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In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

RAYSHON DERRICK THOMAS,

Defendant and Appellant.

Case No. S185305

SUPREME COURT
FILED
DEC - 1 2010
Frederick K. Ohlrich Clerk
Deputy

Fifth Appellate District, Case No. F056337

RESPONDENT'S OPENING BRIEF ON THE MERITS

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
JANET A. NEELEY
Deputy Attorney General
STEPHEN G. HERNDON
Supervising Deputy Attorney General
State Bar No. 130642
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-0350
Fax: (916) 324-2960
Email: Stephen.Herndon@doj.ca.gov
Attorneys for Plaintiff and Respondent

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ISSUES PRESENTED

Did Penal Code section 781 permit the prosecution of defendant for possessing cocaine for sale in Madera County, where defendant lived and arranged his drug sales, even though he stored the contraband in adjacent Fresno County?

If not, should the Court of Appeal have considered whether defendant was prejudiced by the trial court's denial of his motion to dismiss for improper venue?

INTRODUCTION

Penal Code section 781 provides that crimes committed in part in one jurisdictional territory and part in another may be prosecuted in either. Appellant, a paroled gang member, lived and conducted drug sales in Madera County. He stored his cocaine and gun in a storage locker nearby in Fresno County. He was successfully prosecuted for gun possession and possessing cocaine for sale in Madera County. The Fifth District Court of Appeal reversed his convictions, finding that venue lay solely in Fresno County. Respondent takes issue with the appellate court's conclusion that Penal Code section 781[1] does not apply. Respondent also contests the appellate court's failure to conduct a harmless error analysis.

STATEMENT OF THE CASE

A search of appellant, his vehicle, and his residence, all in Madera County, unearthed evidence that appellant was involved in selling rock cocaine. Appellant also had a key to and receipts for a storage locker in Fresno County. Officers searched that locker and found a large amount of cocaine and a revolver with appellant's initials. Possessing cocaine for sale and gun possession charges were filed in Madera County. It was further

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[1] All section references are to the Penal Code.

alleged that both counts were committed for the benefit of, at the direction of, and in association with a criminal street gang. (CT 1-4.)

On June 17, 2002, prior to the preliminary hearing, appellant filed a motion to dismiss based on improper vicinage and venue, alleging that Fresno County was the proper venue because that was where the contraband was located. (1 CT 16-26.) On July 24, 2002, the People filed an opposition. (1 CT 38-47.)

At the August 2, 2002 hearing on that motion, appellant presented testimony from the resident manager of the storage locker. (5 RT 1201-1203.) He explained the procedures for renting and using the lockers. (5 RT 1203-1224.) Any person who knows the proper key code and possesses a key to the lock on the storage unit would have access to that unit. (5 RT 1223.)

Robert Blehm, a detective with the Madera County Narcotics Enforcement Team, testified about his declaration and affidavit that was attached to the People's opposition. (5 RT 1232-1238; see 1 CT 42-46.) Blehm had searched appellant, his vehicle, his residence, and the storage locker after appellant was detained on November 2, 2001. (5 RT 1239-1241; 6 RT 1513-1522.)

The People asked Detective Blehm a hypothetical question based on these facts:

> Being that on November 2nd of last year Mr. Thomas was stopped by his parole officer at 807 Clinton Street, Madera California. Upon being contacted by his parole agent, Mr. Thomas was found to be in possession of a large plastic bag. It contained a large amount of U.S. Currency, as well as a receipt to a storage locker; that being the Derrel's Mini Storage that's been discussed. Specifically, in the red bag there were found 956 one-dollar bills, 745 five-dollar bills, 228 ten-dollar bills, 260 twenty-dollar bills, two fifty-dollar bills, 3 one-hundred dollar bills, for a total of $12,561.

