in *People v. Michael S.*, the court upheld the detention of a suspected auto burglar mainly because he was in an area in which officers had received “many complaints” of vehicle tampering, and the officers saw him “secreted or standing between two parked cars, looking first into one and then into the other as if examining them.”⁵⁵

Reaction to Seeing Officers

Criminals tend to get jumpy when they see an officer or a patrol car. So when officers spot someone reacting in such a manner, they view it as a suspicious circumstance. The courts do, too—but with one reservation: there must have been reason to believe the reaction was, in fact, a response to seeing the officer (and not everyday jumpiness). As the court explained in *People v. Huntsman*, “Absent

a showing the citizen should reasonably know that those who are approaching are law enforcement officers, no reasonable inference of criminal conduct may be drawn.”⁵⁶

In most cases, this requirement can be satisfied if, (1) the reaction occurred immediately after the suspect looked in the officers’ direction; and (2) the officers were in a patrol car,⁵⁷ or they were wearing a standard uniform,⁵⁸ or nonstandard but clearly identifiable departmental attire.⁵⁹

If, however, the officers were in plainclothes or in an unmarked car, the relevance of the suspect’s reaction will depend on whether there was sufficient reason to believe he had recognized them.⁶⁰ For example, in *People v. Huntsman* the court ruled that the defendant’s flight from officers was not significant because the officers “were in plain clothes and were driving an unmarked car at night.” It appeared, said the court, that “the unmarked car served its intended purpose of disguising the law enforcement identities of its occupants.”⁶¹

In addition to marked and unmarked cars, there are semi-marked cars. These are vehicles with some exposed equipment or other markings that most people—especially crooks—can spot in an instant. In fact, the Court of Appeal has pointed out that some of these cars are “about as inconspicuous as three bull elephants in a backyard swimming pool.”⁶²

⁵³ (1981) 121 Cal.App.3d 239, 245.

⁵⁴ See *People v. Frederick B.* (1987) 192 Cal.App.3d 79, 86 [“The crucial circumstances were the passing of money and the area in which it occurred. The abstract innocence of the former was transformed by the latter”]; *People v. Mims* (1992) 9 Cal.App.4th 1244, 1250 [officer saw “an attempted exchange of money for a plastic bag in an area known to him for street drug transactions”]; *U.S. v. Lane* (6th Cir. 1990) 909 F.2d 895, 898 [“The officers were aware that the specific apartment building they were entering had been a problem location for unauthorized persons and drug trafficking.”]; *People v. Ramirez* (1996) 41 Cal.App.4th 1608, 1619 [“the location of the detention was one of the known high-volume narcotics dealing areas of the city”]; *U.S. v. Brown* (7th Cir. 1999) 188 F.3d 860, 865 [“[T]he exchange took place in a high crime area where there had been drug activity, shootings, and gang violence.”]; *U.S. v. McCoy* (4th Cir. 2008) 513 F.3d 405, 413 [the conduct was consistent with “typical drug transactions” in grocery store parking lot].

⁵⁵ *People v. Michael S.* (1983) 141 Cal.App.3d 814, 816.

⁵⁶ (1984) 152 Cal.App.3d 1073, 1091. ALSO SEE *People v. Conley* (1971) 21 Cal.App.3d 894, 899 [“[T]he rationale of the furtive gesture doctrine applies only where the gesture is made in response to seeing an approaching police officer”]; *U.S. v. Johnson* (D.C. Cir. 2000) 212 F.3d 1313, 1316 [furtive gestures “are significant only if they were undertaken in response to police presence”].

⁵⁷ See *People v. Huntsman* (1984) 152 Cal.App.3d 1073, 1091 [“A crucial ingredient of the inferential chain is that the citizen knows that those who are approaching are, in fact, police officers, either because they are driving marked cars or are wearing uniforms.”].

⁵⁸ See *U.S. v. Miller* (1st Cir. 1978) 589 F.2d 1117, 1123, fn.1 [suspect “accelerated rapidly” when he saw the unmarked car which had a “flashing light,” and the deputy was in uniform].

⁵⁹ See *U.S. v. Dykes* (D.C. Cir 2005) 406 F.3d 717, 718 [officers wore “multiple items of identification”].

⁶⁰ See *U.S. v. Johnson* (D.C. Cir. 2000) 212 F.3d 1313, 1316 [“[I]t is not clear that Johnson was aware that Fulton was a police officer; Fulton was after all in an unmarked car.”].

⁶¹ (1984) 152 Cal.App.3d 1073, 1091. ALSO SEE *Wong Sun v. United States* (1963) 371 U.S. 471, 482.

⁶² *Flores v. Superior Court* (1971) 17 Cal.App.3d 219, 224.

Still, when officers are testifying at a hearing on a motion to suppress evidence they must be able to prove that they reasonably believed the defendant had identified their car. This might be accomplished by describing in detail the various police markings and equipment that were readily visible, such as the car's make (e.g., the conspicuous Ford Crown Victoria), coloring (e.g., basic black or white), "ex-empt" license plates, and equipment (e.g., push bar, spotlights, LED dash light, antennas, exposed shotgun, exposed computer monitor, back seat cage). Thus, in *U.S. v. Nash* the court ruled that an officer's semi-marked car "clearly was identifiable as a police car. It was a dark blue Dodge equipped with several antennae and police lights on the rear shelf."⁶³

Another indication that the suspect recognized the officers or their car is that he immediately fled or otherwise responded in a manner consistent with that of a criminal who had just seen something ominous. (Thus, the reactions we discuss in the rest of this section are not only suspicious, they help prove that the suspect had identified the officers.)

An example is found in *Florida v. Rodriguez*⁶⁴ where two Dade County plainclothes officers spotted three suspected drug traffickers at the Miami International Airport. According to the Supreme Court, when the officers started following them, one of the suspects "looked back and saw the detectives," after which he "spoke in a lower voice" to the others who quickly "turned around and looked directly at the detectives." Then, as if there was any remaining doubt, one of the suspects said, "Let's get out of here," and another "uttered a vulgar exclamation."

Similarly, in *Flores v. Superior Court*⁶⁵ three officers in an "undercover" car saw Flores walking away from a public restroom, and they noticed he was holding something that looked like a "narcotics kit." Just then, he looked at the car, at which point he "abruptly changed direction" and, in a "very clandestine" manner, moved the object from one hand to

the other. "By this time" said the court, "there is obviously no question in the defendant's mind as to who the three gentlemen in the car were."

Assuming that it reasonably appeared that the suspect recognized the officers, the question arises: What types of responses are considered significant?

Running from officers

To run from officers is one of the strongest non-verbal admissions of guilt a suspect can make. As the United States Supreme Court observed, "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."⁶⁶ Or, in the words of the Court of Appeal:

An inference that an individual is engaging or has just engaged in criminal conduct may be drawn where that individual, knowing that police are approaching, flees or engages in other activity indicative of an effort to avoid apprehension or police contact.⁶⁷

Still, a person's flight will not justify a stop—something more is required. In fact, the courts have coined the term "flight *plus*" to express this requirement.⁶⁸ How much more is required? Not much, as some of the following examples illustrate:

- The suspect had been standing next to a building in a high drug area when he ran.⁶⁹
- When District of Columbia officers in unmarked cars entered a parking lot in an area "known for heavy narcotics trafficking," the suspect began to walk off. Then, when he saw the officers get out of their cars, he ran away "at a fast pace."⁷⁰
- Two men walking down a street in Modesto at 3:30 A.M. were carrying backpacks "stuffed with objects." When they saw the officers, they ran.⁷¹
- At 4 A.M., an officer on a prowler call in Signal Hill saw a man emerge from a dark area between a home and a plastics company. When the man saw the officer, he ran.⁷²

⁶³ (7th Cir. 1989) 876 F.2d 1359, 1360.