> After that initial contact with Mr. Thomas, his parole agent then went to the address that Mr. Thomas was reporting to parole, that being 524 Adelaide Street, No. 103, to do a search; that location was searched. Between that location and documentation that was on Mr. Thomas' person at the time of his contact by the parole officer on Clinton Street, there was a connection found to 522 Adelaide Street, No. C, in the City of Madera. Also during the search of Mr. Thomas at the Clinton Street address, a number of keys were found in his possession. Was found that he had a key in his possession that opened the padlock or the locking mechanism to the door at 522 Adelaide Street, No. C. Based upon that, 522 Adelaide, No. C, was accessed.
>
> At that location agents found another large stack of money in a dryer that was in the kitchen. The money found in the dryer consisted of 31, one-dollar bills, 10 five-dollar bills, 16 ten-dollar bills, 20 twenty-dollar bills, and another hundred dollar bill, for a total of $741. Additionally, at that location agents discovered two microwave ovens, a bag of – a box of sandwich bags, a face filter mask, and a second receipt for the Derrel's Mini Storage, as well as some baking soda.
>
> At that point agents then proceeded to the location of the mini storage. In the Derrel's Mini Storage that was on the receipts, they took with them the keys that had been found on Mr. Thomas' person. At the Derrel's Mini Storage, they discovered that the key on his person fit a padlock on the locker that was mentioned earlier in the testimony. I think it's 452, but I may be wrong. But the one that was referred to by Mr. Litman, inside that locker upon opening the locker, agents smelled a strong odor of cocaine. The locker was searched. 2.4 pounds of cocaine was found in the locker, as well as a stainless steel revolver. The stainless steel revolver was wrapped in a handkerchief, had – that had the initials RT on it.

(6 RT 1524-1527.) Detective Blehm was also aware that several informants had identified appellant as a large trafficker of cocaine in the City and County of Madera and that he was a validated 916 Sac Town Blood gang member. (6 RT 1527.) Based on those facts, as well as his contacts with street gang members in Madera who had sold and been

arrested for possession and possession for sale of rock cocaine, Detective Blehm opined that appellant possessed the cocaine for purposes of selling it in Madera County. (6 RT 1526-1529.) He opined that appellant was using the 522 Adelaide, No. C residence to manufacture and sell rock cocaine. (6 RT 1538-1539.)

The trial court denied the motion on September 9, 2002. (1 CT 95.) It found that evidence of some of the elements of possession for sale of a controlled substance was located in Madera County. (6 RT 1546.)

On July 12, 2005, appellant filed a motion to dismiss pursuant to section 995 based on improper venue. (1 CT 202-215.) The People filed oppositions to the motion. (1 CT 218-223, 227-236, 239-248.) On January 26, 2006, the trial court denied the motion. (1 CT 250; 21 RT 6020-6021.) In doing so, the court stated:

> What the People have alleged and have proved and with regard to establishing venue, they only have to establish that by a preponderance of the evidence. We are talking not about a street dealer, we are talking about a criminal enterprise trafficking in illegal narcotics whose home base or home office is in the City of Madera.
>
> We have Mr. Thomas living in the City of Madera, either at his purported [*sic*] parole address or at his hideaway, where is apparently the base of his operations. His money is here. And a large amount of money is here. His financing is here. He lives here. He is gang related to here. His business records are here. The only thing absent is his inventory. And his inventory, in a business sense, is just across the county line on Herndon. And so he is in constructive possession of his inventory like any other business even though it could be located a county away or state away, his base of operation is here and so the enterprise is here. He is in constructive – his constructive presence is here. Element obviously of the crime is here but you look at all this evidence presented by the People, a jury could conclude beyond a reasonable doubt that he is in constructive possession in Madera County of the drugs and the gun. So for those reasons the motion is denied.

(21 RT 6020-6021.)

On October 14, 2003, an information was filed in Madera County Superior Court charging appellant, in count 1, with possessing cocaine for sale, possessing more than a kilogram of cocaine, possessing cocaine while armed, having two strike prior convictions, and committing the offense with the intent to promote, further, and assist criminal conduct by gang members; appellant was charged in count 2 with being a felon in possession of a firearm, with prior strike and gang enhancements. (1 CT 125-128.) The gang enhancements were stricken the day the jury returned its verdicts. (4 CT 773.) On October 10, 2008, appellant was sentenced to 8 years plus 25 years to life on these charges.

On July 2, 2010, the Fifth District Court of Appeal reversed appellant's judgment in an unpublished opinion. The court determined that Fresno County, not Madera County, was the proper venue for prosecution. Respondent's petition for rehearing was denied on July 26, 2010.

SUMMARY OF ARGUMENT

The trial court correctly determined that Penal Code section 781 permitted the prosecution of appellant in Madera County. Madera was appellant's base of operations for his drug business, thus he intended to sell the cocaine there. Only his inventory of cocaine was stored in Fresno County. When appellant was apprehended in Madera County, he had the key to and receipts for the storage locker; thus, he constructively possessed the contraband in Madera. Finally, any error in the trial court's venue determination should have been reviewed for prejudice because venue does not implicate a trial court's fundamental jurisdiction.

ARGUMENT

I. APPELLANT WAS PROPERLY TRIED IN MADERA COUNTY BECAUSE HE COMMITTED HIS CRIME[2], OR ENGAGED IN THE REQUISITE ACTS, OR CAUSED THE REQUISITE EFFECTS, IN THAT COUNTY

This case concerns the application of Penal Code section 781 to the crime of possessing cocaine for sale where a defendant stores his drugs in one county but lives and conducts his drug business in another. This statute, one of the many exceptions to the general rule that venue lies in the county where the crime is committed (§ 777), provides:

> When a public offense is committed in part in one jurisdictional territory and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more jurisdictional territories, the jurisdiction of such offense is in any competent court within either jurisdictional territory.

(§ 781.)[3]

Succinctly stated, "[u]nder section 781, when a crime is committed partly in one county and partly in another county, or where the acts or effects constituting the crime or requisite to its commission occur in more

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[2] Respondent focuses on count 1's charge of possessing cocaine for sale; consideration of count 2's gun possession charge does not materially alter the analysis.

[3] Respondent notes some useful definitions: (1) territorial jurisdiction, or venue, means the county where a case can be tried (§§ 691, subd. (b), 777; *People v. Britt* (2004) 32 Cal.4th 944, 955; *People v. Posey* (2004) 32 Cal.4th 193, 199.); (2) jurisdiction refers to the inherent power of a court to decide a case and is composed of personal and subject matter jurisdiction (*Burns v. Municipal Court* (1961) 195 Cal.App.2d 596, 599); and (3) vicinage refers to a defendant's right to have a jury selected from the inhabitants in the area where the crime was committed (*Price v. Superior Court* (2001) 25 Cal.4th 1046, 1056). For venue provisions in addition to sections 777 and 781, see *People v. Posey, supra,* 32 Cal.4th at p. 209, fn. 7.

than one county, venue is in the superior court in each of the counties in question, and a defendant may be tried in any of them." (*People v. Posey, supra,* 32 Cal.4th at pp. 199-200.) Venue provisions in criminal cases "aim at insuring that a defendant's trial ... is conducted in an appropriate place, taking into account convenience both to the People and to the defendant, fairness to the defendant, and participation on the part of the community affected." (*Id.* at p. 204.) Section 781's multiple venue provisions are remedial and must be liberally construed. (*People v. Hernandez* (1976) 63 Cal.App.3d 393, 401.) A liberal construction achieves the statute's underlying purpose, "which is to expand venue beyond the single county in which a crime may be said to have been committed (see, e.g., *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1118; *People v. Simon* (2001) 25 Cal.4th 1082, 1109; *People v. Bismillah* (1989) 208 Cal.App.3d 80, 83; cf. *Price v. Superior Court, supra,* 25 Cal.4th at p. 1055 [concluding that provisions like § 781 are 'remedial and for that reason [are] construed liberally to achieve the legislative purpose of expanding criminal jurisdiction']) -- consistently, of course, with 'protect[ing] a defendant from being required to stand trial in a distant and unduly burdensome locale' (*People v. Simon, supra*, 25 Cal.4th at p. 1110, fn. 18)." (*Posey, supra*, 32 Cal.4th at pp. 218-219.)