⁶⁴ (1984) 469 U.S. 1.

⁶⁵ (1971) 17 Cal.App.3d 219.

⁶⁶ *Illinois v. Wardlow* (2000) 528 U.S. 119, 124. ALSO SEE *California v. Hodari* (1991) 499 U.S. 621, 623, fn.1.

⁶⁷ *People v. Mims* (1992) 9 Cal.App.4th 1244, 1249.

⁶⁸ See *People v. Souza* (1994) 9 Cal.4th 224, 235-6; *People v. Britton* (2001) 91 Cal.App.4th 1112, 1118.

⁶⁹ *Illinois v. Wardlow* (2000) 528 U.S. 119, 124.

⁷⁰ *U.S. v. Dykes* (D.C. Cir. 2005) 406 F.3d 717.

⁷¹ *Crofoot v. Superior Court* (1981) 121 Cal.App.3d 717, 724.

⁷² *People v. Superior Court (Johnson)* (1971) 15 Cal.App.3d 146.

- An officer in Hawthorne responded to a report of a residential burglary in which the perpetrator had fled three to five minutes earlier. About a block from the house, he saw a man who matched the general description of the burglar. The man ran when the officer called to him.⁷³
- At 3 A.M., an officer on patrol in a “high crime” area in Watsonville saw a man talking to the occupants of a car that was parked in an area of “almost complete darkness.” When the officer shined his spotlight at the vehicle, the two occupants “bent down toward the floorboard” and the man “took off running.”⁷⁴

Also note that if officers already have grounds to detain the suspect, his flight may convert reasonable suspicion into probable cause.⁷⁵ As the court noted in *People v. Mendoza*, “An individual who chooses to run from an officer under suspicious circumstances may by that act provide probable cause to detain or arrest.”⁷⁶ Furthermore, if there are grounds to detain a suspect, his flight may provide officers with probable cause to arrest him for obstructing an officer in the discharge of his duties.⁷⁷

Attempting to hide from officers

Like flight, a person’s attempt to hide from officers is a highly suspicious circumstance, even if the attempt was inept.⁷⁸ In the words of the U.S. Court of Appeals, “[S]louching, crouching, or any other arguably evasive movement, when combined with other factors particular to the defendant or his vehicle, can add up to reasonable suspicion.”⁷⁹ Some examples:

- When the suspect saw LAPD officers driving by, he “stepped behind a large dumpster” and then “continued to move around it in such a fashion that he blocked himself from the officers’ view.”⁸⁰
- When their car was spotlighted, “two people in the front seat immediately bent down toward the floorboard.”⁸¹
- When officers spotlighted a car full of teenagers at 3:30 A.M., one of them “ducked down in the front seat and put his arm up over his head bringing his jacket with it trying to shield himself from the view of the officers.”⁸²
- The suspect “was crouched down right at the door of a darkened residence” at 2 A.M.⁸³

Attempting to avoid officers

Although not as suspicious as an obvious attempt to hide from officers, it is relevant that a suspect attempted to avoid them by, for example, suddenly changing direction or ducking into a store or other building. In the words of the Third Circuit, “Walking away from the police hardly amounts to the head-long flight considered [highly suspicious by the United States Supreme Court] and of course would not give rise to reasonable suspicion by itself, even in a high-crime area, but it is a factor that can be considered in the totality of the circumstances.”⁸⁴ For example, the following reactions were considered noteworthy:

- When two suspected drug dealers looked at a Riverside County sheriff’s patrol car that was approaching, they “started walking away in different directions.”⁸⁵

⁷³ *People v. Rafael V.* (1982) 132 Cal.App.3d 977, 982-3.

⁷⁴ *People v. Souza* (1994) 9 Cal.4th 224, 240.

⁷⁵ See *Sibron v. New York* (1968) 392 U.S. 40, 66-7; *People v. Messervy* (1985) 175 Cal.App.3d 243, 247; *People v. DeCosse* (1986) 183 Cal.App.3d 404, 411; *People v. Hill* (1974) 12 Cal.3d 731, 749; *People v. Guy* (1980) 107 Cal.App.3d 593, 598.

⁷⁶ (1986) 176 Cal.App.3d 1127, 1131.

⁷⁷ See Pen. Code § 148; *People v. Allen* (1980) 109 Cal.App.3d 981, 987 [“[Running and hiding] caused a delay in the performance of Officer Barron’s duty.”]; *People v. Johnson* (1991) 231 Cal.App.3d 1, 13, fn. 2 [“Given their right to forcibly detain, California precedent arguably would have allowed the officers to arrest for flight which unlawfully delayed the performance of their duties.”].

⁷⁸ See *Illinois v. Wardlow* (2000) 528 U.S. 119, 124; *United States v. Brignoni-Ponce* (1975) 422 U.S. 873, 885.

⁷⁹ *U.S. v. Woodrum* (1st Cir. 2000) 202 F.3d 1, 7.

⁸⁰ *People v. Michael S.* (1983) 141 Cal.App.3d 814, 816.

⁸¹ *People v. Souza* (1994) 9 Cal.4th 224, 240.

⁸² *People v. Jonathan M.* (1981) 117 Cal.App.3d 530, 535. ALSO SEE *People v. Overten* (1994) 28 Cal.App.4th 1497, 1504.

⁸³ *U.S. v. Holmes* (D.C. Cir. 2004) 360 F.3d 1339, 1345.

⁸⁴ *U.S. v. Valentine* (3rd Cir. 2000) 232 F.3d 350, 357 [referring to *Illinois v. Wardlow* (2000) 528 U.S. 119].

⁸⁵ *People v. Boissard* (1992) 5 Cal.App.4th 972, 975. ALSO SEE *Florida v. Rodriguez* (1984) 469 U.S. 1, 6.

- As a murder suspect drove up to his girlfriend's house and started to pull into the driveway, he apparently saw that Contra Costa County sheriff's deputies were there, at which point he backed up into the street and took off.⁸⁶
- At 4 A.M. a man was standing next to a business in which a silent alarm had been triggered; when officers arrived, he walked away.⁸⁷
- After engaging in an apparent hand-to-hand drug transaction in San Bernardino, the suspect looked at the approaching police car, changed his course of travel, and walked away.⁸⁸
- The suspect was walking toward a pawnshop in downtown Los Angeles, "but on the visible interest of the police in his movements he reversed direction and went into a park."⁸⁹
- When a DEA agent approached three suspected drug traffickers at LAX, one of them attempted to disassociate himself from the group; i.e., he "dropped back behind [the others] and changed his direction of movement."⁹⁰
- As sheriff's deputies in Los Angeles County approached the suspect, he "reached into his right rear pocket and appeared to be trying to get something out, and it was a jerking motion as though he were trying desperately to get something out of his pocket."⁹³
- When a suspected drug dealer turned toward an Oakland patrol car, he suddenly put his hand inside his jacket.⁹⁴
- As LAPD officers made a traffic stop, the three men in the car simultaneously stepped out. Said one of the officers, "they all got out on us."⁹⁵
- When a Sacramento County sheriff's deputy made a car stop on a suspected burglar, the suspect "got out of his car swiftly and walked quickly toward the squad car before the officer had the chance to get out of his car."⁹⁶
- As District of Columbia police officers pulled up to a car in which a suspected drug dealer was sitting, the suspect "looked shocked, fumbled with the [vehicle's] door, and attempted to dart out of the car."⁹⁷

Sudden movement

Any sudden—almost instinctive—movement by a person upon spotting an officer might indicate that he views the officer as a threat, which is both ominous and suspicious. Said the Ninth Circuit, "We have considered sudden movements by defendants, or repeated attempts to reach for an object that was not immediately visible, as actions that can give rise to a reasonable suspicion that a defendant is armed."⁹¹ Some examples:

- When Fremont officers approached the suspect, he "lunged forward" and thrust his hand into the pocket of a canvas bag at his feet.⁹²

Trying to hide or discard something

When a suspect tries to hide or discard something when he sees officers, it may be reasonable to believe that the object is a weapon, drugs, or other incriminating evidence.⁹⁸ Although this is not the type of response that will automatically establish probable cause or even reasonable suspicion, it is highly suspicious. As the court observed in *People v. Holloway*, "The appearance of a police officer, even when unexpected, would not lead an innocent citizen to attempt to hurl his personal property into the night."⁹⁹ Here are some examples:

⁸⁶ *People v. Turnage* (1975) 45 Cal.App.3d 201, 205.