Furthermore,

> The phrase "acts or effects ... requisite to the consummation" (*id.* at p. 219) of a crime does not require that those acts amount to an element of the crime. (See *People v. Price* (1991) 1 Cal.4th 324, 385.) These words encompass preparatory acts. (*People v. Posey, supra*, 32 Cal.4th at p. 219 [telephone call made to county of venue for purpose of planning crime was sufficient preparatory act]; *Price, supra*, 1 Cal.4th at pp. 384-386 [theft of firearms in county of venue, leading to murder in another, was sufficient preparatory act].) The prosecution must prove the facts establishing venue by a preponderance of the evidence.

> (See *People v. Cavanaugh, supra*, 44 Cal.2d at p. 262; *People v. Carter* (1935) 10 Cal.App.2d 387.)

(*People v. Betts* (2005) 34 Cal.4th 1039, 1057 (*Betts*).)

The prosecution need only prove the facts supporting venue by a preponderance of the evidence. (*Posey, supra*, 32 Cal.4th at p. 211.) A venue determination will not be disturbed on appeal as long as there is some evidence to support it. (*People v. Gutierrez, supra*, 28 Cal.4th at p. 1117.)

Here, the trial court had more than some evidence to support its determination that Madera County was a proper venue for appellant's trial under section 781. Appellant's connection to, acts in, and effects upon Madera County were significant: he lived there, was being supervised on parole there, was gang-related there, conducted an ongoing drug business selling rock cocaine there, and maintained a separate apartment to process his drugs there. When arrested, he had items involved in his drug sales (cash, cell phones, pager, baggies, microwaves, vehicle rental agreements, etc.) on his person, in his car, or in a secret apartment near his residence that was under his control. (6 RT 1524-1527; 1 CT 43, 243-244.) Tellingly, when arrested, appellant had a key to and receipts for the storage locker in Fresno which stored his cocaine and gun. In legal terms, appellant actually possessed the key to and receipts for the Fresno locker *in Madera*, giving him constructive possession *in Madera* of the cocaine in the Fresno locker.[4] These possessory acts were requisite to the consummation of his offense of possessing cocaine for sale. Expert opinion established that appellant intended to sell that cocaine in Madera. In short, appellant conducted his

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[4] Liability for possessing a controlled substance for sale may be predicated on either actual or constructive possession. (*People v. Morante* (1999) 20 Cal.4th 403,417, citing *People v. Rogers* (1971) 5 Cal.3d 129, 134.)

drug enterprise where he lived -- in Madera; he only stored his inventory across the county line in Fresno. Accordingly, appellant committed his offense partly in Madera and partly in Fresno, making venue proper in Madera under section 781. (See *People v. Waid* (1954) 127 Cal.App.2d 614, 617 [defendant mailed narcotics in Los Angeles County to prison in San Bernardino County; venue proper in Los Angeles].)

The appellate court eschewed this commonsense approach. Before examining that court's reasoning, a review of recent cases interpreting section 781 is helpful. This Court has examined section 781 several times in the past decade. For example, in *Posey*, this Court held that venue is a question of law to be decided by the court prior to trial. (*Posey, supra*, 32 Cal.4th at pp. 204, 208.) This Court also found the evidence sufficient to establish venue in Marin for a charge of selling cocaine base even though the two sales took place in San Francisco where the defendant lived; defendant's only contact with Marin County occurred over the phone when, from San Francisco, he negotiated the sales with an undercover officer in Marin. (*Id.* at pp. 220-221.) Nevertheless, this Court found venue in Marin was appropriate because defendant's "telephone calls to Marin constituted 'effects ... requisite to the consummation' of the crimes in question." (*Id.* at p. 221.) Similarly, appellant's gang connections, drug sales operation, residency, and possession of the locker key and receipts, all in Madera County, were necessary to the crime of possessing cocaine with the intent to sell it. If phone calls to the forum county are enough to vest venue, certainly appellant's many actions in Madera vested venue there.[5]

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[5] Witkin writes that "[t]he broadened venue provision of P.C. 781 is usually applied in two classes of cases: those in which acts of *commencement* take place in the county of trial (*infra*, § 52), and those in which acts of *consummation* take place there (*infra*, §53)." (See 4 Witkin

(continued...)

Next, in 2005, this Court decided *Betts, supra*, 34 Cal.4th 1039. There, defendant, a long-haul truck driver, picked up one of his victims in Riverside County but molested her in Los Angeles County. (*Betts*, at pp. 1056-1057.) The Court found that venue in Riverside was appropriate. Appellant picked up his victim in Riverside County with the intent to molest her, and his action of driving her to another county gave him the opportunity to molest her. (*Id.* at pp. 1057-1058.) Here, appellant had the intent to sell cocaine in Madera and evidence of his operation was in Madera. Storing his cocaine in Fresno protected it from being stolen or discovered, and thus furthered his drug sales.

In 2009, this Court returned to section 781 in *People v. Carrington* (2009) 47 Cal.4th 145 (*Carrington*). There, the defendant was convicted of multiple crimes arising out of four separate incidents. (*Carrington, supra*, 47 Cal.4th at pp. 154-155.) Said this Court:

> The evidence established, and the trial court found, that defendant committed preparatory acts in San Mateo County when she collected the items she planned to use to commit the crimes, including gloves, a screwdriver, a key, and a gun, from her home in San Mateo County, and made arrangements there to be transported to Palo Alto. Defendant suggests these preparatory acts were insufficient because there is no evidence defendant was planning to commit a murder -- as opposed to a burglary, theft, or robbery -- at the time she made these preparations in San Mateo County. Nevertheless, if preparatory acts occur in one county, those acts vest jurisdiction over the crime "even though the intent may have arisen in another county." (*People v. Bismillah* (1989) 208 Cal.App.3d 80, 86.)

(*Id.* at p. 185; see also *People v. Price, supra,* 1 Cal.4th at p. 385 [Humboldt County had jurisdiction over a murder committed in Los

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(...continued)
& Epstein, Cal. Criminal Law (3d ed. 2000), Jurisdiction and Venue, § 51, and cases collected at §§ 52 & 53.)

Angeles County because the defendant went to Humboldt County to obtain weapons for the purpose of killing the victim in Los Angeles County].) The same is true here. Appellant stored his cocaine in Fresno for the purpose of processing it into cocaine base in Madera County.

The appellate court's reasoning cannot stand in light of this Court's precedent. The Court of Appeal found the offenses with which appellant was charged to be merely possessory crimes. Since the gun and drugs were found in Fresno County, and there was no evidence appellant ever had them in Madera County, the appellate court believed that Fresno County was the *only* county where appellant could be prosecuted. (Opn., at pp. 5-6.) This myopic view of the facts and law is untenable. First, it fails to appreciate that appellant was not charged with possessing cocaine; he was charged with possessing it with the intent to sell it, and the evidence was that he intended to sell it in Madera. Second, it ignores the gang enhancement, which connected appellant's drug sales to his gang activity in Madera. As a result, the appellate court avoids all of the evidence of appellant's drug business in Madera. But there was no evidence that appellant intended to sell this cocaine anywhere other than Madera. Appellant's actions in Madera laid the groundwork for -- were preparatory for -- the sale of his illicit product in Madera.