⁸⁷ *People v. Lloyd* (1992) 4 Cal.App.4th 724, 734; *People v. Smith* (1981) 120 Cal.App.3d 282, 288 ["hurried exit" from car].

⁸⁸ *Flores v. Superior Court* (1971) 17 Cal.App.3d 219, 224.

⁸⁹ *People v. Manis* (1969) 268 Cal.App.2d 653, 660.

⁹⁰ *People v. Profit* (1986) 183 Cal.App.3d 849, 882.

⁹¹ *U.S. v. Flatter* (9th Cir. 2006) 456 F.3d 1154, 1158.

⁹² *People v. Flores* (1979) 100 Cal.App.3d 221, 226.

⁹³ *People v. Superior Court (Holmes)* (1971) 15 Cal.App.3d 806, 808-9.

⁹⁴ *People v. Lee* (1987) 194 Cal.App.3d 975, 983.

⁹⁵ *People v. Hubbard* (1970) 9 Cal.App.3d 827, 830.

⁹⁶ *U.S. v. Mattarolo* (9th Cir. 1999) 191 F.3d 1082, 1087.

⁹⁷ *U.S. v. Johnson* (D.C. Cir. 2008) 519 F.3d 478.

⁹⁸ See *People v. Stokes* (1990) 224 Cal.App.3d 715, 720; *People v. Banks* (1990) 217 Cal.App.3d 1358; *People v. Allen* (2000) 78 Cal.App.4th 445, 450; *People v. Limon* (1993) 17 Cal.App.4th 524, 533.

⁹⁹ (1985) 176 Cal.App.3d 150, 156. Edited.

- Officers saw several men looking at a TV set inside the trunk of a car. When the men looked at the officers, one of them slammed the trunk shut and they started to walk away.¹⁰⁰
- As the suspect was looking for vehicle registration in the glove box, he “shielded the interior with his left hand.”¹⁰¹
- A suspected drug dealer who had been detained kept his left hand hidden from the officer.¹⁰²
- The suspect held his hands “clasped together in front of a bulge in the waistband in the middle of his waist.”¹⁰³
- The suspect “was keeping his right side turned from the officer’s view and appeared to have his right hand in his jacket pocket.”¹⁰⁴

Furtive gestures

A “furtive gesture” is similar to an attempt to hide or discard an object except it is not quite as obvious, which means it is not quite as suspicious. Still, it is a relevant circumstance that is frequently noted by the courts.¹⁰⁵ Some examples:

- When a known drug user spotted an officer, he “moved his hand down to his right front pants pocket,” like a “kid with his hand caught in the cookie jar.”¹⁰⁶
- When a suspected drug seller saw the officers, he quickly made a “hand-to-mouth movement, as though secreting drugs.”¹⁰⁷

- When officers initiated a traffic stop, the driver “appeared to shuffle the upper portion of his body abnormally, as though he were grabbing something on the front seat.”¹⁰⁸
- As an officer approached a car he had stopped for a traffic violation, he saw the driver reach under the driver’s seat, at which point he heard the sound of “metal on metal.”¹⁰⁹
- A passenger in a car stopped for a traffic violation “lifted himself up from the seat with both arms in his rear portion of his body behind his back, both arms went up and down rapidly.”¹¹⁰
- When officers ordered a detainee to put his hands outside the car window, he “reached back inside the car toward his waistband.”¹¹¹
- The suspect turned away from officers when they said they had a search warrant.¹¹²

Nervousness

Criminals tend to become nervous when an officer is nearby, even if they’re not doing anything illegal at the moment. Consequently, a suspect’s nervousness is a circumstance that the courts will take into account.¹¹³

But the courts also know that law-abiding people sometimes get nervous when an officer approaches. As the Eighth Circuit observed, “[B]ecoming nervous when one is confronted by officers of the law is not an uncommon reaction.”¹¹⁴ As a result, the

¹⁰⁰ *People v. Gravatt* (1971) 22 Cal.App.3d 133, 137.

¹⁰¹ *People v. Joines* (1970) 11 Cal.App.3d 259, 264. ALSO SEE *U.S. v. Burnette* (9th Cir. 1983) 698 F.2d 1038, 1048 [as the suspect was looking in her purse for ID, she “attempted to obstruct [the officer’s] view”].

¹⁰² *People v. Butler* (2003) 111 Cal.App.4th 150.

¹⁰³ *People v. Superior Court (Brown)* (1980) 111 Cal.App.3d 948, 956.

¹⁰⁴ *People v. Glenn R.* (1970) 7 Cal.App.3d 558.

¹⁰⁵ See *People v. Guy* (1980) 107 Cal.App.3d 593, 598; *People v. Guajardo* (1994) 23 Cal.App.4th 1738, 1742.

¹⁰⁶ *People v. Gonzales* (1989) 216 Cal.App.3d 1185, 1189.

¹⁰⁷ *People v. Johnson* (1991) 231 Cal.App.3d 1, 12.

¹⁰⁸ *People v. Superior Court (Vega)* (1969) 272 Cal.App.2d 383, 387.

¹⁰⁹ *People v. King* (1989) 216 Cal.App.3d 1237, 1240.

¹¹⁰ *People v. Clayton* (1970) 13 Cal.App.3d 335.

¹¹¹ *U.S. v. Price* (D.C. Cir. 2005) 409 F.3d 436, 442.

¹¹² *People v. Valdez* (1987) 196 Cal.App.3d 799, 806.

¹¹³ See *Illinois v. Wardlow* (2000) 528 U.S. 119, 124 [“Our cases have recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion.”]; *People v. Russell* (2000) 81 Cal.App.4th 96, 103.

¹¹⁴ *U.S. v. White* (8th Cir. 1989) 890 F.2d 1413, 1418. ALSO SEE *People v. Lawler* (1973) 9 Cal.3d 156, 162 [“Defendant’s nervousness could understandably result from extended police questioning because of a traffic violation”]; *U.S. v. Wood* (10th Cir. 1997) 106 F.3d 942, 948 [“It is certainly not uncommon for most citizens—whether innocent or guilty—to exhibit signs of nervousness when confronted by a law enforcement officer.”]; *U.S. v. Walker* (10th Cir. 1991) 933 F.2d 812, 817, fn.3 [“The general term ‘nervousness’ encompasses an almost infinite variety of behaviors.”].

courts do not consider nervousness a significant circumstance unless it was extreme or unusual.¹¹⁵ For instance:

- his hands “were shaking, his voice was cracking, he could not sit still, and his heart was beating so fast that [the officer] was able to see his chest jerk”¹¹⁶
- “visibly trembling”¹¹⁷
- the officer “noticed that [the suspect] appeared to be startled by him, had a ‘look of fear in his eyes’ and then quickly looked away”¹¹⁸
- “extreme nervousness, profuse shaking”¹¹⁹
- “perspiring, swallowing and breathing heavily, and constantly moving his feet or fingers”¹²⁰
- “his face started to turn pale, his hands began to shake, and he did not take his eyes off of [the officer]”¹²¹
- “he kept looking around as he approached the patrol car, appearing nervous and anxious to leave the area”¹²²

“Let’s get out of here!”