Third, the court of appeal fails to acknowledge that appellant could not have possessed the cocaine and gun in Fresno without the key (which gave him access) and receipts (which entitled him to access) for the locker, and appellant had these items when he was arrested in Madera. Manifestly, possessing the key and receipts were requisite to the consummation of the charged offenses. And they gave appellant constructive possession of the contraband -- it was immediately accessible to appellant in some places under his control. (*People v. Barnes* (1997) 57 Cal.App.4th 552, 556; *People v. Austin* (1994) 23 Cal.App.4th 1596, 1609, disapproved on other

grounds in *People v. Palmer* (2004) 24 Cal.4th 856, 861.) Certainly, appellant did not actually possess the contraband when arrested; it was not on his person or in his presence. (*Ibid.*) The appellate court, while recognizing that appellant's right to control the contraband "could be inferred from the evidence found in Madera, including the key and receipts[,]" concluded that this did not mean appellant constructively possessed the contraband in Madera. (Opn., at p. 5.) This is exactly what that evidence means. How the appellate court could acknowledge but summarily deny appellant's constructive possession of the contraband is unexplainable. So is that court's subsequent statement -- that appellant constructively possession the contraband in Fresno, but not in Madera. (*Ibid.*) Appellant was arrested in Madera with the items establishing constructive possession of the Fresno contraband. Appellant's residence and drug enterprise were in Madera. There was no evidence that appellant himself had put the contraband in the Fresno locker. In fact, appellant's sole connection to the contraband was that he had constructive possession of it and had a plan and the means to process and sell it in Madera.

Besides mischaracterizing the evidence, the court of appeal misconstrued respondent's argument. The court said that the People argued for venue in Madera because that is where appellant had the requisite mental state (i.e., the intent to sell). The court dismissed that by saying that it was aware of no case that supports that notion. (Opn., at p. 6.)

The People have not argued that venue is proper in Madera just because that is where the mental state evidence exists -- appellant's intent to sell. However, as *Carrington* and *Betts* show, intent is relevant to the venue determination. (*Carrington, supra*, 47 Cal.4th at p. 185; *Betts, supra*, 34 Cal.4th at pp. 1057-1058.) Here, venue in Madera is supported by *all* appellant's acts. He constructively possessed the contraband while in Madera, as evidenced by the key and receipts and his involvement in

cocaine sales. He intended to sell it in Madera, as shown by his gang connections and drug enterprise evidence on his person, in his car, and in his secret apartment. Storing the cocaine in Fresno helped appellant achieve his unlawful purpose of possessing it with intent to sell. And it is worth noting that the gang evidence (appellant's Madera gang involvement) also supported the gang enhancement alleged in count 1 (though that enhancement was dismissed during trial).

The appellate court cited *Posey* for the proposition that venue does not turn on the presence or absence, in a county, of a defendant's state of mind. (Opn., at p. 6, citing *Posey, supra*, 32 Cal.4th at p. 221.) Again, that does not mean that state of mind evidence is irrelevant. The point of this discussion in *Posey* was to reject the defendant's suggestion that the "acts" spoken of in section 781 included an intent element.

As the *Posey* court stated:

> The gloss applied by defendant, however, inserts into section 781 something that is not present and contracts venue rather than extends it. Indeed, absence from section 781 -- as from the general provisions of section 777 and from other venue provisions as well (...) -- is a requirement that the defendant possess any mental state whatever with respect to a county, for purposes of venue. The requirement of "effects" in a county "requisite to the consummation" of a crime satisfied the need for a reasonable relationship between the crime and the county and, as a result, restricts the People's charging discretion within tolerable bounds. Moreover, the gloss applied by defendant would purchase freedom from manipulation of venue by the People at the cost of allowing similar manipulation by the defendant, who then could choose only a favorable county, or only the residents of a favorable county, for his or her criminal activity."

(*Posey, supra*, 32 Cal.4th at p. 220.)

In other words, state of mind evidence cannot be required so as to defeat venue, but it may be a factor supporting venue. Here, appellant's knowledge and intent, along with all the other acts done and effects created

in Madera, amply support the trial court's determination that venue was proper in Madera.

Finally, respondent submits that the purposes underlying section 781 are fully realized by prosecuting appellant in Madera. Since that is where appellant lived and conducted his gang-related drug business, trial there was convenient and fair to both parties, the witnesses, and the community most affected by appellant's crimes. Trial in Madera expanded rather than contracted venue. It protected appellant from having to defend in a distant locale. Such construction discourages defendants from crossing county lines to hide their drugs in neighboring counties to make prosecution more difficult. Importantly, a search of appellant's vehicle uncovered vehicle rental agreements for other vehicles, a common practice of narcotics traffickers in an effort to avoid detection. (1 CT 244.) Actually, the only inference supported by the record is that appellant sought to get the charges dismissed and to inconvenience prosecution witnesses by forcing them to travel out of county for trial. For all these reasons, this Court should find that the trial court correctly decided that venue was appropriate in Madera County.

II. EVEN ASSUMING ERROR, THE COURT OF APPEAL SHOULD HAVE FOUND THAT APPELLANT WAS NOT PREJUDICED

Assuming the appellate court correctly found error, it should not have reversed the convictions without a showing of prejudice. Here, any error was non-prejudicial because appellant would not have fared any better had he been tried in Fresno County.

Only if an error is so fundamental in nature that it affects a trial court's integrity will a reviewing court reverse the trial court's judgment without a showing that the error had some impact. (*Arizona v. Fulminate* (1991) 499 U.S. 279, 309.) Venue does not implicate a trial court's fundamental jurisdiction, either personal (authority to proceed against a defendant) or

Cal.4th at p. 208.) Errors which are not jurisdictional in the fundamental sense are reviewed under the appropriate standard of prejudicial error. (*People v. Letner* (2010) 50 Cal.4th 99, 139-140.)

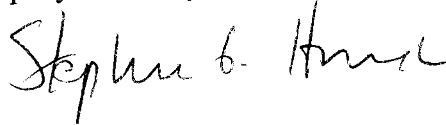
Venue is governed by statute and does not present a constitutional issue. (*Posey, supra*, 32 Cal.4th at p. 209.) To the extent appellant's motion invoked a right of vicinage, that right in California state courts comes from our state constitution, not the federal constitution. (*Id.* at pp. 222-223.) Consequently, any error warrants reversal only if it resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13.) Here, it is not reasonable probable that a result more favorable to appellant would have been reached had he been tried in Fresno County because the evidence of his crimes was overwhelming. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

CONCLUSION

Based on the foregoing, respondent submits that venue was appropriate in Madera County and that error, if any, was non-prejudicial. Consequently, the decision of the court of appeal should be reversed.

Dated: November 29, 2010 Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
JANET A. NEELEY
Deputy Attorney General



STEPHEN G. HERNDON
Supervising Deputy Attorney General
Attorneys for Plaintiff and Respondent

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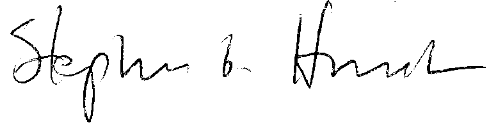
CERTIFICATE OF COMPLIANCE

I certify that the attached Respondent's Opening Brief on the Merits uses a 13 point Times New Roman font and contains 4686 words.

Dated: November 29, 2010

EDMUND G. BROWN JR.
Attorney General of California



STEPHEN G. HERNDON
Supervising Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Thomas**
No.: **S185305**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 30, 2010, I served the attached RESPONDENT'S OPENING BRIEF ON THE MERITS by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Carlo Andreani
Attorney at Law
582 Market Street, Suite 811
San Francisco, CA 94101
(2 copies)

Court of Appeal, Fifth Appellate District
2424 Ventura Street
Fresno, CA 93721

CCAP
2407 J Street, Suite 301
Sacramento, CA 95816

The Honorable Michael R. Keitz
Madera County District Attorney
209 West Yosemite Avenue
Madera, CA 93637

Madera County Superior Court
209 West Yosemite Avenue
Madera, CA 93637

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 30, 2010, at Sacramento, California.

____
Declarant