When two or more people are committing a crime and one of them spots an officer, it is considered an appropriate time to panic. For that reason, the courts have ruled that panicky reactions such as the following were highly relevant: “Jesus Christ, the cops,”¹²³ “Let’s get out of here,”¹²⁴ “Run, it’s the narcs,”¹²⁵ “Police!”¹²⁶ “Rollers!”¹²⁷ “Oh shit. Don’t say anything,”¹²⁸ “The man is across the street.”¹²⁹

These types of warnings are even more suspicious when they are immediately followed by some physical response; e.g., group disperses,¹³⁰ two men involved in a hand-to-hand exchange suddenly put their hands in their pockets.¹³¹

Extreme attention to officers

Merely looking at an officer or patrol car hardly qualifies as a suspicious circumstance. Thus, in *United States v. Moreno-Chaparro* the court pointed out that “in the ordinary case, whether a driver looks at an officer or fails to look at an officer, taken alone or in combination with other factors, should be accorded little weight.”¹³² But extreme or unusual attention to officers, such as the following, may be noteworthy:

- “The defendant upon seeing the [police] car did not give it the passing glance of the upright, law abiding citizen. His eyes were glued on that car. To him, it represented danger.”¹³³
- After officers red-lighted a car, the backseat passenger looked back several times at the patrol car and kept moving around.¹³⁴
- Six suspects inside a moving vehicle all turned to look at the officer as they drove past him.¹³⁵
- The suspects “stared intently at the officers.” An officer said “it was just about ‘eyeball contact’ and explained that in his experience people who had shown that much attention to him . . . turned out to have been up to something.”¹³⁶

¹¹⁵ See *U.S. v. Chavez-Valenzuela* (9th Cir. 2001) 268 F.3d 719, 726; *U.S. v. Brown* (7th Cir. 1999) 188 F.3d 860, 865.

¹¹⁶ *U.S. v. Williams* (10th Cir. 2005) 403 F.3d 1203, 1205.

¹¹⁷ *U.S. v. Holzman* (9th Cir. 1989) 871 F.2d 1496, 1504.

¹¹⁸ *People v. Fields* (1984) 159 Cal.App.3d 555, 564.

¹¹⁹ *U.S. v. Hanlon* (8th Cir. 2005) 401 F.3d 926, 929.

¹²⁰ *U.S. v. Bloomfield* (8th Cir. 1994) 40 F.3d 910, 913.

¹²¹ *People v. Brown* (1985) 169 Cal.App.3d 159, 162.

¹²² *People v. Guajardo* (1994) 23 Cal.App.4th 1738, 1743.

¹²³ *People v. Bigham* (1975) 49 Cal.App.3d 73, 78.

¹²⁴ *Florida v. Rodriguez* (1984) 469 U.S. 1, 3.

¹²⁵ *Pierson v. Superior Court* (1970) 8 Cal.App.3d 510, 516.

¹²⁶ *People v. Mims* (1992) 9 Cal.App.4th 1244, 1250. ALSO SEE *Sanderson v. Superior Court* (1980) 105 Cal.App.3d 264, 271 [“Cops!”].

¹²⁷ *People v. Lee* (1987) 194 Cal.App.3d 975, 980.

¹²⁸ *People v. Vasquez* (1983) 138 Cal.App.3d 995, 999.

¹²⁹ *People v. Wigginton* (1973) 35 Cal.App.3d 732, 736.

¹³⁰ See *Florida v. Rodriguez* (1984) 469 U.S. 1, 3; *People v. Brown* (1990) 216 Cal.App.3d 1442, 1450.

¹³¹ See *People v. Mims* (1992) 9 Cal.App.4th 1244, 1250.

¹³² (5th Cir. 1999) 180 F.3d 629, 632.

¹³³ *Flores v. Superior Court* (1971) 17 Cal.App.3d 219, 224. ALSO SEE *People v. Harris* (1980) 105 Cal.App.3d 204, 212.

¹³⁴ *People v. Hunter* (2005) 133 Cal.App.4th 371, 379, fn.5.

¹³⁵ *People v. Soun* (1995) 34 Cal.App.4th 1499, 1513.

¹³⁶ *People v. Joines* (1970) 11 Cal.App.3d 259, 263.

A suspect's obvious attempt to ignore officers or pretend that he did not see them may also be somewhat suspicious.¹³⁷ The fact that the suspect reacted by making, or failing to make, eye contact with an officer is, if anything, only marginally relevant.¹³⁸

“Suspicious” Activity

Officers sometimes see people doing things that, although not illegal, are suspicious. As the Court of Appeal observed, “Experienced police officers naturally develop an ability to perceive the unusual and suspicious which is of enormous value in the difficult task of protecting the security and safety of law-abiding citizens.”¹³⁹

The courts will not, however, uphold a detention merely because an officer testified that the defendant's actions were “unusual” or “suspicious.” Instead, they need to know exactly what he did and why it appeared significant.¹⁴⁰

EXCESSIVE LOOKING AROUND: People who are committing a crime, or who are about to, tend to look around a lot to see if anyone is watching. This is especially true of drug dealers. As the court noted in *Flores v. Superior Court*, “Those involved in the narcotics trade are a skittish group—literally hunted animals to whom everyone is an enemy until proven to the contrary.”¹⁴¹ Consequently, activities such as the following have been considered noteworthy:

- A suspected drug dealer “scouted the area before entering the apartment.”¹⁴²
- The suspect “loitered about” and “looked furtively in all directions.”¹⁴³
- The suspect “alighted from the vehicle and looked around apprehensively for quite some period of time.”¹⁴⁴
- Two men who had just left a jewelry store (after robbing it) kept looking back at the store.¹⁴⁵

Note, however, that because many innocent people are “skittish,” or at least vigilant, a suspect's watchfulness ordinarily becomes a factor only in light of the surrounding circumstances.

COUNTERSURVEILLANCE: Another common activity of vigilant criminals is countersurveillance, which generally consists of tactics that make it difficult for officers to follow them, or that force the officers to engage in detectable surveillance.¹⁴⁶

For example, the Court of Appeal has noted that countersurveillance driving tactics “typically include driving slowly at less than the flow of traffic, making sudden and un signaled changes in velocity and direction, as well as ‘running’ red traffic lights. Each of these tactics is designed to make unobserved surveillance very difficult.”¹⁴⁷ Some examples:

- “The Lexus went to two addresses which the officers associated with drugs, and drove in and out of the parking lots of those buildings several times.”¹⁴⁸

¹³⁷ See *United States v. Arvizu* (2002) 534 U.S. 266, 270 [driver, as he passed a patrol car, “appeared stiff and his posture very rigid. He did not look at [the officer] and seemed to be trying to pretend that [the officer] was not there.”].

¹³⁸ See *U.S. v. Montero-Camargo* (9th Cir. 2000) 208 F.3d 1122, 1136 [“The skepticism with which [the eye-contact] factor is treated is in large part due to the fact that reliance upon ‘suspicious’ looks can so easily devolve into a case of damned if you do, equally damned if you don’t.”].

¹³⁹ *People v. Elisabeth H.* (1971) 20 Cal.App.3d 323, 327.

¹⁴⁰ See *Brown v. Texas* (1979) 443 U.S. 47, 52 [“[The officer] testified at appellant’s trial that the situation in the alley ‘looked suspicious,’ but he was unable to point to any facts supporting that conclusion.”].

¹⁴¹ (1971) 17 Cal.App.3d 219, 223.

¹⁴² *People v. Avalos* (1996) 47 Cal.App.4th 1569, 1577.

¹⁴³ *People v. Carrillo* (1995) 37 Cal.App.4th 1662, 1668.

¹⁴⁴ *People v. Moore* (1970) 13 Cal.App.3d 424, 431.

¹⁴⁵ *People v. Dolliver* (1986) 181 Cal.App.3d 49.

¹⁴⁶ See *People v. McNabb* (1991) 228 Cal.App.3d 462, 466 [“the conduct of suspect 3 was consistent with countersurveillance to make sure the police were not watching”]; *U.S. v. Del Vizo* (9th Cir. 1990) 918 F.2d 821, 826 [the suspects “frequently appeared to check whether they were being followed . . . all the while traveling in a counter-surveillance fashion”]; *U.S. v. Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 978 [“[The suspect] employed counter-surveillance driving techniques, which we have recognized as being indicative of narcotics distribution.”]; *U.S. v. Ocampo* (9th Cir. 1991) 927 F.2d 485, 490 [“[C]ounter-surveillance driving [is] indicative of narcotics distribution.”]; *People v. Carvajal* (1988) 202 Cal.App.3d 487, 496 [the suspect “drove his truck in a highly unusual, apparently evasive manner immediately following the retrieval of several large, heavy boxes from a storage facility”].

¹⁴⁷ *People v. \$497,590* (1997) 58 Cal.App.4th 145, 148.

¹⁴⁸ *U.S. v. Johnson* (8th Cir. 1995) 64 F.3d 1120, 1125.

- The suspect “pulled to the curb, allowing a surveillance unit to pass her vehicle. She drove to a residence after first going past it and making a U-turn.”¹⁴⁹
- The suspect “drove about the town, up and down side streets, making numerous U-turns, stopping, backing up, and finally arriving at the Ganesha Street property.”¹⁵⁰
- “[B]oth vehicles took evasive actions and started speeding as soon as [the officer] began following them in his marked car.”¹⁵¹

CASING: It is highly relevant that the suspect was engaged in conduct that was consistent with casing a location for a robbery or burglary.¹⁵²

“UNUSUAL” ACTIVITY: A detention may be based, at least in part, on activity that is “so unusual, so far removed from everyday experience that it cries out for investigation,” even if “there is no specific crime to which it seems to relate;”¹⁵³ e.g., a man riding around on a bicycle, carrying an ax.¹⁵⁴

HAND-TO-HAND EXCHANGES: A hand-to-hand exchange is not inherently suspicious. But it can become so in light of the surrounding circumstances and whether the officers could see the object that was exchanged. For example, probable cause will likely exist if officers were in an area where street sales of drugs were prevalent and they saw a suspect exchange money for an object that appeared to be drugs or a common container for drugs.¹⁵⁵

If officers could not identify the object that was exchanged, the transaction may nevertheless be deemed suspicious if there were other circumstances that were indicative of a drug sale; e.g., just before the exchange, the seller retrieved the item from an apparent hiding place; or the suspects ran when they saw the officers.¹⁵⁶

LATE NIGHT ACTIVITY: The fact that a suspect was on the street at a late hour is not, in and of itself, suspicious. But because certain crimes are often committed late at night—such as convenience store robberies and commercial burglaries—it would be suspicious that a person was hanging out in the vicinity of such a location. Some examples:

- 2:35 A.M.: An officer saw a man “exiting from darkened private property where valuable merchandise was located.”¹⁵⁷
- 11:40 P.M.: Officers saw three people inside a car that was parked “in front of a darkened home” in a neighborhood in which, over the past two months, two to three burglaries had occurred each week.¹⁵⁸
- Midnight: An officer driving along a “dark” and “secluded” road saw an occupied pickup truck “nosed into the driveway of a fenced construction storage area,” and there was a big box in the back of the truck.¹⁵⁹
- 12:15 A.M.: Officers saw two men “peering” into the front window of a closed radio shop”; when they saw the officers, they started to walk away.¹⁶⁰
- 3:20 A.M.: Officers were driving past a closed Wendy’s restaurant when they saw a man “concealing himself behind the fence and peering out toward the street.”¹⁶¹

Another crime that often occurs late at night is auto theft. According to the United States Department of Justice, more than 70% of car thefts take place between 6 P.M. and 6 A.M., and the majority of these occur after midnight. Taking note of these statistics, the California Supreme Court said in *People v. Souza*, “The time of night is another pertinent factor in assessing the validity of a detention. Here, the incident occurred at 3 A.M. At that late hour defendant

¹⁴⁹ *People v. Rodriguez-Fernandez* (1991) 235 Cal.App.3d 543, 546.

¹⁵⁰ *People v. Campbell* (1981) 118 Cal.App.3d 588, 592.

¹⁵¹ *United States v. Sharpe* (1985) 470 U.S. 675, 682, fn.3.

¹⁵² See *Terry v. Ohio* (1968) 392 U.S. 1, 23; *People v. Remiro* (1979) 89 Cal.App.3d 809, 828 [circumstances indicated “casing”].

¹⁵³ *People v. Foranyic* (1998) 64 Cal.App.4th 186, 190.

¹⁵⁴ *People v. Foranyic* (1998) 64 Cal.App.4th 186.

¹⁵⁵ See *People v. Garrett* (1972) 29 Cal.App.3d 535; *People v. Stanfill* (1985) 170 Cal.App.3d 420.

¹⁵⁶ See *People v. Limon* (1993) 17 Cal.App.4th 524, 532; *People v. Butler* (2003) 111 Cal.App.4th 150, 162.

¹⁵⁷ *People v. Allen* (1975) 50 Cal.App.3d 896, 901. ALSO SEE *People v. Holloway* (1985) 176 Cal.App.3d 150, 154-5 [“Three A.M. is both a late and unusual hour for anyone to be in attendance at an outdoor social gathering, particularly in a residential neighborhood where he does not reside.”].

¹⁵⁸ *People v. Schoennauer* (1980) 103 Cal.App.3d 398, 407.

¹⁵⁹ *U.S. v. Mattarolo* (9th Cir. 1999) 191 F.3d 1982.

¹⁶⁰ *People v. Koelzer* (1963) 222 Cal.App.2d 20.

¹⁶¹ *U.S. v. Thompson* (D.C. Cir. 2000) 234 F.3d 725, 729.

and his companion were standing in almost total darkness on a sidewalk next to a car parked in a residential area. These facts led Officer Stackhouse to suspect that an auto burglary might be progress. That suspicion was reasonable.”¹⁶²

Lies and Evasions

When a suspect lies, evades a question, gives conflicting statements, or tells unbelievable stories it is only natural to assume that the truth would land him in jail. As the Court of Appeal noted:

Consciousness of guilt is shown by fabrications which, like devious alibis, are apparently motivated by fear of detection, or which, like devious explanations of the possession of stolen goods, suggest that there is no honest explanation for the incriminating circumstances.¹⁶³

OUTRIGHT LIES: All lies are significant, but especially if they pertained to a material issue of guilt. Said the Court of Appeal, “Deliberately false statements to the police about matters that are within a suspect’s knowledge and materially relate to his or her guilt or innocence have long been considered cogent evidence of consciousness of guilt.”¹⁶⁴

Although somewhat less incriminating, lies pertaining to peripheral or secondary issues are also inherently suspicious. The following are examples:

- suspect lied about his name, address, or DOB¹⁶⁵
- suspect lied about where he was coming from¹⁶⁶
- suspect lied about not having a car trunk key¹⁶⁷
- suspect lied that he owned a certain car¹⁶⁸
- suspect lied that the murder victim was his wife¹⁶⁹
- suspect lied that he didn’t know his accomplice¹⁷⁰

SUSPECT GIVES CONFLICTING STATEMENTS: A suspect who is making up a story while being questioned will frequently give conflicting statements because he forgot what he said earlier. Again, this is especially incriminating if the conflict pertained to a material issue.¹⁷¹ For example, in *People v. Memro* the California Supreme Court pointed out that “patently inconsistent statements on such a vital matter as the whereabouts of [the murder victim] near the time he vanished had no discernible innocent meaning and strongly indicated consciousness of guilt.”¹⁷²

Similarly, in *People v. Gravatt* the court ruled that officers had probable cause to arrest the defendant for possession of a stolen TV in the trunk of his car mainly because he initially claimed that the set belonged to his brother-in-law, but then said he won it in a crap game.¹⁷³

TWO SUSPECTS, TWO STORIES: When two or more suspects are questioned separately, they will often give conflicting statements because they don’t know what the other said. For example, in another stolen-TV-in-the-trunk case, the defendant said the TV belonged to a guy who wanted him to sell it, but his accomplice said it belonged to the defendant.¹⁷⁴ The court said the whole thing sounded fishy.

Inconsistencies often crop up when officers stop a car and question the occupants separately about where they were going and why.¹⁷⁵ Although these inconsistencies will not necessarily establish grounds to arrest or prolong the detention, they naturally raise a suspicion that the trip involved something shady. For example, in *U.S. v. Guerrero*¹⁷⁶ one of two suspected drug couriers said they were headed to Kansas City “to work construction,” while the other

¹⁶² (1994) 9 Cal.4th 224, 241.

¹⁶³ *People v. Carrillo* (1995) 37 Cal.App.4th 1662, 1670.

¹⁶⁴ *People v. Williams* (2000) 79 Cal.App.4th 1157, 1167.

¹⁶⁵ *People v. Superior Court (Price)* (1982) 137 Cal.App.3d 90, 97; *People v. Huerta* (1990) 218 Cal.App.3d 744, 750.

¹⁶⁶ *People v. Suennen* (1980) 114 Cal.App.3d 192, 199.

¹⁶⁷ See *People v. Hunter* (2005) 133 Cal.App.4th 371, 379, fn5.

¹⁶⁸ *People v. Carrillo* (1995) 37 Cal.App.4th 1662, 1668-71.

¹⁶⁹ *U.S. v. Wong* (9th Cir. 2003) 334 F.3d 831.

¹⁷⁰ See *U.S. v. Holzman* (9th Cir. 1989) 871 F.2d 1496, 1503; *U.S. v. Ayon-Meza* (9th Cir. 1999) 177 F.3d 1130, 1133.

¹⁷¹ *U.S. v. \$109,179* (9th Cir. 2000) 228 F.3d 1080, 1085; *U.S. v. Boyce* (11th Cir. 2003) 351 F.3d 1102, 1109.

¹⁷² (1995) 11 Cal.4th 786, 843.

¹⁷³ (1971) 22 Cal.App.3d 133, 137.

¹⁷⁴ *People v. Garcia* (1981) 121 Cal.App.3d 239, 246.

¹⁷⁵ See *U.S. v. Guerrero* (10th Cir. 2007) 472 F.3d 784, 788; *U.S. v. Williams* (10th Cir. 2005) 403 F.3d 1203.

¹⁷⁶ (10th Cir. 2007) 472 F.3d 784, 788. ALSO SEE *U.S. v. Gill* (8th Cir. 2008) 513 F.3d 836, 844-5.

said they were just visiting for the day. In ruling that the officers had grounds to detain the pair further, the court said the suspects' "differing renditions of their travel plans" was "most important to the overall evaluation."

INDEPENDENT WITNESS GIVES CONFLICTING STATEMENT: Officers might reasonably believe that a suspect was lying if his statement was in material conflict with that of an independent witness. This occurred in *People v. Davis* where several witnesses told officers they had seen Davis arguing with a woman shortly before she was raped and killed, while Davis claimed they had gone on a friendly walk.¹⁷⁷ Similarly, in *People v. Spears*¹⁷⁸ a murder suspect told officers that he left home at 8 A.M., which was after his employer had been murdered, but his mother said he left well before then.

UNBELIEVABLE TALES (or "That's my story and I'm gonna to stick with it"): Although not a provable lie, the suspect's story may be suspicious because it didn't make sense, it was implausible, or it didn't fit with the known facts. Some examples:

- A fleeing rape suspect claimed he had been jogging, but he wasn't perspiring or breathing hard, and he didn't have a rapid pulse.¹⁷⁹
- A burglary suspect told El Cerrito police that she was waiting for a friend, but she didn't know her friend's name. In addition, she said that her friend would be arriving on BART from San Jose, but BART doesn't run to San Jose.¹⁸⁰
- A burglary suspect told a Monterey Park officer that he was walking to his home, but he was walking in the wrong direction.¹⁸¹
- A suspected car thief told Huntington Beach officers that he borrowed the car from the owner, but he didn't know the owner's name.¹⁸²

- When an officer asked a suspected car thief how he had obtained the truck he was driving, he said he bought it from "a guy in Coon Rapids."¹⁸³
- When questioned by DEA agents at San Diego International Airport, a woman who was carrying \$42,500 in cash inside a bag claimed she had been given the bag by a man named "Samuel" (she didn't know his last name), and that she met the kind gentleman just a few minutes earlier.¹⁸⁴
- A man suspected of being under the influence of drugs told a CHP officer that the odor coming from his car was from a cough drop. But the odor was so "overwhelming" that it could only have been produced by a massive cough drop.¹⁸⁵
- An officer suspected that the fishing poles and equipment a man was carrying were stolen, so he asked if they were expensive; "no," he replied, "they're just cheap old things, I think I paid \$25 or \$30 for them." The officer, an avid fisherman, knew that the equipment was not "cheap."¹⁸⁶

VAGUE OR EVASIVE ANSWERS: Even though a suspect technically answered the officer's questions, his answers may be suspicious because they were ambiguous or elusive; e.g., he "gave vague and evasive answers" to questions about his identity,¹⁸⁷ neither suspect responded when asked what they were doing sitting in a parked car at 1:30 A.M.¹⁸⁸

ADMISSIONS: Suspects may say something that is incriminating but does not amount to a confession. These are known in the law as "admissions" and, as the following examples demonstrate, they are highly suspicious:

- When an officer went to the home of a suspected graffiti vandal to discuss the matter, the suspect said, "Take me to jail."¹⁸⁹

¹⁷⁷ (1981) 29 Cal.3d 814, 823.

¹⁷⁸ (1991) 228 Cal.App.3d 1.

¹⁷⁹ *People v. Fields* (1984) 159 Cal.App.3d 555, 564.

¹⁸⁰ *People v. Harris* (1980) 105 Cal.App.3d 204, 212-3.

¹⁸¹ *People v. Juarez* (1973) 35 Cal.App.3d 631, 635.

¹⁸² *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1364.

¹⁸³ *U.S. v. Hanlon* (8th Cir. 2005) 401 F.3d 926, 929.

¹⁸⁴ *U.S. v. \$42,500* (9th Cir. 2002) 283 F.3d 977

¹⁸⁵ *People v. Russell* (2000) 81 Cal.App.4th 96, 102-3.

¹⁸⁶ *People v. Warren* (1984) 152 Cal.App.3d 991, 997.

¹⁸⁷ *People v. Adams* (1985) 175 Cal.App.3d 855, 861; *U.S. v. Holzman* (9th Cir. 1989) 871 F.2d 1496, 1504.

¹⁸⁸ *People v. Hart* (1999) 74 Cal.App.4th 479, 493.

¹⁸⁹ *People v. Trinidad V.* (1989) 212 Cal.App.3d 1077, 1080 ["The minor's statement 'take me to jail' could reasonably be interpreted as an admission of guilt."].

- As an officer approached two burglary suspects, one of them said to the other, “I told you not to do it.”¹⁹⁰
- When an undercover officer phoned a suspected bookmaker, he heard two men in the background talking about NFL point spreads.¹⁹¹
- Officers overheard a suspected drug dealer talking about “money counters, kilos, thousands of dollars,” and something arriving tomorrow that needed to be “broken down.”¹⁹²
- When an officer detained a suspected prowler, the suspect blurted out, “I’m not prowling. I’m just lost, I’ve been in trouble in Arizona for burglary, and I just got out of jail in Long Beach for prowling . . . ”¹⁹³

KNOWING TOO MUCH: This is a favorite of mystery writers: the suspect volunteers some information that only the killer would have known. But sometimes it happens in real life. Take *People v. Spears* for example.¹⁹⁴ In this case, the defendant, an employee of a Chili’s restaurant in San Jose, shot and killed the manager in the manager’s office shortly before the restaurant was to open for the day. When other employees arrived for work and the defendant “discovered” the manager’s body, he exclaimed, “He’s been shot!” The manager had, in fact, been shot—three times in the head—but the damage to his skull was so extensive that only the killer would have known he had been shot, not bludgeoned.

Possessing Evidence

In many cases, probable cause is based, at least partly, on the discovery of items in the suspect’s possession that were used in the commission of the crime under investigation, or which are commonly used in such crimes. Some examples:

- Inside the van of a suspected burglar, officers found a furniture dolly, a knife, screwdriver, flashlight, and gloves.¹⁹⁵
- A burglary suspect possessed a bolt cutter; a bolt cutter had been used to gain entry into the home he was suspected of burglarizing.¹⁹⁶
- Suspected burglars possessed pillow cases filled with “large, bulky” items.¹⁹⁷
- A suspected drug dealer possessed a “bundle of small, plastic baggies.”¹⁹⁸
- A man suspected of possessing drugs for sale was carrying a “big wad of bills.”¹⁹⁹
- Inside a car occupied by two suspects in a shooting, officers found a .22 rifle, a box of ammunition, and expended shell casings.²⁰⁰
- A man who had solicited the murder of his estranged wife possessed a hand-drawn diagram of his wife’s home and lighting system.²⁰¹
- A murder suspect possessed bailing wire; bailing wire had been used to bind the murder victims.²⁰²
- A robbery suspect possessed clothes that matched those worn by the perpetrator.²⁰³

¹⁹⁰ *People v. Stokes* (1990) 224 Cal.App.3d 715, 721.

¹⁹¹ *People v. Rooney* (1985) 175 Cal.App.3d 634, 648.

¹⁹² *U.S. v. Garcia* (6th Cir. 2007) 496 F.3d 495.

¹⁹³ *People v. Superior Court (Johnson)* (1971) 15 Cal.App.3d 146, 150-2. Quote edited.

¹⁹⁴ (1991) 228 Cal.App.3d 1.

¹⁹⁵ *People v. Taylor* (1975) 46 Cal.App.3d 513, 518.

¹⁹⁶ *People v. Mack* (1977) 66 Cal.App.3d 839, 859.

¹⁹⁷ *People v. Vasquez* (1983) 138 Cal.App.3d 995, 999-1000. ALSO SEE *People v. Suennen* (1980) 114 Cal.App.3d 192, 199 [half-filled pillowcases observed in car of suspected pillowcase burglar].

¹⁹⁸ *People v. Nonnette* (1990) 221 Cal.App.3d 659, 666.

¹⁹⁹ *People v. Brueckner* (1990) 223 Cal.App.3d 1500, 1505. ALSO SEE *People v. Huerta* (1990) 218 Cal.App.3d 744, 751; *U.S. v. Bustos-Torres* (8th Cir. 2005) 396 F.3d 935, 943 [suspect possessed \$10,000 in currency following a suspected drug transaction].

²⁰⁰ *People v. Rico* (1979) 97 Cal.App.3d 124, 133. ALSO SEE *People v. Superior Court (Orozco)* (1981) 121 Cal.App.3d 395, 404; *People v. Anthony* (1970) 7 Cal.App.3d 751, 763.

²⁰¹ *People v. Miley* (1984) 158 Cal.App.3d 25, 35-6. ALSO SEE *People v. Memro* (1995) 11 Cal.4th 786, 843 [man suspected of sexually assaulting and murdering a young boy possessed materials “showing a morbid sexual interest in young boys”]; *People v. Guillebeau* (1980) 107 Cal.App.3d 531, 554 [officer seized a newspaper in the suspect’s house because it contained an article about the crime under investigation, and the officer knew that “suspects commonly harbor newspaper accounts of their offenses.”]; *People v. Duncan* (1981) 115 Cal.App.3d 418, 426 [officer seized a poetry book from a rape suspect’s home because the rapist read poetry to the victim].

²⁰² *People v. Easley* (1983) 34 Cal.3d 858, 872.

²⁰³ *Warden v. Hayden* (1967) 387 U.S. 294.

- A murder suspect possessed “cut-off panty hose”; officers knew that the murderers had worn masks, and that cut-off panty hose are sometimes used as masks.²⁰⁴
- A robbery suspect possessed a handcuff key; the victim had been handcuffed.²⁰⁵

Other Circumstances

The following circumstances are also frequently relevant in establishing probable cause and reasonable suspicion:

SUSPECT’S PHYSICAL CONDITION: The fact that the suspect was injured, bleeding, dirty, out-of-breath, sweating, or wearing torn clothing is highly suspicious if officers reasonably believed that the perpetrator would have been in such a condition.²⁰⁶

SUSPECT’S RAP SHEET: While it is relevant that the suspect had been arrested or convicted of a crime in the past, it is especially significant that the crime was similar to the one under investigation.²⁰⁷

KNOWN ASSOCIATES: Officers learned that the suspect was associating with people who had previously been arrested for, or convicted of, the type of crime under investigation.²⁰⁸

PERPETRATOR’S COMPANION: If there were two or more perpetrators, a positive ID of one suspect made shortly after the crime was committed may help establish probable cause to arrest his companions.²⁰⁹

TANDEM OR ERRATIC DRIVING: Driving erratically or in tandem with another vehicle “may be indicative of criminal goings-on.”²¹⁰

METHOD OF OPERATION (modus operandi): If officers reasonably believed that the suspect engages in criminal activity in a certain manner, it is quite relevant that the crime under investigation was committed in such a fashion.²¹¹

FINGERPRINT MATCH: Definitive evidence.²¹²

DNA MATCH: Definitive evidence.²¹³

MOTIVE: Frequently relevant.²¹⁴

OPPORTUNITY: That the suspect had the opportunity to commit the crime is only mildly suspicious.²¹⁵

HANDWRITING, GRAFFITI ANALYSIS: Both are reliable methods of determining the identity of the writer of a document or graffiti.²¹⁶

ARREST WARRANT LINK TO CAR: Reasonable suspicion to stop a car and detain the occupants will likely exist if the car was registered to, or linked to, a person for whom an arrest warrant was outstanding. The purpose of the stop is to determine whether the fugitive is inside the car, or if the occupants know his whereabouts.²¹⁷

PROFILES: Combinations of circumstances that officers know from experience are consistent with a certain type of criminal activity may be considered. But these circumstances do not gain added significance merely because they have been incorporated into a “profile.”²¹⁸

PEN REGISTERS, CONNECTION TRAPS, TELEPHONE RECORDS: Reasonable suspicion and probable cause may be based in part on information that telephone calls were placed or received on a certain phone, or that such calls were placed or received on a certain date or at a certain time.²¹⁹

²⁰⁴ *People v. Hill* (1974) 12 Cal.3d 731, 763.

²⁰⁵ *Horton v. California* (1990) 496 U.S. 128, 130-1, 142.

²⁰⁶ See *People v. Manis* (1969) 268 Cal.App.2d 653, 661; *People v. Superior Court (Wells)* (1980) 27 Cal.3d 670.

²⁰⁷ See *Brinegar v. United States* (1949) 338 U.S. 160, 172; *People v. Lim* (2000) 85 Cal.App.4th 1289, 1298.

²⁰⁸ See *Maryland v. Pringle* (2003) 540 U.S. 366, 373; *People v. Hunter* (2005) 133 Cal.App.4th 371, 379.

²⁰⁹ See *People v. Craig* (1978) 86 Cal.App.3d 905; *People v. Bowen* (1987) 195 Cal.App.3d 269.

²¹⁰ *U.S. v. Del Vizo* (9th Cir. 1990) 918 F.2d 821, 826. ALSO SEE *United States v. Sharpe* (1985) 470 U.S. 675, 682, fn.3.

²¹¹ See *People v. Maier* (1991) 226 Cal.App.3d 1670, 1675; *U.S. v. Bustos-Torres* (8th Cir. 2005) 396 F.3d 935, 945.

²¹² See *People v. Anderson* (1983) 149 Cal.App.3d 1161, 1165; *People v. Wright* (1990) 52 Cal.3d 367, 392.

²¹³ See *People v. Wilson* (2006) 38 Cal.4th 1237; *People v. Travis* (2006) 139 Cal.App.4th 1271; *People v. Johnson* (2006) 139 Cal.App.4th 1135.

²¹⁴ See *People v. Superior Court (Wells)* (1980) 27 Cal.3d 670, 674; *People v. Spears* (1991) 228 Cal.App.3d 1, 20.

²¹⁵ See *People v. Spears* (1991) 228 Cal.App.3d 1, 20.

²¹⁶ See *People v. Barnum* (1980) 113 Cal.App.3d 340, 346; *People v. Trinidad V.* (1989) 212 Cal.App.3d 1077, 1080.

²¹⁷ See *People v. Dominguez* (1987) 194 Cal.App.3d 1315; *People v. William J.* (1985) 171 Cal.App.3d 72, 77.

²¹⁸ See *United States v. Sokolow* (1989) 490 U.S. 1, 10; *Reid v. Georgia* (1980) 448 U.S. 438.

²¹⁹ See *People v. Andrino* (1989) 210 Cal.App.3d 1395, 1401.

Crime-Specific Circumstances

While the circumstances discussed so far are often relevant in proving that a certain person committed a crime, the following are often cited in proving that a certain crime was committed.

CAR THEFT: Failure to produce registration or driver's license, missing or improperly attached license plate, indications of VIN plate tampering, switched plates, broken windshield, evasive driving, failure to stop promptly when lit up, evidence of ignition tampering, makeshift ignition key, driver gave false or inconsistent statements about his possession of the vehicle; driver cannot name the registered owner.²²⁰

UNDER THE INFLUENCE: Pinpointed, constricted, or dilated pupils; droopy eyelids; bloodshot eyes; eyes not reactive to light; dry mouth; slow, lethargic, or deliberate actions; slow, deliberate, or slurred speech; extreme nervousness; profuse sweating; suspect was in a place where drugs are commonly sold or used; suspect was emaciated; injection marks.²²¹

POSSESSION CRIMES: Proof that a suspect possessed drugs or other contraband can be based on actual or constructive possession. Constructive possession of an item exists if there was a fair probability that the suspect knowingly had sole or joint control over it.²²² Relevant circumstances:

INDICIA: Inside a residence in which contraband was found, officers also found documents or other indicia linking the owner to the location; e.g., rent receipts, utility bills, driver's license.²²³

CONTRABAND IN RESIDENCE: It is usually reasonable to infer that a suspect possessed things in the common areas of his home, and in rooms over which he had joint or exclusive control.²²⁴

CONTRABAND INSIDE A VEHICLE: The driver and all passengers in a vehicle are usually deemed in possession of items to which they have immediate access or which are in plain view.²²⁵

ACCESS AND PROXIMITY: While access does not establish possession,²²⁶ it is a relevant circumstance.²²⁷ But probable cause will not exist merely because the suspect was present in a public place where the contraband was discovered.²²⁸

POSSESSION WITH INTENT TO SELL: Probable cause may be based on such things as the quantity of contraband, scales, packaging, lack of paraphernalia for personal use, large amount of cash.²²⁹

POSSESSION OF STOLEN PROPERTY: The following circumstances are relevant in establishing probable cause to believe that property was stolen:

CONDITION OF PROPERTY: The property showed signs of obliterated serial numbers, clipped wires, pry marks or other signs of forced removal, the presence of store tags or anti-shoplifting devices that are usually removed when goods are sold.²³⁰

LARGE QUANTITY OF PROPERTY: The amount of property in the suspect's possession was inconsistent with personal use. This is especially significant if the property was of a type that is commonly stolen; e.g., TVs, CDs, cell phones, jewelry.²³¹

SUSPICIOUS EXPLANATIONS: The suspect's story as to how he obtained the property was dubious.²³²

FOOT TRAFFIC: There was heavy foot traffic in and out of the suspect's home, and many of the visitors were carrying property.

LOW PRICE: Suspect said he bought the property for a certain price; the price was much too low.²³³

NO LEGITIMATE INCOME: Suspect had no legitimate source of income.²³⁴

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²²⁰ See *People v. James* (1969) 1 Cal.App.3d 645, 648-9; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1364.

²²¹ See *People v. Sanchez* (1987) 195 Cal.App.3d 42; *People v. Layne* (1965) 235 Cal.App.2d 188, 190.

²²² See *Maryland v. Pringle* (2003) 540 U.S. 366; *People v. Daniel G.* (2004) 120 Cal.App.4th 824, 831.

²²³ See *People v. Nicolaus* (1991) 54 Cal.3d 551, 575; *People v. Rushing* (1989) 209 Cal.App.3d 618, 622.

²²⁴ See *Ker v. California* (1963) 374 U.S. 23, 36-7; *People v. Gabriel* (1986) 188 Cal.App.3d 1261, 1265-6.

²²⁵ See *Maryland v. Pringle* (2003) 540 U.S. 366, 372-3; *New York v. Belton* (1981) 453 U.S. 454, 462.

²²⁶ See *People v. Maese* (1980) 105 Cal.App.3d 710, 716.

²²⁷ See *People v. Fisher* (1995) 38 Cal.App.4th 338, 345.

²²⁸ See *Ybarra v. Illinois* (1979) 444 U.S. 85, 91.

²²⁹ See *People v. Hunter* (2005) 133 Cal.App.4th 371, 378; *People v. Parra* (1999) 70 Cal.App.4th 222, 227.

²³⁰ See *People v. Gorak* (1987) 196 Cal.App.3d 1032, 1039; *People v. Curtis T.* (1989) 214 Cal.App.3d 1391, 1398.

²³¹ See *People v. Martin* (1973) 9 Cal.3d 687, 696; *People v. Wolder* (1970) 4 Cal.App.3d 984, 994.

²³² See *People v. Memro* (1995) 11 Cal.4th 786, 843; *People v. Richard T.* (1978) 79 Cal.App.3d 382, 388.

²³³ See *People v. Deutschman* (1972) 23 Cal.App.3d 559, 562.

²³⁴ See *People v. Williams* (1988) 198 Cal.App.3d 873, 890.